ALBERTA SECURITIES COMMISSION

DECISION

**Appeal under subsection 35(1) and section 36 of the Securities Act (Alberta)
from the Decision of the Executive Director under subsection 76(3) of the Act
and
Application for exemption under section 213 of the Act**

LYSALTA CAPITAL DEVELOPMENT CORPORATION

Panel:	Stephen R. Murison, Vice-Chair Dennis A. Anderson, FCA, Commission Member
Appearing:	Terry Hutcheon For Commission Staff Catherine Crang For Lysalta Capital Development Corporation
Date of Hearing:	31 March 2004
Date of Decision:	27 April 2004

Introduction

1. These proceedings involve two elements: an appeal of a decision of the Executive Director, and an application for exemptive relief. Lysalta Capital Development Corporation ("Lysalta") appealed, under subsection 35(1) and section 36 of the *Securities Act*, R.S.A. 2000, c. S-4 (the "Act"), the 30 January 2004 decision of the Executive Director refusing Lysalta's application to renew its registration as a mutual fund dealer under the Act. Lysalta also applied for an exemption under section 213 of the Act from certain of the requirements under the Act pertaining to registration as a mutual fund dealer.

2. A hearing was convened on 31 March 2004. Staff and Lysalta submitted an agreed statement of facts, which was entered as part of Exhibit 1. We heard from counsel for Lysalta and for Staff, considered additional written evidence, and heard from two witnesses: Mr. Terry Lys, the principal of Lysalta, and Ms. Nicole Chute, a chartered accountant and a member of Commission staff ("Staff").

Background

(a) Registration Requirements

3. Section 75 of the Act sets out the relevant registration requirements. Subsection 75(1) states:

> No person or company shall
> (a) trade in a security or an exchange contract or act as an underwriter unless the person or company is registered with the Executive Director as
> (i) a dealer,
> (ii) a salesperson, or
> (iii) a partner, a director or an officer of a registered dealer that acts on behalf of the dealer,
> …

4. Section 16 of the Alberta Securities Commission Rules (the "Rules") provides that "Every registrant who is a dealer shall be classified into 1 or more … categories…". The relevant category for Lysalta is found in subparagraph 16(c):

> (c) a mutual fund dealer, being a person or company
> (i) registered to trade exclusively in the shares or units of mutual funds, and
> (ii) that is a member of a self-regulatory organization or exchange that is recognized by the Commission for the purpose of this clause;

5. On 10 April 2001 the Commission issued an order under what is now section 64 of the Act, recognizing the Mutual Fund Dealers Association ("MFDA") as a self-regulatory organization ("SRO"). That recognition applies for the purpose of subparagraph 16(c)(ii) of the Rules. It was not suggested to us that any exchange or SRO other than the MFDA is relevant for the purpose of these proceedings.

6. In light of the Commission's recognition of the MFDA, the effect of subparagraph 16(c)(ii) of the Rules is that a registrant in the category of mutual fund dealer must be a member of the MFDA. The chronology shows that this was not a requirement at the time of Lysalta's initial registration in 1996.

7. Specific requirements or conditions of registration as a mutual fund dealer are found in other Rules, including section 39 of the Rules concerning the provision to clients of statements of account (discussed below), and in the specific terms and conditions of registration of a particular registrant. The MFDA also has its own rules which prescribe additional requirements for MFDA members.

(b) Lysalta

8. Lysalta was incorporated in 1996 by Terry Lys, whose background gave him a knowledge of and experience in the mutual fund dealer sector. His education includes a bachelor of administration degree (in accounting and finance), and Investment Funds Institute of Canada courses in the early to mid-1990s. His employment history includes five years in mutual fund sales for Ontario-based dealers.

9. Lysalta is a modest enterprise. Mr. Lys has acted as President, Alberta Trading Officer and Compliance Officer of the company since its inception. Lysalta is effectively a one-person firm.

10. Lysalta has been registered under the Act as a mutual fund dealer since 1996. Lysalta's certificate of registration under the Act, dated 7 November 1996 and included in Exhibit 1, includes the general statement that "All Registrants must comply with all of the requirements of Registration in the Act, Regulations and Policies as well as the specific conditions attached to this certificate". Lysalta's registration has four specific conditions:

(i) it is restricted to trading in mutual fund securities only;
(ii) it is restricted from handling and holding free credit balances on behalf of clients; all client money is to flow directly between clients and mutual fund companies;
(iii) it must file certain financial information with the Executive Director each month; and
(iv) any trades require prior specific written instructions and a written authorization from the client.

11. Lysalta is not a registrant, and has not been granted exemption from registration, in any other province.

12. Lysalta's clientele consists of approximately 30 households, largely (approximately 60 per cent measured by investments, although it is unclear whether the reference is solely to investments acquired through Lysalta) households that include relatives of Mr. Lys. Other clients include friends of Mr. Lys and, apparently (the evidence was unclear), other persons

referred to Lysalta by existing clients or through connections to charitable or volunteer organizations with which Mr. Lys is associated. Account sizes vary from very small to large ("seven figures"). In the aggregate they amount to approximately $4 million.

13. A sizeable portion of Lysalta's client base is outside Alberta – in British Columbia, Saskatchewan, Manitoba and, until very recently, Nova Scotia. Approximately one-third of its individual clients are outside Alberta, and they hold approximately 50 per cent of Lysalta's assets under administration.

14. Lysalta does not hold cash or securities for clients. Clients who wish to purchase a mutual fund security provide a cheque payable directly to the mutual fund issuer, which Lysalta forwards to the mutual fund issuer. Lysalta records client transactions on its trading blotter. Trades are confirmed either by telephone or through documentation from the mutual fund issuer.

15. Lysalta is bonded. Exhibit 1 includes a copy of a financial insurance bond, and correspondence included in the Exhibit indicates that Lysalta also maintains a surety bond.

16. In January and February 2003 Staff undertook an examination of Lysalta. Staff concluded from their examination that there were deficiencies in Lysalta's operations, which Staff communicated to Lysalta on 18 February 2003. The remainder of 2003 saw a series of written and verbal communications between Lysalta and Staff.

17. Lysalta does not send to its clients an annual statement of account. It has been preparing, and making available to clients on request, information as to the number of securities they hold and their current value, original cost and adjusted cost base. However, it has not been preparing or delivering an annual statement of transactions (purchases and redemptions) for the year. For the latter information, Lysalta's position is that its clients can rely on the information issued to investors twice yearly directly by mutual fund issuers.

