December 13, 2001

VIA FEDERAL EXPRESS

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549

Public Avail. Date: 1/18/02 0204200207

Act	Section	Rule
1933	2(a)(1)	—
1934	3(a)(10)	—

Attention: Kristina Schillinger
Michael Hyatte

Re: Canaccord Capital Corporation

Ladies and Gentlemen:

On behalf of our client, Canaccord Capital Corporation, a Canadian corporation (the "*Company*"), this letter revises and updates our earlier letters to the Division of Corporation Finance (the "*Division*") dated June 15, 2000 (the "*June 15 Letter*"), October 17, 2000, March 8, 2001, April 3, 2001, and August 6, 2001, in which we asked that the Division concur with our view expressed below or, in the alternative, advise us that the Division will not recommend any enforcement action to the Securities and Exchange Commission (the "*Commission*") in connection with the Company's activities as described below.

The Company has asked whether the Term Note (as defined below) and accompanying guarantee issued under the Quebec Immigrant Investor Program for Assistance to Business ("*Program*"), as initially described in the June 15 Letter and as modified below, to be marketed by the Company in the United States, is a "security" the offer and sale of which would require registration of the Program with the Commission under the Securities Act (the "*Securities Act*"), and registration of the Company with the Commission under the Securities Exchange Act (the "*Exchange Act*") as a broker-dealer for selling the Program. In response to the comments and inquiries expressed by the Division in response to the June 15 Letter and subsequent letters, we can report the following.

I. Facts

Québec law specifically provides for an investment program for prospective immigrants seeking to secure permanent residence in Canada. In short, under the Program a qualified prospective immigrant invests CDN$400,000 for a 5-year term with IQIII (a Quebec government agency as defined below), which in turn invests that amount in an interest-bearing instrument. A legally eligible borrowing corporation in the Province of Quebec (as defined under the Program)

then receives a commercial loan from IQIII equivalent to fifty (50%) percent of the interest generated by the interest-bearing instrument. Under no circumstances will the immigrant investor receive interest on the CDN$400,000 investment, and at the end of the 5-year term each immigrant investor receives a return only of his or her capital without any appreciation or profit and, upon successful completion of the Program's immigration requirements, permanent resident status in Quebec.

As the Program was originally established in 1986, the immigrant investor invested the CDN $400,000 directly into the legally eligible borrowing corporation. The legally eligible borrowing corporation would then issue a promissory note to the immigrant investor. The note would be secured by a financial instrument issued by a Canadian chartered bank or other large corporation that would be held during the term of the promissory note by an independent trust of which the immigrant investor was the beneficiary. If the borrowing corporation was unable to pay back the full amount to the immigrant investor at the end of the term (due to, for example, bankruptcy or insolvency), the proceeds of the instrument would be used to repay the immigrant investor.

On June 8, 2000 the Program was modified. Immigrant investors are now provided with a 5-year term note ("*Term Note*") without interest issued by IQ Immigrants Investisseurs Inc. ("*IQIII*"), a subsidiary of Investissement-Québec, as security (*i.e.*, collateral) for their investment. Investissement-Québec is a Québec government agency devoted to promoting investment in Québec. Under the terms of the revised Program, Investissement-Québec has been delegated the governmental authority to oversee all financial (*i.e.*, non-immigration) aspects of the Program. Investissement-Québec has undertaken this responsibility through a new subsidiary, IQIII.

Pursuant to the *Regulation respecting the selection of foreign nationals*, the Quebec legislation authorizing the Program ("*Regulation*"), the Company has entered into a standard form of agreement with IQIII ("*Agreement*") to serve as a financial intermediary under the Program. The Company is not regulated in Canada as a broker-dealer as a direct or indirect result of its activities relating to the Program (although the Company is subject to regulation in Canada as a broker-dealer for its other securities activities that are separate, distinct and unrelated to the Program). Rather, the Company's activities in the context of the Program are regulated by IQIII and the Quebec Ministry of Immigration. Moreover, neither the Program nor the Term Notes issued thereunder are subject to regulation by the Quebec Securities Administration.

