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COMMISSIONER

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COMMISSIONER



JAMES MATTHEWS
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

SECURITIES DIVISION
1300 West Washington
Third Floor
TELEPHONE: (602) 542-4242
FAX: (602) 542-3583

August 11, 1994

Donn Beloff, Special Counsel
Proskauer Rose Goetz & Mendelsohn
One Boca Place, Suite 340 West
2255 Glades Road
Boca Raton FL 33431

RE: Trans Canada Options Inc.
A.R.S. § 44-184⁴(A)(11)

Dear Mr. Beloff:

On the basis of the facts set forth in your letters of April 28, May 13, June 27 and July 21, 1994, and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as specified in your letters. Please be advised that the Division takes this position only with respect to options upon underlying equity securities which are listed in a manual recognized by A.A.C. R14-4-114.

As this position is premised upon the facts set forth in your letters, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable.

We have attached photocopies of your letters. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Dee Ridgell Harris".

DEE RIDDELL HARRIS
Director of Securities

DRH: nc
Attachment

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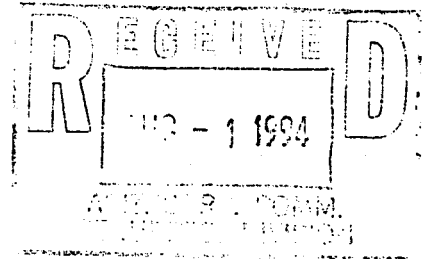
EUROPEAN COUNSEL

DUBARRY LEVEQUE
LE DOUARIN & VEIL
PARIS-BRUSSELS

July 21, 1994

VIA FAX AND OVERNIGHT DELIVERY

Nicolas Cornelius, Esq.
Securities Division
Arizona Corporation Commission
1300 West Washington Street, Third Floor
Phoenix, Arizona 85007



Re: Trans Canada Options Inc. ("TCO")

Dear Mr. Cornelius:

As a result of our recent telephone conversation concerning TCO's amended and supplemented no action request dated, April 28, 1994, I have attached a revised chart showing the securities manuals recognized by Section R14-4-114 of the Arizona Blue Sky Regulations in which the required information concerning the securities underlying TCO's equity options appears. We have obtained copies of the relevant listings which appear in "Standard and Poor's Corporation Records" and the listed manuals published by Moodys. We have now determined that, of TCO's 73 classes of equity options, information on all but five of the issuers of the underlying securities appears in a manual listed in R14-4-114.

Based on the above information, please confirm our understanding that: TCO may rely on the manuals exemption with respect to the sale of any option for which appropriate information concerning the issuer of the underlying security appears in a manual listed in Section R14-4-114 of the Arizona Blue Sky Regulations; and that no information with respect to TCO itself need appear in any such manual.

| | | |
|------------------------------------|-----|------------------|
| Horsham Corp. | TSE | M:INTL/S&PCR |
| Imasco Ltd. | ME | S&PCR |
| Imperial Oil Ltd. | TSE | M:INTL/S&PCR |
| Inco Ltd. | TSE | M:INTL/S&PCR |
| Labatt (John) Ltd. | VSE | M:INTL/S&PCR |
| Lac Minerals Ltd. | TSE | M:INTL/S&PCR |
| Laidlaw Inc. Class B | ME | M:IND,INTL/S&PCR |
| Loewen Group Inc. | VSE | M:INTL/S&PCR |
| MacMillan Bloedel Ltd. | VSE | M:INTL/S&PCR |
| Magna International | TSE | M:INTL/S&PCR |
| Midland Walwyn Capital | TSE | M:INTL/S&PCR |
| Mitel Corporation | TSE | M:INTL/S&PCR |
| Moore Corp. Ltd. | TSE | M:INTL/S&PCR |
| National Bank of Canada | ME | M:INTL/S&PCR |
| Newbridge Networks Corp. | ME | M:INTL/S&PCR |
| Noranda Inc. | ME | M:INTL/S&PCR |
| Northern Telecom Ltd. | TSE | M:INTL/S&PCR |
| Nova Corp. of Alberta | TSE | M:IND,INTL/S&PCR |
| Nova Scotia Power Inc. | VSE | M:INTL/S&PCR |
| Pegasus Gold Inc. | ME | M:INTL/S&PCR |
| Petro-Canada | VSE | M:INTL/S&PCR |
| Placer Dome Inc. | TSE | M:INTL/S&PCR |
| Power Corp. of Canada | ME | M:INTL/S&PCR |
| Quadra Logic Technologies Inc. | VSE | M:INTL/S&PCR |
| Ranger Oil Ltd. | TSE | M:INTL/S&PCR |
| Rogers Communications Inc. Class B | TSE | M:INTL/S&PCR |
| Royal Bank of Canada | TSE | M:B&F,INTL/S&PCR |
| Royal Oak Mines | TSE | M:INTL/S&PCR |
| Sceptre Resources Ltd. | VSE | M:INTL/S&PCR |
| Seagram Company Ltd. (The) | TSE | M:IND,INTL/S&PCR |
| SHL Systemhouse Inc. | TSE | M:INTL/S&PCR |

