

**MacDonald Oil Exploration Ltd., Re**

**Reference: Section**

***In the Matter of the Securities Act, R.S.O. 1990, Chapter S.5, As Amended (the "Act") and In the Matter of MacDonald Oil Exploration Ltd., MacDonald Mines Exploration Ltd., Mario Miranda and Frank Smeenck Citation: 24 O.S.C.B. 379***

**Court: Ontario Securities Commission**

**Judge: Michael Watson**

**Date: January 8, 2001**

**Year: 2001**

**I. Introduction**

1. By Notice of Hearing dated January 8, 2001 (the "Notice of Hearing"), the Ontario Securities Commission (the "OSC") announced that it proposed to hold a hearing to consider whether, pursuant to section 127 of the Act, in the OSC's opinion it is in the public interest for the OSC to make an order:

(a) pursuant to clause 2 of subsection 127(1) of the Act, that trading in any securities by Mario Miranda ("Miranda") and Frank Smeenck ("Smeenck") cease permanently or for such period as may be specified in the order;

(b) pursuant to clause 4 of subsection 127(1) of the Act, that MacDonald Oil Exploration Ltd. ("MacDonald Oil") submit to a review of its practices and procedures and institute such changes as may be ordered by the OSC;

(c) pursuant to clause 6 of subsection 127(1) of the Act, that MacDonald Oil, MacDonald Mines Exploration Ltd. ("MacDonald Mines"), Miranda and Smeenck be reprimanded;

(d) pursuant to clauses 7 and 8 of subsection 127(1) of the Act, that Miranda and Smeenck be prohibited from acting as officer or director of any issuer and that Miranda and Smeenck resign any such office they currently hold;

(e) pursuant to subsections 127.1(1) and (2) of the Act, that MacDonald Oil, MacDonald Mines, Miranda and Smeenck pay amounts as a contribution in respect of the costs of the investigation that has been conducted by staff of the OSC ("Staff") into the affairs of the respondents and in respect of the costs of this hearing; and

(f) such further and other order as the OSC may deem appropriate.

**II. Joint Settlement Recommendation**

2. Staff agree to recommend the settlement of the proceedings initiated in respect of the respondents by the Notice of Hearing in accordance with the terms and conditions set out hereinafter. The respondents agree to the settlement on the basis of the facts agreed to as hereinafter provided and consent to the making of an order (the "Order") in the form attached as Schedule A on the basis of the facts set out below.

3. This agreement will be released to the public only if and when the settlement is approved by the Commission.

### **III. Statement of Facts**

#### **A. Acknowledgment**

4. Staff and the respondents agree with the facts set out in this Part III.

#### **B. The Respondents**

##### **(i) MacDonald Oil**

5. MacDonald Oil is a junior resource issuer currently focussed on oil and gas exploration opportunities in Cuba. Its principal asset is a 15% interest in an exploration licence relating to a block of land ("Block 22") in Cuba.

6. MacDonald Oil was continued under the *Business Corporations Act* (Ontario) (the "OBCA") in April 1997. Its head office is located in Ontario.

7. MacDonald Oil was, at all material times since December 1995, a reporting issuer in Ontario. Effective October 2, 2000, MacDonald Oil became a Tier 3 issuer on the Canadian Venture Exchange ("CDNX").

8. MacDonald Mines and Smeenk, among others, founded MacDonald Oil in 1994.

##### **(ii) MacDonald Mines**

9. MacDonald Mines was, at all material times, a reporting issuer in Ontario and certain other provinces. Its common shares (the "Mines Shares") are listed and quoted for trading on CDNX.

10. MacDonald Mines was, at all material times until August 2000, a shareholder of MacDonald Oil.

##### **(iii) Smeenk**

11. Smeenk was, at all material times, a director of MacDonald Oil and, until July 12, 2000, chairman of the board of directors of MacDonald Oil (the "MacDonald Oil Board"). From November 24, 1994 until January 20, 1995 and again from May 15, 1997 until July 12, 2000, he was MacDonald Oil's president and chief executive officer ("CEO").

12. From February 1993 to October 1997, Smeenk was the president and CEO of MacDonald Mines. At all material times, he has been a director of MacDonald Mines and, since October 1997, he has been the chairman of MacDonald Mines' board of directors.

##### **(iv) Miranda**

13. From January 1998 to July 12, 2000, Miranda was a director and the treasurer and chief financial officer ("CFO") of MacDonald Oil.

14. From June 1996 until October 1997, Miranda was the CFO of MacDonald Mines and, since October 1997, he has been the president and CEO of MacDonald Mines. Since January 1998, he also has been a director of MacDonald Mines.

#### **C. Prior Proceedings**

15. On June 8, 1999, MacDonald Oil commenced a securities exchange take-over bid (the "Prior Offer") for all of the outstanding common shares (the "Bresea Shares") of Bresea

Resources Ltd. The OSC and the Alberta Securities Commission (the "ASC") issued temporary cease-trade orders (the "Temporary Orders") in respect of the Prior Offer shortly before its scheduled expiry time on July 12, 1999. The Temporary Orders were subsequently extended and amended, pending a hearing by the OSC and ASC to consider whether permanent orders in respect of the Prior Offer should be issued. Following the hearing, the OSC and ASC issued permanent orders (the "Permanent Orders"), which, among other things, cease-traded the Prior Offer and directed that trading cease in Bresea Shares by MacDonald Oil, MacDonald Mines, Smeenck, Miranda and certain others (collectively, the "Prior Respondents") until, among other things, the Prior Respondents established to the satisfaction of the Executive Directors of the OSC and ASC that all Bresea Shares tendered to the Prior Offer had been withdrawn by, or returned to, their owners.

16. In October 1999, MacDonald Oil made an application (the "Application") to the OSC and ASC for:

(a) a variation previously supported by Staff (the "Requested Variation") of the Permanent Orders; and

(b) exemptive relief (the "Requested Exemptions") to enable it to proceed with a new securities exchange take-over bid (the "Proposed Offer") for the Bresea Shares.

17. In November 1999, Staff advised MacDonald Oil that Staff had concerns about whether MacDonald Oil and its directors, officers and principal shareholders had been complying with Ontario securities law and that these concerns needed to be resolved before Staff would be in a position to determine whether to recommend that the OSC and ASC grant the Requested Exemptions. Staff also asked that MacDonald Oil provide certain information addressing these concerns.

18.

(a) Since November 1999, MacDonald Oil has cooperated with Staff and has provided information to Staff in response to Staff's initial request and follow-up requests.

(b) On February 11, 2000 all terms of the Permanent Orders had been met except the Requested Variation.

19. On March 31, 2000, Staff provided a further response to the Application by delivering a memorandum (the "Staff Memorandum") describing in detail Staff's views, based upon information available at that time, regarding possible instances of non-compliance by MacDonald Oil, MacDonald Mines, Miranda and Smeenck with Ontario securities law.

20. In August 2000, MacDonald Oil advised Staff that:

(a) the Staff Memorandum had received extensive review by management of MacDonald Oil;

(b) in addition to taking steps to regularize past filing obligations, MacDonald Oil had undertaken numerous changes including procedural changes, personnel changes, by-law changes and policy changes in order to make every reasonable effort to ensure proper regulatory compliance and ensure that all regulatory filings and other requirements would be maintained on an up-to-date basis;

(c) for various reasons, the Requested Exemptions were no longer required; and

(d) accordingly, MacDonald Oil wished to proceed with that aspect of the Application relating to the Requested Variation.