The Program and Term Note expressly provide that no interest shall be paid to an immigrant investor on the CDN$400,000 investment. The Term Note, while issued by IQIII, is fully and unconditionally guaranteed by the Québec government. The Term Note accompanied by the government guarantee is issued as security to immigrant investors in lieu of the financial instrument previously issued by a Canadian chartered bank.

Although the Term Note is negotiable, the Term Note shall not be negotiated, assigned or transferred *other* than as collateral to an approved bank to secure a loan under the financing option available under the Program. Specifically, Section 3.4.1 of the amended Agreement prohibits the Company in its capacity as an intermediary (also referred to as a "Mandatary") under the Program from negotiating, assigning or transferring the Term Note for any purpose other than to collateralize the financing option (as described more fully in Section II. E) available to immigrant investors through the Mandatary or other approved financial institution. Thus, the Term Note may be transferred only to secure a financed loan in the limited context of the Program and for no other reason. Indeed, Section 3.4.1 of that Agreement prohibits any further negotiation, transfer or assignment of the Term Note. As a result, no secondary market for the Term Notes can be created.

Under the Regulation, brokers and trust companies have been selected to market the Program on behalf of the Quebec government. There is no legislative history addressing the rationale supporting the selection of brokers and trust companies to market the Program. To increase the Program's chances for success, the Quebec government selected those financial institutions that are actively involved with the expansion of business investment in Quebec. Thus, although securities "dealers" may act as financial intermediaries, non-dealer trust companies may also act as intermediaries under the Program. (Although the English version of the Regulation uses the word "broker" but defines the word "dealer," this is due to faulty translation rather than deliberate legislative intent. In Quebec, French is the official version of legislation, and the French version prevails in the case of a discrepancy between the English and French versions. Thus, you will note that the French version of Sections 1 and 34.1 of the Regulation both use the word "courtier" whereas the English version uses the word "dealer" in Section 1 and "broker" in Section 34.1).

As a financial intermediary under the Program, the Company receives a commission for each immigrant investor. This commission is payable to the Company by IQIII upon the disbursement of the immigrant investment to the Québec corporation and is in no way variable depending on financial performance.

The Company has a US affiliate, called Canaccord Capital (USA) Inc. (formerly named Noram Investment Services Inc.), 1201 Elm Street, Suite 3500, Dallas, Texas, 75270. Said affiliate has no participation in the Program, but rather provides US trading capacity to the Company's clients.

The immigrant investor must reside in Canada. Under the Program, the immigrant investor becomes a permanent resident of Canada able to travel freely through Canada and enter the United States as a permanent resident of Canada. However, if the immigrant investor remains outside Canada for six months or more, he or she could lose permanent resident status. After 3 years as a permanent resident, the immigrant investor could become a citizen of Canada

if he or she meets the other requirements for the granting of citizenship, primarily by passing the requisite examination.

The Company has marketed the Program to immigration lawyers and consultants around the world for the last four years. Because the Company does not market directly to immigrant investors, it must rely upon referrals from such immigration lawyers and consultants. The majority of immigration lawyers and consultants specializing in immigration to Canada are located in Canada, the United States and Hong Kong. It is therefore critical that the Company be able to market its Program to immigration lawyers and consultants operating out of the United States. In the past, the Company has marketed the Program to, and the majority of its participants have been from Hong Kong and China, and to a lesser extent from, the Mideast, Europe, Africa, and South America (roughly in that order).

Despite their operating out of the United States, the vast majority of the immigrant investor clients referred by US immigration lawyers and consultants reside outside of the United States. Additionally, our client believes that there may be an increasing demand by US residents for immigration to Canada. The motivations behind this decision to immigrate to Canada from the United States vary. Therefore, the Company's marketing efforts are directed to immigration lawyers and consultants around the world, and it would like to include the United States.

