

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Relief from registration and prospectus requirements in connection with a statutory arrangement involving an exchangeable share structure where exemptions may not be available in for technical reasons. Issuer of exchangeable shares exempted from certain continuous disclosure requirements and its insiders exempted from insider reporting requirements subject to certain conditions. First trade deemed a distribution unless made in accordance with specified provisions of Multilateral Instrument 45-102: *Resale of Securities*.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74(1), 80(b)(iii) and 121(2)(a)(ii).

Applicable Ontario Rules

Rule 45-501 - *Exempt Distributions*

Rule 51-501 - *AIF and MD&A*

Applicable National Instruments

Multilateral Instrument 45-102: *Resale of Securities*

National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*

**IN THE MATTER OF THE SECURITIES LEGISLATION
OF ALBERTA, SASKATCHEWAN,
MANITOBA, QUEBEC, ONTARIO, NOVA SCOTIA,
NEW BRUNSWICK, NEWFOUNDLAND AND LABRADOR,
PRINCE EDWARD ISLAND, NORTHWEST TERRITORIES,
NUNAVUT AND YUKON TERRITORY**

AND

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

AND

**IN THE MATTER OF
DIVINE, INC.**

AND

**IN THE MATTER OF
DELANO TECHNOLOGY CORPORATION**

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, New Brunswick, Newfoundland and Labrador, Prince Edward Island, the Yukon Territory, the Northwest Territories and Nunavut (collectively the "Jurisdictions") has received an application from divine, inc. ("divine") and Delano Technology Corporation ("Delano" and, together with divine, the "Applicants") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that:

- (a) certain trades in securities made in connection with or resulting from the proposed acquisition of Delano by divine (the "Transaction") to be effected by way of a plan of arrangement (the "Arrangement") under section 182 of the *Business Corporations Act* (Ontario) (the "OBCA") shall be exempt from the requirements contained in the Legislation to be registered to trade in a security (the "Registration Requirements") and to file a preliminary prospectus and a prospectus and receive receipts therefor (the "Prospectus Requirements");
- (b) Delano be exempt from any requirements of the Legislation, where applicable,
 - (i) to issue press releases and file reports regarding material changes ("Material Change Reporting Requirements");

- (ii) to prepare, file and deliver annual reports, audited comparative annual financial statements, unaudited, comparative, interim financial statements and information circulars or annual reports in lieu thereof;

(collectively, the "Continuous Disclosure Requirements") and

- (iii) to prepare and file an annual information form ("AIF"), including management's discussion and analysis ("MD&A"), to prepare and file interim MD&A, and to send such annual and interim MD&A to security holders of Delano (collectively, the "AIF and MD&A Requirements");
- (c) that insiders of Delano be exempt from the requirement (the "Insider Reporting Requirement") contained in the Legislation, where applicable, to file reports disclosing the insider's direct or indirect beneficial ownership of, or control or direction over, securities of Delano; and
- (d) that Delano be exempt from the requirement to contained in section 2.2(2) of OSC Rule 52-501 *Financial Statements* to prepare and file a comparative income statement and cash flow statement (collectively the "52-501 Filing Requirement").

AND WHEREAS, under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission ("OSC") is the principal regulator for this Application;

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

1. divine was incorporated in 1999 as a Delaware corporation. divine's business includes providing expertise in collaboration, interaction and knowledge solutions that extend enterprise solutions. divine's principal corporate offices are located in Chicago, Illinois.
2. divine is currently subject to the informational requirements of the United States *Securities Exchange Act* of 1934, as amended (the "1934 Act"), is not a "reporting issuer" or its equivalent in any of the Jurisdictions and does not intend to become a reporting issuer or its equivalent in any of the Jurisdictions after completion of the Transaction.
3. divine's authorized capital consists of 2,500,000,000 shares of Class A common stock ("divine Common Shares"), par value U.S.\$0.001 per share, 100,000,000 shares of Class C common stock, U.S.\$0.001 par value per share, and 50,000,000 shares of preferred stock, U.S.\$0.001 par value per share ("divine Preferred Stock") of which 500,000 shares have been designated Series A Junior Participating Preferred Stock. As at March 27, 2002, no shares of divine Preferred Stock and no shares of Class C common stock were issued and outstanding, and 457,145,645 divine Common Shares were issued and

outstanding. As part of the Transaction, divine will issue one share of special voting stock (the "Special Voting Share") to a trustee (the "Trustee") in accordance with the Voting and Exchange Trust Agreement (defined below).