21. On October 13, 2000, the OSC and ASC issued orders granting the Requested Variation (the "Variation Orders"). The Variation Order issued by the OSC is attached as Schedule B to this Settlement Agreement.

22. On December 21, 2000, MacDonald Oil commenced a new offer to acquire all of the outstanding Bresea Shares (the "New Offer"). The New Offer is scheduled to expire on January 18, 2001.

23. In response to concerns expressed by staff of the OSC, ASC, British Columbia Securities Commission and the Commission des valeurs mobilières du Québec (collectively, the "Commissions") regarding certain disclosure in the take-over bid circular relating to the New Offer (the "New Circular"), MacDonald Oil disseminated a Notice of Change dated January 5, 2001 (the "Notice of Change") containing, among other things, the following disclosure:

"The proposed sponsor of MacDonald Oil and its take-over bid for Bresea, Jones Gable & Co. Ltd. ("Jones Gable"), has recently come under investigation by the Alberta Securities Commission for non-compliance with Alberta securities law. Although Jones Gable is not registered as a securities dealer in Alberta, it has approximately 98 accounts with Alberta addresses. Jones Gable has had accounts with Alberta addresses since 1984 without being registered as a securities dealer in Alberta. After being apprised of the requirement to be registered in Alberta in order to carry on a brokerage business in Alberta, Jones Gable agreed not to deal with Alberta residents until properly registered and agreed to apply for registration in Alberta. The Alberta Securities Commission has powers similar to the powers of the Ontario Securities Commission described in the foregoing paragraphs. The investigation of Jones Gable's conduct is not yet complete. Jones Gable may be subjected to certain sanctions as a result of such conduct. In addition, Jones Gable may also be considered by the Canadian Venture Exchange to be unacceptable to be the sponsor for MacDonald Oil and its take-over bid and, accordingly, the Exchange may not accept a sponsorship report from Jones Gable."

"An officer and director of the proposed sponsor, Donald M. Ross, has recently come under investigation by the Alberta Securities Commission for non-compliance with Alberta securities law. In late December 1999, Mr. Ross and members of his family directly or indirectly acquired beneficial ownership of, or the power to exercise control or direction over, more than 10% of the outstanding shares of Scaffold Connection Corporation through the facilities of the Toronto Stock Exchange. Mr. Ross issued a press release and filed an insider report with the Ontario Securities Commission. However, he did not make a similar filings with the Alberta Securities Commission. Subsequently from February 9, 2000 to March 22, 2000, Mr. Ross made additional purchases (12,000 shares) and sales (16,500 shares) resulting in net sales of 4,500 of shares of that company. A second insider report was filed with the Ontario Securities Commission on behalf of Mr. Ross (while he was hospitalized in the United States as a result of a major car accident); however, that report was deficient and was not rectified until August 2000. The investigation of Mr. Ross' conduct is not yet complete. The Alberta Securities Commission has powers similar to the powers of the Ontario Securities Commission described in the foregoing paragraph. Mr. Ross may be subject to certain sanctions as a result of such conduct. Policies of the Canadian Venture Exchange prohibit officers and directors of Exchange members who are directors of listed companies from putting themselves in an actual or perceived conflict of interest situation."

"Another proposed director of the Corporation, Thomas F. Bugg, has also recently come under investigation by the Alberta Securities Commission for non-compliance with Alberta

securities law. Insider trading reports filed by Mr. Bugg with securities regulatory authorities in 1998 and 1999 contained errors on several occasions or were not filed; other filings may also have been neglected by Mr. Bugg. He subsequently filed an amended insider trading report. The Alberta Securities Commission has powers similar to the powers of the Ontario Securities Commission described in the foregoing paragraphs. The investigation of Mr. Bugg's conduct is not yet complete. Mr. Bugg may be subjected to certain sanctions as a result of his conduct."

24. The Notice of Change also provided disclosure that Donald A. Ross had determined that he would not seek or accept a nomination to the MacDonald Oil Board.

#### **D. Insider Reports and Early Warning Reports**

25. MacDonald Mines has represented to Staff that the following table sets forth all transactions in common shares of MacDonald Oil (the "Shares"), warrants to purchase Shares (each warrant entitling the holder to purchase one Share, a "Warrant") and options to purchase Shares (each option entitling the holder to acquire one Share, an "Option") since MacDonald Oil became a reporting issuer in Ontario that gave rise to a filing requirement either under sections 101 and/or 107 of the Act applicable to MacDonald Mines. Aggregate holdings are reported, post-transaction, on an undiluted basis and on a partially-diluted basis (allowing only for the exercise of those Warrants or Options held by MacDonald Mines).

##### Date Transaction Details

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95-12-20 Aggregate holdings on date MacDonald Oil became a reporting iss  
1,842,055 Shares and 2,500,000 Warrants (18.4% undiluted and  
34.7% partially diluted)  
96-12-24 Disposed of 2,500,000 Warrants. Aggregate holdings: 1,842,055  
Shares (18.4% undiluted and partially diluted)  
97-5-23 Acquired and immediately exercised 1,000,000 Warrants. Aggregat  
holdings: 2,842,055 Shares (17.2% undiluted and partially diluted)  
97-6-27 Agreed to sell 2,800,000 Shares. Net aggregate beneficial holdings  
42,055 Shares (0.25% undiluted and partially diluted)  
99-4-15 Acquired 1,692,603 Shares and 1,692,603 Warrants. Aggregate  
holdings: 1,734,658 Shares and 1,692,603 Warrants (7.4% undilut  
and 13.6% partially diluted)  
99-7-8 Disposed of 30,000 Shares. Aggregate holdings: 1,704,658 Shares  
1,692,603 Warrants (7.3% undiluted and 13.5% partially diluted)  
00-3-1 Acquired 1,692,603 Shares upon exercise of Warrants. Aggregate  
holdings: 3,397,261 Shares (13.5% undiluted and partially diluted)  
00-8-2 Agreed to dispose of 3,397,261 Shares. Net aggregate beneficial  
holdings: 0 (0% undiluted and partially diluted)

26. In respect of six transactions effected between December 1995 and July 1999, MacDonald Mines failed to file timely insider reports, or filed inaccurate insider reports, contrary to section 107 of the Act.

27. On at least three occasions between May 1997 and March 2000, MacDonald Mines contravened subsections 101(1) or (2) of the Act, by failing to issue and file on a timely basis news releases ("Early Warning Releases") and/or failing to file reports ("Early Warning Reports") containing the information prescribed by the Act and/or regulation made under the Act (the "Regulation").

28. On two occasions, MacDonald Mines acquired beneficial ownership of Shares or securities convertible into Shares in circumstances where the prohibition upon such

acquisitions and offers set out in subsection 101(3) of the Act (the "Early Warning Moratorium") applied.

29. On November 23, 1999 MacDonald Mines filed an omnibus insider report in respect of six reportable transactions that occurred between 1995 and 1999.

30. On July 20, 2000 MacDonald Mines filed an omnibus Early Warning Report and an omnibus Early Warning Release in respect of reportable transactions that occurred between 1997 and 2000.

31. MacDonald Mines has represented to Staff that it has now:

(a) filed complete and accurate insider reports in respect of all transactions giving rise to a reporting obligation to which it is subject under section 107 of the Act; and

(b) filed complete and accurate Early Warning Releases and Early Warning Reports in respect of all transactions giving rise to early warning disclosure requirements to which it became subject under section 101 of the Act (the "Early Warning Disclosure Requirements").

