

2003 BCSECCOM 674

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from eligibility requirements to allow wholly-owned Canadian subsidiary of an MJDS-eligible U.S. issuer to issue approved rating debt, fully and unconditionally guaranteed by an affiliate of the parent company – relief also granted from Canadian GAAP reconciliation requirements, Canadian GAAS reconciliation requirements and certain continuous disclosure requirements for the Canadian subsidiary, subject to conditions

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 85, 87, 91, 117(2) and 119(2)(b)

Securities Rules, B.C. Reg. 194/97, ss. 144, 145 and 149

National Instrument 44-101 *Short Form Prospectus Distributions*

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA,
BRITISH COLUMBIA, MANITOBA, NEW BRUNSWICK,
NEWFOUNDLAND AND LABRADOR, NOVA SCOTIA, ONTARIO,
PRINCE EDWARD ISLAND, QUEBEC AND SASKATCHEWAN**

AND

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

AND

**IN THE MATTER OF JOHN DEERE CREDIT INC. AND JOHN DEERE
CAPITAL CORPORATION**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan (the “Jurisdictions”) has received an application from John Deere Credit Inc. (“JDCI”) and John Deere Capital Corporation (“JDCC”, and together with JDCI, the “Applicants”) for decisions under the securities legislation of the Jurisdictions (the “Legislation”) that the Applicants, as applicable, be exempted from the following requirements contained in the Legislation:

- (a) the requirements in National Instrument 44-101 (“NI 44-101”) and National Instrument 44-102 (“NI 44-102”) that a person or

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company guaranteeing non-convertible debt issued by an issuer be a reporting issuer with a 12-month reporting history in a Canadian province or territory and have a current annual information form (the “Eligibility Requirement”) in order to permit JDCI to issue non-convertible debt securities, in particular medium term notes, with an approved rating (as defined in NI 44-101) which will be fully and unconditionally guaranteed by JDCC;

- (b) the requirement pursuant to NI 44-101 to reconcile financial statements included in a prospectus and prepared in accordance with generally accepted accounting principles of a foreign jurisdiction to Canadian GAAP (the “Canadian GAAP Reconciliation Requirement”);
- (c) the requirement pursuant to NI 44-101 to provide, where financial statements included in a prospectus are audited in accordance with generally accepted auditing standards (“GAAS”) of a foreign jurisdiction, a statement by the auditor (a) disclosing any material differences in the form and content of the auditor’s report as compared to a Canadian auditor’s report; and (B) confirming that the auditing standards of the foreign jurisdiction are substantially equivalent to Canadian GAAS (the “Canadian GAAS Reconciliation Requirement”, and together with the Canadian GAAP Reconciliation Requirement, the “Reconciliation Requirements”);
- (d) the requirement in NI 44-101 and under the Legislation of Ontario, Quebec and Saskatchewan that JDCI have a current annual information form (an “AIF”) and file renewal AIFs with the Decision Makers (the “AIF Requirements”);
- (e) the requirement that JDCI file with the Decision Makers and send to its securityholders annual audited comparative financial statements and an annual report, where applicable (the “Annual Financial Statements Requirements”);
- (f) the requirement that JDCI file with the Decision Makers and send to its securityholders, where applicable, interim unaudited financial statements (the “Interim Financial Statements Requirements”);

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- (g) the requirement that JDCI file with the Decision Makers and send to its securityholders, where applicable, annual and interim MD&A (the “MD&A Requirements”);
- (h) the requirement that JDCI issue and file with the Decision Makers press releases, and file with the Decision Makers material change reports (together, the “Material Change Requirements”);
- (i) the requirement that JDCI comply with the proxy and proxy solicitation requirements under the Legislation, including filing with the Decision Makers and, if applicable, sending to securityholders, an information circular or report in lieu thereof (the “Proxy Requirements”);
- (j) the requirement that the insiders of JDCI (the “Insiders”) file insider reports with the Decision Makers (the “Insider Reporting Requirements”); and
- (k) the requirement that a short form prospectus include the information set forth in item 12.1(1) and items 12.2(1) to 12.2(4) of Form 44-101F3 (the “Prospectus Disclosure Requirements”);