4. divine maintains stock option and purchase plans pursuant to which the divine Board of Directors has the authority, among other things, to determine the type of options ("divine Options") and the number of divine Common Shares which are subject to the divine Options or the number of divine Common Shares which may be purchased, as the case may be.
5. The divine Common Shares are quoted on the NASDAQ National Market ("NASDAQ").
6. As at April 4, 2002, there were approximately 22 registered holders of divine Common Shares indicated on divine's records as being resident in Canada holding, in aggregate, 6,847,789 divine Common Shares, representing less than 2% of the total number of issued and outstanding divine Common Shares. Following the completion of the Transaction and certain other transactions (to be completed before or shortly after the Transaction) by divine that are disclosed in the Circular (defined below), and assuming that Exchangeable Shares are considered to be divine Common Shares, it is expected that the beneficial holders of divine Common Shares resident in Canada will hold less than 10% of the issued and outstanding divine Common Shares and represent less than 10% of the number of holders of divine Common Shares. This calculation is based upon the number of beneficial and registered Delano Shareholders (as defined below) and registered holders of divine Common Shares who are residents of Canada and on the assumption that the consideration to be paid by divine to Delano Shareholders pursuant to the Arrangement will consist entirely of Exchangeable Shares.
7. Delano was incorporated under the OBCA in 1998. Delano develops and markets customer relations management software. Delano's head office is located in Markham, Ontario.
8. Delano is a reporting issuer in the provinces of Ontario and Alberta (the "Reporting Jurisdictions"), but is not a reporting issuer or its equivalent under the Legislation of any other Jurisdiction. Delano is also subject to the reporting requirements of the 1934 Act.
9. The authorized capital of Delano consists of an unlimited number of common shares ("Delano Common Shares"), an unlimited number of Class "A" special shares, an unlimited number of Class "B" special shares, an unlimited number of Class "C" special shares and an unlimited number of preference shares. As of March 12, 2002, 43,429,694 Delano Common Shares were issued and outstanding and no Class "A", Class "B" or Class "C" or preferred shares were issued and outstanding. As part of the Transaction, Delano will create and issue non-voting exchangeable shares ("Exchangeable Shares"), which will be

exchangeable for an equal number of divine Common Shares. As of May 31, 2002, no publicly traded debt securities of Delano were outstanding.

10. The Delano Common Shares are currently listed for trading on The Toronto Stock Exchange (the "TSX") and are quoted on NASDAQ.
11. Delano maintains employee stock option plans pursuant to which it has granted options to acquire Delano Common Shares ("Delano Options"). As of April 4, 2002, there were Delano Options outstanding which, when vested, would be exercisable to purchase a total of 6,689,602 Delano Common Shares.
12. As of April 4, 2002, there were warrants ("Delano Warrants") to acquire 36,723 Delano Common Shares issued and outstanding.
13. To the knowledge of Delano, Delano is not in default of any requirements of the Legislation.
14. On March 12, 2002, divine and Delano entered into a business combination agreement (the "Combination Agreement") setting forth the terms of the Transaction. On completion of the Transaction, to be effected by way of the Arrangement, divine will own all of the outstanding Delano Common Shares. The Arrangement will require: (i) the approval of holders of the Delano Common Shares (the "Delano Shareholders") holding not less than 66 and 2/3% of the votes cast at the special meeting of such Delano Shareholders (the "Delano Meeting") by Delano Shareholders present in person or represented by proxy; and (ii) the final approval of the Court (as defined below).
15. In connection with the Arrangement, Delano mailed to the Delano Shareholders a management information circular (the "Circular"). The Circular contains, among other things, prospectus-level disclosure of the business and affairs of each of Delano and divine and the particulars of the Arrangement, the Exchangeable Shares and the divine Common Shares. The Circular also discloses that divine and Delano have applied for exemptive relief from Prospectus Requirements for certain trades to be made in connection with Transaction, and for relief that exempts Delano from certain Continuous Disclosure Requirements and that exempts insiders of Delano from certain Insider Reporting Requirements.
16. On April 22, 2002 the Superior Court of Justice (Ontario) (the "Court") granted an interim order in respect of the Arrangement providing for the calling and holding of the Delano Meeting and certain other procedural matters including providing for approval of the Arrangement to be made by the affirmative vote of not less than 66 and 2/3% of the votes cast at the Delano Meeting by Delano Shareholders present in person or represented by proxy.
17. It is expected that, shortly after consummation of the Transaction, the Delano Common Shares will be delisted from the TSX and NASDAQ.