The goal of the Program is to allow individuals to immigrate to Canada by making a passive investment into a legally eligible Québec corporation undertaking an investment project. To this end, all immigrant investments must be used to finance corporate projects of investment, technological innovation, design innovation or the development of new markets. The investment projects themselves must be part of one of the following industries:

(a) Manufacturing;
(b) Environmental restoration and recycling;
(c) Centralized call centres;
(d) Tourism;
(e) "New economy", including biotechnology, pharmaceuticals, information technology, aeronautics, aerospace and scientific engineering;
(f) Development of new markets;
(g) Technological and design innovation;
(h) Marine biology; or
(i) Horticulture.

All corporations and their eligible projects must be approved by IQIII before the disbursement of the immigrant investment. Following disbursement, a final report of the disbursement is submitted to IQIII as a pre-condition to the immigrant investor being issued a Permanent Resident Visa by the Government of Canada.

II. Law and Analysis

Set forth below is an analysis of the law pertaining to notes and investment contracts. The issue of the guarantee component of the Program is also addressed followed by an analysis of the marketing and packaging services and the financing option available under the Program.

A. Notes

1. Law

Under the Securities Act a note is presumed to be a security if its term exceeds 9 months. However, an issuer can rebut this presumption by establishing that the instrument is sufficiently similar to a previously recognized judicial exception from characterization as a note (the "family resemblance test"). In order to do so, several factors must be evaluated, which factors are set forth in the Supreme Court case of Reves v. Ernst & Young, 494 U.S. 56 ("Reves").

First, the instrument or transaction must be assessed to determine the motivations that would prompt a reasonable buyer and seller to enter into it. If the seller's (in this case, IQIII's) purpose is to raise money for the general use of a business enterprise or to finance substantial investments and the buyer is primarily interested in the profit that the instrument is expected to generate, then the instrument is likely to be a "security." If, on the other hand, the note is exchanged to facilitate the purchase and sale of a minor asset or consumer good, to correct for the seller's cash-flow difficulties, or to advance some other commercial or consumer purpose, the instrument will likely not be characterized as a "security."

Second, the "plan of distribution" of the instrument must be examined. The courts use language that states that a note may be classified as a security if there is "common trading for speculation or investment."

Third, the reasonable expectations of the investing public must be examined to determine whether the public perceives the instrument as an investment opportunity, in which case it will generally be classified as a security.

Finally, the fourth factor in the "family resemblance" test is to examine whether there is some factor such as the existence of another regulatory scheme which significantly reduces the risk of the instrument, thereby rendering the application of the Securities Act to protect the investor unnecessary.

2. Analysis

The first element of the Reves test, the motivation of the seller, can be addressed as follows. In our case, although the seller's motivation in issuing the Term Note is to finance the

Program, it is clear that the buyer's (i.e., the immigrant investor's) primary motivation is not one of profit. The Program does not pay interest to the immigrant investor over the 5-year term of the Term Note; rather, the immigrant investor can only expect to receive his or her capital at the end of the 5-year term without any capital appreciation. Consequently, there is no way that the investor can receive a profit on his or her investment in the Program. Therefore, on our facts, it appears that the investor is not induced to make the investment for reasons of profit, but rather for the primary reason of securing favorable immigration status in Canada while not losing his or her investment. Since the Term Note earns no interest, there is no profit potential of the investment beyond the return of the initial capital. In our case, therefore, since there is no interest component of the Program at all, one cannot reasonably conclude that the immigrant investor's primary motivation in participating in the Program is to earn interest. Rather, the immigration motivation is the primary one.