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meanings set out in National Instrument 14-101 Definitions;

AND WHEREAS the Applicants have represented to the Decision Makers that:

1. JDCI primarily finances sales and leases by John Deere dealers of new and used agricultural, commercial and consumer, and construction and forestry equipment.
2. JDCI is the result of the amalgamation under the *Canada Business Corporations Act* on October 28, 1996 of Canadian Equipment Finance Corporation and John Deere Finance Limited. JDCI is an indirect, wholly-owned subsidiary of Deere & Company (“Deere”), a reporting company under the *Securities Exchange Act of 1934*, as amended (the “1934 Act”).

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3. JDCI became a reporting issuer or the equivalent in the Jurisdictions by virtue of it filing a short form shelf prospectus dated July 22, 1999 with the Decision Makers in connection with the establishment in Canada of a medium term note program (the “1999 MTN Program”) under the provisions of former National Policy Statement No. 47 and former National Policy Statement No. 44. JDCI “renewed” the 1999 MTN Program on August 2, 2001 (the “2001 MTN Program”) pursuant to a short form shelf prospectus dated July 31, 2001.
4. JDCC was incorporated under the laws of Delaware on June 18, 1958, and is not a reporting issuer or the equivalent in any of the Jurisdictions. JDCC is an indirect, wholly-owned subsidiary of Deere. Deere is party to an agreement with JDCC pursuant to which Deere has agreed to continue to own at least 51% of the voting shares of capital stock of JDCC. JDCC and its subsidiaries (collectively, “John Deere Capital”) provide and administer financing for retail purchases of new equipment manufactured by Deere’s agricultural equipment, commercial and consumer equipment, and construction and forestry divisions and used equipment taken in trade for this equipment. John Deere Capital purchases retail installment sales and loan contracts (retail notes) from Deere and its subsidiaries (collectively, “John Deere”). John Deere acquires these retail notes through John Deere retail dealers. John Deere Capital also purchases and finances a limited amount of non-Deere retail notes and continues to service a small portfolio of recreational products and other retail notes. In addition, John Deere Capital leases John Deere equipment and a limited amount of non-Deere equipment to retail customers (financing and operating leases). John Deere Capital also finances and services revolving charge accounts, in most cases acquired from and offered through merchants in the agricultural, commercial and consumer, and construction and forestry markets (revolving charge accounts). Further, John Deere Capital finances and services operating loans, in most cases acquired from and offered through farm input providers, and provides insured international export financing generally involving John Deere products (operating loans). John Deere Capital also provides wholesale financing for inventories of John Deere engines and John Deere agricultural, commercial and consumer and construction and forestry equipment owned by dealers of those products (wholesale receivables). In addition, John Deere Capital purchases and administers a significant portion of the trade receivables originated by John Deere, which are included in wholesale receivables.

