Draft Regulations

Securities Act
(R.S.Q. c. V-1.1, s. 331.1, pars. (1), (4.1), (6), (8), (11). (14) and (34), and s. 331.2)

Regulation to amend Regulation 41-101 respecting General Prospectus Requirements and concordant regulations+

Prospectus pre-marketing and marketing regime

Notice is hereby given by the *Autorité des marchés financiers* (the "Authority") that, in accordance with section 331.2 of the *Securities Act*, R.S.Q. c. V-1.1, the following Regulations, the text of which is published hereunder, may be made by the Authority and subsequently submitted to the Minister of Finance for approval, with or without amendment, after 90 days have elapsed since their publication in the Bulletin of the Authority:

- *Regulation to amend Regulation 41-101 respecting General Prospectus Requirements.*

Draft amendments to the following regulation are also published hereunder:

- *Regulation to amend Regulation 44-101 respecting Short Form Prospectus Distributions*.

Draft amendments to the following policy statement and notice are also published hereunder:

- Amendments to *Policy Statement to Regulation 41-101 respecting General Prospectus Requirements*;

- Amendments to *Policy Statement 41-201 respecting Income Trusts and Other Indirect Offerings*;

- Amendments to *Policy Statement to Regulation 44-101 respecting Short Form Prospectus Distributions*;

- Amendments to *Policy Statement to Regulation 44-102 respecting Shelf Distributions*;

- Amendments to *Notice 47-201 relating to Trading Securities Using the Internet and Other Electronic Means*.

Request for comment

Comments regarding the above may be made in writing before **February 23, 2012**, to the following:

M^{e} Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22^{e} étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax: (514) 864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

Further information

Further information is available from:

Rosetta Gagliardi
Senior Policy Adviser
Autorité des marchés financiers
514-395-0337, ext. 4462
Toll-free: 1 877 525-0337
rosetta.gagliardi@lautorite.qc.ca

November 25, 2011

Notice and Request for Comment

Draft *Regulation to amend Regulation 41-101 respecting General Prospectus Requirements*

Draft Amendments to *Policy Statement to Regulation 41-101 respecting General Prospectus Requirements*

Draft Amendments to *Policy Statement 41-201 respecting Income Trusts and Other Indirect Offerings*

Draft *Regulation to amend Regulation 44-101 respecting Short Form Prospectus Distributions*

Draft Amendments to *Policy Statement to Regulation 44-101 respecting Short Form Prospectus Distributions*

Draft Amendments to *Policy Statement to Regulation 44-102 respecting Shelf Distributions*

Draft Amendments to *Notice 47-201 relating to Trading Securities using the Internet and Other Electronic Means*

Introduction

We, the Canadian Securities Administrators (CSA), are publishing for a 90 day comment period draft amendments to:

- *Regulation 41-101 respecting General Prospectus Requirements* (Regulation 41-101);
- *Policy Statement to Regulation 41-101 respecting General Prospectus Requirements* (Policy Statement 41-101);
- *Policy Statement 41-201 respecting Income Trusts and Other Indirect Offerings* (Policy Statement 41-201),
- *Regulation 44-101 respecting Short Form Prospectus Distributions* (Regulation 44-101);
- *Policy Statement to Regulation 44-101 respecting Short Form Prospectus Distributions* (Policy Statement 44-101);
- *Policy Statement to Regulation 44-102 respecting Shelf Distributions* (Policy Statement 44-102);
- *Notice 47-201 relating to Trading Securities Using the Internet and Other Electronic Means* (Notice 47-201).

Objective of the Draft Amendments

The draft amendments set out changes to the prospectus pre-marketing and marketing regime in Canada for issuers other than mutual funds. These changes will increase the range of permissible pre-marketing and marketing activities in connection with prospectus offerings. The current regulatory regime limits those activities.

Proposed Text

We invite comment on the draft amendments (the draft amendments), which are published with this notice.

Certain jurisdictions may include additional local information in an appendix to this notice.

The draft amendments have been prepared on the assumption that certain amendments to the prospectus rules that were published for comment on July 15, 2011 will be in effect when the draft amendments are enacted.

Background

Appendix A provides a summary of the phases of a prospectus offering under the existing regulatory regime.

Pre-marketing

"Pre-marketing" occurs when a dealer communicates with potential investors before a public offering and includes other promotional activity that occurs before a preliminary prospectus is filed. Unless the issuer is relying on the bought deal exemption in Part 7 of Regulation 44-101, pre-marketing is prohibited in Canada. Specifically,

- securities legislation generally prohibits any form of marketing for a public offering unless a preliminary prospectus has been filed and receipted, and

- investment dealers are not permitted to solicit expressions of interest from investors until a preliminary prospectus is filed and receipted.

The bought deal exemption is a limited accommodation for issuers seeking certainty of financing. Generally, the bought deal exemption allows an investment dealer to solicit expressions of interest before the filing of a preliminary short form prospectus if, among other things, the issuer has entered into an enforceable agreement with an underwriter who has agreed to purchase the full amount of the offering, the issuer issues a news release announcing the agreement, and the issuer files and obtains a receipt for a preliminary prospectus within four business days of the agreement.

Marketing during the waiting period

"Marketing" includes oral or written communications after the filing of a preliminary prospectus. During the "waiting period" between the filing of a preliminary prospectus and a final prospectus, certain limited marketing activities are permitted. For example, it is permissible to:

- distribute a notice containing limited information about the offering,

- distribute the preliminary prospectus, and

- solicit expressions of interest from a prospective investor, if the investor is provided with copy of preliminary prospectus.

Policy rationale for existing rules

The policy rationales for the existing rules include:

- *Equal access to information*

- Any information given to investors in connection with a public offering should be in the prospectus.

- The prospectus should be available to all investors.

- *Deterring conditioning of the market*

- Issuers and investment dealers should not condition or prime the market before the preliminary prospectus is filed.

- *Deterring insider trading and tippee trading*

- The pre-marketing restrictions reinforce the requirement that insiders and "tippees" (as described in section 3.2 of National Policy 51-201: *Disclosure Standards*) should not trade on the basis of information about a potential offering that has not been generally disclosed.

- *Investor protection through adequate disclosure of proposed offering*

- A prospectus provides "full, true and plain disclosure" of all material facts.

- The issuer and the underwriters are potentially liable for any misrepresentations in the prospectus.

- The issuer and the underwriters should use the prospectus as the main marketing document.

We believe that these policy rationales are still valid and we have attempted to address them in the draft amendments.

Substance and Purpose of the Draft Amendments

The draft amendments will increase the range of permissible pre-marketing and marketing activities in connection with prospectus offerings. In particular, the amendments will, subject to certain conditions:

- expressly allow non-reporting issuers, through an investment dealer, to determine interest in a potential initial public offering (IPO) by communicating with permitted institutional investors, and

- expressly allow investment dealers to use term sheets and conduct road shows during the "waiting period" and following the receipt of a final prospectus.

The amendments will also clarify when bought deals and bought deal syndicates can be enlarged.

The purposes of the draft amendments are to:

- ease certain regulatory burdens and restrictions that issuers and investment dealers face in trying to successfully complete a prospectus offering, while at the same time providing protection to investors, and

- clarify certain matters in order to provide clear rules and a "level playing field" for market participants involved in a prospectus offering.

Summary of the Draft Amendments

The draft amendments are summarized as follows.

A. Pre-marketing

1. Testing of the waters exemption for IPO issuers

Draft subsection 13.4(1) of Regulation 41-101 contains a limited exemption to permit non-reporting issuers, through an investment dealer, to determine interest in a potential IPO through limited confidential communication with permitted institutional investors. The

exemption will be subject to certain conditions to ensure confidentiality and prevent abuse (e.g., conditioning of the market). The conditions of the exemption include the following:

- Before providing a permitted institutional investor with information about the proposed offering, the investment dealer must ask the permitted institutional investor to confirm in writing (e.g., by return email) that it will keep the information confidential.

