

NATIONAL POLICY No. 33
FINANCING OF FILM PRODUCTIONS

Published December 13, 1990

Part I

General Provisions

1. The requirements under this policy statement apply to the distribution of securities in a limited partnership for film productions or videos ("film productions") that are subject to the prospectus or offering memorandum requirements ("disclosure document") of any securities legislation in force in a province or territory of Canada where the disclosure document is filed. Distributions of securities subject to the offering memorandum requirements are those distributions where the offering memorandum is prepared and filed pursuant to the seed capital exemption or, the government incentive securities exemption available in certain provinces and territories or pursuant to the \$ 25 000 exemption in British Columbia.

They also apply, mutatis mutandis, to the distribution of:

1. units in any other partnership for film productions;
2. securities of a corporation formed for film productions and;
3. undivided interests in a film production.

The Canadian Securities Administrators ("administrators") may apply these requirements to other transactions when they are a distribution of securities representing an interest in a film production.

2. Although not specifically directed at other types of productions of a creative nature such as theatre and recordings, this policy statement may have relevance to them.
3. All major contracts with respect to the production and distribution of publicly financed film productions shall be drafted so as not to conflict with the requirements of this policy statement.
4. The administrators will only issue a prospectus receipt or grant or permit the use of a prospectus exemption if the proceeds of the distribution are to be used for one or more identified film productions and if the terms and conditions for the complete financing of the film productions are established by the time the disclosure document is filed and are described therein.

5. In this policy,

"above-the-line costs" refer to costs incurred for the acquisition of literary rights, the writing of the screenplay, the hiring of the director, the producer and any other person performing the producer's role, and the principal actors, as well as costs incurred in relation to the development of the screenplay.

"below-the-line costs" refer to all production-related costs, including post-production costs which are not included in the above-the-line costs. The salaries of all production personnel and all non-principal actors, as well as the costs of all materials bought in relation to the production of the film production are to be included.

"completion guarantee" refers to an agreement under which a person or a company agrees to guarantee the completion and delivery of the film production by a predetermined date and to assume any production cost, necessary to the completion of the film production, in excess of the original production cost estimates.

"financial partner" refers to investors in the film production, other than the purchasers of the securities pursuant to the disclosure document, identified at the time of filing such document.

"indirect costs" refer to costs that are not attributable to the creation of actual on-screen images, such as financing, legal, overhead and office expenses.

"person having a vested interest in the film production" refers to a person or company who provides services of a material nature to the film production, and in particular, shall include the production company, the director and the co-producer.

"producer's gross revenue" means all sums generated by the exploitation of the film production, including interest revenues, after deduction, in the case of an international co-production, of those sums attributable to the foreign co-producer for his interest in the film production, as stipulated by contract, and of those amounts paid to the exhibitors of the film production, the various taxes paid to governmental authorities, and permitted fees and expenses of the distributor and sub-distributor.

"promoter" means the person or company acting independently or in concert with one or more persons or companies and which takes the initiative in the production or financing of a film production, in particular, the producer and any person or company that has the responsibility for arranging the financing.

"tax expert" refers to either a public accountant or lawyer experienced in the field of taxation.

Unless otherwise indicated, all other technical or trade terms used in this policy statement should be interpreted according to current industry usage.

6. Funds provided by the sale of securities shall be deposited in trust with a Canadian financial institution and only withdrawn, at the date of closing, if all of the conditions of closing are met, according to the use of proceeds as described in the disclosure document. The trustee shall undertake to return the funds to the subscribers if any of the conditions of closing are not met.
7. For a period of at least five years, all producer's gross revenue shall be deposited in a trust account with a Canadian financial institution which shall allocate such funds in accordance with section 14 and as described in the disclosure document. This provision shall not apply to a distribution which includes a put option which has been exercised if, following such exercise, there remains no security holders, except for the promoter, persons having a vested interest in the film production and persons with whom they are associated.
8. On an annual basis for the period of at least five years specified in section 7, a senior officer of the issuer or of the general partner of the issuer shall obtain from the producer a report signed by a senior officer of the producer, addressed to the appropriate administrators and in the format provided in Schedule A. Such report shall confirm compliance with the applicable requirements of sections 7 and 14 for the last completed financial year of the issuer and shall be filed by the issuer with the appropriate administrators within 120 days of the applicable financial year end of the issuer.