32. Smeenk has represented to Staff that the following table sets forth all transactions in Shares, Warrants and Options since MacDonald Oil became a reporting issuer in Ontario that gave rise to a filing requirement under sections 101 and/or 107 of the Act applicable to Smeenk. Aggregate holdings are reported on an undiluted basis and on a partially-diluted basis (allowing only for the exercise of those Warrants and Options held by Smeenk).

#### Date Transaction Details

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95-12-20 At the time MacDonald Oil became a reporting issuer, Smeenk held Shares, 60,000 Warrants and 380,000 Options (aggregate holdings: undiluted and 15.3% partially diluted)

97-1-27 Acquired 30,000 Shares upon exercise of Warrants. Aggregate holdi 1,193,184 Shares, 30,000 Warrants and 380,000 Options (8.0% und 10.5% partially diluted)

97-6-1 30,000 Warrants expired unexercised. Aggregate holdings 1,193,18 and 380,000 Options (7.2% undiluted and 9.3% partially diluted)

97-6-27 Agreed to sell 1,200,000 Shares, subject to certain conditions. Aggre holdings: 1,193,148 Shares and 380,000 Options (7.2% undiluted an partially diluted) subject to an agreement to sell 1,200,000 Shares

98-1-15 Acquired 200,000 Options. Aggregate holdings: 1,193,148 Shares a 580,000 Options (7.2% undiluted and 10.3% partially diluted) subject agreement to sell 1,200,000 Shares

98-6-1 Reacquired beneficial ownership of 1,200,000 Shares. Aggregate ho 1,193,148 Shares and 580,000 Options (6.9% undiluted and 9.9% p diluted)

98-6-2 Acquired 600,000 Options. Aggregate holdings: 1,193,148 Shares a 1,180,000 Options (6.9% undiluted and 12.8% partially diluted)

98-6-6 Acquired 400,000 Shares upon exercise of Options and then sold 40 Shares. Aggregate holdings: 1,193,148 Shares and 780,000 Options undiluted and 10.4% partially diluted)

99-2-16 Acquired 800,000 Shares and 800,000 Warrants. Aggregate holding 1,993,148 Shares, 800,000 Warrants and 780,000 Options (10.6% u and 17.6% partially diluted)

99-6-2 200,000 Options expired unexercised. Aggregate holdings: 1,993,14 800,000 Warrants and 580,000 Options (8.5% undiluted and 13.6%

diluted)

99-8-31 Acquired 500,000 Options. Aggregate holdings: 1,993,148 Shares, 8 Warrants and 1,080,000 Options (8.5% undiluted and 15.3% partially diluted)

99-9-15 Disposed of 420,000 Warrants. Aggregate holdings: 1,993,148 Shares, 380,000 Warrants and 1,080,000 Options (8.5% undiluted and 13.9% diluted)

99-11-15 Disposed of 800,000 Shares. Aggregate holdings: 1,193,148 Shares, 1 Warrant and 1,080,000 Options (5.1% undiluted and 10.7% partially diluted)

00-3-1 Acquired 20,000 Warrants and exercised 400,000 Warrants. Aggregate holdings: 1,593,148 Shares and 1,080,000 Options (5.8% undiluted and 10.7% partially diluted)

00-3-24 Exercised 300,000 Options. Aggregate holdings: 1,893,148 Shares, 780,000 Options (6.9% undiluted and 9.4% partially diluted)

00-6-1 200,000 Options expired unexercised. Aggregate holdings: 1,893,148 Shares and 580,000 Options (6.9% undiluted and 8.7% partially diluted)

00-6-21 200,000 Options expired unexercised. Aggregate holdings: 1,893,148 Shares and 380,000 Options (6.9% undiluted and 8.0% partially diluted)

00-8-2 Agreed to sell 693,148 Shares. Aggregate beneficial holdings: 1,200 Shares and 380,000 Options (4.3% undiluted and 5.6% partially diluted)

00-10-31 Returned 500,000 Shares to treasury for cancellation. Net aggregate holdings: 700,000 Shares and 380,000 Options (12.6% undiluted and 3.8% partially diluted)

33. In respect of twelve transactions effected between December 1995 and September 1999, Smeenck either failed to file timely insider reports or filed inaccurate insider reports, contrary to section 107 of the Act.

34. On at least three occasions between January 1997 and February 1999, Smeenck failed to comply with the Early Warning Disclosure Requirements, by failing to issue and file Early Warning Releases and/or failing to file Early Warning Reports on a timely basis.

35. On at least six occasions between January 1998 and March 2000, Smeenck acquired, or offered to acquire, beneficial ownership of Shares or securities convertible into Shares in circumstances where the Early Warning Moratorium applied, contrary to subsection 101(3) of the Act.

36. On November 17, 1999 Smeenck filed an omnibus insider report in respect of a number of reportable transactions that occurred between 1995 and 1999.

37. On July 20, 2000 Smeenck filed an omnibus Early Warning Report and an omnibus Early Warning Release in respect of reportable transactions that occurred between 1998 and 2000.

38. Smeenck has represented to Staff that he has now:

(a) filed complete and accurate insider reports in respect of all transactions giving rise to a reporting obligation to which he became subject under section 107 of the Act; and

(b) filed complete and accurate Early Warning Releases and Early Warning Reports in respect of all transactions giving rise to Early Warning Disclosure Requirements to which he became subject under section 101 of the Act.

39. Miranda has represented to Staff that the following table sets forth all transactions in securities of MacDonald Oil since it became a reporting issuer that gave rise to a filing requirement under sections 101 and/or 107 of the Act applicable to Miranda. Aggregate

holdings are reported on a post-transaction, undiluted basis and on a partially-diluted basis (allowing only for the exercise of those Warrants and Options held by Miranda).

#### Date Transaction Details

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96-12-08 Acquired 100,000 Options. Aggregate holdings: 100,000 Options (0% undiluted and 1.0% partially diluted)

98-1-15 Acquired 200,000 Options. Aggregate holdings: 300,000 Options (0% undiluted and 1.8% partially diluted)

98-5-15 Acquired 100,000 Shares upon exercise of Options and disposed 100,000 Shares. Aggregate holdings: 200,000 Options (0% undiluted and 1.2% partially diluted).

98-6-2 Acquired 200,000 Options. Aggregate holdings: 400,000 Options (0% undiluted and 2.3% partially diluted)

99-6-21 200,000 Options expired unexercised. Aggregate holdings: 200,000 Options (0% undiluted and 1.1% partially diluted)

99-8-31 Acquired 400,000 Options. Aggregate holdings: 600,000 Options (0% undiluted and 3.2% partially diluted)

40. In respect of six transactions effected between December 1996 and August 1999, Miranda failed to file timely insider reports, or filed inaccurate insider reports, contrary to section 107 of the Act.

41. On November 24, 1999 Miranda filed omnibus insider reports in respect of a number of reportable transactions that occurred between 1996 and 1999.

42. Miranda has represented to Staff that he has now filed complete and accurate insider reports in respect of all transactions giving rise to a reporting obligation to which he became subject under section 107 of the Act.