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|-------------------------------------|-----|-------------------|
| Softkey Software Products Ltd. | VSE | M:INTL/S&PCR |
| Softkey Software Products Ltd. | VSE | M:INTL/S&PCR |
| Stelco Inc. Class A | VSE | M:INTL/S&PCR |
| Talisman Energy Inc. | ME | M:INTL/S&PCR |
| Teck Corp. Class B | VSE | M:INTL/S&PCR |
| Teleglobe Inc. | VSE | M:INTL/S&PCR |
| Telus Corporation | ME | M:INTL |
| Toronto-Dominion Bank (The) | TSE | M:B&F,INTL/S&PCR |
| Toronto 35 Index Participation Unit | TSE | |
| TransAlta Corp. | VSE | M:INTL,UTIL/S&PCR |
| TransCanada PipeLines Ltd. | VSE | M:INTL,UTIL/S&PCR |
| TVX Gold Inc. | TSE | M:INTL/S&PCR |
| Wascana Energy Inc. | ME | |

Market

TSE - Toronto Stock Exchange
VSE - Vancouver Stock Exchange
ME - Montreal Stock Exchange

Manual

M - Moodys
INTL - International
UTIL - Utilities
BF - Banking and Finance
IND - Industrial
S&PCR - Standard & Poor's Corporation Records

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EUROPEAN COUNSEL:
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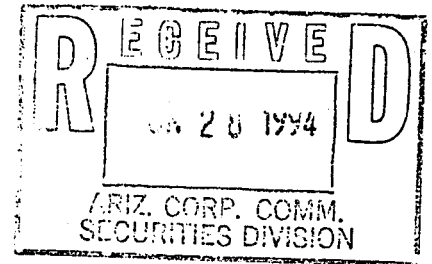
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B-1040 BRUSSELS, BELGIUM

June 27, 1994

VIA FAX AND OVERNIGHT DELIVERY

Nicolas Cornelius, Esq.
Securities Division
Arizona Corporation Commission
1300 West Washington Street, Third Floor
Phoenix, Arizona 85007



Re: Trans Canada Options Inc. ("TCO")

Dear Mr. Cornelius:

As a result of our recent telephone conversation concerning TCO's amended and supplemented no action request, dated April 28, 1994, on behalf of TCO I am hereby responding to your six specific questions.

1. Actions in Other States

TCO has renewed, or will renew in the next several months as required, its existing registrations in the states of California, Florida, Illinois, Massachusetts, New York and Wisconsin. We are currently preparing no action requests similar to that filed with the state of Arizona for each of the 37 states which have non-issuer manual exemptions.

2. Options to be traded in Arizona.

As of April 4, 1994, TCO issued and cleared 74 separate equity options, 17 separate LEAPS, 5 options on Canadian government bonds and one index option. (LEAPS are long term options.) Each of those options will be available for purchase in Arizona. I have attached a list of all of TCO's equity option classes, the exchange on which the underlying security is listed and the securities manual in which information on that security appears. TCO's classes of options are more particularly described in the Rule 9b-1 Options Disclosure Booklet which I sent to you on May 13, 1994.

PROSKAUER

Nicolas Cornelius, Esq.
June 27, 1994
Page 2

3. Most Active Option Classes

For the year ended December 31, 1993, TCO's five most active option classes were:

| <u>Options Class</u> | <u>Underlying Securities Market</u> |
|----------------------------------|-------------------------------------|
| Cott Corporation | Montreal |
| Toronto 35 Index Options | Toronto |
| American Barrick Resources Corp. | Toronto |
| Biochem Pharma Inc. | Montreal |
| Inco Limited | Toronto |

4. Vancouver Stock Exchange Listings

Of the option classes listed in question 2 above, 19 of the underlying securities, and 2 related LEAPS, are traded only on the Vancouver Exchange.