18. Pursuant to the Transaction, vesting terms of all out-of-the money Delano Options (“Out-of-the-Money Options”) will be accelerated such that all such Out-of-the-Money Options are exercisable and may be conditionally exercised prior to the effective time of the Arrangement (the “Effective Time”), and, to the extent such Out-of-the-Money Options are not exercised prior to the Effective Time, such Out-of-the-Money Options shall terminate and expire immediately prior to the Effective Time.
19. At the Effective Time, the steps described below will occur:
 - (a) the outstanding Delano Common Shares held by each Delano Shareholder, other than:
 - (i) Delano Common Shares held by divine or any affiliate thereof;
 - (ii) Delano Common Shares that an eligible holder has validly elected to exchange for Exchangeable Shares;
 - (iii) Delano Common Shares held by shareholders exercising their dissent rights who are ultimately entitled to be paid the fair value of their Delano Common Shares;

will be transferred by the holder thereof to divine in exchange for that number of divine Common Shares equal to the product of the total number of Delano Common Shares held by such shareholder multiplied by 1.187 (the “Exchange Ratio”).

- (b) Delano’s capital will be reorganized to create the Exchangeable Shares and to eliminate all other classes of shares of Delano other than the Delano Common Shares.
- (c) the outstanding Delano Common Shares that a holder has validly elected to exchange for Exchangeable Shares shall be transferred by the holder thereof to Delano in exchange for a number of Exchangeable Shares equal to the product of the Exchange Ratio and the number of Delano Common Shares in respect of which such election is validly made, provided that notwithstanding the foregoing, only Delano Shareholders who are either, (1) Canadian residents for purposes of the *Income Tax Act* (Canada) (the “ITA”) not exempt from tax under Part I of the ITA holding Delano Common Shares on their own behalf or (2) persons who hold Delano Common Shares on behalf of one or more Canadian residents for purposes of the ITA not exempt from tax under Part I of the ITA, shall be entitled to elect to receive Exchangeable Shares in respect of any such Delano Common Shares.
- (d) divine and Delano shall execute a support agreement (the “Exchangeable Share Support Agreement”) and divine, Delano and the Trustee will enter into a voting and exchange trust agreement (the “Voting and Exchange

Trust Agreement”) and all rights of holders of Exchangeable Shares under the Voting and Exchange Trust Agreement shall be received by them as part of the property receivable by them in exchange for the Delano Common Shares so transferred to Delano.