- The issuer relying on the exemption must keep a written record of any investment dealer that it authorized to act on its behalf in making solicitations in reliance on the exemption and a copy of any written authorization.

- An investment dealer that relies on the exemption must keep a written record of any permitted institutional investor that it solicited and a copy of the above-noted correspondence with the investor.

Due to insider and tippee trading concerns, the exemption will not be available to "IPO issuers" that are already public companies in a foreign jurisdiction.

We specifically request comment on the utility of the proposed exemption (see questions 1 to 2 under "Request for Comments" below).

2. Bought deal exemption

As noted above, the bought deal exemption in Part 7 of Regulation 44-101 is a limited accommodation for issuers seeking certainty of financing. In order to provide clear rules and a "level playing field" for market participants, we propose to amend the rules to clarify certain matters and to specify when a bought deal agreement can be amended or terminated.

Enlarging bought deals

In particular, we propose to amend Part 7 of Regulation 44-101 so that if an issuer relies on the bought deal exemption and signs a bought deal agreement with an investment dealer, it would be permitted to amend the agreement to provide for a larger offering provided that:

- A news release is issued immediately after the agreement is amended.

- The offering size is increased by not more than a specified percentage of the original size of the offering.

- The preliminary prospectus is filed and receipted within four business days of the original agreement.

- The enlargement of the offering cannot be the culmination of a formal or informal plan to offer a larger amount devised before the execution of the original agreement.

- The enlarged offering is for the same price as the original offering.

The rationale for these conditions is that we expect the original bought deal agreement to be a firm commitment for a substantial number of securities. Otherwise, an investment dealer could circumvent the pre-marketing restrictions and the policy behind the bought deal exemption by entering into the original agreement for a small number of securities in order to solicit investors without a preliminary prospectus and then, after having obtained expressions of interest, entering into an amended agreement for a much larger amount.

We specifically request comment on the specified percentage up to which a bought deal could be enlarged (see question 3 under "Request for Comments" below). We anticipate that the final amendments will include one of the options set out in question 3.

Enlarging bought deal syndicate

The draft amendments to Part 7 of Regulation 44-101 also allow for additional underwriters to join the bought deal syndicate if the addition of a particular underwriter was not the culmination of a formal or informal plan to add that underwriter devised before the execution of the original agreement.

Definition of "bought deal agreement"

The draft amendments to Part 7 of Regulation 44-101 also provide for:

- All references to "enforceable agreement" to be replaced with "bought deal agreement".

- A definition of "bought deal agreement" to reflect current market practice for bought deals and the policy rationale for the exemption. In particular, the definition will provide that a bought deal agreement cannot have a market-out clause.

Other

We note that the amendments to the prospectus rules that were published for comment on July 15, 2011 propose to amend the bought deal exemption to specify that an investment dealer can continue to solicit expressions of interest after the filing of the preliminary prospectus and before the issuance of a receipt for the preliminary prospectus. This amendment is meant to address an inadvertent gap in permitting solicitations between the time of filing and the time of receipting of the preliminary prospectus. Although this gap would usually only exist for a matter of hours, some investment dealers have indicated that they want to be able to continue to solicit investors during that period. The draft amendments reflect this change.

3. Additional guidance on "sufficient specificity"

Existing subsection 6.4(4) of Policy Statement 41-101 provides guidance that a distribution of securities commences when an investment dealer has had discussions with an issuer that are of sufficient specificity that it is reasonable to expect that the investment dealer will propose an underwriting of securities to the issuer. We have concerns that certain market participants have been taking aggressive interpretations of "sufficient specificity". Consequently, we propose to amend subsection 6.4(4) of Policy Statement 41-101 to provide additional guidance on "sufficient specificity", including permitted activities before the announcement of a bought deal or the filing of a preliminary prospectus. The additional guidance includes examples of situations which would indicate that "sufficient specificity" has occurred and a distribution of securities has commenced. That subsection also sets out our concerns with "non-deal road shows" where issuers and dealers meet with institutional investors to discuss the business and affairs of the issuer.

4. Term sheet provision for bought deals

Under the draft amendments to section 1.1 of Regulation 41-101, a "term sheet" is defined as a written communication regarding a distribution of securities under a prospectus that contains information on the issuer or the securities, but does not include:

- a prospectus, or

- a notice, circular, advertisement, letter or other communication referred to in section 13.1 of Regulation 41-101 that is expressly permitted by securities legislation.

Draft section 7.5 of Regulation 44-101 contains a term sheet provision for bought deals so that investment dealers may provide a term sheet to a permitted institutional investor after the bought deal is announced, but before the preliminary prospectus is filed four business days later. This provision would be subject to certain key conditions, which include the following:

- The disclosure in the term sheet must be fair, true and plain (this requirement and the definition of "term sheet" are discussed under "Marketing during the waiting period - Term sheet provision" below).

- All information concerning securities in the term sheet must be in the bought deal news release or the issuer's continuous disclosure record.

- The term sheet must be approved in writing by the issuer and the underwriters and filed before use (although, as noted in draft subsection 6.5A(7) of Policy Statement 41-101, the term sheet will not be made public on SEDAR until the preliminary prospectus is filed and receipted).

- The term sheet must be included in the preliminary prospectus and final prospectus or incorporated by reference into the preliminary prospectus and final prospectus. This will result in the term sheet being subject to statutory liability for misrepresentations.

- The term sheet must contain a prescribed legend with cautionary language referring investors to the subsequent preliminary prospectus and final prospectus and noting that the term sheet does not contain full disclosure of all material facts.

- Any permitted institutional investor who received a term sheet must receive the subsequent preliminary prospectus.

We specifically request comment on whether the rules should also permit an investment dealer to provide a bought deal term sheet to retail investors before the filing of the preliminary prospectus (see question 4 under "Request for Comments" below). For investor protection reasons, our provisions for term sheets during the waiting period (discussed below) only permit a term sheet to be given to a retail investor if it is accompanied by a copy of the preliminary prospectus (since a term sheet will not provide full, true and plain disclosure of all material facts). However, under the current bought deal exemption, an investment dealer is able to solicit expressions of interest from retail investors before the filing of a preliminary prospectus.

5. News release before filing a preliminary prospectus

Draft subsection 6.9(3) of Policy Statement 41-101 contains guidance on how an issuer can comply with its material change reporting obligations without contravening the pre-marketing restrictions. This guidance notes that:

- A material change news release should not be promotional and should be carefully drafted to avoid "conditioning of the market" concerns.

- Even if a material change news release is issued, an investment dealer would not be able to solicit expressions of interest until a bought deal was announced or a preliminary prospectus was filed and receipted.

B. Marketing during the waiting period

1. Term sheet provision

Draft subsection 13.5(1) of Regulation 41-101 contains a provision to permit investment dealers to provide a term sheet in conjunction with a preliminary prospectus in order to allow for a greater range of marketing communications during the waiting period. The provision would be subject to certain key conditions, including:

- The disclosure in the term sheet must be *fair*, true and plain. Since a term sheet is not required to contain the same information as a prospectus, it cannot meet the prospectus requirement of "*full*, true and plain" disclosure. Draft subsection 6.5A(2) of Policy Statement 41-101 provides guidance on when we would consider a term sheet to be fair, true and plain.

- All information concerning the securities in the term sheet, including any comparables (i.e., information that compares the issuer to other issuers), must be contained in the preliminary prospectus.

- The term sheet must be approved in writing by the issuer and the underwriters and filed before use.

- The term sheet must be included in the final prospectus or incorporated by reference into the final prospectus. This will result in the term sheet being subject to statutory liability for misrepresentations.

- The term sheet must be distributed with a copy of the preliminary prospectus.

- The term sheet must contain a prescribed legend with cautionary language referring investors to the preliminary prospectus and noting that the term sheet does not contain full disclosure of all material facts.

Draft subsection 6.5A(3) of Policy Statement 41-101 provides guidance on the requirement that all information concerning securities in the term sheet must be contained in the preliminary prospectus (e.g., it is permissible for a term sheet to summarize information from the prospectus or to include graphs or charts based on numbers in the prospectus).