A copy of this compliance report shall accompany the annual financial statements sent to the securityholders.

9. Where the financing initially contemplated for the film production was through other sources of financing, the administrators may examine the reasons for abandoning this source of financing and may investigate any increase in the budget originally presented to prospective investors.

Part II

Structuring of the Offering

10. The position of producer shall be filled pursuant to a written agreement at the time of filing the disclosure document. The director and the principal actors shall be identified at the time of filing the disclosure document. Written agreements with the director and principal actors shall be signed by the date of closing of the offering. Written notice from the person's agent confirming the terms of the engagement will be deemed acceptable evidence of a written agreement.

The Producer shall have at least three years continuous experience in either feature length film productions, short productions, television series or documentaries if the proceeds will be used for any of the foregoing or in videos if the proceeds will be used for the production of videos. If the producer does not

have the required experience, the services of a co-producer who has the required experience shall be retained.

11. In the case of a feature length film production, if the film production is not completed prior to the date of filing the disclosure document, a completion guarantee from a recognized independent guarantor shall be obtained in accordance with current industry practice. The guarantor shall agree to complete the said film prior to a determined date without compromising the film's eligibility for certification.
12. If distribution agreements for major markets are not concluded by the date of filing the disclosure document, there must be procedures initiated for marketing the film production. The promoter, a person having a vested interest in the film production, or a person with whom they are associated may negotiate distribution agreements provided the promoter or such person has the relevant experience and ability; the fees paid to this person shall be in accordance with current industry practice for similar functions.
13. When the distribution includes a put option offered to the security holders, adequate arrangements prior to the offering must be made to ensure that the required funds are available at the exercise date to effect payment in full for all securities acquired pursuant to the exercise of the option.
14. The revenue derived from the film production cannot be allocated in a manner that would be less advantageous to the security holder than the following:
 1. First, the producer's gross revenue shall flow to the issuer and the financial partners, pro rata according to their investment in the film production, until such time as the full amount of their investment has been recouped.
 2. Thereafter, advances made by a completion guarantor may be recovered, with interest.
 3. Next, the producer's gross revenue shall be divided among the issuer, the financial partners and the producer. The issuer and the financial partners shall receive at least 50 % of the producer's gross revenue to be distributed pro rata according to their investment in the film production.
 4. The amounts payable to the principal actors, the other creative personnel, interim lenders and other lenders shall be deducted directly from that portion of the producer's gross revenue flowing to the producer. The revenue allocations shall be described in the disclosure document.
15. All offerings must provide for payment to the producer of a percentage of revenue sufficient to guarantee a continued interest in the successful operation of the project.
16. Loans advanced by the interim lender shall be repaid at the date of closing in either, or both, of the following manners:
 1. payment to the interim lender of amounts due from the proceeds of the offering;

2. issuance to the interim lender of securities remaining unsold after completion of the distribution in satisfaction of the debt owing. In such instances, there can be no preference given the interim lender over the other investors except that the interim lender may invest in the securities without paying selling commissions. Such interim lender shall not be treated any differently, as investor, than any other investor in terms of the revenue allocation contemplated in section 14.
17. After the date of closing, no person, other than a foreign co-producer, shall have a security interest in the film production or in the revenues therefrom.
18. Deferred fees to be paid from revenues are permitted if the fees are deferred to reduce the financed portion of the film production. For purposes of section 14, those persons receiving deferred fees shall be considered as financial partners.