18. Lysalta has not consistently maintained, or updated annually, written information about each client's financial position, investment objectives and risk tolerances, commonly referred to as "know your client" or "KYC" information. It seems to have been Lysalta's position that Mr. Lys, and hence Lysalta, have in fact had the requisite knowledge, gained through Mr. Lys' personal relationship with most or all of his clients, and that in consequence documenting such information would add little to the process.

19. Staff had challenged certain aspects of Lysalta's monthly financial statements. Staff had questioned whether Lysalta had been properly accruing expenses, and hence whether its reported net free capital might have been overstated. Staff had also questioned whether Lysalta had in fact consistently maintained net free capital of $25 000 as required. Staff had requested financial projections, but Lysalta had not furnished them.

20. Lysalta is not an MFDA member and has not made application to become a member.

21. No complaints about Lysalta have been received from clients.

22. Following several months of communication with Lysalta, Staff advised Lysalta by letter dated 12 December 2003 that Lysalta, not having become a member of the MFDA, was in violation of subparagraph 16(c)(ii) of the Rules. The letter further recited Staff concerns relating to: Lysalta's failure to provide information requested by Staff in respect of the company's financial statements; KYC information; provision of statements of account to clients; and its out-of-province clients. The letter concluded that Lysalta had not satisfied Staff concerns and that, accordingly, Staff considered Lysalta unsuitable for renewal of registration. Staff advised Lysalta that it could request a hearing before the Executive Director.

Hearing Before the Executive Director

23. Lysalta exercised its right to a hearing before the Executive Director. A hearing was held on 21 January 2004. Staff agreed that Lysalta's registration as a mutual fund dealer would be extended until then to permit the hearing to proceed and to enable Lysalta to continue in business.

24. At the hearing, the Executive Director considered written and oral submissions of Lysalta and of Staff and heard testimony from Staff members and from Mr. Lys.

25. Lysalta sought to have the Executive Director consider both Staff's objections to the renewal of Lysalta's registration, and the granting to Lysalta of an exemption, under section 213 of the Act, from the MFDA membership requirement.

26. Lysalta and Staff agreed that the issues relevant to that hearing were:

(i) the requirement of Lysalta to be an MFDA member;
(ii) the accuracy of Lysalta's financial statements;
(iii) Lysalta's handling of KYC information;
(iv) the compliance of Lysalta's client statements with ASC Rule 39(5); and
(v) Lysalta's legal ability to service out-of-province clients.

(a) Lysalta's Position

27. Lysalta took the position that membership in the MFDA would be unduly costly for it, pointing to the application and annual minimum membership fee of $3 000, the MFDA's mandatory net free capital requirement of $50 000 for members, and the costs of belonging to an MFDA investor protection fund. Lysalta argued that its clients did not require the protection afforded by MFDA membership and adherence to MFDA requirements for several reasons: Lysalta does not hold money or securities for clients; it is bonded; and its clients are predominantly relatives or friends of Mr. Lys.

28. Lysalta continued to dispute Staff's contentions about the past adequacy of its net free capital. However, it did indicate that it would make appropriate monthly accruals in order to properly calculate its net free capital, and that it would provide the financial projections sought by Staff.

29. Mr. Lys did not seem to think that documenting and updating KYC information would be an obstacle for Lysalta.

30. Concerning subsection 39(5) and the requirement that clients of a mutual fund dealer be provided with a statement, at least annually, itemizing purchases or redemptions since the prior statement, Lysalta took the position that most of the information contemplated by the Rule is provided to its clients by mutual fund issuers and thus, in effect, there is no non-compliance. Mr. Lys estimated that for Lysalta to be able to provide statements containing the information specified in subsection 39(5), it would have to purchase new computer software at an annual cost of $12 000. Mr. Lys also stated that only one-third to one-half of his clients would receive additional information from such a statement, and that such statements from Lysalta might actually contain less information than the clients currently receive from the mutual fund issuers. Moreover, Lysalta argued that the information it generates about its clients' cost of investments is particularly useful to them for measuring their tax obligations. However, because such information is not required under the Rules it would not necessarily be provided to clients of a mutual fund dealer who followed strictly the requirements of the Rules.

31. Lysalta seemed to have operated under the assumption that its manner of reporting, or not reporting, to its clients had been known to, and condoned by, Staff from the outset. Lysalta pointed to a statement of policy provided to Staff in connection with Lysalta's original registration application.

32. Lysalta seemed to consider restrictions on its extraprovincial activity, and Staff expressions of concern about non-compliance with such restrictions, simply as an affront.

(b) Executive Director's Decision

33. In respect of Lysalta's lack of MFDA membership, the Executive Director held that he did not have jurisdiction to grant an exemption under section 213. Following his decision in *Re Pewter Financial Ltd.* (2003) ABSECCOM REA-#1152647 v1 (varied by the Commission on appeal (2003) ABSECCOM ENF-#1268722 v1), he declined to grant registration, or a renewal of registration, on terms and conditions that would, in effect, amount to his granting such an exemption. He concluded that, absent an exemption granted by the Commission from the requirement for MFDA membership in accordance with subparagraph 16(c)(ii) of the Rules, Lysalta's failure to be a member of the MFDA demonstrated unsuitability. He therefore found that its registration would be objectionable.

34. Concerning the accuracy of Lysalta's financial statements and the adequacy of its net free capital, and its failure to provide the financial projections sought by Staff, the Executive

Director found that it was proper for Staff to seek further information where, based on the risks in a particular case, they felt it prudent to do so. He noted that section 82 of the Act entitles the Executive Director to require such information. The Executive Director appeared to accept Mr. Lys' indication that Lysalta would comply with such requirements in future.

35. The Executive Director appeared to accept that apparent deficiencies in Lysalta's documentation of KYC information might reflect more a "lack of formality" than a failure to actually obtain such information through Mr. Lys' direct personal contacts with clients. In any event, the Executive Director appeared prepared to accept Mr. Lys' evidence that Lysalta would in future comply with the formal KYC requirements.

36. The Executive Director did not accept that Lysalta was in compliance with its obligations to provide annual client statements of account by relying on subsection 39(5) of the Rules. Nor did he agree that the Commission had accepted or was otherwise estopped from insisting on compliance by reason of not having objected to the description of its policies furnished by Lysalta in 1996. He pointed out that Lysalta's policy description did not indicate that information generated by Lysalta would be sent to clients only if requested, although Mr. Lys had apparently suggested in his evidence that this was implicit. The Executive Director concluded that, unless Lysalta obtains an exemption from that provision of the Rules, it cannot carry on in breach.