5. Listings in Recognized Securities Manuals

As shown on the attached list, all but one of the securities underlying TCO's equity options and LEAPS are listed in a securities manual recognized by Sections R14-4-114 or R14-4-138 of the Arizona Blue Sky Regulations. If the Commission determines that TCO may rely on the manual exemption, TCO will insure that all underlying equity securities will be listed in a recognized securities manual.

6. Termination of Registration in Arizona

TCO determined not to renew its registration in Arizona in 1992 since the cost of that annual renewal could no longer be economically justified given the limited trading volume in Arizona.

Please call me if you need any further information with respect to this matter.

Sincerely,

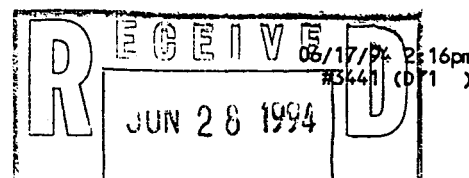


Donn Beloff

Enclosure

| <u>Security</u> | <u>Market</u> | <u>Manual</u> |
|------------------------------------|---------------|--------------------|
| Agnico Eagle Mines Ltd. | ME | M:INTL/S&PCR |
| Air Canada | TSE | M:INTL,TRANS,S&PCR |
| Alcan Aluminum Ltd. | TSE | M:IND,INTL/ S&PCR |
| American Barrick Resources Corp. | TSE | M:INTL/IND/S&PCR |
| Bank of Montreal | ME | M:INTL/S&PCR |
| Bank of Nova Scotia (The) | TSE | M:B&F,INTL/S&PCR |
| B.C. Telecom Inc. | VSE | M:UTIL |
| BCE Inc. | TSE | M:INTL,UTIL/S&PCR |
| Biochem Pharma Inc. | ME | M:INTL/S&PCR |
| Biomira Inc. | TSE | M:OTC/S&PCR |
| Bombardier Inc. Class B | ME | M:IND/S&PCR |
| CAE Industries Ltd. | ME | M:INTL/C&PCR |
| Cambior Inc. | ME | M:INTL/S&PCR |
| Cdn. Imp. Bank of Commerce | VSE | M:INTL/S&PCR |
| Canadian Occidental Petroleum Ltd. | VSE | M:INTL/S&PCR |
| Canadian Pacific Ltd. | TSE | M:INTL,IND/S&PCR |
| Canadian Tire Corp. Ltd. | TSE | M:INTL/S&PCR |
| Cascades Inc. | ME | M:INTL/S&PCR |
| Corel Corporation | TSE | M:INTL/S&PCR |
| Cott Corporation | ME | M:INTL/S&PCR |
| Delrina Corporation | TSE | M:INTL |
| Deprenyl Research Ltd. | TSE | M:INTL/S&PCR |
| Dofasco Inc. | ME | M:INTL/S&PCR |
| Domtar Inc. | ME | M:INTL/S&PCR |
| Echo Bay Mines Ltd. | VSE | M:INTL/S&PCR |
| Fletcher Challenge Cda. Ltd. | VSE | M:INTL/S&PCR |
| Glamis Gold | ME | S&PCR |
| Gulf Canada Resources Ltd. | ME | M:INTL/S&PCR |
| Hees International Bancorp Inc. | TSE | M:B&F,INTL/S&PCR |
| Hemlo Gold Mines, Inc. | TSE | M:INTL/S&PCR |

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|------------------------------------|-----|------------------|
| Horsham Corp. | TSE | M:INTL/S&PCR |
| Imasco Ltd. | ME | S&PCR |
| Imperial Oil Ltd. | TSE | M:INTL/S&PCR |
| Inco Ltd. | TSE | M:INTL/S&PCR |
| Labatt (John) Ltd. | VSE | M:INTL/S&PCR |
| Lac Minerals Ltd. | TSE | M:INTL/S&PCR |
| Laidlaw Inc. Class B | ME | M:IND,INTL/S&PCR |
| Loewen Group Inc. | VSE | M:INTL/S&PCR |
| MacMillan Bloedel Ltd. | VSE | M:INTL/S&PCR |
| Magna International | TSE | M:INTL/S&PCR |
| Midland Walwyn Capital | TSE | M:INTL/S&PCR |
| Mitel Corporation | TSE | M:INTL/S&PCR |
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| Noranda Inc. | ME | M:INTL/S&PCR |
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| Royal Oak Mines | TSE | M:INTL/S&PCR |
| Sceptre Resources Ltd. | VSE | M:INTL/S&PCR |
| Seagram Company Ltd. (The) | TSE | M:IND,INTL/S&PCR |
| SHL Systemhouse Inc. | TSE | M:INTL/S&PCR |