- (e) each Delano Option that has not been cancelled, terminated or duly exercised prior to the Effective Time will be exchanged for a replacement option (“Replacement Option”). Each Replacement Option will constitute an option to purchase a number of divine Common Shares equal to the product of the Exchange Ratio and the number of Delano Common Shares subject to that Delano Option, at an exercise price per divine Common Share equal to the exercise price per Delano Common Share of the Delano Option immediately prior to the Effective Time divided by the Exchange Ratio.
 - (f) each Delano Warrant will be amended to provide for the purchase of the number of divine Common Shares equal to the product of the Exchange Ratio multiplied by the number of Delano Common Shares subject to such Delano Warrant, at an exercise price per divine Common Share equal to the exercise price per Delano Common Share of the Delano Warrant immediately prior to the Effective Time divided by the Exchange Ratio.
20. No fractional Exchangeable Shares or fractional divine Common Shares will be delivered in exchange for Delano Common Shares pursuant to the Arrangement. In lieu of any such fractional securities, each person otherwise entitled to a fractional interest in an Exchangeable Share or a divine Common Share will be entitled to receive a cash payment equal to such person’s pro rata portion of the net proceeds after expenses received upon the sale of whole shares representing an accumulation of all fractional interests in divine Common Shares to which all such persons would otherwise be entitled (either directly or through rights appertaining to such fractional Exchangeable Shares).
 21. The Exchangeable Shares will not be listed or quoted on any exchange.
 22. divine has applied to NASDAQ to quote the divine Common Shares issued pursuant to the Arrangement or issuable from time to time in exchange for Exchangeable Shares, or upon the exercise of the Replacement Options or the Delano Warrants, effective on completion of the Transaction.
 23. Each Exchangeable Share will be exchangeable at the option of the holder, at any time, for one divine Common Share and an amount in cash equal to the declared and unpaid dividends on one Exchangeable Share.
 24. The Exchangeable Shares, together with the Voting and Exchange Trust Agreement and Support Agreement described below, will provide holders thereof with a security of a Canadian issuer having economic and voting rights which are substantially economically equivalent to those of divine Common Shares. Exchangeable Shares will generally be received by Canadian-resident holders of

Delano Common Shares, on a tax-deferred rollover basis for purposes of the ITA.

25. The Exchangeable Shares are subject to adjustment or modification in the event of a stock split or other change to the capital structure of divine so as to maintain at all times the initial one-to-one relationship between the Exchangeable Shares and the divine Common Shares.
26. The rights, privileges, restrictions and conditions attaching to the Exchangeable Shares (the "Exchangeable Share Provisions") will provide that each Exchangeable Share will entitle the holder to dividends payable at the same time as, and equivalent to, each dividend paid by divine on a divine Common Share.
27. The Exchangeable Shares will be non-voting (except as required by the Exchangeable Share Provisions or by applicable law) and will be retractable at the option of the holder at any time. Subject to the overriding Retraction Call Right of divine referred to below in this paragraph, upon retraction the holder will be entitled to receive for each Exchangeable Share retracted an amount equal to the current market price of a divine Common Share, to be satisfied by the delivery of one divine Common Share, together with an amount equivalent to the amount of all declared and unpaid dividends on each such Exchangeable Share (such aggregate amount, the "Retraction Price"). Upon being notified by Delano of a proposed retraction of Exchangeable Shares, divine will have an overriding retraction call right (the "Retraction Call Right") to purchase from the holder all of the Exchangeable Shares that are the subject of the retraction notice for a price per share equal to the Retraction Price.
28. Subject to the applicable law and the overriding Redemption Call Right of divine referred to below in this paragraph, Delano may redeem all but not less than all of the then outstanding Exchangeable Shares (other than Exchangeable Shares held by divine and its affiliates) on, or any time after, the third anniversary of the effective date of the Transaction (the "Redemption Date"). As set out in the Exchangeable Share Provisions, in certain circumstances the Board of Directors of Delano may accelerate the Redemption Date. Upon such redemption, a holder will be entitled to receive from Delano for each Exchangeable Share redeemed an amount equal to the current market price of a divine Common Share, to be satisfied by the delivery of one divine Common Share, together with an amount equivalent to the amount of all declared and unpaid dividends on each such Exchangeable Share (such aggregate amount, the "Redemption Price"). Upon being notified by Delano of a proposed redemption of Exchangeable Shares, divine will have an overriding redemption call right (the "Redemption Call Right") to purchase on the Redemption Date all but not less than all of the then outstanding Exchangeable Shares (other than Exchangeable Shares held by divine and its affiliates) for a price per share equal to the Redemption Price.
29. Subject to the overriding Liquidation Call Right of divine referred to below in this paragraph, in the event of the liquidation, dissolution or winding-up of Delano or any other distribution of assets of Delano for the purpose of winding up its affairs,

a holder of an Exchangeable Share will be entitled to receive from Delano for each such Exchangeable Share, subject to applicable law, in preference to Delano Common Shares, an amount equal to the current market price of one divine Common Share, to be satisfied by the delivery of one divine Common Share, together with an amount equivalent to the amount of all declared and unpaid dividends on each such Exchangeable Share (the "Liquidation Amount"). Upon a proposed liquidation, dissolution or winding-up of Delano or other distribution of the assets of Delano for the purpose of winding up its affairs, divine will have an overriding liquidation call right (the "Liquidation Call Right") to purchase all but not less than all of the Exchangeable Shares (other than Exchangeable Shares held by divine and its affiliates) on the effective date of such liquidation, dissolution or winding-up for an amount per share equal to the Liquidation Amount.