Draft subsection 6.5A(9) of Policy Statement 41-101 provides guidance on the remedies available to an investor if a term sheet contains a misrepresentation. For example, an investor who purchases a security distributed under the final prospectus may have remedies under the civil liability provisions of applicable securities legislation. In addition, an investor who purchases a security of the issuer on the secondary market may have remedies under the civil liability for secondary market disclosure provisions of applicable securities legislation if the term sheet contains a misrepresentation since:

- The term sheet is required to be included in the final prospectus or incorporated by reference into the final prospectus (a final prospectus is a "core document" under the secondary market liability provisions), and

- The term sheet is required to be filed and is therefore a "document" under the secondary market liability provisions.

A term sheet filed under the draft provisions will not be subject to offering memorandum liability as we do not consider such a term sheet to be an offering memorandum under applicable securities legislation since it is not being provided in respect of securities being sold in a distribution under an exemption from the prospectus requirement.

2. Green sheets

Draft section 6.6 of Policy Statement 41-101 provides guidance that an investment dealer will continue to be able to provide traditional green sheets to their registered representatives. However, any green sheet that is distributed to the public will be considered a "term sheet" and would contravene the prospectus requirement unless it complied with draft subsection 13.5(1) of Regulation 41-101.

3. Road shows

Under the draft amendments to section 1.1 of Regulation 41-101, a "road show" is defined as a presentation to potential investors regarding a distribution of securities under a prospectus conducted by an investment dealer on behalf of an issuer in which one or more executive officers of the issuer participate.

Draft sections 13.8 and 13.9 of Regulation 41-101 contain provisions for road shows during the waiting period. These provisions will apply to all types of road shows (including in-person, telephone conference calls, over the internet or by other electronic means).

A summary of the draft road show provisions is set out below.

(a) Express provision for road shows for permitted institutional investors

Draft section 13.8 of Regulation 41-101 allows an investment dealer to conduct a road show for permitted institutional investors during the waiting period. This provision will be subject to certain conditions, including:

- Other than comparables (described above), all information in the road show is contained in the preliminary prospectus.

- All information (including any comparables) in the road show must be fair, true and plain.

- Other than comparables, any written materials distributed to investors must comply with the term sheet provision.

(b) Express provision for road shows for retail investors

Draft section 13.9 of Regulation 41-101 allows an investment dealer to conduct a road show for retail investors during the waiting period. This provision will be subject to certain conditions, including:

- All information in the road show is contained in the preliminary prospectus.

- All information in the road show must be fair, true and plain.

- Any written materials distributed to investors must comply with the term sheet provision.

Unlike the provision for road shows for permitted institutional investors (discussed above), draft section 13.9 does not allow road shows for retail investors to contain comparables in the absence of prospectus liability. In the absence of adequate protections for retail investors, we believe that comparables should only be given to permitted institutional investors. We note that:

- Comparables can be "cherry picked" by investment dealers and misunderstood by retail investors.

- In the past, investment dealers have included comparables in road shows for institutional investors. But, given their nature, issuers and investment dealers do not want to include comparables in the prospectus since they would be subject to prospectus liability.

- If an issuer decides to include comparables in a prospectus, they should also include appropriate risk factors and cautionary language.

We specifically request comment on the circumstances in which comparables should be permitted to be given to retail investors (see questions 5 to 9 under "Request for Comments" below).

(c) Restricted access for road shows

The draft amendments require "restricted access" for road shows. In particular, the investment dealer must establish and follow reasonable procedures to:

- verify the identity and keep a written record of any investor attending the road show in person, by telephone conference call, over the internet or by other electronic means,

- ensure that the investor has received a copy of the preliminary prospectus, and

- restrict copying of any written materials.

These requirements will provide evidence as to who attended a road show in person, by telephone conference call, over the internet or by other electronic means. We think it is important to know what persons attended the road show so that they can be provided with

any revised materials and for evidentiary reasons (e.g., complaints, compliance reviews, litigation or enforcement proceedings). We provide guidance on this matter in draft subsection 6.13(2) of Policy Statement 41-101.

(d) Guidance for road shows for cross border IPO offerings

In the past, issuers conducting internet road shows for cross-border IPOs applied for exemptive relief from the "restricted access" requirements in Canadian securities legislation because U.S. securities law required the issuers to either file the internet road show materials with the SEC or make them "available without restriction by means of graphic communication to any person". Issuers felt that if they were to file the materials with the SEC on EDGAR, then they would contravene Canadian waiting period restrictions. Since we are now proposing to require road show materials to be filed on SEDAR, cross-border issuers will be able to file the same materials on EDGAR without applying for exemptive relief. We provide guidance on this matter in draft subsection 6.13(3) of Policy Statement 41-101.

4. Research reports

Draft section 6.3A of Policy Statement 41-101 contains guidance that any research reports issued by an investment dealer on an issuer must comply with section 7.7 of IIROC's Universal Market Integrity Rules (UMIR) and any applicable local rule. The guidance also indicates that an investment dealer should have appropriate "ethical wall" policies and procedures in place between the business unit that issues research reports or provides media commentary on an issuer and the business unit that acts as underwriter for prospectus offerings.

C. Marketing after the receipt of a final prospectus

The draft amendments also contain provisions prescribing when investment dealers can provide term sheets and conduct road shows after the receipt of a final prospectus (provided the disclosure is based on the final prospectus), subject to similar conditions as the conditions described above.

D. Marketing after the receipt of a final base shelf prospectus

The draft amendments also contain provisions prescribing when investment dealers can provide term sheets and conduct road shows after the receipt of a final base shelf prospectus (provided the disclosure is based on the final base shelf prospectus and any applicable shelf prospectus supplement or preliminary form of shelf prospectus supplement), subject to similar conditions as the conditions described above.

E. Other

The draft amendments also:

- include new definitions in section 1.1 of Regulation 41-101 and Part 7 of Regulation 44-101 to reflect the above proposals (e.g., definition of permitted institutional investor),

- include new guidance in Policy Statement 41-101 on the draft sections in Regulation 41-101 relating to the testing of the waters exemption for IPO issuers, term sheets and road shows,

- include consequential amendments to Regulation 41-101 (including Form 41-101F1 and Form 41-101F2), Policy Statement 41-101, Policy Statement 41-201, Regulation 44-101 (including Form 44-101F1), Policy Statement 44-101, Policy Statement 44-102 and Notice 47-201 to reflect the above proposals,

- clarify and update certain language in Policy Statement 41-101 relating to pre-marketing and marketing activities in connection with prospectus offerings (e.g., draft section 6.10 of Policy Statement 41-101), and

- provide additional guidance on marketing before the filing of a shelf prospectus supplement in draft section 1.3 of Policy Statement 44-102.

Future changes to SEDAR

If the draft amendments are enacted, we propose to create new "document types" for prospectus filings on the System for Electronic Document Analysis and Retrieval (SEDAR). In particular, we contemplate new document types for term sheets and road show materials. These new document types will allow issuers to accurately file the materials contemplated by the draft amendments on SEDAR. We invite comment on new document types.

Alternatives Considered

No alternatives to amendments to rules were considered.

Additional Background on Development of Proposals

Prior informal consultations

In developing the draft amendments, we conducted:

- research on prospectus marketing regimes in the United States and other foreign jurisdictions, and

- informal consultations in 2008 and 2010 with certain issuers, investment dealers, institutional investors, advisory committees in various CSA jurisdictions and other market participants.

Additional proposal that was considered

In addition to the draft amendments, we considered a proposal for a limited exemption to allow greater "testing of the waters" by existing reporting issuers before the filing of a preliminary prospectus or the announcement of a bought deal. Under the proposal, existing reporting issuers would have been able, through their investment dealers, to determine interest in a potential offering by means of limited confidential communication with permitted institutional investors. The exemption would have been subject to conditions to deter unlawful insider and tippee trading. We decided not to proceed with this proposal for several reasons. Generally, there were concerns expressed during the informal consultations about the proposed exemption, the practicability of the conditions and the potential for unlawful insider and tippee trading.