Part III

Conflicts of Interest

19. The promoter, a person having a vested interest in the film production, or a person with whom they are associated may not subscribe in total for more than 25 % of the securities distributed unless the securities are subscribed for in satisfaction of amounts due pursuant to section 16 or if, at the date of filing the disclosure document, there is a firm commitment to subscribe for a specified amount of securities. The face page of the disclosure document shall disclose the amount of securities subscribed for by the promoter, a person having a vested interest in the film production or a person with whom they are associated.
20. Production services and equipment including, for example, laboratory services, studios, equipment rental and editing facilities provided by the promoter, by a person having a vested interest in the film production, or by a person with whom they are associated shall be provided at a price no higher than current industry practice.
21. Financing charges payable to the promoter, to a person having a vested interest in the film production, or to a person with whom they are associated, shall not exceed the rate that would be charged by an arm's length financial institution in similar conditions.

Part IV

Rights and Obligations

22. A list of securityholders' names and addresses shall be maintained and given to any security holder or creditor upon request in accordance with National Policy Statement No. 34, where the issuer is an unincorporated issuer, and to any person upon request in accordance with the issuer's incorporating legislation, where the issuer is a corporation.

23. Where the issuer is a limited partnership or other unincorporated entity, the limited partnership agreement or other agreement establishing the rights of the securityholders shall be attached to the disclosure document. The material terms of this agreement shall be disclosed in the disclosure document. The agreement shall specify the procedures for securityholders' meetings, including those matters to be raised at the meeting and the majority required. The matters that must be submitted to security holders shall include, in particular, the dissolution of the partnership or other unincorporated entity, amendments to the agreement, dismissal of the security holders' agent or of the general partner, if applicable, the sale of one or more film productions and approval of any capital calls whether or not otherwise provided for in the agreement.

Where the issuer is a corporation, its articles or bylaws must require that security holder approval be obtained for the sale of one or more film productions and, in addition to any approval required under its incorporating legislation, the articles or bylaws must require the additional approval specified in the following paragraph for dissolution of the corporation, amendments to the articles or bylaws of the corporation and the sale of one or more film productions.

The security holders' meeting shall vote on the issues stipulated in the two preceding paragraphs by way of a resolution adopted by a majority representing at least two thirds of the securities issued, excluding those held by the promoter, by persons having a vested interest in the film production, or by persons with whom they are associated.

Stricter rules for approval of a resolution by securityholders may be provided for in the limited partnership agreement, any other agreement establishing the rights of security holders or in the articles or bylaws of a corporate issuer.

24. Where the issuer is a limited partnership or other unincorporated entity, the securities of the security holder who defaults on a call for additional contributions may not be seized. The general partner or the securityholders' agent may only reduce the interest of that security holder in the issuer. These provisions shall be disclosed under the heading "Risk Factors".

The preceding paragraph does not apply to a call related to the initial subscription or pursuant to the provisions of the statute under which the issuer is established.

25. In the case where security holders were offered a put option, the compulsory acquisition of securities held by security holders who have not exercised the said option shall be permitted provided that holders of at least 75 % of the securities distributed, excluding those held by the promoter, by persons having a vested interest in the film production or by persons with whom they are associated, have exercised the option. The take-over bid provisions of any applicable securities legislation and any applicable policy statements of the administrators shall apply to the put option.

Part V

Disclosure Document

26. General

- 26.01 In addition to information normally required in a prospectus or offering memorandum by any securities legislation in force in each province or territory of Canada where the disclosure document is filed, the disclosure document shall also include the information prescribed in this part.
- 26.02 The disclosure document should include a glossary of those terms specific to the film industry contained in the document. However, the term "certified production" shall not be used in the disclosure document unless its meaning corresponds to the relevant definition in the regulations to the Income Tax Act.

27. Film Property

- 27.01 The disclosure document shall clearly state that the issuer owns or will own at the date of closing clear title to an original master negative that is completed or will be completed and to all other commercial rights arising from each film production. If any rights are to be excluded in whole or in part, they are to be specified as exclusions showing beneficiary ownership. The face page shall clearly state whether the offering is for 100 % of the film production or some lesser interest.
- 27.02 The disclosure document shall clearly describe all of the media, territorial and ancillary rights of a material nature which may be commercially exploited. The disclosure document shall also indicate and describe those media, territorial or ancillary rights of a material nature which have been retained by a third party, or by the promoter, a person having a vested interest in the film production, or a person with whom they are associated.