The second element of the Reves test, the plan of distribution, can be analyzed as follows. Although the courts do not elaborate on this point, it seems clear that the Program is not intended to be a vehicle for trading, speculation or investment. Presumably, an investor with disposable income in the amount of CDN$400,000 who was primarily intending to procure a speculative investment with risk and, therefore, potential return could choose a wide range of alternative investments with a much higher speculative component than the Program offers. Rather, the Program is designed to provide to the immigrant investor the opportunity to secure permanent residence without losing his or her investment. First, the notes are not effective instruments for speculation or investment as there is no upside opportunity available. Further, as there is no interest component at all, the Program could not reasonably be characterized as an investment vehicle. Second, many alternative investments are available offering more promising returns. In essence, the investment component of the Program is incidental to the primary motivation for the immigrant investor making the indirect loan to the legally eligible borrowing corporation, that of securing permanent residence.

This second element of the Reves test has also been interpreted such that the "commonly traded" factor is satisfied if the instrument is "offered and sold to a broad segment of the public" (Stoiber v. Securities and Exchange Commission, FSLR §90,335 (1998)). In the Calozza case that interprets this element of the Reves test, as cited above, the court concluded that the sale of notes to 150 members of a fraternal organization in a multistate area satisfied this criterion. In our case, the Program will potentially be marketed throughout the U.S., suggesting that this factor may be satisfied. However, although it may be argued that the instruments are being "commonly traded" in that they may be considered to be offered to a broad segment of the public, still, they are not being marketed as investment vehicles.

The third element of the Reves test, the reasonable expectations of the investing public, can be analyzed as follows. The Program is marketed using the term "investment" in the advertising literature. The case of Resolution Trust Corporation v. Stone, et al., FSLR §97,663 (1993), again citing Reves, found that the fact that notes were advertised as "investments" and

that nothing would have led a reasonable person to question this characterization suggested that the notes were securities.

However, in our case a reasonable person could easily question the characterization of the Program as an investment. Again, it is difficult to see how the Program can be characterized as anything other than a simple secured commercial loan, as opposed to a speculative investment. The Program is such that a straight promissory note is secured by the Québec government guarantee, giving the vehicle virtually identical characteristics as a commercial loan, the paradigm of non-security instruments that are not intended to be regulated by the Securities Act. As stated above, an investor seeking to maximize return, even while incurring substantial risk, has an endless array of alternative vehicles in which to invest where there is no expectation of securing favorable immigration status. Although it is true that the Program is marketed as an "investment," we believe that the countervailing factor of the investor's true motivation in making the capital injection through IQIII to the legally-eligible borrowing corporation, that of securing permanent residence in Canada, negates that characterization.

The fourth element of the Reves test, the "family resemblance" test, can be analyzed as follows. First, the Reves case indicates that the fact that an instrument is collateralized or insured is a major risk-reducing factor. In fact, this element was confirmed in the recent case of the Court of Appeals for the Sixth Circuit, Bass v. Janney Montgomery Scott, Inc., 210 F 3d 577, in which it was held that, following the Reves test, the fact that promissory notes were collateralized negated their status as securities because of their reduced risk. The Term Note issued under the Program by the borrowing corporation is fully secured by the Québec government guarantee. Therefore, the immigrant investor's risk in losing his or her principal is greatly reduced, much like in the case of the quintessentially non-security secured commercial loan.

In addition, one can point specifically to a regulatory scheme that significantly reduces the need for U.S. securities laws to protect the immigrant investor, that being the Regulation, the Québec law that sanctions the Program. The Regulation requires the "dealer" to be registered with the Québec Securities Commission, and it provides the regulatory scheme contemplated in the enunciation of the "family resemblance test," which has the effect of significantly reducing the risk to U.S. investors choosing to participate.

Therefore, much in the same way that a commercial loan, when fully secured, is the paradigm of an instrument falling outside the scope of the definition of a "security," the Program, consisting of the Term Note fully backed by the Québec government guarantee made possible by the Regulation, includes a factor that negates the need for regulation under U.S. Securities laws since the risk to the participant is eliminated (or greatly reduced) by the Regulation itself.