| | | |
|-------------------------------------|-----|-------------------|
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| Softkey Software Products Ltd. | VSE | M:INTL/S&PCR |
| Stelco Inc. Class A | VSE | M:INTL/S&PCR |
| Talisman Energy Inc. | ME | M:INTL/S&PCR |
| Teck Corp. Class B | VSE | M:INTL/S&PCR |
| Teleglobe Inc. | VSE | M:INTL/S&PCR |
| Telus Corporation | ME | M:INTL/S&PCR |
| Toronto-Dominion Bank (The) | TSE | M:B&F,INTL/S&PCR |
| Toronto 35 Index Participation Unit | TSE | |
| TransAlta Corp. | VSE | M:INTL,UTIL/S&PCR |
| TransCanada PipeLines Ltd. | VSE | M:INTL,UTIL/S&PCR |
| TVX Gold Inc. | TSE | M:INTL/S&PCR |
| Wascana Energy Inc. | ME | |

Market

TSE - Toronto Stock Exchange
VSE - Vancouver Stock Exchange
ME - Montreal Stock Exchange

Manual

M - Moodys
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UTIL - Utilities
BF - Banking and Finance
IND - Industrial
S&PCR - Standard & Poors Corporate Register

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DONN A. BELOFF
SPECIAL COUNSEL

EUROPEAN COUNSEL:
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May 13, 1994

VIA OVERNIGHT DELIVERY

Nicolas Cornelius, Esq.
Securities Division
Arizona Corporation Commission
1300 West Washington Street, Third Floor
Phoenix, Arizona 85007

Re: Trans Canada Options Inc. ("TCO")

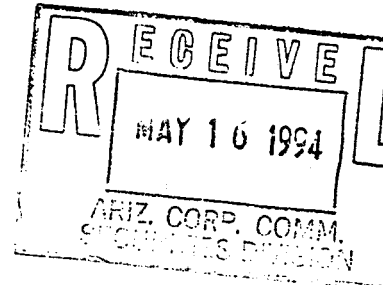
Dear Mr. Cornelius:

As a result of our telephone conversation on May 12, 1994, I am hereby amending and supplementing our no action request dated, April 28, 1994, on behalf of TCO.

We are hereby requesting, on behalf of TCO that the Securities Division issue a no action letter confirming that:

1. A.R.S. Section 44-1844(A)(11) may be relied upon by TCO if the information required by that section is published in a recognized securities manual with respect to each of the equity securities underlying the standardized put and call option contracts issued by TCO; and
2. No information with respect to TCO itself, as the presumptive "issuer" of the options for purposes of registration under the Securities Act of 1933, need be included in such securities manuals for the reasons set forth in our letter of April 28, 1994.

As requested, I have enclosed the current version of TCO's Rule 9b-1 Options Disclosure Booklet for your review.

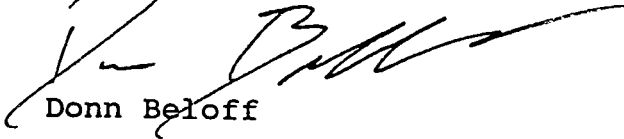


PROSKAUER

Nicolas Cornelius, Esq.
May 13, 1994
Page 2

Please call me if we can provide any further information
with respect to this matter.

Sincerely,



Donn Beloff

cc: Trans Canada Options, Inc.

PROSKAUER ROSE GOETZ & MENDELSON

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EUROPEAN COUNSEL:
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75116 PARIS, FRANCE

BRUSSELS
55, AVENUE DE TERVUEREN
B-1040 BRUSSELS, BELGIUM

April 28, 1994

VIA OVERNIGHT DELIVERY

Richard M. Weinroth
General Counsel
Securities Division
Arizona Corporation Commission
1300 West Washington Street, Third Floor
Phoenix, Arizona 85007

Re: Trans Canada Options Inc. ("TCO")

Dear Mr. Weinroth:

TCO is reviewing the possible applicability of the standard manual exemption to the registration of TCO's put and call options contracts in the State of Arizona. Pursuant to the Securities Division Policy Statement which appears at ¶ 9614 of the CCH Blue Sky Law Reporter, and A.R.S. Section 44-1861L, we are hereby requesting that the Securities Division issue a no action letter confirming that A.R.S. Section 44-1844(A)(11) may be relied upon by TCO if the information required by that section with respect to TCO is published in a recognized securities manual.