Impact on Investors

As noted above, the draft amendments will ease certain regulatory burdens and restrictions that issuers and investment dealers face in trying to successfully complete a prospectus offering, while at the same time addressing investor protection concerns. Investor protection elements include the following:

Testing of the waters exemption for IPO issuers

The proposed testing of the waters exemption for IPO issuers will only be available to solicit permitted institutional investors. Since the issuer will not have prepared a preliminary prospectus, we believe that the exemption should not be available to solicit retail investors. The exemption would also be subject to certain conditions (described above) to ensure confidentiality and reduce the risk of conditioning the market.

Term sheet provisions

The term sheet provisions will permit a greater range of marketing communications for issuers and investment dealers. A term sheet may benefit investors by providing an initial "snap-shot" of certain terms of a prospectus offering. Investor protection will not be compromised since the term sheet will be subject to the conditions described above, including the requirement that the term sheet be included in the final prospectus or

incorporated by reference into the final prospectus and therefore subject to liability for misrepresentations.

Road show provisions

The road show provisions permit an investment dealer to conduct a road show for potential investors if the conditions of the applicable provision are met. These conditions (described above) are intended to provide investor protection, including the requirement that:

- comparables can only be given to permitted institutional investors,

- road show materials must be included in the final prospectus or incorporated by reference into the final prospectus and therefore subject to liability for misrepresentations, and

- the investment dealer must establish and follow reasonable procedures for "restricted access" to road shows.

Anticipated Costs and Benefits

While the draft amendments may impose certain costs on market participants, the proposed changes to the current pre-marketing and marketing regime are generally expected to ease certain regulatory burdens and restrictions that issuers and investment dealers face in trying to successfully complete a prospectus offering and will foster capital raising activities.

General

Market participants will incur costs associated with understanding and complying with the new requirements. These are one-time start-up costs, which may vary among market participants. For example, market participants who presently do not have record keeping systems in place will face greater start-up costs than those who do.

Testing of the waters exemption for IPO issuers

The proposed testing of the waters exemption for IPO issuers involves costs associated with the record keeping requirements set out in the conditions to the exemption. However, these costs are justified by the benefit that the IPO issuer and its investment dealer will be able to determine interest in a potential IPO before incurring additional costs in preparing a preliminary long form prospectus for the IPO.

Term sheet and road show provisions

The proposed term sheet and road show provisions involve costs associated with having to file the term sheet and road show material on SEDAR, comply with disclosure and record-keeping requirements, and comply with restricted access requirements in the case of road shows. However, we believe that these costs are justified by the benefit of being able to distribute a term sheet in connection with a prospectus offering and having clear rules that permit road shows to be held during a prospectus offering.

Bought deal exemption

We do not anticipate any additional material costs with our proposals that specify when a bought deal agreement can be amended or terminated (since an issuer proposing to amend a bought deal agreement would have to prepare an amending agreement in any event). The main benefit is that there will be clear rules on when a bought deal agreement can be amended or terminated and when a bought deal or a bought deal syndicate can be enlarged. By having rules that specify when a bought deal can be enlarged, issuers and investment dealers may be able to save costs associated with filing a separate prospectus for an offering of additional securities.

Unpublished Materials

In proposing the draft amendments, we have not relied on any significant unpublished study, report, or other written materials.

Request for Comments

We welcome your comments on the draft amendments, and also invite comments on the following specific questions:

Testing of the waters exemption for IPO issuers

1. Would the proposed testing of the waters exemption for IPO issuers be of value to those issuers and their investment dealers? Would it allow them to obtain useful feedback from permitted institutional investors? Why or why not?

2. Do you think the proposed testing of the waters exemption for IPO issuers will be used? If so, who do you think would use the exemption most? Small issuers or large issuers? Or, would it be used equally by both?

Bought deal exemption

3. Our proposals provide for the enlargement of bought deals up to a specified percentage. Should the specified percentage be:

- 15% of the original size of the offering (which corresponds to the existing 15% limit on over-allotment options),
- 25% of the original size of the offering, or
- 50% of the original size of the offering?

Or, do you think another limit is appropriate in order to provide flexibility, yet prevent abuse of the bought deal exemption?

Term sheet provision for bought deals

4. The term sheet provision for bought deals provides that a bought deal term sheet could only be given to permitted institutional investors before the receipt of a preliminary short form prospectus. Should the rules also allow a bought deal term sheet to be given to retail investors before the receipt of a preliminary short form prospectus? Why or why not?

Comparables

5. Our proposals would permit a road show for institutional investors to contain comparables even if the comparables were not contained in the prospectus and therefore not subject to prospectus liability. It has been suggested that institutional investors are better able to understand the nature of comparables and the risks related to comparables (e.g., “cherry picking”) than ordinary retail investors and individuals who are accredited investors. Do you agree? Why or why not?

6. Do you agree with our proposal that before attending a road show that may contain comparables, the investment dealer conducting the road show must obtain confirmation in writing from the institutional investor that they will keep the comparables confidential? Why or why not?

7. If comparables are included in a prospectus or a road show, should the prospectus rules prescribe a method for choosing comparables in order to reduce the risk of “cherry picking”? Should the rules contain measures that would foster the preparation of comparables which are fair and balanced or comparables which could assist an investor in determining if an offering was properly priced? What methods would achieve these goals? For example, should the CSA prescribe a template mandating the metrics used in compiling

comparables or mandating how to pick a representative sample? If so, do you have suggestions for these templates?

8. If comparables are included in a prospectus or a road show, should the prospectus rules require additional disclosure to alert retail investors about the nature of comparables and how they can be "cherry picked" and misunderstood? What cautionary language and risk factors should be included? What other safeguards could we implement in order to reduce these risks?

How to provide your comments

Please provide your comments in writing by **February 23, 2012**. If you are not sending your comments by email, an electronic file containing the submissions should also be provided (in Windows format, Microsoft Word).

Please address your submission to the following Canadian securities regulatory authorities:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Deliver your comments **only** to the two addresses that follows. Your comments will be distributed to the other participating CSA member jurisdictions.

Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22^{e} étage
Montréal, Québec H4Z 1G3
Fax: 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-8145
E-mail: jstevenson@osc.gov.on.ca

Please note that comments received will be made publicly available and posted at www.osc.gov.on.ca and the websites of certain other securities regulatory authorities. We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

Questions

Please refer your questions to any of:

Rosetta Gagliardi
Senior Policy Adviser
Autorité des marchés financiers
514-395-0337, ext. 4462
rosetta.gagliardi@lautorite.qc.ca

Larissa Streu
Senior Legal Counsel, Corporate Finance
British Columbia Securities Commission
604-899-6888
lstreu@bcsc.bc.ca

Allan Lim
Manager, Corporate Finance
British Columbia Securities Commission
604-899-6780
alim@bcsc.bc.ca

Blaine Young
Associate Director, Corporate Finance
Alberta Securities Commission
403-297-4220
blaine.young@asc.ca

Lanion Beck
Legal Counsel, Corporate Finance
Alberta Securities Commission
403-355-3884
lanion.beck@asc.ca

Ian McIntosh
Deputy Director, Corporate Finance
Saskatchewan Financial Services Commission - Securities Division
306-787-5867
ian.mcintosh@gov.sk.ca

Bob Bouchard
Director, Corporate Finance
Manitoba Securities Commission
204-945-2555
bob.bouchard@gov.mb.ca

Michael Bennett
Senior Legal Counsel, Corporate Finance
Ontario Securities Commission
416-593-8079
mbennett@osc.gov.on.ca

Ella-Jane Loomis
Legal Counsel
New Brunswick Securities Commission
506-643-7857
ella-jane.loomis@nbsc-cvmnb.ca

Kevin Redden
Director, Corporate Finance
Nova Scotia Securities Commission
902-424-5343
reddenkg@gov.ns.ca