37. The Executive Director noted that neither he nor the Commission is in a position to provide a remedy to enable Lysalta to carry on serving clients outside Alberta, unregistered, in contravention of the securities laws of those jurisdictions. Noting evidence that Lysalta had begun making inquiries to the securities regulatory authorities in affected jurisdictions, the Executive Director held that Lysalta must either discontinue serving clients outside Alberta immediately, seek registration exemptions or obtain registration in the affected jurisdictions.

38. The Executive Director acknowledged in his reasons for decision that Lysalta is "a very small player who will have trouble adapting to the requirements of the MFDA", and that "the cost of regulation is the main challenge for Lysalta". He noted, however, that Lysalta had not been complying with the requirements of Alberta securities laws even before the advent of the MFDA: "Notwithstanding its ability to satisfy its clients, Lysalta is in a regulated industry and must comply with the requirements of law. To date, it has not done so."

39. The Executive Director did suggest that there might be grounds for Lysalta to pursue, with the Commission, an exemption on a basis comparable to the exemption, embodied in current Alberta securities laws, that permits certain distributions of securities to be made without a prospectus to purchasers who have a specified close relationship to the issuer.

40. The Executive Director also held that Lysalta must cease serving clients outside Alberta in contravention of the securities laws of the affected jurisdictions. He gave Lysalta 30 days in

which to move accounts to a properly registered entity, or alternatively to pursue registration or exemption in affected jurisdictions "in a timely fashion and providing evidence of same".

41. The Executive Director concluded by confirming the finding of Staff that the proposed renewal of Lysalta's registration would be objectionable and, by clear implication, he declined to grant renewal of the registration. For the purpose of enabling Lysalta to pursue its statutory rights of appeal from his decision and to pursue membership with the MFDA, he granted an interim extension of Lysalta's registration, until its rights of redress no longer exist. Such extension was conditional on Lysalta pursuing its rights in a timely fashion and on there being no conditions or circumstances which in his opinion would constitute a risk to Lysalta's clients.

Hearing before the Commission

(a) Issues

42. The two primary issues to be determined by this panel were:

1. Did the Executive Director err in finding the renewal of Lysalta's registration as a mutual fund dealer under the Act to be objectionable and hence in declining to renew such registration?
2. Should the Commission exempt Lysalta under section 213 of the Act from the requirement under subparagraph 16(c)(ii) of the Rules that a mutual fund dealer be a member of an SRO, in this case the MFDA, and, if so, on what terms and conditions?

(b) Preliminary Matters

43. The evidence before us was not inconsistent with that before the Executive Director, although we did receive additional evidence and heard additional arguments on issues including the sending of client statements of account and extraprovincial compliance matters.

44. Counsel for Lysalta put forward an interpretation of subsection 39(5) of the Rules that, if accepted, would mean that the requirement to provide clients of a mutual fund dealer with statements of account could be satisfied by the dealer relying on the delivery of such statements directly from mutual fund issuers. Even were such an interpretation accepted, counsel seemed to acknowledge that the information furnished to clients directly by mutual fund issuers still did not in all cases fully satisfy the content requirements of the provision. Staff argued for an interpretation of the provision that imposes the obligation squarely on the mutual fund dealer, without the ability to rely on others to actually provide the information to clients.

45. We learned that Lysalta has taken some limited additional steps to regularize its position outside Alberta, in the form of correspondence to the securities regulatory authorities in the affected jurisdictions outlining Lysalta's activities there and requesting regulatory approval or relief. There was also evidence that, in response to a firm negative response from the securities regulatory authority in Nova Scotia, Lysalta has advised its former client there that it can no longer act for that client. Mr. Lys testified as to recent telephone discussions with staff of the British Columbia Securities Commission. Although he presented the conversation as very

sympathetic to Lysalta's position, counsel for Staff indicated that it amounted to little more than a commitment to forward the application for consideration.

46. We believe that one element of the arguments and testimony presented to us on behalf of Lysalta merits a preliminary comment. It appeared to the panel, from some of the remarks made in the course of the hearing, that Lysalta may have been under the impression that it was up to the Commission to satisfy Lysalta that we would render a decision that would enable Lysalta to conduct its business in a manner satisfactory to Lysalta, and that if and only if we performed to that standard would Lysalta adhere to remaining regulatory requirements. While the impression we gained may have been unintended and inadvertent and not a true reflection of Lysalta's understanding, we nonetheless think it useful to begin our analysis with some remarks on the nature and purpose of securities regulation.

47. The purpose of the Act, and the role of the Commission as the responsible regulating authority, is to protect investors and to foster a fair and efficient capital market and confidence in that market. We apply Alberta securities laws with a view to furthering these objectives. Within this regulated environment there are categories of market participants who hold a place of privilege, but one which carries with it important responsibilities. Among these categories are registered mutual fund dealers. As we saw earlier, in the absence of a registration exemption, trading in securities must be conducted through a registrant. This alone gives registrants a position of privilege. As a class, mutual fund dealers are assigned an important role in protecting investors, notably their clients, as well as in fostering the fairness and efficiency of the market for mutual fund securities. To accomplish that, mutual fund dealers and other registrants are subject to evolving and sometimes extensive regulatory requirements. The system has been supplemented by a role for SROs, including the recent advent of the MFDA. The Commission strives to deal fairly with all market participants, while our focus remains at all times on our fundamental regulatory objectives.

48. Strong registrants who conduct themselves in accordance with both the letter and the spirit of the regulatory system play an important part in achieving those fundamental objectives. That does not, however, mean that it is the responsibility of the regulatory system or of those who administer it to assure for any particular market participant a profitable or fulfilling role of its own choosing. Mutual fund dealers operate in a regulated industry, and regulation can undoubtedly be constraining. Some participants may find the requirements or constraints not to their liking. We endeavour to deal fairly and objectively with all market participants, but it is not our task to craft a regulatory structure that happens to satisfy the business model, or any other attribute, of each and every current or prospective market participant. Our decisions are made in light of the fundamental objectives of securities regulation mentioned earlier.

49. We turn now to the principal issues before the panel.

(c) Appeal from the Decision of the Executive Director

50. The first issue is whether the Executive Director erred in finding the renewal of Lysalta's registration as a mutual fund dealer to be objectionable.