#### **E. Disclosure in Rights Offering Circulars**

43. On June 27, 1997, Cubacan Exploration Ltd. ("Cubacan") issued and filed a news release and material change report disclosing that:

(a) it had agreed to acquire from MacDonald Mines and Smeenk approximately 25% of the outstanding Shares, subject to completion of due diligence and regulatory approval (the "Private Purchase Agreement");

(b) it had agreed to appoint Smeenk to its board of directors and that Allan Kent ("Kent"), Cubacan's CEO, would join the MacDonald Oil Board; and

(c) it had entered into tentative agreements with MacDonald Oil to consolidate their operations in Cuba and have Cubacan provide technical and operational support to MacDonald Oil.

44. On the same date, MacDonald Oil issued, but did not file, a news release disclosing similar information, except that the news release issued by MacDonald Oil did not indicate that completion of the Private Purchase Agreement was subject to due diligence and regulatory approval.

45. Immediately prior to the execution of the Private Purchase Agreement, MacDonald Mines and Smeenk were MacDonald Oil's two largest shareholders, holding approximately 17.2% and 7.2% of the outstanding Shares respectively on an undiluted basis and 17.2% and 9.3% respectively on a partially-diluted basis. To the best of the respondents' knowledge, the next largest shareholder at that time, Golden Shield Resources (Nassau)

Ltd., held less than 3% of the Shares on a partially-diluted basis.

46. On July 18, 1997, MacDonald Oil filed a circular (the "1997 Rights Offering Circular") relating to the proposed offering (the "1997 Rights Offering") to its existing holders of Shares of rights to acquire Shares and Warrants. The 1997 Rights Offering expired on September 3, 1997.

47. The 1997 Rights Offering Circular stated, among other things, that:

"2. To the knowledge of the Directors of MacDonald Oil, there has been no transfer of shares which has materially affected the control of MacDonald Oil since the date of the last Annual General Meeting [*i.e.*, April 1997].

3. Except as disclosed in this Rights Offering circular, there have been no material changes in the circumstances of MacDonald Oil since November 30, 1996, the date of the quarterly report for the nine months ending September 30, 1996."

48. The 1997 Rights Offering Circular disclosed that Kent had become a director of MacDonald Oil but did not disclose that:

(a) MacDonald Oil had entered into a tentative agreement with Cubacan to jointly develop MacDonald Oil's sole asset, Block 22; or

(b) Cubacan had agreed to acquire beneficial ownership of approximately 25% of the outstanding Shares pursuant to the Private Purchase Agreement.

49. MacDonald Oil did not file a material change report with the OSC in respect of the events referred to in paragraph 43 until December 1999, after Staff indicated to MacDonald Oil that such events appeared to constitute a material change that should have been disclosed in a material change report and in the 1997 Rights Offering Circular.

50. MacDonald Oil failed to disclose in the 1997 Rights Offering Circular that:

(a) MacDonald Oil's two largest shareholders had agreed, subject to due diligence and regulatory approval, to sell substantially all of their interest in MacDonald Oil, representing approximately 25% of the outstanding Shares, to Cubacan; and

(b) MacDonald Oil and Cubacan had entered into a tentative agreement to jointly develop MacDonald Oil's sole asset, Block 22.

51. MacDonald Oil acted contrary to the public interest when it failed to disclose the information referred to in paragraphs 50 (a) and (b) above in the 1997 Rights Offering Circular.

52. On March 22, 1999, MacDonald Oil filed a circular (the "1999 Rights Offering Circular") relating to the proposed offering (the "1999 Rights Offering") to existing holders of its Shares of rights to acquire Shares and Warrants.

53. The 1999 Rights Offering Circular disclosed that MacDonald Oil intended to use the net proceeds of the 1999 Rights Offering (expected to be approximately \$253,000) for working capital and exploration on Block 22. The 1999 Rights Offering Circular also stated that, since the date of MacDonald Oil's last annual meeting, its directors were not aware of any transfer of Shares materially affecting its control.

54. MacDonald Oil's interim financial statements for the three months ended February 28, 1999, disclosed that it had cash resources of US\$ 1,759 and a deficit of US\$ 512,521.

55. In order to fund the transaction costs of the 1999 Rights Offering, MacDonald Oil effected a private placement of Shares and Warrants, on the same terms provided for in the 1999 Rights Offering, to Smeenck in February 1999.

56. The 1999 Rights Offering expired on April 15, 1999. On the expiry date, MacDonald Mines exercised an over-subscription privilege under the 1999 Rights Offering to acquire 1,692,603 units not otherwise subscribed for, for approximately \$101,556. In the aggregate, MacDonald Oil issued 4,683,952 Shares and 4,683,952 Warrants for gross proceeds of approximately \$281,000.

57. To induce MacDonald Mines to exercise the over-subscription privilege, MacDonald Oil purchased 1,418,002 common shares of MacDonald Mines (the "Mines Shares") from Northfield Capital Corporation ("Northfield Capital"), a corporation of which Smeenck was a director, at a cost of approximately \$141,800 so that Northfield Capital would subscribe for Mines Shares and warrants to purchase Mines Shares.

58. MacDonald Oil failed to disclose to holders of Shares ("MacDonald Oil Shareholders") prior to the expiry of the 1999 Rights Offering that it intended to spend approximately 50% of the proceeds of the 1999 Rights Offering to buy securities of a related party in order to induce that related party to exercise its over-subscription privilege, rather than using the proceeds for working capital, as it had disclosed in the 1999 Rights Offering Circular.

59. MacDonald Oil acted contrary to the public interest when it failed to disclose the information referred to in paragraph 58 above to MacDonald Oil Shareholders prior to the expiry of the 1999 Rights Offering.

#### **F. OSC Policy 5.2 - Junior Resource Issuers**

60. At all material times, MacDonald Oil was subject to OSC Policy 5.2 - Junior Resource Issuers, which became a deemed rule in March 1997 (the "Deemed Rule").

##### **(i) Issuance of Options**

61. From time to time, MacDonald Oil has remunerated its directors and officers by issuing Options to them. MacDonald Oil has represented to Staff that the following table sets out all of the transactions in which Options were issued to directors or officers of MacDonald Oil.

Date Transaction Details Exercise Price

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95-7-31 200,000 Options expiring 00-6-1 issued \$0.20  
to Russell Martel ("Martel")  
95-7-31 200,000 Options expiring 00-6-1 issued \$0.20  
to A.D.G. Reid ("Reid")  
95-7-31 200,000 Options expiring 00-6-1 issued \$0.20  
to Smeenck  
95-7-31 200,000 Options expiring 00-6-1 issued \$0.20  
to Michael K. Cohen  
95-7-31 200,000 Options expiring 00-6-1 issued \$0.20  
to Thomas J. Pladsen  
95-7-31 200,000 Options expiring 00-6-1 issued \$0.20  
to Paul R. Ankcorn  
95-7-31 180,000 Options expiring 01-5-1 issued \$0.20  
to Martel