In the case of a foreign co-production, disclosure shall be made on the face page of the excluded aspects of the film production.

28. Scenario and Story Outline

The disclosure document shall indicate the persons from whom the film property and other rights were acquired, the amount paid for such rights and, if they have been acquired from the promoter, a person having a vested interest in the film production or a person with whom they are associated, the cost to such person for acquiring the said rights. The name of the principal writers and the total amount paid for producing the script shall be identified in the disclosure document. The story outline or the major elements of the plot, except perhaps for its ending, should be sufficiently detailed to enable a well advised investor to make a prudent assessment as to the commercial attractiveness of the film production.

29. Principal Actors

The names of the principal actors shall be specified in the disclosure document. Statements, quotations or extracts from critical reviews shall not be permitted in the disclosure document.

30. Producer and Director

30.01 The disclosure document shall describe the usual functions of a producer and director. It shall identify by name the persons in those positions and clearly summarize the functions to be performed with respect to the film production. The amounts payable to the producer, or any person performing the producer's role, and the director shall be clearly stated in the budget.

30.02 The disclosure document shall contain a detailed description of both the producer's and the director's experience in the film industry and related areas over the previous five years.

If the producer has previously produced a film production financed through the sale of securities by way of prospectus or offering memorandum, disclosure shall be made, in tabular form, of the title of the film production, the year of release, the budgeted production costs as presented in the disclosure document for that film production, the final production costs, the subscription price and the amount of reimbursements to securityholders to date on a per security basis. For those offerings which include a put option, disclosure shall also be made of the stipulated exercise price of the option as stated in the disclosure document for that film production, whether the option has been exercised and the actual exercise price.

If the producer or director has not previously produced or directed a film production, this must be stated.

30.03 The disclosure document shall describe the normal sequence of events involved in a film production, being development, pre-production, principal photography and post-production. To the extent practicable, amounts allocated to each stage should be identified in the budget.

30.04 If the principal photography has not commenced by the date of filing the disclosure document, the date at which this stage is scheduled to start and end shall be given. However, if principal photography is in progress, disclosure shall be made as to whether production is on schedule and on budget or, if not, to what extent the production is ahead or behind of schedule and to what extent expenses have gone over or under original budget estimates.

The disclosure document shall indicate the stage of completion of the film production, the costs incurred as of the date of filing, the anticipated completion date and the anticipated costs for the completion of the film production.

30.05 If interim financing has been obtained to provide funds for the production, sufficient detail shall be given of amounts committed and of the cost of such financing as well as of the sources of financing. If the interim lender is the promoter, a person having a vested

interest in the film production or a person with whom they are associated, the name of the lender, the amounts advanced, and the terms of the loan shall be described.

30.06 The disclosure document shall also contain a summary of insurance coverage regarding various hazards, including maximum recoverable amount and deductibles and the extent to which time delays are covered.

30.07 The disclosure document shall state that the promoter will indemnify and hold the issuer harmless in the case of any claims for damages being brought for libel, slander, or violation of the rights of a person or a group, to the extent that such claims are not covered by an insurance policy. The consequences of a default by the promoter shall be described in the disclosure document under the heading "Risk Factors".

This provision also applies to the securityholders in a partnership and to the holders of undivided interests.

31. Budget

31.01 The disclosure document shall include a detailed budget, in accordance with film industry practice, stating the major above-the-line costs, below-the-line costs and indirect costs, indicating the percentage of total budget each item represents and each subtotal represents.

31.02 The disclosure document shall state that any amount remaining unspent on completion of the film production will be spent for the marketing of the film production or returned to the securityholders.