(i) *Legal Basis for Appeal*

51. Subsection 35(1) of the Act permits a person or company directly affected by a decision of the Executive Director to appeal that decision to the Commission. Pursuant to section 36, such an appeal is conducted as an appeal, not as a new hearing. Subsection 36(3) provides that, on appeal, the Commission may make any decision that the Executive Director could have made, confirm, vary or reject the decision under appeal, or direct the Executive Director to re-hear the matter.

52. The Executive Director's decision was made under section 76 of the Act, which states:

> (1) Unless it appears to the Executive Director that
>
> (a) an applicant is not suitable for registration, renewal of registration, reinstatement of registration or amendment of registration, or
>
> (b) the proposed registration, renewal of registration, reinstatement of registration or amendment of registration is objectionable,
>
> the Executive Director shall grant to the applicant the registration, renewal of registration, reinstatement of registration or amendment of registration being applied for.
>
> (2) The Executive Director, in granting registration, renewal of registration, reinstatement of registration or amendment to registration, may do one or more of the following:
>
> (a) restrict a registration of an applicant by imposing terms and conditions on the registration;
>
> (b) restrict the duration of a registration of an applicant;
>
> (c) restrict the registration of an applicant to trades in certain securities or exchange contracts or a certain class of securities or exchange contracts.
>
> (3) The Executive Director shall not refuse to grant, renew, reinstate or amend registration for an applicant or impose terms and conditions on it without giving the applicant an opportunity to have a hearing before the Executive Director.

53. The Executive Director's primary task was to apply section 76 of the Act. As such, in assessing whether he erred in performing that task, we need to determine whether Lysalta's lack of membership in an SRO or exchange and the issues relating to Lysalta's financial statements, documentation of KYC information, client statements of account and extraprovincial compliance supported a finding that Lysalta was unsuitable for registration as a mutual fund dealer or that such registration would be objectionable.

(ii) *MFDA Membership*

54. In assessing whether the Executive Director erred in his application of section 76 of the Act, we consider first whether Lysalta's lack of membership in an SRO or exchange, as called for by subparagraph 16(c)(ii) of the Rules, indicated unsuitability for registration as a mutual fund dealer or indicated that such registration would be objectionable.

55. There is no question that Lysalta is in the full-time business of selling mutual funds to clients. Subparagraph 16(c)(ii) of the Rules is clear that to be categorized as a mutual fund dealer under section 75 of the Act, an applicant that seeks registration as a mutual fund dealer must be a member of either an SRO or an exchange. In April 2001 the Commission recognized the MFDA to serve that purpose.

56. The real question before us is whether Lysalta's lack of MFDA membership demonstrates that its registration as a mutual fund dealer would be unsuitable or objectionable.

57. It is worth considering the context in which the requirement for MFDA membership originated, including the underlying regulatory policy objectives and concerns. The Commission commented on this issue in *Pewter Financial Ltd.* (2003) ABSECCOM ENF-#1268722 v1 at paragraphs 28-29:

> In the face of tremendous growth in the mutual fund industry during the 1980s and 1990s, the Commission, and its counterparts in other Canadian jurisdictions, determined that our regulatory objectives of protecting investors and fostering market confidence and efficiency would be best served by mandating a regime of self-regulation of mutual fund dealers, much as a self-regulatory system already applied to full-service securities dealers (the IDA). A self-regulatory regime, it was felt, could provide superior monitoring and enforcement activities through an SRO comprised of industry members who, arguably, know the industry best. Among the public interest considerations that the Commission and its counterparts determined should be addressed by an SRO for mutual fund dealers were regulatory monitoring and review of compliance, and enforcement action in the event of non-compliance. After a lengthy process of public consultation across Canada, the Commission and its counterparts fostered the formation and recognition of the MFDA for that purpose. In Alberta, section 16 of the Rules was amended to require exchange or SRO (in this case, MFDA) membership as a condition of mutual fund dealer registration.
>
> The requirement for MFDA membership under subparagraph 16(c)(ii) of the Rules is thus designed to serve important securities regulatory objectives. Without very compelling circumstances, the absence of MFDA membership can properly be considered to demonstrate unsuitability for registration as a mutual fund dealer, or that such registration would be objectionable.

58. Examining the present case in this context, the importance of the MFDA and MFDA membership is clear. We find that SRO or exchange membership – in this case, membership in the MFDA – is of sufficient importance to the regulation of mutual fund dealers that its

absence, without compelling circumstances supporting a different conclusion, demonstrates unsuitability for registration or renders registration objectionable.

59. In our view, therefore, the Executive Director was correct when he found that, without MFDA membership, Lysalta was unsuitable for registration as a mutual fund dealer and its application for renewed or amended registration was objectionable. We find that he did not err in denying Lysalta such renewed or amended registration.

(iii) *Financial Statements – Further Information Under Section 82*

60. Staff had sought information from Lysalta in connection with the concerns they had expressed about Lysalta's monthly financial statements, in particular its manner of accruing expenses and hence its computation of net free capital. Staff also sought certain financial projections. Those had yet to be produced by Lysalta. The Executive Director held that Lysalta was obliged by section 82 of the Act to produce the information sought by Staff. Mr. Lys indicated that Lysalta would respond to Staff's requirement for information.

61. Paragraph 82(a) provides that the Executive Director may require a registrant or applicant to submit further information or material, and he may specify a deadline. This provision serves a very basic purpose: it assists the Executive Director in making informed decisions in the performance of his regulatory duties. It is implicit, and essential to the effectiveness of the provision, that the recipient of such a requirement is obliged to comply. It was not seriously argued before us that the information sought was irrelevant to Lysalta's registration or its application, nor that section 82 was somehow inapplicable. We were in fact given the impression that compliance would be forthcoming. While there was a hint of conditionality to such compliance, we place no weight on it; this is not a matter of negotiation. As it was not disputed that further information was sought from Lysalta under section 82, the information must be submitted. The Executive Director was correct to so find. A failure to satisfy such a requirement indicates unsuitability for registration, or that registration would be objectionable.