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5. JDCC has been a reporting company under the 1934 Act since at least 1961. JDCC has filed annual reports on Form 10-K and quarterly reports on Form 10-Q since it first became a reporting company, in accordance with the filing obligations set out in sections 13 and 15(d) of the 1934 Act. JDCC has filed with the United States Securities and Exchange Commission (the “SEC”) all filings required to be made with the SEC under the 1934 Act during the last 12 months.
6. Pursuant to each of the 1999 MTN Program and the 2001 MTN Program, JDCI was entitled to issue up to Cdn.\$1,000,000,000 (or the equivalent thereof in lawful money of the United States of America) of non-convertible medium term notes which were fully and unconditionally guaranteed by Deere in respect of the payment of principal, premium (if any), interest and certain other amounts that could become due under the notes. As at July 31, 2003, JDCI had issued and outstanding under the 1999 MTN Program a total of Cdn.\$150,000,000 in principal amount of notes and under the 2001 MTN Program a total of Cdn.\$990,000,000 in principal amount of notes (collectively, the “Existing Notes”). JDCI and Deere will continue to satisfy the conditions of the 1999 decision document and the 2001 decision document (the “2001 Decision Document”) previously obtained in connection with the 1999 MTN Program and the 2001 MTN Program, respectively, except to the extent that such conditions are amended by this decision document, so long as the Existing Notes remain outstanding.
7. As at July 31, 2003, JDCC and its consolidated subsidiaries had approximately US\$6,841.8 million in senior long-term debt outstanding (excluding current maturities). JDCC’s senior long-term debt is rated “A-” by Standard & Poor’s, “A3” by Moody’s Investors Service and “A” by Fitch Investors Service.
8. JDCI proposes to file a short form shelf prospectus in each of the Jurisdictions pursuant to National Instrument 44-101 (“NI 44-101”) and National Instrument 44-102 (“NI 44-102”, and together with NI 44-101, the “Shelf Requirements”) in order to issue medium term notes in an aggregate principal amount of up to Cdn.\$1,000,000,000 (or the equivalent thereof in lawful money of the United States of America) (the “Proposed Offering”) and may in the future file additional short form shelf prospectuses in each of the Jurisdictions in respect of the issuance by JDCI of additional medium term notes from time to time (the “Future Offerings” and together with the Proposed Offering, the “Offerings” and each an “Offering”). All medium term notes issued by JDCI pursuant to the Proposed Offering and Future Offerings (collectively, the “Notes”)

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will have an approved rating (as defined in NI 44-101) and will be rated by a recognized security evaluation agency in one of the categories determined by the Commission des valeurs mobilières du Québec (an “Approved Rating”).

9. In connection with the Proposed Offering and any Future Offerings:
- (a) each short form shelf prospectus of JDCI will be prepared pursuant to the Shelf Requirements, with the disclosure required by:
 - (i) item 12.1 of Form 44-101F3 of NI 44-101 (“Form 44-101F3”) being addressed by incorporating by reference in each prospectus:
 - (A) the most recent annual report on Form 10-K of JDCC filed with the SEC (including the exhibit setting out the “Computation of ratio of earnings to fixed charges”);
 - (B) all quarterly reports on Form 10-Q and current reports on Form 8-K of JDCC filed with the SEC in respect of the financial year following the year that is the subject of JDCC’s most recently filed annual report on Form 10-K (including exhibits setting out the “Computation of ratio of earnings to fixed charges”);
 - (C) in respect of the prospectus filed in connection with the Proposed Offering only, the audited annual financial statements of JDCI for the fiscal years ended October 31, 2002 and 2001 and the unaudited interim financial statements of JDCI for the three months ended January 31, 2003, the six months ended April 30, 2003 and the nine months ended July 31, 2003; and
 - (D) in respect of a prospectus filed in connection with any Future Offering:
 - (I) the annual comparative selected financial information (the “Annual

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Selected Financial Information”) derived from the audited annual financial statements of JDCI for its most recently completed financial year and the financial year immediately preceding such financial year, prepared in accordance with generally accepted accounting principles in Canada (“Canadian GAAP”), accompanied by a specified procedures report of the auditors to JDCI, which shall define and include at least the following line items (or such other line items that provide substantially similar disclosure): 1) total revenues; (2) net income; (3) net investment in financing contracts and equipment on operating leases, together with a descriptive note on the dollar amount of the allowance for impaired financial contracts; (4) total assets; (5) short-term borrowings; (6) long-term borrowings (which shall include the Notes); (7) accounts payable and other liabilities; and (8) total shareholder’s equity; and

- (II) the interim comparative selected financial information (the “Interim Selected Financial Information”) derived from the unaudited interim financial statements of JDCI for its most recently completed interim period and the corresponding interim period in the previous financial year, prepared in accordance with Canadian GAAP, which shall define and include at least the line items set out above in paragraph 9(a)(i)(D)(I) (or such other line items that provide substantially similar disclosure);