95-7-31 180,000 Options expiring 01-5-1 issued \$0.20  
 to Reid  
 95-7-31 180,000 Options expiring 01-5-1 issued \$0.20  
 to Smeenk  
 96-12-8 500,000 Options expiring 01-12-1 issued \$0.20  
 to James Podruski  
 96-12-8 100,000 Options expiring 01-12-1 issued \$0.20  
 to Miranda  
 97-3-27 50,000 Options expiring 00-4-1 issued to \$0.40  
 Sheila Martin  
 97-3-27 950,000 Options expiring 00-4-1 issued \$0.40  
 to James Podruski in trust for employees  
 97-4-21 500,000 Options expiring 01-12-1 issued \$0.17  
 to A.D. de Werth  
 98-1-15 200,000 Options expiring 02-1-15 issued \$0.10  
 to Kent  
 98-1-15 200,000 Options expiring 02-1-15 issued \$0.10  
 to Miranda  
 98-1-15 200,000 Options expiring 02-1-15 issued \$0.10  
 to Smeenk  
 98-1-15 50,000 Options expiring 02-1-15 issued \$0.10  
 to Sheila Martin  
 98-6-2 200,000 Options expiring 99-6-1 granted \$0.08  
 to Kent  
 98-6-2 200,000 Options expiring 99-6-1 granted \$0.08  
 to Miranda  
 98-6-2 600,000 Options expiring 99-6-1 granted \$0.08  
 to Smeenk  
 99-8-30 200,000 Options expiring 00-6-21 \$0.08  
 granted to Kent  
 99-8-30 200,000 Options expiring 00-6-21 \$0.06  
 granted to Kent  
 99-8-30 200,000 Options expiring 00-6-21 \$0.08  
 granted to Miranda  
 99-8-30 200,000 Options expiring 00-6-21 \$0.06  
 granted to Miranda  
 99-8-30 200,000 Options expiring 00-6-21 \$0.08  
 granted to Smeenk  
 99-8-30 300,000 Options expiring 00-6-21 \$0.06  
 granted to Smeenk  
 00-2-29 200,000 Options expiring 00-6-21 \$0.08  
 granted to Cudney  
 00-2-29 75,000 Options expiring 00-6-21 granted \$0.06  
 to Driedger  
 00-2-29 200,000 Options expiring 00-6-21 \$0.08  
 granted to Sanderson

62. At various times, MacDonald Oil had more than 10% of its then issued and outstanding Shares, calculated on an undiluted basis, reserved for issue upon the exercise of Options granted to its directors and officers.

63. MacDonald Oil contravened section 17.4 of the Deemed Rule when it:

(a) issued Options having exercise prices below the prescribed minimum exercise price of \$0.20 specified in the Deemed Rule; and

(b) issued Options in circumstances when the total number of Shares reserved for issue upon the exercise of all of the outstanding Options granted to directors and officers exceeded 10% of its then issued and outstanding Shares calculated on an undiluted basis.

64. Pursuant to agreements entered into between MacDonald Oil and each holder of Options outstanding as of May 2, 2000 (the "Outstanding Options"), each Outstanding Option was repriced to provide for an exercise price of \$0.20.

#### **(ii) Financial Assistance**

65. Pursuant to a private agreement entered into in February 1999 with MacDonald Oil and approved by the MacDonald Oil Board concurrently with the approval of the 1999 Rights Offering, Smeenck subscribed for 600,000 units, consisting of 600,000 Shares and 600,000 Warrants at a purchase price of \$0.06 per unit. The purchase price equalled the price per unit provided for in the 1999 Rights Offering. MacDonald Oil and Smeenck have represented to Staff that the purpose of this transaction was to provide financial assistance to MacDonald Oil and, in particular, to provide it with funds to defray the anticipated transaction costs associated with the 1999 Rights Offering.

66. MacDonald Oil contravened section 18.1 of the Deemed Rule in permitting an insider to acquire Shares at a purchase price per Share below the prescribed minimum price of \$0.20 per Share specified in the Deemed Rule.

#### **(iii) Bonus for Loan**

67. In June 1998, MacDonald Oil issued 100,000 Shares (having a value of \$10,000) to Genoil Inc. ("Genoil") as a bonus for a loan provided to it by Genoil.

68. MacDonald Oil contravened section 12.1 of the Deemed Rule and contravened sections 25 and 53 of the Act by:

(a) issuing bonus Shares at an issue price per Share below the minimum issue price of \$0.20 prescribed by the Deemed Rule; and

(b) effecting a distribution of securities for which prospectus and registration exemptions were not available.

#### **(iv) Issuance of Shares for Debt**

69. In January 1998, MacDonald Oil issued 222,920 Shares to Russell Martel ("Martel") prior to his resignation as a director of MacDonald Oil in order to obtain his resignation and in order to settle debts aggregating approximately \$22,290 owed by MacDonald Oil to companies Martel controlled.

70. MacDonald Oil contravened section 13.1 of the Deemed Rule by issuing Shares in settlement of a debt:

(a) at an issue price per Share below the minimum price of \$0.20 prescribed by the Deemed Rule; and

(b) without obtaining disinterested shareholder approval of the proposed transaction.

#### **(v) Management Compensation**

71. MacDonald Oil paid compensation to its management for management and

professional services (indirectly through their management companies) in amounts aggregating:

(a) US \$12,603 for management services in the fiscal year ended August 31, 1996;

(b) US \$26,916 for management and US \$13,555 for professional services in the fiscal year ended August 31, 1997;

(c) US \$6,706 for management and US \$18,352 for professional services in the fiscal year ended August 31, 1998;

(d) US \$39,730 for management and US \$28,200 for professional services in the fiscal year ended August 31, 1999; and

(e) US \$16,326 for management services in the fiscal year ended August 31, 2000.

72. MacDonald Oil contravened section 17.1 of the Deemed Rule in paying an aggregate of more than \$2,000 per month to its management in the fiscal years ended August 31, 1997, 1998 and 1999 without obtaining the Director's approval pursuant to section 17.2 of the Deemed Rule.

#### **G. Other Filing Requirements: Financial Statements,**

##### **Proxy Materials and Reports of Exempt Trades**

73. MacDonald Oil contravened sections 77 and 78 of the Act in failing to file the following financial statements on a timely basis:

Annual statements for the year ended August 31, 1997

Interim statements for the period ended February 28, 1998

Interim statements for the period ended November 30, 1998

Annual statements for the year ended August 31, 1998

74. In April 1997, MacDonald Oil held an annual meeting of Shareholders (the "1997 Meeting"). It did not file the information circular and form of proxy (collectively, the "1997 Proxy Materials") sent to Shareholders in connection with the 1997 Meeting until September 15, 2000.

75. Miranda and Smeenck did not comply with section 112 of the OBCA by failing to file the 1997 Proxy Materials on a timely basis.

76. The MacDonald Oil Board did not convene an annual meeting of Shareholders between April 9, 1997 and May 4, 2000.

77. Miranda and Smeenck did not comply with section 94 of the OBCA by failing to have the MacDonald Oil Board call an annual meeting of Shareholders within fifteen months after the 1997 Meeting took place.

78. Each of MacDonald Mines, Miranda and Smeenck contravened section 53 of the Act (the "Prospectus Requirement") in effecting trades in securities of MacDonald Oil without satisfying all of the requirements of section 72 of the Act, which requirements apply to certain trades in previously issued securities acquired pursuant to certain exemptions from the Prospectus Requirement.

## **H. Prior Offer for Bresea**

79. MacDonald Oil contravened Ontario securities law in disseminating to Bresea Shareholders a take-over bid circular (the "Prior Circular") that did not comply with the disclosure requirements in Ontario securities law applicable to securities exchange take-over bids.

80. MacDonald Oil took up Bresea Shares in circumstances where it knew that Temporary Orders were being sought by Staff and, if the Temporary Orders were made on that day, it would not be able to pay for the tendered Bresea Shares within the three day period prescribed by Ontario securities law and the terms of the Prior Offer.

81. Smeenck instructed the depositary for the Prior Offer to take up Bresea Shares on MacDonald Oil's behalf in circumstances where he knew that Temporary Orders were being sought by Staff and, if the Temporary Orders were made on that day, MacDonald Oil would not be able to pay for the tendered Bresea Shares within the three day period prescribed by Ontario securities law and the terms of the Prior Offer.