(iv) *KYC Information*

62. Staff had alleged, and Lysalta did not dispute, that Lysalta had not documented and updated KYC information about its clients. It seems to have been Lysalta's position that the firm, through Mr. Lys' direct personal contact with Lysalta clients, did in fact "know" its clients, and hence it did have the information that KYC principles demand of registrants. Documentation – reducing that knowledge to writing – was, it seems, considered a merely mechanical "form" requirement. The Executive Director seemed prepared to accept that Lysalta's error was more one of form than of substance, but he found that Lysalta was nonetheless obliged to satisfy its KYC obligations in writing. He was correct to do so, and Lysalta indicated that it would comply in future. Lysalta operates, as we have said elsewhere, in a regulated industry. Gathering KYC information and keeping it current, and using KYC information in assessing the suitability of potential client investments, are among the most important responsibilities of a registrant. For this Commission to fulfil its functions as

regulator, with a view to both investor protection and investor confidence, regulatory staff must be able to ascertain what KYC information a mutual fund dealer has collected from its clients, and when it was collected. Even the best of information, if maintained only in an individual's head, is not easily ascertainable or verifiable; documentation of KYC information is imperative. A failure to do so is an indication of unsuitability for registration, or that registration would be objectionable.

(v) *Annual Client Statement of Account*

63. Concerning the furnishing of statements of account to clients, we heard from counsel conflicting interpretations of subsection 39(5) of the Rules. That provision states:

> (5) A mutual fund dealer is not required to comply with subsections (1) and (2) if a statement of account is sent to each client at least once every 12 months, showing
>
> (a) the number and market value at the date of purchase or redemption, of securities purchased or redeemed during the period since the date of the last statement sent under this subsection, and
>
> (b) the total market value of all securities of the mutual fund held by the client at the date of the statement.

64. Lysalta had argued, at the hearing before the Executive Director, that it would have to acquire new computer software at an annual cost of approximately $12 000 to be able to prepare the statements contemplated in subsection 39(5) of the Rules. In testimony before this panel, Mr. Lys said that it would not be possible to modify or adapt Lysalta's current software to provide information about client purchases and redemptions of mutual fund securities. We heard that Lysalta would not be able to prepare both the information prescribed by subsection 39(5) and the information concerning investment costs that Lysalta has been preparing in the past. Therefore, if we were to insist that Lysalta prepare the subsection 39(5) information, its clients would be deprived of the cost information that is of use to them for purposes of tax reporting and compliance.

65. According to counsel for Staff, subsection 39(5) must be read in the context of the section as a whole, which begins in subsection 39(1) by imposing directly on a registrant the obligation to forward to clients a statement of account. It was her position, therefore, that the unnamed provider of the statement referred to in subsection 39(5) must be the mutual fund dealer who, but for subsection (5), would be bound to deliver the statement of account in accordance with subsection 39(1). Counsel for Lysalta in effect read subsection 39(5) as a free-standing provision imposing a delivery requirement on nobody in particular, the effect being simply that the mutual fund dealer is not bound by subsection 39(5) as long as it, or someone else, provides clients with the information specified in subsection (5).

66. It is not necessary for us in this case to arbitrate between these competing interpretations. Subsection 39(5) of the Rules speaks of a statement of account, and from the context as well as from the content prescribed for the statement it is clear to us that the objective of the drafters was that clients of a mutual fund dealer obtain, at least annually,

information about the holdings and the transactions in their account with the dealer. There may be a degree, perhaps a high degree, of overlap between the information that investors receive from mutual fund issuers and the information prescribed in subsection 39(5). There is, however, a difference. That difference lies in the consolidation of information for the benefit of clients of mutual fund dealers. An account maintained by a client of a mutual fund dealer might include securities issued by only one mutual fund issuer, or securities of a number of different mutual fund issuers. Subsection 39(5) in our view calls for a statement containing information in respect of all of the securities, and all of the purchases and redemptions during the reporting period, in each mutual fund dealer client account, whether the client invests in one or in many mutual funds. Such a statement could duplicate the information received by the client from a mutual fund issuer only if the client happened to have invested and traded solely in securities of that one particular mutual fund issuer. We see no basis for assuming that Lysalta clients will invariably restrict their mutual fund investments and trading to a single mutual fund issuer, particularly given the importance that Lysalta seems to ascribe to its independence from mutual fund issuers.

67. Irrespective of who bears the direct obligation to send information under subsection 39(5) of the Rules, we find that the information to be delivered under that provision is information about holdings, purchases and redemptions in each mutual fund dealer client account as a whole. That information is (or ought to be) in the possession of the mutual fund dealer, not individual mutual fund issuers. The fact that there might be a degree of overlap between the information furnished by mutual fund issuers and that required under subsection 39(5) does not by itself remove, or satisfy, the client reporting obligations of a mutual fund dealer. There might be scope for a mutual fund dealer to bundle or repackage the information issued by the various mutual fund issuers in which their clients have invested, to facilitate production of the statements called for under subsection 39(5), but whether such an approach is feasible does not affect the ultimate responsibility of the mutual fund dealer under subsection 39(5).

68. We find that subsection 39(5) places on the mutual fund dealer the obligation of ensuring, as a minimum, that each of its clients receives at least annually the information specified in the provision in respect of all holdings and activity in the client's account with the dealer. The mutual fund dealer bears the onus of demonstrating that any documentation and procedure it devises satisfies subsection 39(5). Lysalta failed to discharge that onus. Again, that failure indicates unsuitability for registration, or that registration would be objectionable.

69. The panel was persuaded that the cost information that Lysalta has been in the practice of preparing for clients may indeed be valuable information for clients. That does not, however, alter the requirements of Alberta securities laws. While that information is not currently mandatory and this panel does not propose to require it, nothing precludes a mutual fund dealer from providing its clients with that additional information.

(vi) *Extraprovincial Compliance*

70. There seemed to be no real dispute that, by trading for clients in other provinces in which it is not registered, Lysalta was acting in contravention of the securities laws of those jurisdictions. Noting that neither he nor this Commission is in a position to provide a remedy for those extraprovincial contraventions, the Executive Director commented:

> From the ASC's point of view, we cannot allow an Alberta registrant to wilfully disregard the laws of a sister province.

He stated that Lysalta had three options:

> [To] discontinue this practice immediately, seek [in the relevant jurisdictions] an exemption from registration or apply for registration in the affected provinces.

71. The Executive Director held that Lysalta must discontinue serving extraprovincial clients, setting a 30-day time limit for moving their accounts to persons or companies properly registered, or take timely steps to remedy the breach of extraprovincial securities laws.

