

# 2003 BCSECCOM 134

## Headnote

Relief from registration and prospectus requirements for trades of preferred shares and common shares on the automatic conversion of the preferred shares

## Exemption Order

### Dundee Wealth Management Inc.

### Sections 48 and 76 of the *Securities Act*, R.S.B.C. 1996, c.418

## Background

- ¶ 1 Dundee Wealth Management Inc. (Dundee Wealth) applied for an exemption from the requirements to be registered to trade and to file and obtain receipts for a preliminary prospectus and prospectus in sections 34(1)(a) and 61 of the Act (the registration and prospectus requirements) for certain intended trades.

## Representations

- ¶ 2 Dundee Wealth represents that:
1. it was incorporated under the *Business Corporations Act* (Ontario);
  2. its authorized capital consists of an unlimited number of common shares, an unlimited number of special shares, issuable in series, an unlimited number of first preference shares, issuable in series, an unlimited number of second preference shares, issuable in series, and an unlimited number of third preference shares, issuable in series;
  3. its common shares are listed and posted for trading on the Toronto Stock Exchange and it is a reporting issuer in each province of Canada and is not in default of any requirement of the Act or the *Securities Rules*, B.C. Reg. 194/97;
  4. under a merger agreement (the merger agreement) dated as of December 26, 2002 between Dundee Wealth, 6042074 Canada Inc. (a wholly-owned subsidiary of Dundee Wealth) and IPC Financial Network Inc. (IPC Financial), Dundee Wealth intends to acquire all of the issued and outstanding common shares in the capital of IPC Financial, including common shares of IPC Financial issuable upon the exercise or surrender of outstanding stock options and the conversion of outstanding IPC Financial preference shares;

## 2003 BCSECCOM 134

5. IPC Financial and 6042074 Canada Inc. will amalgamate under section 181 of the *Canada Business Corporations Act* (CBCA) (the amalgamated company to be formed by the amalgamation is referred to as Amalco);
6. under the amalgamation, each holder of common shares of IPC Financial will receive for each common share of IPC Financial:
  - (a) 0.05 of a common share of Dundee Wealth (a Common Share),
  - (b) one redeemable preferred share of Amalco, and
  - (c) either 0.125 of a First Preference Share, Series A of Dundee Wealth (a Preference Share) or 0.125 of a First Preference Share, Series B of Dundee Wealth;
7. under the amalgamation, Dundee Wealth will receive common shares of Amalco in exchange for its shares of 6042074 Canada Inc.;
8. on the second business day after completion of the amalgamation, each redeemable preferred share of Amalco will be redeemed for \$0.25 in cash (assuming 65.1 million IPC Financial common shares outstanding);
9. after the redemption, Dundee Wealth will own all of the issued and outstanding shares of Amalco;
10. the management proxy circular to be sent to all shareholders of IPC Financial in connection with the proposed amalgamation will contain prospectus level disclosure regarding Dundee Wealth, as required by s.117(2)(a) of the Act and Item 11 of British Columbia Form 54-901F;
11. Preference Shares are convertible into Common Shares on a one-for-one basis, subject to the terms and conditions attaching to such shares:
  - (a) at the option of the holder, at any time after three years following the date of their issuance,
  - (b) at the option of Dundee Wealth, if the Market Price of Common Shares (as defined in the merger agreement) has exceeded \$10.00 (a "Conversion Triggering Event"), at any time, and
  - (c) automatically, if any Preference Shares remain outstanding:

## 2003 BCSECCOM 134

- (i) on the Preference Shares dividend payment date immediately following the third anniversary of the initial issuance of the Preference Shares, if a Conversion Triggering Event has occurred, or
  - (ii) on the Preference Shares dividend payment date immediately following a Conversion Triggering Event, if such event occurs later than the Preference Shares dividend payment date immediately following the third anniversary of the initial issuance of the Preference Shares;
12. the conversion of the Preference Shares into Common Shares at the option of the holders of the Preference Shares or at the option of Dundee Wealth is exempt from the registration and prospectus requirements under clauses 45(2)(12)(iii) and 74(2)(11)(iii) of the Act, respectively; and
13. no similar exemptions are available under the Act for the automatic conversion of the Preference Shares into Common Shares.

### Order

- ¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders:
- (a) under sections 48 and 76 of the Act, the trades in Common Shares issued upon the automatic conversion of the Preference Shares are exempt from the registration and prospectus requirements, provided that no commission or other remuneration is paid or given to any person in respect of such trades except for administrative or professional services or for services performed by a registered dealer; and
  - (b) under section 76 of the Act, any trade in Common Shares acquired under this order is deemed to be a distribution unless the conditions in subsections (3), (4) or (5) of section 2.6 of Multilateral Instrument 45-102 *Resale of Securities* are satisfied.

¶ 4 February 12, 2003

Derek E. Patterson  
Manager