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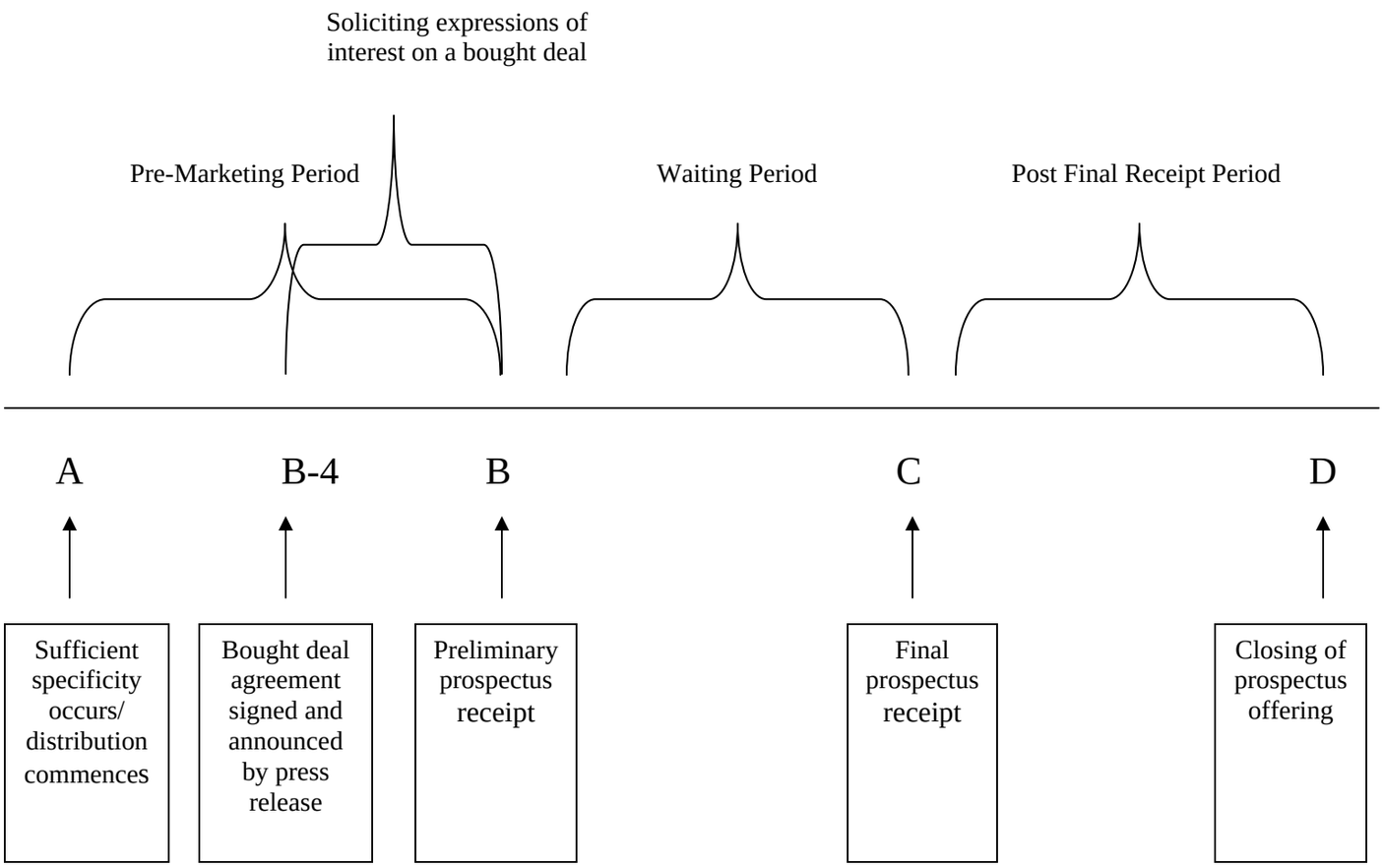
Appendix A

Phases of a Prospectus Offering



REGULATION TO AMEND REGULATION 41-101 RESPECTING GENERAL PROSPECTUS REQUIREMENTS

Securities Act
(R.S.Q., c. V-1.1, s. 331.1, par. (1), (4.1), (6), (8), (11), (14) and (34))

1. Section 1.1 of Regulation 41-101 respecting General Prospectus Requirements is amended:

(1) by inserting, after the definition of the term “base offering”, the following:

“ “base shelf prospectus” has the same meaning as in section 1.1 of Regulation 44-102 respecting Shelf Distributions;”;

(2) by inserting, after the definition of the term “business day”, the following:

“ “Canadian financial institution” has the same meaning as in section 1.1 of Regulation 45-106 respecting Prospectus and Registration Exemptions;”;

(3) by inserting, after the definition of the term “interim period”, the following:

“ “investment dealer” has the same meaning as in section 1.1 of Regulation 31-103 respecting Registration Requirements and Exemptions;”;

(4) by inserting, after the definition of the term “over-allotment option”, the following:

“ “permitted institutional investor” means any of the following:

(a) a Canadian financial institution or a Schedule III bank,

(b) the Business Development Bank of Canada,

(c) a subsidiary of any person referred to in paragraph (a) or (b) if the person owns all of the voting securities of the subsidiary except the voting securities required by law to be owned by directors of the subsidiary,

(d) a pension fund that is regulated by the federal Office of the Superintendent of Financial Institutions or a pension commission or similar regulatory authority of a jurisdiction of Canada or a foreign jurisdiction and includes a wholly-owned subsidiary of such a pension fund,

(e) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (c),

(f) the Government of Canada or a jurisdiction of Canada, or any Crown corporation, agency or wholly-owned entity of the Government of Canada or a jurisdiction of Canada,

(g) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government,

(h) a municipality, public board or commission in Canada and a metropolitan community or an intermunicipal management board in Québec,

(i) an investment fund if either of the following apply:

(i) the fund is managed by a person registered as an investment fund manager under the securities legislation of a jurisdiction of Canada,

(ii) the fund is advised by a person authorized to act as an adviser under the securities legislation of a jurisdiction of Canada;";

(5) by inserting, after the definition of the term "publicly accountable enterprise", the following:

" "registered individual" has the same meaning as in section 1.1 of Regulation 31-103 respecting Registration Requirements and Exemptions;";

(6) by inserting, after the definition of the term "reverse takeover acquirer", the following:

" "road show" means a presentation to potential investors, regarding a distribution of securities under a prospectus, conducted by an investment dealer on behalf of an issuer in which one or more executive officers of the issuer participate;

" "Schedule III bank" means a bank named in Schedule III of the Bank Act (S.C. 1991, c. 46);";

(7) by inserting, after the definition of the term "SEC issuer", the following:

" "shelf prospectus supplement" has the same meaning as in section 1.1 of Regulation 44-102 respecting Shelf Distributions;";

(8) by inserting, after the definition of the term "subordinate voting securities", the following:

" "term sheet" means a written communication regarding a distribution of securities under a prospectus that contains information on the issuer or the securities, but does not include

(a) a prospectus, or

(b) a notice, circular, advertisement, letter or other communication referred to in section 13.1 that is expressly permitted by securities legislation;".

2. Section 9.1 of the Regulation is amended by inserting, after subparagraph (vi) of paragraph (a), the following:

"(vii) a copy of any term sheet required to be filed under subsection 13.5(1); and".

3. Section 9.2 of the Regulation is amended by inserting, after subparagraph (xiii) of paragraph (a), the following:

"(xiv) a copy of any term sheet required to be filed under subsection 13.5(1) that has not previously been filed; and".

4. Section 13.1 of the Regulation is amended by replacing, in paragraph (1), the words "A notice" with the words "Except for a term sheet under subsection 13.5(1), a notice".

5. Section 13.2 of the Regulation is amended by replacing, in paragraph (1), the words "A notice" with the words "Except for a term sheet under subsection 13.6(1) or 13.7(1), a notice".