In addition, in light of the further-enhanced Program, in which the Term Note effectively replaces the trust indenture, the element of collateralization is even further assured such that the reasonable expectations of the investing public would not be to characterize the Program as a speculative investment, but rather as a secure vehicle by which to achieve favorable immigration status in Canada. Therefore, the fourth element of the Reves test is further supported in light of the enhanced security of the Program, as manifest in the substitution of the Term Note for the previously existing government instrument, such that the risk-reducing factor of the Program is further confirmed. As per the case of Bass v. Janney Montgomery Scott, Inc., cited above, we believe that the fact that the Program is fully collateralized negates its status as a security because of the reduced risk. The substitution of the Term Note for the government security further confirms this conclusion based on our analysis of the case law stemming from the Reves test.

B. Investment Contracts

1. Law

Definitions of a "security" include a category of "investment contracts", a catch-all term for transactions not specifically included in the definition lists and which would otherwise not involve securities under the securities laws. The Supreme Court in SEC v. W.J. Howey Co. has defined an investment contract as a contract, transaction or scheme whereby a person (a) invests his money, (b) in a common enterprise, and (c) is led to expect profits, (d) solely from the efforts of others.

The first element of the Howey test, the investment of money test, has been extended to cover instances where a person is giving up some tangible and definable consideration in return for an interest that has substantially the characteristics of a security, as was set forth in the case of International Brotherhood of Teamsters v. Daniel, 439 U.S. 551.

The second element of the Howey test, the common enterprise test, focuses on "the extent to which the success of the investor's interest rises and falls with others involved in the enterprise." The Courts have developed the concept of "horizontal commonality" to describe the pooling of similar interests among investors, and "vertical commonality" to describe the promoter's relationship with a single investor. Horizontal commonality clearly meets the Howey test, but the courts are divided on whether vertical commonality alone is sufficient. The courts have developed a broad approach to vertical commonality, which requires that the fortunes of the investors be linked to the efforts or expertise of the promoters and a pro rata sharing of profits is not necessary. In contrast, the narrower approach to vertical commonality requires that the investor's fortunes be linked to the fortunes of the promoter, which approach suggests that more than evidence of merely furnishing investment counsel to another for a commission is required to meet this narrower test.

The third element of the Howey test, the investor's expectation of profit, has been broadened to cover both capital appreciation of the investment itself as well as a participation in earnings.

Finally, the fourth element of the Howey test, that the investor's expectation of profits derive solely from the efforts of others, is usually interpreted to include cases in which the investor's expectation of profits derive *substantially* from the efforts of others, thus allowing the investor to contribute a minimal level of effort while still resulting in the program falling within the category of an investment contract. The efforts of others must be considered to be undeniably significant, as held in the case of SEC v. Glenn W. Turner Enterprises, 474 F. 2d 476.

2. **Analysis**

The first element of the Howey test, the investment of money, is clearly met by the Program since the immigrant investor is investing CDN$400,000 pursuant to the terms of the Program. It is not clear, however, that the second element of the Howey test, that of a common enterprise, is met by the Program. The Program does not comprise any aspect of pooling of investors' money in order to achieve enhanced returns, thus falling short of meeting the horizontal commonality element of the second element of the Howey test, nor are the fortunes of the immigrant investor in any way tied to the expertise, efforts or fortunes of the promoter, thus negating the applicability of the vertical commonality element of the second element of the Howey test. In our case, the Program is characterized simply by the immigrant investor making an investment of a specific amount, which investment will not earn any interest. The profits to be earned by the immigrant investor are in no way related to the efforts of the Company in its promotion of the Program but result exclusively from the fixed interest rate tied to the Term Note. Since the impetus of the immigrant investor in participating in the Program is not one of profit at all, but rather in securing favorable immigrant status in Canada, the expertise of the representatives of the Company in promoting and administering the Program are irrelevant.