A.R.S. Section 1844(A)(11) generally provides an exemption from the registration provisions of that statute for nonissuer transactions in outstanding securities if the class of security has been outstanding in the hands of the public for not less than ninety days preceding the date of the transaction and a recognized securities manual designated by the commission contains the names of the issuer's officers and directors and:

1. A statement of financial condition of the issuer as of a date within 18 months of the date of the sale; and

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(200) 5/02/94
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Richard M. Weinroth
April 28, 1994
Page 2

2. A statement of income or operations for each of the two fiscal years next before the date of the statement of financial condition.

If the requisite information concerning TCO is listed in a recognized securities manual, we believe that the manual exemption should be available to exempt TCO's options from registration in Arizona for the following reasons:

1. TCO's options will be sold in Arizona only by dealers registered pursuant to A.R.S. 44-1946, or pursuant to an exemption such as the "institutional investor" exemption of A.R.S. 44-1844(8).

2. All classes of TCO's options have been outstanding in the hands of the public for at least ninety days prior to the date of this letter, and will be outstanding for not less than ninety days preceding the date of any transaction for which TCO intends to rely on the manual exemption.

3. In the event that the Division agrees with our analysis, TCO will be listed in a recognized manual of securities for a period of at least ninety days prior to the date of any transaction for which TCO will rely on the manual exemption.

4. We do not believe that the purchase or sale of TCO's options in Arizona should be considered to be "issuer transactions" for the reasons stated below.

The Role of TCO

TCO is the only entity authorized to issue and clear standardized options in the United States and Canada. TCO is a clearing organization subject to regulation under the laws of certain Canadian provinces. TCO's rules must be approved by the securities regulatory authorities of those provinces. The SEC has not required TCO to register as a clearing agency under U.S. law.

TCO issues and clears options traded on the Toronto Stock Exchange, the Montreal Stock Exchange and the Vancouver Stock Exchange. TCO options relate to underlying securities of Canadian issuers, Canadian government bonds and Canadian stock and Treasury bill indices (although some of the securities underlying TCO's options are listed on both Canadian and U.S. exchanges).

Richard M. Weinroth
April 28, 1994
Page 3

Purchasers of options issued by TCO look ultimately to TCO as the clearing organization for performance of the rights conferred by the security. The clearing organization, in turn, looks to the obligations of clearing members representing the sellers of options. TCO has financial requirements that its clearing members must meet in order to insure that those clearing members will be able to meet their obligations to the clearing organization. In addition, the clearing organizations hold margin and clearing fund deposits that may be used in the event that a clearing member defaults in its obligations.

TCO-issued options have been offered for sale in Canada since 1976 and were offered in Arizona during the period from 1980 to July 1992. I have attached a copy of TCO's last Notice of Effective Registration in Arizona for your reference. TCO's last examiner in Arizona was Lee Poole. TCO has never defaulted in any obligation in respect of securities it issues.

Although TCO is considered the "issuer" of standardized options for the purposes of registering under the Securities Act of 1933, as amended (the "1933 Act"), and the Arizona Securities Act, sales of options are not direct offerings by TCO, i.e., offerings in which the proceeds are received directly or indirectly by the company that is the issuer of the security being offered. That is not the case with TCO-issued options. In an option transaction, the entire purchase price, known as the "premium", is transferred by TCO from the purchaser to the seller. TCO does not retain any part of the premium. The only compensation received by TCO is a fixed clearing fee of less than \$1.00 per transaction. That clearing fee is determined independently of the amount of the premium and is paid by the clearing members representing the sellers and the purchasers of options. That fee is analogous to the fee received by a stock clearing corporation for clearing a stock transaction.

Rather than representing sales for the "direct or indirect benefit of an issuer", options trading is more properly characterized as a form of trading in the secondary markets. Transactions in options differ from direct offerings, and are like secondary trading, in at least three important respects. First, a direct offering of securities is typically made at a single price. The price of options, in contrast, is determined by the market on a transaction-by-transaction basis. Second, a direct offering is typically

Richard M. Weinroth
April 28, 1994
Page 4

made through an underwriter. TCO-issued options are not sold pursuant to underwriting agreements. Third, and most importantly, the proceeds of a direct offering go to the issuer. In every option transaction, the proceeds are received by a seller who is not the issuer of the option or the underlying security. The seller may be selling options that he currently holds in his account or he may be engaging in a "short" sale, but in neither case does TCO retain any part of the premium.