82. MacDonald Oil acted contrary to the public interest in taking up Bresea Shares in the circumstances described in paragraph 80 above and Smeenck acted contrary to the public interest by instructing the depositary for the Prior Offer to take up Bresea Shares on MacDonald Oil's behalf in the circumstances described in paragraph 81 above.

## **IV Position of the Respondents**

83. The respondents represent the facts set out in this Part IV to be true. Staff neither acknowledge the facts, nor express an opinion as to the legal propriety or efficacy of the steps represented to have been taken.

84. With respect to paragraphs 59 in Part III above, although the Mines Shares acquired by MacDonald Oil with the proceeds of the 1999 Rights Offering may not have constituted working capital, the purchase of the Mines Shares enabled MacDonald Oil to significantly increase the gross proceeds raised in the 1999 Rights Offering from approximately \$180,000 to approximately \$280,000 and to significantly increase the aggregate amount of cash and marketable securities held by MacDonald Oil from approximately \$180,000 to approximately \$420,000.

85. With respect to paragraphs 80, 81 and 82 in Part III above, on the expiry date of the Prior Offer, the officers and directors of MacDonald Oil believed that MacDonald Oil had to take up the Bresea Shares on or before the expiry time - 5:00 PM on July 12, 1999 - and, accordingly, with that in mind, instructed the depositary to take up shares on July 12, 1999. The officers and directors of MacDonald Oil had no assurance that the Temporary Orders would be issued.

86. In response to the concerns raised by Staff, the respondents acknowledged their errors and immediately initiated a process of remedial action. In this regard, the following steps have been taken:

(a) MacDonald Oil, MacDonald Mines, Miranda and Smeenck have taken steps to regularize past filing obligations;

(b) MacDonald Oil has cooperated with Staff by responding to the questions raised by Staff and by providing copies of the documentation requested by Staff;

(c) the issues raised by Staff have received extensive review by management of MacDonald Oil and management has acknowledged its responsibility for ensuring regulatory compliance; and

(d) MacDonald Oil has undertaken numerous changes including procedural changes, personnel changes, by-law changes and policy changes in order to enhance its corporate governance policies and procedures and to make every reasonable effort to ensure proper regulatory compliance and ensure that all ongoing regulatory requirements are complied with.

87. On the same day that issues were first raised by Staff, MacDonald Oil, MacDonald Mines, Miranda and Smeenk initiated a process of updating and regularizing their filing obligations and made the first filings to update and regularize their filings and further initiated a process of reviewing and enhancing MacDonald Oil's corporate governance practices and procedures.

88. By Resolution of the Board of Directors dated February 15, 2000, John P. Sanderson ("Sanderson") and Robert D. Cudney ("Cudney") were appointed directors and Carla D. Driedger ("Driedger") was appointed corporate secretary.

89. On May 2, 2000, MacDonald Oil increased, and every holder of Options agreed to increase, the exercise price of all Options to \$0.20 per share to comply with the minimum pricing provisions of the Deemed Rule.

90. At a meeting held on July 12, 2000, the MacDonald Oil Board adopted following resolutions:

(a) Miranda's resignation as a director of MacDonald Oil was accepted and Burton V. Pabst ("Pabst") was appointed to fill the vacancy created by Miranda's resignation;

(b) was appointed chairman of the MacDonald Oil Board;

(c) Cudney was appointed as president and chief executive officer, Thomas J. Pladsen ("Pladsen") was appointed treasurer, Brent J. Peters ("Peters") was appointed chief financial officer, Smeenk was appointed executive vice-president, Allan C. Thorne ("Thorne") was appointed controller and Driedger was appointed/confirmed corporate secretary of MacDonald Oil;

(d) a corporate governance committee was established, with Cudney, Pabst and Sanderson appointed to the committee, and a Corporate Governance Committee By-law ("By-law No. 3") was adopted by the MacDonald Oil Board;

(e) an audit committee was established, with Cudney, Kent and Smeenk appointed to the committee, and an Audit Committee By-law ("By-law No. 4") was adopted by the Board;

(f) a compensation committee was established, with Cudney, Pabst and Sanderson appointed to the committee, and a Compensation Committee By-law ("By-law No. 5") was adopted by the MacDonald Oil Board;

(g) MacDonald Oil's stock option plan was amended (the "Stock Option Plan Amendment") to reduce the maximum number of Shares issuable under such plan to 2,790,000 Shares (representing an amount less than 10% of the Shares issued and outstanding on that date); and

(h) a regulatory compliance policy (the "Compliance Policy") relating to the continuous disclosure and reporting obligations of MacDonald Oil, as well as its directors and officers in their personal capacities, was adopted.

91. The preamble to the Compliance Policy states that "...concerns have been expressed in the past that MacDonald Oil and certain of its directors and officers did not file, or did not file on a timely basis, various forms, notices, reports, press releases, letters and other documents with the necessary regulatory authorities pertaining to the Corporation, its business, trading in its shares and related matters in accordance with applicable securities legislation, regulations, rules and policies." The Compliance Policy provides that it is a policy of MacDonald Oil that:

(a) each officer and director of MacDonald Oil shall familiarize himself with all securities legislation, regulations, rules and policies relating to the filing on a timely basis of various forms, notices, reports, press releases and other documents (collectively, "Records") pertaining to the trading in shares of MacDonald Oil and related matters by such officer or director;

(b) MacDonald Oil will give, at its own expense, each officer and director access from time to time to MacDonald Oil's legal counsel to assist in that familiarization;

(c) each officer and director shall file with the secretary to MacDonald Oil a duplicate copy of each Record filed by such officer and director pertaining to trading in Shares and related matters concurrently with the filing of such Record with the applicable securities regulatory authority; and

(d) each officer and director shall be requested to sign and acknowledge a form of undertaking (an "Undertaking") approved by the MacDonald Oil Board in respect of the Compliance Policy.

92. Each current officer and director of MacDonald Oil has executed an Undertaking.

93. In or about October 2000, Smeenk returned 500,000 Shares to MacDonald Oil's treasury for cancellation to make the effective exercise price of the Options exercised by him and by Miranda \$0.20 per Share. At about the same time, Kent contributed \$10,000 to MacDonald Oil's treasury to make the effective exercise price of the Options exercised by him \$0.20 per Share.

94. MacDonald Oil has convened its annual shareholders meeting for January 12, 2001 (the "Shareholders Meeting") at which time the shareholders will be asked to approve, among other things, the following:

(a) the adoption of By-law No. 3, By-law No. 4 and By-law No. 5;

(b) the Stock Option Plan Amendment; and

(c) an amendment to the Articles of the Corporation to increase the minimum number of directors to 5 and the maximum number of directors to 11 and to set the current number of directors at 8.

95. At the Shareholders Meeting, the shareholders also will be asked to re-elect the incumbent directors and to expand the board of directors by electing three new independent directors.

## **V Terms of Settlement**

96. The respondents agree to the following terms of settlement:

(a) each of the respondents will be reprimanded by the OSC.