30. In the event of certain changes in Canadian federal and Ontario tax law, (such that a beneficial owner of Exchangeable Shares who is a Canadian resident and holds their Exchangeable Shares as capital property may exchange their Exchangeable Shares with divine for divine Common Shares on a tax deferred basis) divine will have the right to purchase all of the Exchangeable Shares then outstanding (other than Exchangeable Shares held by divine and its affiliates) prior to the third anniversary of the Effective Date (the "divine Call Right") for an amount per share equal to the current market price of a divine Common Share, to be satisfied by the delivery of one divine Common Share, together with an amount equivalent to the amount of all declared and unpaid dividends on each such Exchangeable Share.
31. Upon the exchange of an Exchangeable Share for a divine Common Share, the holder of the Exchangeable Share will cease to have voting rights in respect of divine Common Shares provided under the Voting and Exchange Trust Agreement, as described below.
32. divine shall have the right to cause an affiliate of divine to exercise the Liquidation Call Right, Redemption Call Right, divine Call Right or Retraction Call Right in any circumstance in which divine is entitled to exercise such rights.
33. The Special Voting Share entitles the holder of record of such share to a number of votes at meetings of holders of divine Common Shares equal to the aggregate number of votes that the holders of Exchangeable Shares outstanding from time to time (excluding by agreement Exchangeable Shares held by divine and its affiliates) would be entitled to if such Exchangeable Shares were exchanged by the holders thereof for divine Common Shares, and which Special Voting Share is to be issued, deposited with and voted by the Trustee as described in the Voting and Exchange Trust Agreement.
34. Each holder of an Exchangeable Share (other than divine and its affiliates) on the record date for any meeting at which holders of divine Common Shares are entitled to vote will be entitled to instruct the Trustee to exercise that number of

the votes attached to the Special Voting Share represented by the Exchangeable Shares held by such holder.

35. Under the Voting and Exchange Trust Agreement, divine will grant to the Trustee for the benefit of the holders of the Exchangeable Shares a right (the "Exchange Right") exercisable upon certain insolvency events in respect of Delano, to require divine to purchase from a holder of Exchangeable Shares (other than divine or its affiliates) all or any part of the Exchangeable Shares held by that holder. The purchase price for each Exchangeable Share purchased by divine under the Exchange Right will be an amount equal to the current market price of a divine Common Share to be satisfied by the delivery to the Trustee, on behalf of the holder, of one divine Common Share, together with an amount equivalent to the amount of all declared and unpaid dividends on such Exchangeable Share.
36. Shortly prior to the liquidation, dissolution or winding-up of divine or other distribution of divine's assets for the purpose of winding up of its affairs, the Exchangeable Shares (other than those held by divine and its affiliates) will be automatically exchanged for divine Common Shares pursuant to the Voting and Exchange Trust Agreement in order that holders of Exchangeable Shares may participate in such event on the same basis as holders of divine Common Shares.
37. The Support Agreement will provide that: (a) divine will not declare or pay any dividends on the divine Common Shares unless Delano is able to declare and pay, and simultaneously declares and pays an equivalent dividend on the Exchangeable Shares; (b) divine will honour the redemption and retraction rights and dissolution entitlements that are attributes of the Exchangeable Shares under the Exchangeable Share Provisions and the related Liquidation Call Right, Redemption Call Right, divine Call Right and Retraction Call Right; and (c) divine will not exercise its vote as a shareholder to initiate the voluntary liquidation, dissolution or winding-up of Delano nor take any action or omit to take any action that is designed to result in the liquidation, dissolution or winding up of Delano.
38. The Support Agreement will also provide that, without the prior approval of holders of the Exchangeable Shares, actions such as distributions of stock dividends, options, rights and warrants for the purchase of securities or other assets, subdivisions, reclassifications, reorganizations and other changes cannot be taken in respect of the divine Common Shares without the same or an economically equivalent action being taken in respect of the Exchangeable Shares.
39. The steps under the Transaction and the attributes of the Exchangeable Shares contained in the Exchangeable Share Provisions, the Arrangement, the Voting and Exchange Trust Agreement and the Exchangeable Share Support Agreement involve or may involve a number of trades of securities (collectively, the "Trades").