6. The Regulation is amended by adding, after section 13.3, the following:

"**13.4. Testing of the waters exemption – IPO issuers**

(1) Subject to subsections (2) to (4), the prospectus requirement does not apply to a solicitation of an expression of interest in order to ascertain if there would be sufficient interest in an initial public offering of securities of an issuer pursuant to a preliminary long form prospectus, if

(a) the issuer has a reasonable expectation of filing a preliminary long form prospectus in respect of an initial public offering in at least one jurisdiction;

(b) the issuer

(i) is not a reporting issuer in any jurisdiction before the date of the preliminary long form prospectus,

(ii) is not an SEC issuer before the date of the preliminary long form prospectus,

(iii) does not have a class of securities that has been assigned a ticker symbol by the Financial Industry Regulatory Authority in the United States of America for use on any of the over-the-counter markets in the United States of America before the date of the preliminary long form prospectus,

(iv) does not have a class of securities that have been traded on an over-the-counter market where trading data is publicly reported before the date of the preliminary long form prospectus, and

(v) does not have any of its securities listed, quoted or traded on a marketplace outside of Canada or any other facility outside of Canada for bringing together buyers and sellers of securities where trading data is publicly reported before the date of the preliminary long form prospectus;

(c) an investment dealer makes the solicitation on behalf of the issuer;

(d) the issuer provided written authorization to the investment dealer to act on its behalf before the investment dealer made the solicitation;

(e) the solicitation is made to a permitted institutional investor; and

(f) the issuer and the investment dealer keep information about the proposed offering confidential.

(2) An investment dealer must not solicit an expression of interest from a permitted institutional investor under subsection (1) unless

(a) any written material provided to the investor is marked confidential and contains a legend stating that the material is not subject to liability for misrepresentations under applicable securities legislation; and

(b) before providing the investor with information about the proposed offering, the investment dealer obtains confirmation in writing from the investor that the investor will keep the information confidential.

(3) An issuer relying on the exemption in subsection (1) must keep a written record of any investment dealer that it authorized to act on its behalf in making solicitations in reliance on the exemption and a copy of any written authorizations referred to in paragraph (1)(d).

(4) An investment dealer relying on the exemption in subsection (1) must keep

(a) a written record of any permitted institutional investor that it solicited in reliance on the exemption,

(b) a copy of any written material referred to in paragraph (2)(a), and

(c) any written confirmations referred to in paragraph (2)(b).

“**13.5. Term sheets during the waiting period**

(1) An investment dealer that provides a term sheet to a potential investor during the waiting period is exempt from the prospectus requirement if

(a) the term sheet complies with subsections (2) to (6);

(b) the disclosure in the term sheet is fair, true and plain;

(c) other than contact information for the investment dealer, all information in the term sheet concerning the securities is disclosed in the preliminary prospectus and any amendment to the preliminary prospectus;

(d) the term sheet contains the same cautionary language in bold type, other than prescribed legends, as the face page and summary of the preliminary prospectus;

(e) the term sheet is approved in writing by the issuer and the underwriters and filed before it is provided;

(f) the term sheet is provided in the local jurisdiction only if a receipt for the preliminary prospectus was issued in the jurisdiction; and

(g) the investment dealer provides a copy of the preliminary prospectus and any amendment with the term sheet.

(2) A term sheet provided under subsection (1) must be dated and state the following, on the first page, with the bracketed information completed:

"A preliminary prospectus containing important information relating to the securities described in this [term sheet] has been filed with the securities regulatory authority(ies) in [each of/certain of the provinces/provinces and territories of Canada]. A copy of the preliminary prospectus, and any amendment to the preliminary prospectus, is required to be delivered with this [term sheet].

"The preliminary prospectus is still subject to completion. There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final prospectus has been issued.

"This [term sheet] does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary prospectus, any amendment to the preliminary prospectus, the final prospectus and any amendment to the final prospectus for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.".

(3) If a term sheet is provided during the waiting period under subsection (1), the issuer must

(a) include the term sheet in its final prospectus or incorporate by reference the term sheet into its final prospectus in the manner contemplated by subsection 36A.1(1) of Form 41-101F1, subsection 37.3(1) of Form 41-101F2 or subsection 11.6(2) of Form 44-101F1, as applicable, and

(b) indicate that the term sheet is not part of the final prospectus to the extent that the term sheet's contents have been modified or superseded by a statement contained in the final prospectus and, if a statement in the term sheet has been modified or superseded, disclose how the statement in the term sheet has been modified or superseded by the statement in the final prospectus.

(4) If a term sheet is provided during the waiting period under subsection (1) but the issuer does not include the term sheet in its final prospectus or incorporate by reference the term sheet into its final prospectus in the manner contemplated by subsection 36A.1(1) of Form 41-101F1, subsection 37.3(1) of Form 41-101F2 or subsection 11.6(2) of Form 44-

101F1, as applicable, the term sheet is deemed for purposes of securities legislation to be incorporated into the issuer's final prospectus as of the date of the final prospectus to the extent not otherwise expressly modified or superseded by a statement contained in the final prospectus.

(5) If the final prospectus, or any amendment to the final prospectus, modifies a statement of a material fact that appeared in a term sheet provided during the waiting period under subsection (1), the issuer must prepare a revised term sheet that highlights the modified statement and the relevant investment dealer must deliver with the final prospectus, or any amendment, a copy of the revised term sheet to each purchaser of securities distributed under the final prospectus, or any amendment, that received the original term sheet.

(6) Any revised term sheet provided with the final prospectus, or any amendment, under subsection (5) must comply with section 13.6.

"**13.6. Term sheets after the receipt of a final prospectus**

(1) An investment dealer must not provide a term sheet to a potential investor after a receipt for a final prospectus, or any amendment to the final prospectus, is issued unless

(a) the term sheet complies with subsections (2) to (5);

(b) the disclosure in the term sheet is fair, true and plain;

(c) other than contact information for the investment dealer, all information in the term sheet concerning the securities is disclosed in the final prospectus and any amendment;

(d) the term sheet contains the same cautionary language in bold type, other than prescribed legends, as the face page and summary of the final prospectus;

(e) the term sheet is approved in writing by the issuer and the underwriters and filed before it is provided;

(f) the term sheet is provided in the local jurisdiction only if a receipt for the final prospectus was issued in the jurisdiction; and

(g) the investment dealer provides a copy of the final prospectus, and any amendment, with the term sheet.

(2) A term sheet provided under subsection (1) must be dated and state the following, on the first page, with the bracketed information completed:

"A final prospectus containing important information relating to the securities described in this [term sheet] has been filed with the securities regulatory authority(ies) in [each of/certain of the provinces/provinces and territories of Canada]. A copy of the final prospectus, and any amendment to the final prospectus, is required to be delivered with this [term sheet].

"This [term sheet] does not provide full disclosure of all material facts relating to the securities offered. Investors should read the final prospectus, and any amendment, for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.".

(3) If a term sheet is provided under subsection (1), the issuer must include the term sheet in its final prospectus and any amendment to the final prospectus or incorporate by reference the term sheet into its final prospectus, and any amendment, in the manner

contemplated by subsection 36A.1(2) of Form 41-101F1, subsection 37.3(2) of Form 41-101F2 or subsection 11.6(3) of Form 44-101F1, as applicable.

(4) If a term sheet is provided under subsection (1), the issuer must

(a) state in the final prospectus that any term sheet provided by the issuer to a potential purchaser after the date of the final prospectus is deemed for the purposes of securities legislation to be incorporated into the final prospectus, and

(b) in the case of an amendment to the final prospectus, indicate that the term sheet is not part of the final prospectus to the extent that the term sheet's contents have been modified or superseded by a statement contained in the amendment and, if a statement in the term sheet has been modified or superseded, disclose how the statement in the term sheet has been modified or superseded by the statement in the amendment.

(5) If a term sheet is provided under subsection (1) but the issuer does not include the term sheet in its final prospectus, and any amendment, or incorporate by reference the term sheet into its final prospectus, and any amendment, in the manner contemplated by subsection 36A.1(2) of Form 41-101F1, subsection 37.3(2) of Form 41-101F2 or subsection 11.6(3) of Form 44-101F1, as applicable, the term sheet is deemed for purposes of securities legislation to be incorporated into the issuer's final prospectus as of the date of the final prospectus to the extent not otherwise expressly modified or superseded by a statement contained in the final prospectus.