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- (ii) item 12.2 of Form 44-101F3 being addressed by incorporating by reference in each short form shelf prospectus of JDCI the following documents filed with the SEC or the Decision Makers, as applicable, subsequent to the date of the particular prospectus but prior to the termination of the particular Offering:
 - (A) any annual reports on Form 10-K of JDCC filed with the SEC (including exhibits setting out the “Computation of ratio of earnings to fixed charges”);
 - (B) any quarterly reports on Form 10-Q and current reports on Form 8-K of JDCC filed with the SEC (including exhibits setting out the “Computation of ratio of earnings to fixed charges”);
 - (C) the Annual Selected Financial Information referred to above in paragraph 9(a)(i)(D)(I);
 - (D) the Interim Selected Financial Information referred to above in paragraph 9(a)(i)(D)(II); and
 - (E) any material change reports filed by JDCI; and
 - (iii) item 7 of Form 44-101F3 (earnings coverage ratios) and section 8.4 of NI 44-102 (requirement to update earnings coverage ratios) being addressed in respect of JDCC by disclosure with respect to JDCC in accordance with United States requirements;
- (b) JDCC will fully and unconditionally guarantee payment of the principal, premium (if any), interest and certain other amounts that could become payable under any provisions of the trust indenture relating to the particular Notes;
 - (c) any Notes issued by JDCI pursuant to any Offering will have an Approved Rating;

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- (d) JDCC will sign each short form shelf prospectus of JDCI as credit supporter;
- (e) each short form shelf prospectus of JDCI will include, directly or indirectly, all material disclosure regarding JDCI and JDCC;
- (f) JDCC will undertake to file with the Decision Makers, in electronic format through SEDAR (as defined in National Instrument 13-101) under JDCI's SEDAR profile, all documents that it files under sections 13 and 15(d) of the 1934 Act until such time as the Notes are no longer outstanding;
- (g) the consolidated annual and interim financial statements of JDCC that will be included or incorporated by reference in any short form shelf prospectus of JDCI will be prepared in conformity with generally accepted accounting principles in the United States that the SEC has identified as having substantial authoritative support, as supplemented by Regulation S-X and Regulation S-B under the 1934 Act ("US GAAP"), and, in the case of the audited consolidated annual financial statements, such financial statements will be audited in accordance with generally accepted auditing standards in the United States, as supplemented by the SEC's rules on auditor independence ("US GAAS"); and
- (h) JDCC satisfies the criteria set forth in paragraph 3.1 of NI 71-101 (or any applicable successor provision or instrument) and is eligible to use the multi-jurisdictional disclosure system ("MJDS") described therein (or any successor instrument) for the purpose of distributing approved rating non-convertible debt in Canada based on compliance with United States prospectus requirements with certain additional Canadian disclosure.

AND WHEREAS under the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers in each of Ontario, Québec and Saskatchewan is that, in connection with any Offering (which, for greater certainty, includes the Proposed Offering and any Future Offerings), the AIF

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Requirements shall not apply to JDCI provided that (i) JDCC complies with the AIF Requirements of NI 44-101 as if it is the issuer by filing an AIF in the form of JDCC's most recently filed Form 10-K (as filed under the 1934 Act); and (ii) JDCI and JDCC comply with all of the conditions of each of the Decisions below.

DATED September 29th, 2003.