40. The fundamental investment decision to be made by holders of Delano Common Shares is made at the time of the Arrangement, when such holders vote in respect of the Arrangement. As a result of this decision, a holder (other than a dissenting holder) will receive Exchangeable Shares or divine Common Shares in exchange for the Delano Common Shares held by such holder. The Exchangeable Shares (together with ancillary rights) will provide certain Canadian tax benefits to certain Canadian holders but will otherwise be substantially the economic and voting equivalent of the divine Common Shares, and as such all subsequent exchanges of Exchangeable Shares are in furtherance of the holder's initial investment decision. As mentioned above, that investment decision will be made on the basis of the Delano Circular, which contains prospectus-level disclosure of the business and affairs of each of divine and Delano and of the particulars of the Transaction and the Arrangement.
41. Following completion of the Arrangement, divine will concurrently send to holders of Exchangeable Shares and divine Common Shares resident in Jurisdictions all disclosure material it sends to holders of divine Common Shares resident in the United States pursuant to the 1934 Act.

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

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

THE DECISION of the Decision Makers under the Legislation is that:

1. The Trades are not subject to the Registration Requirements and the Prospectus Requirements, provided that:
 - (a) except in Quebec, the first trade in a Jurisdiction of Exchangeable Shares acquired under a Trade will be a distribution or primary distribution to the public unless the conditions in subsections (3) or (4) of section 2.6 of Multilateral Instrument 45-102 – *Resale of Securities* ("MI 45-102") are satisfied;
 - (b) except in Quebec, the first trade in a Jurisdiction of divine Common Shares acquired under a Trade will be a distribution or primary distribution to the public under the Legislation of such Jurisdiction (the "Applicable Legislation") (other than first trades which are Trades or which are otherwise exempted from the Registration Requirements and the Prospectus Requirements under the Applicable Legislation) unless, at the time of the first trade:
 - (i) if divine is a reporting issuer or its equivalent in any Jurisdiction listed in Appendix B to MI 45-102 other than Quebec, the conditions in subsections (3) or (4) of section 2.6 of MI 45-102 are satisfied; or

- (ii) if divine is not a reporting issuer or its equivalent in any Jurisdiction other than Quebec, such first trade is made through an exchange, or a market, outside of Canada; and

(c) In Quebec,

to the extent that there is no exemption available from the Registration Requirements and the Prospectus Requirements in respect of a first trade of Exchangeable Shares acquired under a Trade, the first trade in Quebec of Exchangeable Shares will be a distribution unless either

(i) the following conditions are met :

- A. one of the parties to the Arrangement is and has been a reporting issuer in Quebec and has complied with the applicable requirements for the twelve months immediately preceding such first trade;
- B. no unusual effort is made to prepare the market or to create demand for the Exchangeable Shares;
- C. no extraordinary commission is paid to a person or company in respect of the trade; and
- D. if the seller of the Exchangeable Shares is an insider or officer of Delano, the seller has no reason to believe that Delano is in default of the Legislation, or

(ii) Delano is not a reporting issuer in Quebec and such first trade is made through an exchange, or a market, outside of Canada;

(d) In Quebec,

to the extent that there is no exemption available from the Registration Requirements and the Prospectus Requirements in respect of a first trade of divine Common Shares acquired under a Trade, the first trade in Quebec of divine Common Shares will be a distribution unless either

(i) the following conditions are met :

- A. divine is and has been a reporting issuer in Quebec and has complied with the applicable requirements for the twelve months immediately preceding such first trade;
- B. no unusual effort is made to prepare the market or to create demand for the divine Common Shares;