"**13.7. Term sheets after the receipt of a final base shelf prospectus**

(1) An investment dealer must not provide a term sheet to a potential investor after a receipt for a final base shelf prospectus, or any amendment to the final base shelf prospectus, is issued unless

(a) the term sheet complies with subsections (2) to (8);

(b) the disclosure in the term sheet is fair, true and plain;

(c) other than contact information for the investment dealer, all information in the term sheet concerning the securities is disclosed in the final base shelf prospectus, any amendment to the final base shelf prospectus, or any applicable shelf prospectus supplement or preliminary form of shelf prospectus supplement that has been filed;

(d) the term sheet contains the same cautionary language in bold type, other than prescribed legends, as the face page and summary of the final base shelf prospectus;

(e) the term sheet is approved in writing by the issuer and the underwriters and filed before it is provided;

(f) the term sheet is provided in the local jurisdiction only if a receipt for the final base shelf prospectus was issued in the jurisdiction; and

(g) the investment dealer provides a copy of the final base shelf prospectus, and any amendment to the final base shelf prospectus, and any applicable shelf prospectus supplement or preliminary form of shelf prospectus supplement with the term sheet.

(2) A term sheet provided under subsection (1) must be dated and state the following, on the first page, with the bracketed information completed:

"A final base shelf prospectus containing important information relating to the securities described in this [term sheet] has been filed with the securities regulatory

authority(ies) in [each of/certain of the provinces/provinces and territories of Canada]. A copy of the final base shelf prospectus, any amendment to the final base shelf prospectus, and any applicable shelf prospectus supplement or preliminary form of shelf prospectus supplement is required to be delivered with this [term sheet].

"This [term sheet] does not provide full disclosure of all material facts relating to the securities offered. Investors should read the final base shelf prospectus, any amendment and any applicable supplement for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.".

(3) If a term sheet is provided under subsection (1) after a receipt for the final base shelf prospectus is issued but before a shelf prospectus supplement is filed, the issuer must

(a) include the term sheet in the relevant shelf prospectus supplement or incorporate by reference the term sheet into the relevant shelf prospectus supplement in the manner contemplated by paragraph 4 of subsection 6.3(1) of Regulation 44-102 respecting Shelf Distributions, and

(b) indicate that the term sheet is not part of the shelf prospectus supplement to the extent that the term sheet's contents have been modified or superseded by a statement contained in the shelf prospectus supplement and, if a statement in the term sheet has been modified or superseded, disclose how the statement in the term sheet has been modified or superseded by the statement in the shelf prospectus supplement.

(4) If a term sheet is provided under subsection (1) after a receipt for the final base shelf prospectus is issued and after the relevant shelf prospectus supplement is filed, the issuer must include the term sheet in the relevant shelf prospectus supplement or incorporate by reference the term sheet into the relevant shelf prospectus supplement in the manner contemplated by paragraph 4 of subsection 6.3(1) of Regulation 44-102 respecting Shelf Distributions.

(5) If a term sheet is provided under subsection (1) after a receipt for the final base shelf prospectus is issued and after the relevant shelf prospectus supplement is filed, the issuer must state in the shelf prospectus supplement that any term sheet provided by the issuer to a potential purchaser after the date of the shelf prospectus supplement and before the termination of the distribution is deemed to be incorporated into the shelf prospectus supplement.

(6) If a term sheet is provided under subsection (1) but the issuer does not include the term sheet in its relevant shelf prospectus supplement or incorporate by reference the term sheet into its relevant shelf prospectus supplement in the manner contemplated by subsection (3) or (4), as applicable, the term sheet is deemed for purposes of securities legislation to be incorporated into the shelf prospectus supplement as of the date of the supplement to the extent not otherwise expressly modified or superseded by a statement contained in the supplement.

(7) If a shelf prospectus supplement modifies a statement of a material fact that appeared in a term sheet provided under subsection (1) with a preliminary form of shelf prospectus supplement, the issuer must prepare a revised term sheet that highlights the modified statement and the relevant investment dealer must deliver with the shelf prospectus supplement a copy of the revised term sheet to each purchaser of securities distributed under the shelf prospectus supplement that received the original term sheet.

(8) Any revised term sheet provided with the shelf prospectus supplement under subsection (7) must comply with this section.

"**13.8. Road shows for permitted institutional investors during the waiting period**

(1) An investment dealer that conducts a road show for permitted institutional investors during the waiting period is exempt from the prospectus requirement if

(a) the road show complies with subsections (2) to (4);

(b) the disclosure in the road show is fair, true and plain;

(c) other than information that compares the issuer to other issuers and contact information for the investment dealer conducting the road show, all information in the road show concerning the securities is disclosed in the preliminary prospectus and any amendment to the preliminary prospectus;

(d) the issuer provides written authorization to the investment dealer to conduct the road show;

(e) the road show is conducted in the local jurisdiction only if a receipt for the preliminary prospectus was issued in the jurisdiction;

(f) only permitted institutional investors, registered individuals and representatives of the issuer attend the road show; and

(g) before the road show commences, the investment dealer obtains confirmation in writing from each permitted institutional investor attending the road show that the permitted institutional investor will keep confidential any information that compares the issuer to other issuers that is disclosed in connection with the road show.

(2) An investment dealer must not provide written material, other than a preliminary prospectus and any amendment to a preliminary prospectus, to a permitted institutional investor attending a road show conducted under subsection (1) unless

(a) other than information that compares the issuer to other issuers, the written material is provided in accordance with section 13.5;

(b) the issuer redacts any information not disclosed in the preliminary prospectus, or any amendment, that compares the issuer to other issuers from the written material before filing it in accordance with paragraph 13.5(1)(e);

(c) the version of the written material that is filed contains a description of any information that was redacted in accordance with paragraph (b) immediately after the redacted information; and

(d) the version of the written material that is provided to the permitted institutional investor attending the road show contains a statement, immediately after any information not disclosed in the preliminary prospectus or any amendment that compares the issuer to other issuers, that the information is not disclosed in the preliminary prospectus, or any amendment, and will not be subject to prospectus liability.

(3) The investment dealer must establish and follow reasonable procedures to

(a) verify the identity and keep a written record of any permitted institutional investor attending the road show in person, by telephone conference call, over the internet or by other electronic means;

(b) ensure that the permitted institutional investor has received a copy of the preliminary prospectus and any amendment to the preliminary prospectus; and

(c) restrict copying of any written materials.

(4) The investment dealer must commence the road show with the oral reading of the following statement, with the bracketed information completed:

"A preliminary prospectus containing important information relating to the securities described in this presentation has been filed with the securities regulatory authority(ies) in [each of/certain of the provinces/provinces and territories of Canada]. A copy of the preliminary prospectus, and any amendment to the preliminary prospectus, is required to be delivered to each investor attending this presentation.

"The preliminary prospectus is still subject to completion. There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final prospectus has been issued.

"This presentation does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary prospectus, any amendment to the preliminary prospectus and the final prospectus for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.".

"**13.9. Road shows for retail investors during the waiting period**

(1) An investment dealer that conducts a road show for potential investors during the waiting period is exempt from the prospectus requirement if

(a) the road show complies with subsections (2) to (4);

(b) the disclosure in the road show is fair, true and plain;

(c) other than contact information for the investment dealer conducting the road show, all information in the road show concerning the securities is disclosed in the preliminary prospectus and any amendment to the preliminary prospectus;

(d) the issuer provides written authorization to the investment dealer to conduct the road show;

(e) the road show is conducted in the local jurisdiction only if a receipt for the preliminary prospectus was issued in the jurisdiction; and

(f) only potential investors, registered individuals and representatives of the issuer attend the road show.

(2) An investment dealer must not provide written material, other than a preliminary prospectus and any amendment to the preliminary prospectus, to an investor attending a road show conducted under subsection (1) unless the written material is provided in accordance with section 13.5.