32. Completion Guarantee

All material terms of any guarantee shall be described in the disclosure document. The name of the guarantor shall be given as well as the fees payable. If the guarantor has a vested interest in the film production, this fact shall be disclosed. The non financial role of the third party guarantor shall be described including budget analysis and review, monitoring of the production and the right to intervene and assume control of the project. The disclosure document shall also state that the guarantor guarantees the technical quality of the film production, but not its aesthetic quality. Any right to a rebate of a portion of the fee shall be disclosed in the disclosure document as should the identity of the recipients of the rebate. Finally, if there is no completion guarantee or if the completion guarantee is not given by an independent guarantor, it shall be stipulated in the disclosure document what services the production has not had and will not have access to as a result of there being no such guarantee.

33. Commercial Exploitation

33.01 The disclosure document shall describe the sources of revenues generated by the commercial exploitation of the film production: movie theatres, television, television series, pay-television, videocassettes, in-flight movies and other ancillary rights. The

commercial impact of any media, territorial or ancillary rights which are excluded shall be specified.

- 33.02 The disclosure document shall describe in detail the usual provisions of the distribution agreements, gross and net receipts, variations in foreign territories and flow of revenues generated in each case from box-office receipts to the producer's gross revenue. The normal range of fees paid to exhibitors and distributors shall also be set out, as well as typical sales and promotional expenses, and the names of those persons who bear these expenses.

With regard to television exploitation of a film production, the requirements set out in the previous paragraph shall also cover U.S. network and syndicated television.

- 33.03 The disclosure document shall identify the person responsible for compliance with respect to certification of the film production for tax purposes and for maintaining the records relating to the tax position of the securityholders.

34. Distribution

- 34.01 If distribution agreements are in place, the material terms of the agreements shall be disclosed including those concerning the territories and media to which they apply, fees and expenses to be charged, minimum amounts required for sales and promotion or the absence of such an amount, audit rights, powers of securityholders or their agent to veto sub-distribution agreements, and the distributor's right to refuse delivery of the film production.

- 34.02 If negotiations of distribution agreements are in progress at the time of filing the disclosure document, the status of these negotiations for each of the major markets shall be disclosed.

- 34.03 If distribution agreements for the major markets have not been concluded, this specific risk shall be disclosed on the face page of the disclosure document.

- 34.04 All fees associated with the negotiation of distribution agreements shall be described. If the promoter, a person having a vested interest in the film production or a person with whom they are associated is appointed as distribution agent, disclosure shall be made of this fact as well as such person's remuneration.

35. Risk Factors

All the risk factors pertaining to the nature of the issuer, the securities being offered or any other relevant consideration shall be fully disclosed. The face page of the disclosure document shall include a bold face reference to the risk factors section in the body of the disclosure document.

36. Financial Disclosure

- 36.01 Financial statements required to be sent to the securityholders pursuant to continuous disclosure requirements of any securities legislation in force in a province or territory in Canada where the disclosure document is filed shall disclose the various sources of the producer's gross revenue, as well as the distribution of such revenue, by group of beneficiaries. In all financial statements, amounts pertaining to securities offered in the disclosure document shall be presented on a per security basis as well as on an aggregate basis
- 36.02 The name of the person responsible for providing continuous disclosure information shall be included in the disclosure document.
- 36.03 When the promoter, a person having a vested interest in the film production or a person with whom they are associated provides any guarantees with respect to the completion or distribution of the film production, such document. The administrators may require that these audited financial statements be included in the disclosure document.
- 36.04 Where the distribution includes a put option, the disclosure document shall state the exercise price of the put option and the arrangements made to ensure that the required funds will be available to effect full payment of the acquired securities. If revenue guarantees are not obtained for the full amount of the predetermined maximum exercise price, disclosure shall be made of the fact that there is no assurance that the securityholder will receive the full amount of the predetermined maximum exercise price.

Tables showing tax savings and rate of return shall be calculated based on the amount of revenue guarantees obtained at the date of filing the disclosure document.

The disclosure document may also include tables showing tax savings and rate of return based on the predetermined maximum exercise price; for a film production that has not obtained any revenue guarantees, tables showing the effect of a median exercise price shall also be included. However, disclosure shall be made in bold face type that there is no assurance that the actual exercise price of the put option will equal the predetermined maximum exercise price, and that consequently, the securityholder may not realize the stipulated tax savings and rate of return.