This third element of the Howey test, the investor's expectation of profit, again, is not met by the facts which characterize the Program. The sole motive of an individual participating in the Program is to secure favorable immigration status in Canada, and an immigrant investor who would participate in the Program with the goal of maximizing his or her return on investment would effectively be behaving in an economically-irrational manner. In fact, the participants in the Program cannot expect to earn interest, and therefore there is no upside potential in such an investment, unlike other vehicles more likely to be considered investment contracts under the Howey analysis.

Finally, the fourth element of the Howey test, that the investor's expectation of profit derive solely from the efforts of others, is not met on the facts. As discussed above, there is no expectation of profit at all inherent in the immigrant investor's motivations in participating in the

Program since there is no interest component, and the little expectation that could be argued to exist is not tied to the efforts of the Company at all. As a result, under the Howey test, we believe that the Program cannot be characterized as an investment contract.

C. Guarantees

1. Law

Under the Securities Act, the definition of a security expressly includes a guarantee of any of the other instruments or devices enumerated in Section 2(a)(1). Consequently, the entire transaction must fall within the statutory definition of a security as well as the guarantee. *See, e.g.*, Johns Hopkins Univ. v. Hutton, 422 F.2d 1124, 1128 (4th Cir. 1980). Further, the presence of a guarantee will not change the status of the underlying instrument subject to the guarantee. For example, where guarantees were not and could not have been purchased separately from industrial revenue development bonds issued by a municipality, and no separate charge was made to purchasers of the bonds for the guarantees, the exempt status of the bonds under the Securities Act was not affected by the guarantee. Woods v. Homes & Structures of Pittsburgh, Kan., Inc. 489 F.Supp. 1270 (D.Kan. 1980).

Consequently, whether a guarantee is a security depends on whether the underlying investment subject to the guarantee is a security. And, absent separate or additional consideration or terms associated with a guarantee, the existence of a guarantee will not affect the status of the underlying instrument for purposes of determining whether such instrument is a "security" under the Securities Act.

2. Analysis

Here, we believe that the guarantee is not a security under Section 2(a)(1) of the Securities Act. As discussed above, neither the underlying Program nor the Term Note is a security under Section 2(a)(1) of the Securities Act. The guarantee will not change the non-security status of the underlying Program and Term Note as the guarantee cannot be purchased separately from the Term Note and there is no separate charge or fee for the guarantee. The guarantee does not affect the structure or status of the Term Note other than to secure the return of each immigrant investor's capital should IQIII be unable to fulfill its repayment obligation under the Term Note when it matures. Furthermore, the guarantee is not incorporated into a security to be distributed to investors and may not be purchased separately from the Term Note. The sole purpose of the guarantee is to secure the return of the immigrant investor's commercial non-interest loan with the full faith and credit of the Québec government. Consequently, the Québec government can be considered no more than a commercial guarantor and not an issuer of a security as the role of the Québec government is merely to secure each immigrant investor's return of capital upon completion of the requisite immigration requirements under the Program.

Additionally, the guarantee does not separately constitute an investment contract under Howey or a security under Reves. To repeat the Howey test above, an "investment contract" as used in the Securities Act means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits from the efforts of others. Here, there is absolutely no expectation of profit for an immigrant investor under either the Term Note or the government guarantee securing that Note. Here, there is no pooling of money, no expectation of profit nor is there any reliance on the efforts of others to deliver any profits. Rather, immigrant investors expect to obtain a permanent resident visa in Canada (Quebec) and the return of their investment without interest upon each immigrant investor's successful completion of the Program. The guarantee serves only to help ensure the return of an immigrant investor's capital should IQIII be unable to do so upon maturation of the Term Note (and the requisite fulfilment of the Program's requirements by the immigrant investor). Investors enter into this Program to become residents of Québec, not to earn a profit on their investment as no profit or interest is paid.

Reves applies the family resemblance test to analyze whether a note is a security to be regulated under the federal securities laws. Reves, 496 U.S. at 64-65. The family resemblance test contains four factors as described above in Part II.A.1. The first element of the Reves test is the motivation of the seller and buyer to enter into the transaction. The motivation of the Québec government to guarantee payment of the Term Note is to facilitate the financing of local business and encourage immigration to Québec by desirable foreign nationals. However, the buyer's only motivation is to obtain permanent resident status in Canada (Québec) and, upon successful completion of the Program, receive his or her investment back without profits or interest.