- C. no extraordinary commission is paid to a person or company in respect of the trade; and
 - D. if the seller of the divine Common Shares is an insider or officer of divine, the seller has no reason to believe that divine is in default of the Legislation, or
 - (ii) divine is not a reporting issuer in Quebec and such first trade is made through an exchange, or a market, outside of Canada;
2. the Continuous Disclosure Requirements of Jurisdictions in which Delano is a reporting issuer or its equivalent shall not apply to Delano during such time as Delano is a reporting issuer or its equivalent in any of such Jurisdictions or thereafter, so long as:
- (a) divine sends to all holders of Exchangeable Shares resident in the Jurisdictions all disclosure material furnished to holders of divine Common Shares resident in the United States, including, without limitation, copies of its annual financial statements and all proxy solicitation materials;
 - (b) divine files with the Decision Maker in the Jurisdictions in which Delano is a reporting issuer or its equivalent copies of all documents required to be filed pursuant to the 1934 Act, as amended, including, without limitation, copies of any Form 10-K, Form 10-Q, Form 8-K and proxy statements prepared in connection with divine's stockholders' meetings;
 - (c) divine complies with the requirements of NASDAQ in respect of making public disclosure of material information on a timely basis and forthwith issues in the Jurisdictions in which Delano is a reporting issuer or its equivalent and files with the Decision Maker in such Jurisdictions any press release that discloses a material change in divine's affairs;
 - (d) Delano complies with the Material Change Reporting Requirements in respect of material changes in the affairs of Delano that would be material to holders of Exchangeable Shares, but not to holders of divine Common Shares;
 - (e) prior to or coincident with the distribution of the Exchangeable Shares, divine shall cause Delano to provide to each recipient or proposed recipient of Exchangeable Shares resident in the Jurisdictions a statement that Delano is exempted from certain disclosure requirements applicable to reporting issuers in the Jurisdictions, and specifying those requirements Delano has been exempted from and identifying the disclosure that will be made in substitution therefor (which statement may be satisfied by the inclusion of such a statement in the Delano Circular);
 - (f) divine includes in all future mailings of proxy solicitation materials to holders of Exchangeable Shares a clear and concise statement explaining

the reason for the mailed material being solely in relation to divine and not in relation to Delano, such statement to include a reference to the substantial economic equivalency between the Exchangeable Shares (and the right to direct voting at divine's stockholders' meetings pursuant to the Voting and Exchange Trust Agreement) and the divine Common Shares;

- (g) divine remains the direct or indirect beneficial owner of all the issued and outstanding voting securities of Delano;
 - (h) Delano has not made a public offering of securities other than the Exchangeable Shares in the Jurisdictions; and
 - (i) divine files with each Decision Maker copies of all documents required to be filed by it with the SEC under the 1934 Act, and such filings are made under Delano's SEDAR profile and the filing fees which would otherwise be payable by Delano in connection with such filings are paid
3. the Insider Reporting Requirements of Jurisdictions in which Delano is a reporting issuer or its equivalent shall not apply to any insider of Delano during such time as Delano is a reporting issuer or its equivalent in any of such Jurisdictions or thereafter, so long as such insider:
- (a) does not receive or have access to, in the ordinary course, information as to material facts or material changes concerning divine before the material facts or material changes are generally disclosed;
 - (b) is not a director or senior officer of a significant subsidiary of divine as defined in National Instrument 55-101 *Exemption From Certain Insider Reporting Requirements* (a "Significant Subsidiary"); and
 - (c) is not an insider of divine in a capacity other than as a director or senior officer of a subsidiary of divine that is not a major subsidiary of divine, as if divine were a reporting issuer.

DATED July 26, 2002

"Paul M. Moore"

"Harold P. Hands"

AND THE FURTHER DECISION of the Decision Maker in Ontario is that the AIF and MD&A Requirements and the 52-501 Filing Requirement shall not apply to Delano provided that the conditions set out in paragraph 2 of the operative portion of the Decision are satisfied.

DATED July 26, 2002

"Margo Paul"

Manager, Corporate Finance