The Arizona Securities Division has specifically recognized that standardized options transactions are not issuer transactions for the purposes of the filing fee established under A.R.S. 44-1843B. I have enclosed for your reference a copy of the no action letter issued to the Options Clearing Corporation on February 4, 1992 with respect to that conclusion. The same reasoning should also be applied to TCO since its operations are completely analogous to those of the OCC.

The Federal Disclosure Scheme

Even if the Division agrees with our conclusion that TCO may rely on the manual exemption in Arizona, the disclosure documents mandated by the 1933 Act and the Securities Exchange Act of 1934, as amended (the "1934 Act"), will still be available to all purchasers in Arizona of options issued by TCO.

In 1973, when the Chicago Board Options Exchange was established as an exchange for the trading of call options, the Securities and Exchange Commission ("SEC") recognized the unique nature of the market to be created. Rather than treating each individual writer of an option as an issuer, the clearing corporation was deemed to be the sole issuer of each option contract for purposes of registration under the 1933 Act.

Prior to 1982, there was no special registration form for options. However, the SEC's February 1979 Report of the Special Study of the Options Market (the "Options Study") found that the standard disclosure requirements under the 1933 Act were not well suited to these new securities. In the case of a typical debt or equity security, the investor acquires either an ownership interest in the issuer or a right to payments that the investor expects to be made from the future earnings of the issuer. In either case, the detailed disclosure regarding the issuer's business that is required in a traditional prospectus is highly relevant to the investor.

Richard M. Weinroth
April 28, 1994
Page 5

This is not the case with an option, where the issuer's obligation to perform the security in accordance with its terms is backed primarily by the obligations of the clearing members of the issuer and the margin deposits and clearing funds held by the issuer to secure those obligations. The Options Study concluded that, given the unique nature of exchange-traded options, a specifically tailored disclosure document should be developed which would contain information appropriate for investors in standardized options. It was contemplated that this document, and not the 1933 Act prospectus, would be the principal disclosure document for options. In 1982, the SEC implemented the recommendations of the Options Study by adopting Forms S-20 for registration of standardized options under the 1933 Act and by adopting Rule 9b-1, which specified the requirements of an options disclosure document ("Disclosure Document") to be filed pursuant to the 1934 Act. Form S-20 and the Rule 9b-1 Disclosure Document are applicable to standardized options and "such other securities as the Commission may, by order, designate".

Rule 9b-1 provides that a broker or dealer may not accept an order from a customer to purchase an option that is the subject of a Disclosure Document, or approve the customer's account for the trading of such options, unless the broker or dealer furnishes or has furnished the Disclosure Document to the customer. The Disclosure Document presents a description of the characteristics and risks of options in a manner that is readily understandable to a reader without a financial background. The Disclosure Document contains a reference to the availability of the Form S-20 prospectus, which the investor may obtain upon request from the exchange on which the securities is traded.

The foregoing disclosure system was designed by the SEC specifically for options after much study and consideration. TCO believes this system to be appropriate and fully adequate for the purposes of making disclosure to the public regarding options. Registration at the state level imposes a burden on TCO with no corresponding benefit to investors.

The Role of Brokers

TCO issues and clear options, but it does not offer to sell options. Options are offered and sold in the United States only through registered brokers. Offers and sales in Arizona have been made, and will in the future be made, only through brokers registered in Arizona under A.R.S. 44-1946,

PROSKAUER

Richard M. Weinroth
April 28, 1994
Page 6

or pursuant to an exemption such as the "institutional investor" exemption of A.R.S. 44-1844(8).

5. TCO's options do not constitute the whole or part of an unsold allotment to, or subscription by, a dealer as a participant in the distribution of the securities by the issuer or by or through an underwriter.

For the reasons discussed above, we believe that the exemption from registration provided for in A.R.S. 44-1844(11) may be relied upon by TCO if TCO is listed in a securities manual designated under Rule R14-4-114. We would appreciate your confirmation of this conclusion.

Please call me if we can provide any further information with respect to this matter.

Sincerely,

Donn Beloff

cc: Trans Canada Options, Inc.