- 36.05 Where deferred fees are not covered by a revenue guarantee given by an independent party, the tables showing tax savings and rate of return shall exclude the amount of deferred fees. The disclosure document may also provide tables of tax savings and rate of return which include the amount of deferred fees provided that disclosure is made that there is no assurance that the amount of deferred fees will be considered by tax authorities as a capital cost of the film production.

37. Tax Considerations

The disclosure document shall include the opinion or comments of a tax expert as to the availability to the securityholder of the tax deductions described in the disclosure document. Notwithstanding any such opinion or comments, the administrators reserve the right to request a ruling from

the Minister of Communications (Canada) and from the provincial counterpart as to whether the film production meets the conditions required for issuing the appropriate production certificate.

The disclosure document shall stipulate that as a condition of closing, evidence will be provided of the issuance of a provisional certificate from the Minister of Communications (Canada) and provincial counterparts, if applicable.

The tax expert shall be named and such tax expert's consent shall be filed with the disclosure document.

38. Conflicts of Interest

The disclosure document shall disclose all amounts payable to the promoter, to a person having a vested interest in the film production, or to a person with whom they are associated arising from the film production offering, in particular, deferred expenses, amounts contained in any budgeted item (including any fees payable to such person), fees for acting as completion guarantor, fees and interest earned on interim financing, fees charged for acting as general partner or as agent for the securityholders, if applicable, and that share of the producer's gross revenue to which such general partner or agent is entitled following recoupment. This information shall be disclosed separately for each particular person. Any conflicts of interest resulting from a plurality of functions shall be clearly stated.

39. Return on Investment

he rate of return on investment contained in the disclosure document shall be calculated according to the formula prescribed in Schedule B. The rate of return may be included in the disclosure document only for those offerings which include a put option. No other method of calculation shall be used without the prior approval of the administrator of the jurisdiction in which the offering is contemplated. The disclosure document shall indicate that the rate of return is a hypothetical number based on tax assumptions (which shall be fully disclosed) and does or does not consider the time value of money.

SCHEDULE A

PRODUCER'S COMPLIANCE REPORT

TO: The appropriate securities regulatory authorities

FROM: Name of producer

RE: Compliance Report on National Policy Statement No. 33

For the year ended _____, 19XX

FOR: Name of the issuer

Dear Sirs:

We, (name of producer), hereby confirm the following:

1- for the year ended _____, 19XX, producer's gross revenue, as defined in section 5 of National Policy Statement No. 33, amounted to \$ _____, and this amount has been deposited in a trust account with a Canadian financial @nstitution in accordance with section 7 of National Policy Statement No. 33; and

2- all producer's gross revenue has been allocated by such Canadian financial institution in accordance with section 14 of National PolicY Statement No. 33 and as described in the disclosure document dated _____.

Signed on behalf of the producer

Signature

Name and office of the person
executing this report

Date

SCHEDULE B

Calculation of the rate of return

The rate of return shall be disclosed for each twelve-month period or, if it is anticipated that a put option will be exercised within a period of less than twelve months, the rate of return shall be disclosed for the number of months remaining until the anticipated date for the exercise of the said option. In the latter case, there shall be no extrapolation of the rate of return to cover a twelve-month period. If the put option may be exercised within a period that exceeds twelve months, the rate of return shall consider the time value of money. The disclosure document may also include the rate of return for the entire exercise period of the put option, if that period exceeds twelve months.

Moreover, the rate of return shall be provided based on the hypotheses that an investor will benefit from a capital gains exemption, has exhausted his capital gains exemption or has not completely exhausted his capital gains exemption. If the cumulative net investment loss account can affect the capital gains exemption available on disposition of other investments, the rate of return shall take into account this additional tax liability. The rate of return shall be calculated as follows:

tax saving + exercise price of the put
option - tax on disposal of unit -

maximum rate = other expenses
of return -----

total unit price