Charlie MacCready

AND THE FURTHER DECISION of the Decision Makers under the Legislation is that the Applicants be exempt from the Eligibility Requirement and the Reconciliation Requirements in connection with any Offering (which, for greater certainty, includes the Proposed Offering and any Future Offerings) provided that:

- (a) each of JDCI and JDCC complies with paragraph 9 above
- (b) JDCI complies with all of the filing requirements and procedures set out in NI 44-101 except as varied by the Decision or as permitted by NI 44-102;
- (c) the consolidated annual and interim financial statements of JDCC that will be included or incorporated by reference in any short form shelf prospectus of JDCI will be prepared in conformity with US GAAP, and, in the case of the audited consolidated annual financial statements, such financial statements will be audited in accordance with US GAAS;
- (d) Deere remains the direct or indirect beneficial owner of (i) 100% of the issued and outstanding voting shares of JDCI and (ii) at least 51% of the issued and outstanding voting shares of JDCC; and
- (e) JDCC continues to satisfy the criteria set forth in paragraph 3.1 of NI 71-101 (or any applicable successor provision or instrument) and remains eligible to use the MJDS described therein (or any successor instrument) for the purpose of distributing approved rating non-convertible debt in Canada based on compliance with United States prospectus requirements with certain additional Canadian disclosure.

DATED September 29th, 2003.

Charlie MacCready

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AND THE FURTHER DECISION of the Decision Makers under the Legislation is that, commencing as of the date hereof, the Prospectus Disclosure Requirements shall not apply to any short form shelf prospectus filed by JDCI in connection with any Offering (which, for greater certainty, includes the Proposed Offering and any Future Offerings), provided that each of JDCI and JDCC complies with paragraph 9 above.

DATED September 29th, 2003.

Charlie MacCready

AND THE FURTHER DECISION of the Decision Makers (other than the Decision Maker in Prince Edward Island) under the Legislation is that, in connection with any Offering (which, for greater certainty, includes the Proposed Offering and any Future Offerings):

- A. the Annual Financial Statements Requirements shall not apply to JDCI provided that (i) JDCI files, in electronic format, the Annual Selected Financial Information, accompanied by a specified procedures report of the auditors to JDCI, in accordance with paragraph 9(a)(i)(D)(I) above, commencing for the fiscal year ended October 31, 2003; (ii) JDCC files with the Decision Makers, in electronic format through SEDAR under JDCI's SEDAR profile, the annual reports on Form 10-K filed by JDCC with the SEC, on the same day on which they are filed with the SEC, or as soon as practicable thereafter; and (iii) the documents referred to in (ii) above are provided to holders of Notes whose last address as shown on the books of JDCI is in Canada, in the manner, at the time and only if required by applicable United States law to be sent to JDCC debt holders;
- B. the Interim Financial Statements Requirements shall not apply to JDCI provided that (i) JDCI files, in electronic format, the Interim Selected Financial Information in accordance with paragraph 9(a)(i)(D)(II) above, commencing for the interim period ended January 31, 2004; (ii) JDCC files with the Decision Makers, in electronic format through SEDAR under JDCI's SEDAR profile, each of the quarterly reports on Form 10-Q filed by JDCC with the SEC, on the same day on which they are filed with the SEC, or as soon as practicable thereafter; and (iii) the documents referred to in (ii) above are provided to holders of Notes whose last address as shown on the books of

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JDCI is in Canada, in the manner, at the time and only if required by applicable United States law to be sent to JDCC debt holders;

- C. the MD&A Requirements shall not apply to JDCI, provided that (i) JDCC files with the Decision Makers, in electronic format through SEDAR under JDCI's SEDAR profile, the documents referred to in paragraphs A(ii) and (B)(ii) above, on the same day on which they are filed with the SEC, or as soon as practicable thereafter; and (ii) such documents are provided to holders of Notes whose last address as shown on the books of JDCI is in Canada, in the manner, at the time and only if required by applicable United States law to be sent to JDCC debt holders;
- D. the Material Change Requirements shall not apply to JDCI, provided that (i) JDCI files with the Decision Makers, in electronic format through SEDAR under JDCI's SEDAR profile, each of the mandatory current reports on Form 8-K filed by JDCC with the SEC, on the same day on which they are filed with the SEC, or as soon as practicable thereafter; (ii) JDCC forthwith issues in each Jurisdiction and JDCI files with the Decision Makers, any press release that discloses material information and which is required to be issued in connection with the mandatory Form 8-K requirements applicable to JDCC; and (iii) if there is a material change in respect of the business, operations or capital of JDCI that is not a material change in respect of JDCC, JDCI will comply with the requirements of the Legislation to issue a press release and file a material change report notwithstanding that the change may not be a material change in respect of JDCC;
- E. the Proxy Requirements shall not apply to JDCI, provided that (i) JDCC complies with the requirements of the 1934 Act and the rules and regulations made thereunder relating to proxy statements, proxies and proxy solicitations in connection with any meetings of its noteholders (if any); (ii) JDCC files with the Decision Makers, in electronic format through SEDAR under JDCI's SEDAR profile, materials relating to the meeting filed by it with the SEC, on the same day on which they are filed with the SEC, or as soon as practicable thereafter; and (iii) such documents are provided to holders of Notes whose last address as shown on the books of JDCI is in Canada, in the manner, at