The second element of the Reves test, the plan of distribution, seeks to determine whether the instrument in question is one in which there is "common trading for speculation or investment." Here, there is no speculative or investment component to the guarantee. The guarantees may not be traded as there is no interest or profit whatsoever on the guarantee (or underlying investment). Indeed, each guarantee is case-specific and attaches to each immigrant investor's particular Term Note, which cannot be traded. There can also be no trading in the guarantees as the prospective immigrant must successfully complete the Program before benefiting from the guarantee by receiving his or her investment back should IQIII default on its repayment obligation.

The third element of the Reves test is the reasonable expectations of the public. The Program will be marketed to those foreign nationals deemed desirable as potential immigrants to Québec. The guarantee of the Québec government will be marketed simply as a safety net securing the return of each immigrant investor's loan. Due to the Program's clear lack of any profit or return on investment, including under the guarantee, it would not be reasonable to expect the public to view the guarantee securing the Term Note as a security subject to regulation under the federal securities laws. The clear lack of profit or return on investment will lead the public to view the guarantee as simply the legal and moral obligation of the Québec government

to ensure the return of each immigrant investor's investment upon successful completion of the Program.

Finally, the Reves test examines whether another factor, such as the existence of another regulatory scheme, significantly reduces the risk of the instrument, thereby rendering application of the federal securities laws unnecessary. Here, the Program was enacted by and is subject to the immigration laws and regulations of Québec. The guarantee is an important element of the overall legislative Program designed to foster and promote immigration to Québec while financing local business. As such, the guarantee is subject to regulation under a separate body of law in Québec. The guarantee is backed by the full faith and credit of the Québec government and represents the legal and moral obligation to return each immigrant investor's capital upon successful completion of the Program.

D. Marketing and Packaging Services

The marketing and packaging services (the "Services") that organize, implement and market the Program to immigration attorneys, consultants and foreign nationals do not contain any inherent, incremental, enhanced or other value that could be considered an investment contract under Howey or a security under Reves. Under Howey, an "investment contract" is a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of others. Here, the Services consist of organizational, informational and explanatory materials implementing the Program and describing its administrators and requirements. The Services provide no inherent or enhanced value inuring to investors. As a result, the Services do not represent a contract, transaction or scheme in which a person may invest his money on the expectation of earning a profit solely from the efforts of others. Rather, the Services only explain the background and implement the requirements of the Program while promoting immigration to Québec by eligible foreign nationals. In short, there is no profit motive, profit expectation or resulting profit associated with or attributable to the Services, which seek only to organize and implement the Program.

Similarly, the Services do not constitute a security under Reves. The first element of the Reves test, the motivation of the seller and buyer to enter into the transaction, is not applicable to the Services. The Services do not represent a separate transaction, contract or agreement, but rather only implement and summarize the underlying Program and its requirements. As such, there can be no buyer or seller of the Services. The second element under Reves, the plan of distribution, is likewise inapplicable. The Services do not comprise an instrument in which there can be "common trading for speculation or investment." The Services are not an instrument, device or scheme that could be packaged and traded for speculation or investment separate from the Term Note and guarantee.

The third element of the Reves test, the reasonable expectations of the public, also leads to the conclusion that the Services are not a security. The Services seek to implement and

explain the Program's requirements. The reasonable expectations of the public when reviewing the Services is that the marketing and packaging materials comprising the Services are intended to implement the Program and inform immigration professionals and eligible foreign nationals as to the benefits of and requirements for immigrating to Canada. As such, it is not reasonable to expect that the public will view the Services as a security to be afforded the protections of the federal securities laws.