72. We concur with the Executive Director's comments. To take cognizance of breaches of securities laws outside Alberta is simply to acknowledge facts. To take exception to the continuation of such breaches is simply to recognize that underlying public interest objectives are common to our Act and the corresponding laws of the affected jurisdictions, and that to tolerate a known breach could affect the reputation of and confidence in Alberta's capital market and market regulation. Conduct contrary to the securities laws of another jurisdiction by itself suggests unsuitability for registration in Alberta, and that such registration would be objectionable. The Executive Director may, in fact, have been somewhat generous in seeming to accept that Lysalta might persist, temporarily, in its current conduct while it pursues, in timely fashion, efforts at regularizing its situation outside Alberta.

(vii) *MFDA Membership Exemption by the Executive Director*

73. A secondary or alternative issue before the Executive Director was whether he should, expressly or implicitly, grant Lysalta an exemption from the MFDA membership requirement under subparagraph 16(c)(ii) of the Rules. The Executive Director declined to grant such an exemption on the grounds that he had no jurisdiction to grant such an exemption, and that it would be inappropriate for him to do indirectly what he had not the jurisdiction to do directly – to grant a renewal of registration despite Lysalta's lack of MFDA membership.

74. Section 213 of the Act specifies that the Commission may grant relief of the sort sought by Lysalta. There being no parallel grant of authority to the Executive Director, either in the Act itself or in a subsidiary instrument such as an authorization by the Commission, jurisdiction to grant exemptive relief under section 213 rests exclusively with the Commission. We agree with the Executive Director that he did not have jurisdiction to grant the exemption sought. We also agree that it would be inappropriate for him, without such exemption having been granted

by the Commission, to have done so himself indirectly, by purporting to renew Lysalta's registration despite its lack of MFDA membership.

(viii) *Summary*

75. To summarize, on Lysalta's appeal from the decision of the Executive Director, we find as follows:

(i) The Executive Director was correct in considering that Lysalta's failure to become a member of the MFDA, contrary to subparagraph 16(c)(ii) of the Rules, demonstrated its unsuitability for registration and in finding the renewal or amendment of Lysalta's registration as a mutual fund dealer in that circumstance to be objectionable.

(ii) The Executive Director was correct in effectively holding that Lysalta must satisfy requirements to submit information under section 82 of the Act.

(iii) The Executive Director was correct in effectively holding that Lysalta must document KYC information.

(iv) The Executive Director was correct in holding that Lysalta has been in breach of subsection 39(5) of the Rules and that, unless it obtains an exemption, it must bring its conduct into compliance with that provision.

(v) The Executive Director was correct in concluding that Lysalta must discontinue serving extraprovincial clients. In setting a 30-day time limit for Lysalta to move those clients' accounts to persons or companies properly registered, or to take timely steps to remedy the breach of extraprovincial securities laws, the Executive Director may have acted somewhat generously on this issue.

(vi) Lysalta's conduct in respect of each of the foregoing issues individually, and all of them taken together, indicate that Lysalta was unsuitable for registration, or that the renewal or amendment of its registration would be objectionable.

(vii) The Executive Director was correct in holding that he did not have the jurisdiction to grant Lysalta an exemption under section 213 of the Act from the requirements of subparagraph 16(c)(ii) of the Rules, and in considering that it would have been inappropriate for him to have indirectly granted such an exemption by renewing Lysalta's registration despite its lack of MFDA membership.

76. The decision of the Executive Director having met the standard of correctness, Lysalta's appeal from his decision is denied.

(d) ***Application for Exemption***

(i) *Nature of Exemption Sought*

77. The remaining issue is Lysalta's application for exemptive relief from certain of the requirements of Alberta securities laws applicable to registration as a mutual fund dealer. Lysalta sought exemption from the requirement under subparagraph 16(c)(ii) of the Rules that it be an MFDA member. It sought such exemption essentially without condition but also, in the alternative, sought the exemption on conditions that would narrow its client base to family,

friends and business associates of Mr. Lys. From the submissions of counsel for Lysalta it became apparent to the panel that Lysalta also sought to be able to continue its current practice of relying on mutual fund issuers to send the information prescribed in subsection 39(5) of the Rules rather than sending such information itself. Lysalta seemed to be willing to send to its clients annually the information it prepares relating to holdings and historical costs. Lysalta seemed to be seeking from the panel either confirmation that such a course of action would satisfy subsection 39(5) of the Rules, or an exemption to permit Lysalta to follow that course of action in lieu of compliance with subsection 39(5).

(ii) *Factors to be Considered*

78. Many if not all of the factors considered in Lysalta's appeal of the decision of the Executive Director are equally relevant to its application for exemption. That said, the outcome of the appeal is not determinative of the outcome of Lysalta's application for exemption. The grant of an exemption is discretionary. In considering such an application we are guided, above all, by whether a departure from the usual requirements of Alberta securities laws would be justified in the circumstances, not contrary to the public interest, and consistent with the regulatory goals discussed earlier.

(iii) *Analysis*

79. The onus of justifying an exemption rests on the applicant, in this case Lysalta.

80. We referred earlier to what we detected as a suggestion on the part of Lysalta that it is the task of the panel to render a decision satisfactory to Lysalta. We reject any such interpretation of Alberta securities laws or of our role. Lysalta's apparent dissatisfaction with the legal requirements from which it seeks exemption is, simply, insufficient grounds for granting an exemption.

81. Our comments above about subsection 39(5) of the Rules in the context of Lysalta's appeal from the decision of the Executive Director are equally applicable for these purposes. We earlier concluded that Lysalta's current practice concerning the furnishing of statements to clients fails to satisfy its obligations under section 39, including subsection 39(5). We do not believe that it would be in the public interest to exempt Lysalta from section 39. We are not persuaded that adherence by Lysalta to subsection 39(5) necessarily precludes it from also offering historical cost information to its clients; that will be a business decision. In any event, this aspect of Lysalta's application is denied.

82. Lysalta's arguments about the MFDA membership requirement are somewhat more compelling. As the Executive Director noted, Lysalta is a very small player with, it seems, a very unusual business model. The costs of mutual fund dealer regulation, taking into account the establishment of the MFDA and the effect of MFDA rules, may indeed affect the viability of Lysalta's business model.

83. This is not to deny that the MFDA and MFDA membership fulfil a very important role in our securities regulatory system. Despite Mr. Lys' negative views on the merits of the MFDA and the process of its recognition by this Commission, the evolution of mutual fund dealer regulation has been the result of a deliberate, considered process undertaken by the Commission and its counterparts across Canada, with industry and public input and with a view to the public interest (see the Commission's comments in *Pewter*, cited earlier). The regulatory system now in place for mutual fund dealers, including the role of the MFDA, reflects the current thinking and experience of securities regulators and industry. For entities whose business consists primarily of mutual fund dealing and which conduct that business with the public, we believe that this regulatory system – of which MFDA membership forms an integral part – appropriately addresses the Commission's fundamental regulatory objectives of protecting investors and fostering a fair and efficient capital market and confidence in that market.