(b) MacDonald Oil will submit to a review by BDO Dunwoody of its practices and procedures, including, without limitation, MacDonald Oil's practices and procedures with respect to compliance by its directors, officers and principal shareholders (the "Review") and will institute such changes as may be recommended by BDO Dunwoody and/or by Staff, all at the sole expense of MacDonald Oil and all within the time frames set out by BDO Dunwoody after consultation with Staff. MacDonald Oil will report in writing to Staff and BDO Dunwoody as to the implementation of the recommendations made by BDO Dunwoody and/or by Staff within the time frames set out by BDO Dunwoody;

(c) MacDonald Oil will, within thirty days of the date of approval of this settlement, make a payment in the amount of \$50,000 to the OSC by certified cheque, money order or bank draft in respect of a portion of the OSC's costs with respect to this matter;

(d) MacDonald Mines will, within thirty days of the date of approval of this settlement, make a payment in the amount of \$15,000 to the OSC by certified cheque, money order or bank draft in respect of a portion of the OSC's costs with respect to this matter;

(e) Miranda will, within thirty days of the date of approval of this settlement, make a payment in the amount of \$5,000 to the OSC by certified cheque, money order or bank draft in respect of a portion of the OSC's costs with respect to this matter;

(f) Smeenck will, within thirty days of the date of approval of this settlement, make a payment in the amount of \$5,000 to the OSC by certified cheque, money order or bank draft in respect of a portion of the OSC's costs with respect to this matter;

(g) commencing March 1, 2001, Miranda will cease trading in all securities for a period of six months, with the exception that he may dispose of securities that he held on the date of this agreement during such six month period;

(h) commencing March 1, 2001, Smeenck will cease trading in all securities for a period of one year, with the exception that he may dispose of securities that he held on the date of this agreement during such one year period;

(i) each of Miranda and Smeenck will be prohibited from acting as an officer of MacDonald Oil for a period of two years, with the exception that Smeenck may continue to hold his current position of executive vice-president of MacDonald Oil during such two year period, provided that the position of executive vice-president of MacDonald Oil does not include any of the responsibilities that customarily are associated with the positions of chairman, president, chief executive officer, chief operating officer, chief financial officer, controller, treasurer or secretary of an issuer, and, if either Miranda or Smeenck presently holds any such office, he will resign such office within ten days of the date of approval of this settlement;

(j) each of Miranda and Smeenck will be prohibited from acting as the chair of the board of directors of MacDonald Oil and/or serving as a member of the audit, corporate governance, compliance or executive committees of the board of directors of MacDonald Oil for a period of two years and, if either Miranda or Smeenck presently holds any such office, he will resign such office within ten days of the date of approval of this settlement; and

(k) each of the respondents will deliver an undertaking to cooperate with Staff in connection with the Review and any further investigation of the matters referred to in the Review in the form attached as Schedule C.

## **VI Staff Commitment**

97. If this settlement is approved by the OSC, Staff will not initiate any complaint to the OSC or request the OSC to hold a hearing or issue any order in respect of any conduct or alleged conduct of the respondents in relation to the facts set out in Part III of this agreement.

## **VII Procedure for Approval of Settlement**

98. The approval of the settlement as set out in this agreement shall be sought at a public hearing before the OSC to be scheduled for such date as is agreed to by Staff and the respondents.

99. The facts set out in this agreement will constitute the entirety of the evidence to be submitted respecting the respondents in the proceeding commenced by the Notice of Hearing and each of the respondents hereby waives any right to a full hearing and appeal of this matter under the Act.

100. If this settlement is approved by the OSC, none of the parties to this agreement will make any statement that is inconsistent with this agreement.

101. If, for any reason whatsoever, this settlement is not approved by the OSC, or an Order substantially in the form attached as Schedule A is not made by the OSC:

(a) each of the parties to this agreement will be entitled to proceed to a hearing of the allegations in the Notice of Hearing and related Statement of Allegations unaffected by this agreement or the settlement negotiations;

(b) Staff may apply to the OSC for an order cease-trading the New Offer, and in connection with that application, both Staff and the respondents will be at liberty to introduce the facts set out in Part III of this agreement, with the exception of paragraphs 51, 59 and 82, as evidence in the proceeding, and neither Staff nor any of the respondents will object to the admission of such evidence, or ask the OSC to make factual findings inconsistent with such evidence;

(c) subject to paragraphs 101(a) and (b) above, the terms of this agreement will not be raised in any other proceeding or disclosed to any person except with the written consent of all of the parties to this agreement or as may be otherwise required by law; and

(d) none of the respondents will raise in any proceeding, this agreement or the negotiation or process of approval thereof as a basis for any attack on the OSC's jurisdiction, alleged bias, appearance of bias, alleged unfairness or any other challenge that may otherwise be available.

102. If, prior to the approval of this settlement by the OSC, there are new facts or issues of substantial concern, in the view of Staff, regarding the facts set out in Part III of this agreement, Staff will be at liberty to withdraw from this agreement. Notice of such intention will be provided to the respondents in writing. In the event of such notice being given, the provisions of paragraph 101 in this part will apply as if this agreement had not been approved in accordance with the procedures set out in this agreement.

## **VIII Disclosure of Settlement Agreement**

103. Staff or the respondents may refer to any part or all of this agreement in the course of the hearing convened to consider this settlement. Staff or the respondents may also choose to make use of part or all of this agreement in the application contemplated in paragraph 101(b) above. Otherwise, this agreement and its terms will be treated as confidential by all parties to this agreement until approved by the OSC, and forever if, for any reason whatsoever, this settlement is not approved by the OSC.

104. Any obligation as to confidentiality shall terminate upon the approval of this settlement by the OSC.

### **IX Execution of Settlement Agreement**

105. This agreement may be signed in one or more counterparts which together shall constitute a binding agreement on each party executing a counterpart.

*SIGNED IN THE PRESENCE OF:*

MacDonald Oil Exploration Ltd.

MacDonald Mines Exploration Ltd.

Mario Miranda

Frank Smeenck

"Michael Watson" - Director Enforcement Branch

**"A"**

*IN THE MATTER OF THE SECURITIES ACT, R.S.O. 1990, CHAPTER S.5, AS AMENDED (the "Act") AND IN THE MATTER OF MACDONALD OIL EXPLORATION LTD., MACDONALD MINES EXPLORATION LTD., MARIO MIRANDA AND FRANK SMEENCK*

### **Order**

(Sections 127 and 127.1)

*WHEREAS* on January 8, 2001, the Ontario Securities Commission ("the Commission") issued a notice of hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended ("the Act"), in respect of MacDonald Oil Exploration Ltd., MacDonald Mines Exploration Ltd., Mario Miranda and Frank Smeenck ("the Respondents");

*AND WHEREAS* the Respondents entered into a settlement agreement dated January 8, 2001 ("the Settlement Agreement") in which they agreed to a proposed settlement of the proceeding, subject to the approval of the Commission;

*AND UPON* reviewing the Settlement Agreement and the statement of allegations of Staff of the Commission, and upon hearing submissions from counsel for the Respondents and from Staff of the Commission;

*AND WHEREAS* the Commission is of the opinion that it is in the public interest to make this order;