The fourth element of the Reves test is also inapplicable as the Services do not comprise an "instrument" subject to another regulatory scheme that significantly reduces the risk of such instrument.

E. Financing Option

The financing option under the Program does not represent a security or investment contract separate from the Program, Term Note or guarantee. The financing option provides an alternative method for immigrant investors to enroll in the Program without investing the entire CDN$400,000 up front. Actually, if the financing option is selected by an immigrant investor, that option will cause the immigrant investor to lose his or her investment. Under the financing option, an eligible immigrant investor may initially pay CDN$120,000 and finance the remaining CDN$280,000. No further payment is required from the immigrant investor and, upon completion of the Program, that CDN$120,000 investment is not repaid to the investor. Thus, selecting the financing option results in the complete forfeiture of an immigrant investor's CDN$120,000 investment. In other words, an eligible foreign national can essentially pay CDN$120,000 to obtain a Canadian Permanent Resident Visa, provided that such immigrant investor successfully fulfills each requirement of the Program. Consequently, the financing option cannot be construed as an investment contract under Howey as there is clearly no expectation of a profit to be derived from the efforts of others.

Similarly, under the Reves test, the guaranteed forfeiture of the initial investment under the financing option cannot be interpreted as a security. First, the only motivation for the immigrant investor to enter into the financing transaction is to gain citizenship in Canada. Although the seller of the financing option is seeking to attract immigrant investors and raise funds for local investment in Québec, there is absolutely no profit motive for immigrant investors as such investors will forfeit their investment in return for permanent resident status in Canada. Second, there is no plan of distribution or common trading under the financing option. Rather, the financing option allows an eligible immigrant investor to essentially pay CDN$120,000 in the hope of becoming a citizen of Canada. Although the Program authorizes an immigrant investor to transfer the Term Note to a qualified bank or financial institution to collateralize the loan under the financing option, the financing option is not available for distribution to other investors as the Term Note may not be further negotiated, transferred or assigned. Moreover, the financing option to be selected based on the individual financial circumstances of each eligible immigrant investor seeking to immigrate to Québec. Third, the

public cannot reasonably expect that the financing option (*i.e.*, guaranteed loss of capital) is a security of the type to be regulated by the securities laws. As the financing option promises only the guaranteed loss of an investor's entire investment in return for permanent resident status in Canada, it is not reasonable to expect that the public will view the financing option as a security. Finally, under the fourth element of the Reves test, the financing option is regulated by another set of statutes and regulations that govern the availability and requirements for qualifying for the financing option under the Program.

III. Conclusion

For the reasons stated above, *i.e.*, that the Program is essentially an immigration program, it is our opinion that the instruments constituting the Program fall outside the definition of a "security" under the Securities Act.. Our analysis as set forth above concludes that (1) the Program cannot be characterized as a note under the securities laws, and (2) cannot be characterized as falling within the catch-all category of investment contracts.

The Company is anxious to proceed with the marketing of the Program in the United States as described herein as soon as possible. Accordingly, we appreciate your prompt consideration of this matter. If you have any questions or should require any additional information concerning any of the issues addressed herein, please feel free to contact the undersigned.

Yours very truly,

Guy P. Lander

cc: Jerry Rosenthal (via email)

PR

00046

January 18, 2002

Act 33
Section 2(a)(1)
Rule
Public Availability 1-18-02

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF CORPORATION FINANCE

Re: CanAccord Capital Corporation
Incoming letter dated December 13, 2002

Based on the facts presented, the Division will not recommend enforcement action to the Commission if, in reliance on your opinion of counsel that the Canadian Immigrant Investor Program and the notes issued thereunder are not securities within the meaning of the Securities Act of 1933 or the Securities Exchange Act or 1934, CanAccord administers the Immigrant Investor Program as described in the incoming letter without registration under either statute.

This position is based on the representations made to the Division in your letter. Any different facts or conditions might require the Division to reach different conclusions.

Sincerely,

Kristina Schillinger Wyatt
Special Counsel