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the time and only if required by applicable United States law to be sent to JDCC debt holders; and

- F. the Insider Reporting Requirements shall not apply to Insiders of JDCI, provided that each insider (as defined in the Legislation) files with the SEC on a timely basis the reports, if any, required to be filed with the SEC pursuant to section 16(a) of the 1934 Act and the rules and regulations thereunder.

provided that (for A. through F.):

- (a) JDCI does not issue additional securities other than the Notes, debt securities ranking *pari passu* to the Notes, short-term promissory notes guaranteed by JDCC or Deere (the “Short Term Notes”), medium term notes guaranteed by JDCC or Deere issued pursuant to the Deere Euro medium term note programme (the “Euro MTN Programme”), any debentures issued in connection with the security granted by JDCI to the holders of the Notes or of the Existing Notes or debt ranking *pari passu* with the Notes, and those securities currently issued and outstanding, other than to Deere or to direct or indirect subsidiaries of Deere;
- (b) if debt securities ranking *pari passu* with the Notes are hereinafter issued by JDCI (other than (i) to Deere or to direct or indirect subsidiaries of Deere, (ii) any Short Term Notes that may be considered to rank *pari passu* with the Notes, or (iii) any medium term notes (the “Euro Notes”) issued pursuant to the Euro MTN Programme that may be considered to rank *pari passu* with the Notes, provided that reasonable precautions and restrictions are implemented by JDCI, the relevant dealers and other participants in the distribution to ensure that such Euro Notes are not distributed, or redistributed, into Canada or to Canadian residents and that such Euro Notes come to rest outside Canada), JDCC shall fully and unconditionally guarantee such debt securities as to the payments required to be made by JDCI to holders of such debt securities;
- (c) each of JDCI and JDCC complies with paragraph 9 above;
- (d) JDCI and Deere continue to satisfy the conditions of the 2001 Decision Document, except to the extent that such conditions

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are amended by the Decision, so long as the Existing Notes remain outstanding;

- (e) the Notes maintain an Approved Rating;
- (f) Deere remains the direct or indirect beneficial owner of securities (i) 100% of the issued and outstanding voting securities of JDCI and (ii) at least 51% of the issued and outstanding voting securities of JDCC;
- (g) JDCC maintains a class of securities registered pursuant to section 12(b) or 12(g) of the 1934 Act or is required to file reports under section 15(d) of the 1934 Act;
- (h) JDCC continues to satisfy the criteria set forth in paragraph 3.1 of NI 71-101 (or any applicable successor provision or instrument) and remains eligible to use the MJDS described therein (or any successor instrument) for the purpose of distributing approved rating non-convertible debt in Canada based on compliance with United States prospectus requirements with certain additional Canadian disclosure; and
- (i) all filing fees that would otherwise be payable by JDCI in connection with the Annual Financial Statements Requirements, the Interim Financial Statements Requirements and the Material Change Requirements, or in connection with JDCI's participation as a reporting issuer in any Jurisdiction, are paid.

DATED September 29th, 2003.

R.W. Davis

H. Lorne Morphy