*IT IS ORDERED THAT:*

1. The Settlement Agreement, attached to this order, is hereby approved.
2. Each of the Respondents is hereby reprimanded.
3. MacDonald Oil will submit to a review by BDO Dunwoody of its practices and procedures including, without limitation, MacDonald Oil's practices and procedures with respect to compliance by its directors, officers and principal shareholders ("the Review") and will institute such changes as may be recommended by BDO Dunwoody and/or by Staff, all at the sole expense of MacDonald Oil and all within the time frames set out by BDO Dunwoody after consultation with Staff. MacDonald Oil will report in writing to Staff and BDO Dunwoody as to the implementation of the recommendations made by BDO Dunwoody and/or by Staff within the time frames set out by BDO Dunwoody.
4. MacDonald Oil will, within thirty days of the date hereof, make a payment in the amount of \$50,000 to the Commission in respect of a portion of the Commission's costs with respect to this matter.
5. MacDonald Mines will, within thirty days of the date hereof, make a payment in the amount of \$15,000 to the Commission in respect of a portion of the Commission's costs with respect to this matter.
6. Miranda will, within thirty days of the date hereof, make a payment in the amount of \$5,000 to the Commission in respect of a portion of the Commission's costs with respect to this matter.
7. Smeenk will, within thirty days of the date hereof, make a payment in the amount of \$5,000 to the Commission in respect of a portion of the Commission's costs with respect to this matter.
8. Commencing March 1, 2001, Miranda will cease trading in all securities for a period of six months, except that he may at any time dispose of any securities held by him on the date of the Settlement Agreement.
9. Commencing March 1, 2001, Smeenk will cease trading in all securities for a period of one year, except that he may at any time dispose of any securities held by him on the date of the Settlement Agreement.
10. Each of Miranda and Smeenk is prohibited from acting as an officer of MacDonald Oil for a period of two years, except that Smeenk may continue to hold his current position of executive vice-president of MacDonald Oil during such two-year period, provided that the position of executive vice-president of MacDonald Oil does not include any of the responsibilities that customarily are associated with the positions of chairman, president, chief executive officer, chief operating officer, chief financial officer, controller, treasurer or secretary of an issuer.
11. If either Miranda or Smeenk is an officer of MacDonald Oil as at the date hereof, he will resign such office within ten days, subject to the exception with respect to Smeenk set out in paragraph 10 above.
12. Each of Miranda and Smeenk is prohibited from acting as the chair of the board of directors of MacDonald Oil and/or serving as a member of the audit, corporate governance, compliance or executive committees of the board of directors of MacDonald Oil for a period of two years. If either Miranda or Smeenk holds any such position as at the date hereof, he will resign that position within ten days.

January 12, 2001.

## "B"

*IN THE MATTER OF THE SECURITIES ACT, R.S.O. 1990, CHAPTER S.5, AS AMENDED (the "Act") AND IN THE MATTER OF MACDONALD OIL EXPLORATION LTD., MACDONALD TRADING CORPORATION, RUSSELL MARTEL AND BRESEA RESOURCES LTD.*

### **Order**

*(Section 144)*

*WHEREAS* on August 11, 1999, the Ontario Securities Commission (the "Commission") issued an order (the "Order") pursuant to clause 104(1)(c), clauses (2) and (5) of subsection 127(1) and subsection 127(2) of the Act in respect of the offer dated June 8, 1999 (the "Offer") by MacDonald Oil Exploration Ltd. ("MacDonald Oil") to acquire all of the common shares (the "Bresea Shares") of Bresea Resources Ltd. ("Bresea") in exchange for convertible preferred shares and E-Warrants of MacDonald Oil (the "Consideration");

*AND WHEREAS* paragraph 3(A) of the Order provided that MacDonald Oil was to disseminate to the public a news release forthwith that: (i) advised holders of Bresea Shares (the "Bresea Shareholders") that, as a result of the Order, MacDonald Oil could not acquire the Bresea Shares or issue the Consideration in payment for such tendered Bresea Shares; (ii) specified that withdrawal rights were exercisable and continued to be exercisable; and (iii) summarized the manner in which Bresea Shareholders could exercise their rights of withdrawal pursuant to section 95 of the Act;

*AND WHEREAS* paragraph 3(B) of the Order (the "Notification Requirement") provided that, within ten days of the Order's issuance, MacDonald Oil was to deliver to every holder of Bresea Shares to whom the Offer was sent a notice that contained the information specified in paragraph 3(A) of the Order (the "Notice");

*AND WHEREAS* paragraph 6 of the Order provided that trading was to cease in Bresea Shares by MacDonald Oil, any person that was a director, officer, affiliate or associate of MacDonald Oil or acting jointly or in concert with any of the foregoing persons or companies, MacDonald Trading Corporation and Russell Martel (collectively, the "Respondents") unless and until they satisfied the Executive Director of the Commission that: (i) there had been compliance with the orders referred to in paragraphs 3, 4 and 5 of the Order; and (ii) that, with respect to all of the Bresea Shares tendered to the Offer, withdrawal rights had been exercised or such Bresea Shares had been returned to the appropriate Bresea Shareholders;

*AND WHEREAS* MacDonald Oil has made an application (the "Application") to vary paragraph 3(B) of the Order to permit MacDonald Oil to satisfy the Notification Requirement by having the depositary for the Offer (the "Depositary"):

(a) distribute the Notice by fax to all registered representatives of Bresea Shareholders who delivered, or sent to the Depositary by fax, notices of guaranteed delivery or Bresea Share certificates endorsed for transfer; and

(b) mail the Notice to all other Bresea Shareholders who delivered notices of guaranteed delivery or Bresea Share certificates endorsed for transfer.

*AND UPON* considering the Application and the recommendation of the staff of the Commission;

*AND UPON* MacDonald Oil having represented to the Commission as follows:

1. MacDonald Oil has complied with paragraphs 1, 2, 3(A) and 4 of the Order.
2. MacDonald Oil's directors and officers have complied with paragraph 5 of the Order.
3. All of the Bresea Shares tendered to the Offer have been returned to the appropriate Bresea Shareholders.
4. After discussions with staff of the Commission regarding MacDonald Oil's request for a variation of the Order in a manner consistent with the terms of this order, MacDonald Oil sent the Notice on August 23, 1999 to every Registered Bresea Shareholder who tendered Bresea Shares to the Offer.
5. In connection with any new offer to acquire Bresea Shares that constitutes a take-over bid, MacDonald Oil will include in the circular to be sent to all holders of Bresea Shares to whom such new offer is made the disclosure required to have been included in the Notice pursuant to paragraph 3(B) of the Order.

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

*IT IS ORDERED* pursuant to subsection 144(1) of the Act that paragraph 3(B) of the Order is varied so as to permit MacDonald Oil to satisfy the Notification Requirement by having the Depositary:

- (a) distribute the Notice by fax to all registered representatives of Bresea Shareholders who delivered, or sent to the Depositary by fax, notices of guaranteed delivery or Bresea Share certificates endorsed for transfer; and
- (b) mail the Notice to all other Bresea Shareholders who delivered notices of guaranteed delivery or Bresea Share certificates endorsed for transfer.

October 13, 2000

"C"

### **Undertaking**

*TO:* THE ONTARIO SECURITIES COMMISSION

Each of the undersigned hereby undertakes and agrees to cooperate with the staff of the Ontario Securities Commission ("Staff") in connection with the Review (as defined in the settlement agreement of which this undertaking forms a part, the "Settlement Agreement") and any further investigation of the matters referred to in the Review. Such cooperation includes, but is not limited to, arrangements made by the MacDonald Oil Exploration Ltd. to make available a member of the board of directors of MacDonald Oil Exploration Ltd. and/or any person employed by or providing management services to MacDonald Oil Exploration Ltd., on reasonable notice and without service of a summons or subpoena, to cooperate with OSC Staff, to produce any documents within his or her possession, custody or control which are requested by the OSC Staff, and to appear and give truthful and accurate information and testimony in any investigation or proceeding under the Act in connection with the matters referred to herein at which OSC Staff may make requests for such information or testimony.

January 8, 2001.