84. That said, it seems to this panel that, given the unusual structure of Lysalta's business, the public interest would not necessarily be jeopardized were we to vary some of these regulatory requirements as they apply to Lysalta, on strict conditions and within narrow limits. We do believe, however, that strict conditions and narrow limits would be essential aspects of any such exemptive relief.

85. Lysalta argued that we should exempt it from the MFDA membership requirement as has been done for certain other mutual fund dealers. Counsel for Lysalta, and Mr. Lys, cited exemption orders granted to two other mutual fund dealers. Having considered those orders, it is clear to the panel that they were issued in circumstances that were not analogous to the facts before us. The other entities to which exemption was granted had not been registered solely in the category of mutual fund dealer, as counsel acknowledged, and mutual fund dealing was incidental to their business, whereas Lysalta is registered and carries on business solely in that category. It appears to the panel that exemption from the MFDA membership requirement has turned, and ought properly to turn, on unusual factors, notably that an applicant's trading activities as a mutual fund dealer are limited to non-public clients or are merely incidental to the applicant's principal business activities (for example, acting as a portfolio advisor or manager).

86. Lysalta is registered, and carries on business, solely as a mutual fund dealer. Lysalta has had a limited client base, much of which seems to consist of family and friends, but the client base appears to have gone beyond the narrow limits associated with the "family, friends and business associates" category applicable to certain capital-raising exemptions. The evidence indicates that Lysalta's client base now includes other persons referred by existing clients, as well as contacts made through charitable or voluntary organizations in which Mr. Lys has been active. As such, we conclude that Lysalta has in fact been serving "the public".

87. We therefore find that the basis on which exemption from the MFDA membership requirement was granted to other mutual fund dealers in the orders cited on behalf of Lysalta is

not applicable to Lysalta, because Lysalta's mutual fund dealing is not "incidental" to its business – it is the business – and Lysalta's client base constitutes or includes "the public".

88. We do not believe that it would be consistent with the public interest in this case to depart dramatically from either the requirements of Alberta securities laws or the basis on which the cited exemptions were granted. Were Lysalta to continue its current business model, or in any event to carry on trading activities for the public, we believe that it would not be in the public interest to exempt Lysalta and its business from the MFDA membership requirement under subparagraph 16(c)(ii) of the Rules.

(iv) *Grounds for Exemption*

89. While we are not prepared to grant Lysalta exemption for its current business model, we believe there to be scope for such an exemption consistent with the public interest, building on Lysalta's alternative application for an exemption subject to a "family, friends and business associates" limitation. Although counsel for Staff correctly pointed out that there is no "family, friends and business associates" exemption from the MFDA membership requirement, the panel does have considerable discretion in this application, sufficient to enable us to craft appropriate conditions of relief in the public interest. We have greater concern as to whether the conditions that we believe essential for the exemption sought could support a viable business.

90. The model for a "family, friends and business associates" exemption, alluded to by counsel for Lysalta, and by the Executive Director in his decision, is now found in Part 3 of Multilateral Instrument 45-103 *Capital Raising Exemptions* ("MI 45-103"). Under Part 3, a trade in a security of an issuer is not subject to the usual requirements that the trade be effected through a registrant and that the investor be provided with a prospectus, if the investor purchases the security as principal and falls within one of the enumerated categories, which include:

> …
> (b) a spouse, parent, grandparent, brother, sister or child of a director, senior officer or control person of the issuer, or of an affiliate of the issuer,
> (c) a parent, grandparent, brother, sister or child of the spouse of a director, senior officer or control person of the issuer or of an affiliate of the issuer,
> (d) a close personal friend of a director, senior officer or control person of the issuer, or of an affiliate of the issuer,
> (e) a close business associate of a director, senior officer or control person of the issuer, or of an affiliate of the issuer,
> …

91. Part 3 of MI 45-103 reflects a determination by the rulemakers that protection of the enumerated class of investors is not unduly jeopardized, despite the absence of the usual protections of prospectus disclosure and the involvement of a registrant, given the closeness of the relationship between such investors and the issuer itself. Because of their closeness to company principals, such investors are thought to have adequate information, or adequate

access to information, about the business, affairs and prospects of the issuer to be able to make informed investment decisions (without, of course, allowing trading on information not also available to the public). We might further infer that such investors' knowledge of and confidence in the director, senior officer or control person, and his or her ability, experience, ethics and business acumen, mean that they can appropriately base their investment decisions on those characteristics. It might also be inferred that the same close and direct relationship will motivate the director, senior officer or control person to endeavour to ensure that the issuer succeeds in its business and that family, friends and business associates are directed to sources of information about the issuer.

92. Although MI 45-103 serves quite different purposes from the requirements at issue before us, we believe that similar reasoning could apply in the case of Lysalta. It is true that there is not necessarily any personal relationship of the sort contemplated in MI 45-103 between a Lysalta client and a security issuer (a mutual fund in which the client might decide to invest), the issue here is whether the trading advice and procedures provided by Lysalta to the client might put the client at risk. We concluded that, given a very close and direct relationship between Mr. Lys and each Lysalta client who falls within categories similar to those in Part 3 of MI 45-103, it is highly unlikely that those clients would be placed in jeopardy by the absence of the protections afforded by MFDA membership and adherence to MFDA requirements.

93. Client categories comparable to those set out in Part 3 of MI 45-103 are limited – properly, in our view, given the relief to which the categories relate. Those categories are more limited than the range of clients that Lysalta currently serves. More limited client categories, coupled with a cessation (at least temporarily) of service to out-of-province clients (discussed below), mean that Lysalta could face a very substantial narrowing of its client base. While it is not the panel's task to ensure the success of any market participant's business, we do not consider that the interests of Lysalta, its clients or the public at large would be well served by having Lysalta reconfigure and relaunch its business, only for that business promptly to prove unviable, with either a suspension of business or new requests for expanded exemptions quickly following. We accordingly believe that it would be appropriate and in the public interest for Lysalta's use of the requested exemption to be conditional on Lysalta first satisfying the Executive Director that it has a reasonable prospect of viable operation within the terms of such exemption.

94. We also believe it to be appropriate and in the public interest for Lysalta's use of the requested exemption to be conditional on Lysalta first satisfying the Executive Director that it has ceased its contravention of extraprovincial securities laws. We comment further on this issue, below.

(v) *Terms and Conditions of Exemption*

95. Accordingly, on the conditions that follow, we order that Lysalta is exempt from the requirement under subparagraph 16(c)(ii) of the Rules that it be a member of an exchange or SRO, specifically the MFDA. The conditions of the exemption are as follows:

(a) Consistent with the terms of its current registration:
   (i) Lysalta is restricted to trading in mutual fund securities only and may not trade in any other type of securities, whether by registration or any exemption that exists under the Act;
   (ii) Lysalta is restricted from handling and holding free credit balances on behalf of clients. All client monies for subscriptions, redemptions, or pending investment decisions shall flow directly between the mutual fund issuer and the client;
   (iii) Lysalta must file with the Executive Director unaudited financial statements including a balance sheet and income statement, a calculation of net free capital and a statement of adjusted liabilities on a monthly basis, within 30 days of the end of each month; and
   (iv) no trades can be completed by Lysalta without first obtaining specific written instructions and a written authorization from the client.

(b) Lysalta is permitted to trade only for persons or companies described in one or more of the following categories:
   (i) a spouse, parent, grandparent, brother, sister or child of Mr. Lys;
   (ii) a parent, grandparent, brother, sister or child of Mr. Lys' spouse;
   (iii) a close personal friend of Mr. Lys;
   (iv) a close business associate of Mr. Lys; or
   (v) a company all the shareholders of which, a partnership all the partners of which, or a trust all the beneficiaries of which are described in one or more of clauses (i), (ii), (iii) or (iv).

(c) Lysalta must inform each client that Lysalta is not a member of the MFDA and is not bound by the MFDA rules, and that Lysalta clients are accordingly not entitled to the protections provided by MFDA regulation. This information must be provided in writing:
   (i) initially, in the case of continuing clients, when Lysalta commences to rely on the exemption, or in the case of a new client, when the client or prospective client is first solicited by or meets with a Lysalta representative; and
   (ii) again with each annual statement of account.

(d) Lysalta can rely on this exemption only after it has satisfied the Executive Director that it is not in breach of the securities laws of any other jurisdiction, and that it has a reasonable prospect of operating a viable business within the terms of the exemption. To that end, before relying on this exemption Lysalta must first have:
   (i) notified the Executive Director in writing of that intention;

(ii) within 30 days of sending the notification referred to in clause (i), provided the Executive Director with:

A. written evidence satisfactory to him that Lysalta has either ceased acting for clients outside Alberta or, in the case of a jurisdiction in which it continues to act for a client, that its position in that jurisdiction has been regularized either by registration or by having obtained an exemption from registration; and

B. a written financial forecast and such other information as the Executive Director may reasonably require to enable him to make an assessment of Lysalta's future ability to achieve and maintain the required $25 000 of net free capital and to otherwise fulfil its obligations as a registered mutual fund dealer and registrant in conformity with the conditions of this exemption; and

(iii) received notice in writing from the Executive Director that he is satisfied as to the matters referred to in clause (ii).

(e) Lysalta must comply with the terms, conditions and requirements of Alberta securities laws and of its registration, except as varied by this exemption. Among other things, this means that, to address the matters in issue in these proceedings, Lysalta must:

(i) comply with the requirements of Alberta securities laws to document, and update, KYC information about each client;

(ii) send to each client, at least annually, a statement of account containing at least the information specified in subsection 39(5) of the Rules concerning securities held in the client's account, and purchases and redemptions in that account; and

(iii) comply in a timely fashion with any requirement to furnish information under section 82 of the Act.

(e) Interim Extension of Current Registration

96. To give Lysalta an opportunity to determine whether it wishes to rely on the exemption granted above and, if so, to enable it to satisfy the preliminary conditions specified for that purpose, or alternatively to enable Lysalta to seek membership in the MFDA or to pursue other rights under the Act, we order that Lysalta's current registration is extended on an interim basis until 30 June 2004.

(f) Extra-Provincial Activity to Cease Immediately

97. Whether Lysalta chooses to reconfigure its business in order to rely on the exemption granted above, or determines instead to conform to the usual registration requirements without exemption, the issue of its out-of-province clients remains. As the Executive Director noted, we do not administer the laws of other jurisdictions. However, we are familiar enough with the laws administered by our counterparts across Canada to know that, in respect of the registration requirements applicable to mutual fund dealers, they are similar in purpose and effect to our

own. Non-compliance with such extraprovincial requirements is not directly a breach of our Act, but it is contrary to Commission Policy 3.1 *Registrants Code of Conduct and Ethical Practices* (an instance of unethical conduct referred to in subsection 4.4.1.10) and hence contrary to Lysalta's conditions of registration. More broadly, given that the purpose and effect of those extraprovincial requirements are very similar to our own, we believe that disregard of those extraprovincial laws cannot be overlooked or condoned. Counsel for Staff argued before us that Lysalta's activity in contravention of extraprovincial securities laws reflected badly on it and that we ought to find registering Lysalta in the face of such conduct unsuitable and objectionable. We agree. We find that such activity evidences unsuitability for registration in Alberta and renders the registration of a person or company in Alberta objectionable.

98. The Executive Director in his decision seems to have given Lysalta the option of taking timely steps to regularize its position outside Alberta. That was somewhat generous. In continuing to act for out-of-province clients without registration or exemption, Lysalta continues, knowingly, to breach other provinces' securities laws. The course of action that Lysalta chooses to follow within Alberta will not alter or remedy this breach. This breach is unacceptable to the panel. We have made a cessation of those extraprovincial breaches a precondition to Lysalta's ability to rely on the exemption granted above. Were Lysalta to decide not to rely on that exemption but instead to obtain MFDA membership and seek a renewal of registration on that basis, then (as indicated above) we would consider a continued breach of extraprovincial laws to make its registration in Alberta objectionable and inappropriate. Indeed, even were Lysalta to decide to cease activity as a registrant in Alberta altogether, it would be no less obliged to cease contravening securities laws outside Alberta. Irrespective of what course of action Lysalta decides to pursue in Alberta, its breach of extraprovincial securities laws must cease, immediately.

99. 27 April 2004.

100. **For the Commission:**

"original signed by"

Stephen R. Murison, Vice-Chair

"original signed by"

Dennis A. Anderson, FCA, Member