(3) The investment dealer must establish and follow reasonable procedures to

(a) verify the identity and keep a written record of any investor attending the road show in person, by telephone conference call, over the internet or by other electronic means;

(b) ensure that the investor has received a copy of the preliminary prospectus and any amendment; and

(c) restrict copying of any written materials.

(4) The investment dealer must commence the road show with the oral reading of the following statement, with the bracketed information completed:

"A preliminary prospectus containing important information relating to the securities described in this presentation has been filed with the securities regulatory

authority(ies) in [each of/certain of the provinces/provinces and territories of Canada]. A copy of the preliminary prospectus, and any amendment to the preliminary prospectus, is required to be delivered to each investor attending this presentation.

"The preliminary prospectus is still subject to completion. There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final prospectus has been issued.

"This presentation does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary prospectus, any amendment to the preliminary prospectus and the final prospectus for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.".

"**13.10. Road shows for permitted institutional investors after the receipt of a final prospectus**

(1) An investment dealer must not conduct a road show for permitted institutional investors after a receipt for a final prospectus, or any amendment to the final prospectus, is issued unless

(a) the road show complies with subsections (2) to (4);

(b) the disclosure in the road show is fair, true and plain;

(c) other than information that compares the issuer to other issuers and contact information for the investment dealer conducting the road show, all information in the road show concerning the securities is disclosed in the final prospectus and any amendment;

(d) the issuer provides written authorization to the investment dealer to conduct the road show;

(e) the road show is conducted in the local jurisdiction only if a receipt for the final prospectus was issued in the jurisdiction;

(f) only permitted institutional investors, registered individuals and representatives of the issuer attend the road show; and

(g) before the road show commences, the investment dealer obtains confirmation in writing from each permitted institutional investor attending the road show that the permitted institutional investor will keep confidential any information that compares the issuer to other issuers that is disclosed in connection with the road show.

(2) An investment dealer must not provide written material, other than a final prospectus and any amendment, to permitted institutional investors attending a road show conducted under subsection (1) unless

(a) other than information that compares the issuer to other issuers, the written material is provided in accordance with section 13.6;

(b) the issuer redacts any information not disclosed in the final prospectus, or any amendment, that compares the issuer to other issuers from the written material before filing it in accordance with paragraph 13.6(1)(e);

(c) the version of the written material that is filed contains a description of any information that was redacted in accordance with paragraph (b) immediately after the redacted information; and

(d) the version of the written material that is provided to the permitted institutional investors attending the road show contains a statement, immediately after any information not disclosed in the final prospectus or any amendment that compares the issuer to other issuers, that the information is not disclosed in the final prospectus or any amendment and will not be subject to prospectus liability.

(3) The investment dealer must establish and follow reasonable procedures to

(a) verify the identity and keep a written record of any permitted institutional investor attending the road show in person, by telephone conference call, over the internet or by other electronic means;

(b) ensure that the permitted institutional investor has received a copy of the final prospectus and any amendment; and

(c) restrict copying of any written materials.

(4) The investment dealer must commence the road show with the oral reading of the following statement, with the bracketed information completed:

"A final prospectus containing important information relating to the securities described in this presentation has been filed with the securities regulatory authority(ies) in [each of/certain of the provinces/provinces and territories of Canada]. A copy of the final prospectus, and any amendment to the final prospectus, is required to be delivered to each investor attending this presentation.

"This presentation does not provide full disclosure of all material facts relating to the securities offered. Investors should read the final prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.".

"**13.11. Road shows for retail investors after the receipt of a final prospectus**

(1) An investment dealer must not conduct a road show for potential investors after a receipt for a final prospectus, or any amendment to the final prospectus, is issued unless

(a) the road show complies with subsections (2) to (4);

(b) the disclosure in the road show is fair, true and plain;

(c) other than contact information for the investment dealer conducting the road show, all information in the road show concerning the securities is disclosed in the final prospectus and any amendment;

(d) the issuer provides written authorization to the investment dealer to conduct the road show;

(e) the road show is conducted in the local jurisdiction only if a receipt for the final prospectus was issued in the jurisdiction; and

(f) only potential investors, registered individuals and representatives of the issuer attend the road show.

(2) An investment dealer must not provide written material, other than a final prospectus and any amendment, to investors attending a road show conducted under subsection (1) unless the written material is provided in accordance with section 13.6.

(3) The investment dealer must establish and follow reasonable procedures to

(a) verify the identity and keep a written record of any investor attending the road show in person, by telephone conference call, over the internet or by other electronic means;

(b) ensure that the investor has received a copy of the final prospectus and any amendment; and

(c) restrict copying of any written materials.

(4) The investment dealer must commence the road show with the oral reading of the following statement, with the bracketed information completed:

"A final prospectus containing important information relating to the securities described in this presentation has been filed with the securities regulatory authority(ies) in [each of/certain of the provinces/provinces and territories of Canada]. A copy of the final prospectus, and any amendment to the final prospectus, is required to be delivered to each investor attending this presentation.

"This presentation does not provide full disclosure of all material facts relating to the securities offered. Investors should read the final prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.".

"**13.12. Road shows for permitted institutional investors after the receipt of a final base shelf prospectus**

(1) An investment dealer must not conduct a road show for permitted institutional investors after a receipt for a final base shelf prospectus, or any amendment to the final base shelf prospectus, is issued unless

(a) the road show complies with subsections (2) to (4);

(b) the disclosure in the road show is fair, true and plain;

(c) other than information that compares the issuer to other issuers and contact information for the investment dealer conducting the road show, all information in the road show concerning the securities is disclosed in the final base shelf prospectus, any amendment to the final base shelf prospectus and any applicable shelf prospectus supplement or preliminary form of shelf prospectus supplement that has been filed;

(d) the issuer provides written authorization to the investment dealer to conduct the road show;

(e) the road show is conducted in the local jurisdiction only if a receipt for the final base shelf prospectus was issued in the jurisdiction;

(f) only permitted institutional investors, registered individuals and representatives of the issuer attend the road show; and

(g) before the road show commences, the investment dealer obtains confirmation in writing from each permitted institutional investor attending the road show that the permitted institutional investor will keep confidential any information that compares the issuer to other issuers that is disclosed in connection with the road show.

(2) An investment dealer must not provide written material, other than a final base shelf prospectus, any amendment to the final base shelf prospectus and any applicable shelf prospectus supplement or preliminary form of shelf prospectus supplement, to permitted institutional investors attending a road show conducted under subsection (1) unless

(a) other than information that compares the issuer to other issuers, the written material is provided in accordance with section 13.7;

(b) the issuer redacts any information not disclosed in the final base shelf prospectus, any amendment to the final base shelf prospectus or any applicable shelf prospectus supplement or preliminary form of shelf prospectus supplement that compares the issuer to other issuers from the written material before filing it in accordance with paragraph 13.7(1)(e);

(c) the version of the written material that is filed contains a description of any information that was redacted in accordance with paragraph (b) immediately after the redacted information; and

(d) the version of the written material that is provided to the permitted institutional investors attending the road show contains a statement, immediately after any information not disclosed in the final base shelf prospectus, any amendment to the final base shelf prospectus or any applicable shelf prospectus supplement or preliminary form of shelf prospectus supplement that compares the issuer to other issuers, that the information is not disclosed in the final base shelf prospectus, any amendment or any applicable supplement, and will not be subject to prospectus liability.

(3) The investment dealer must establish and follow reasonable procedures to

(a) verify the identity and keep a written record of any permitted institutional investor attending the road show in person, by telephone conference call, over the internet or by other electronic means;

(b) ensure that the permitted institutional investor has received a copy of the final base shelf prospectus, any amendment to the base shelf prospectus and any applicable shelf prospectus supplement or preliminary form of shelf prospectus supplement; and

(c) restrict copying of any written materials.

(4) The investment dealer must commence the road show with the oral reading of the following statement, with the bracketed information completed:

"A final base shelf prospectus containing important information relating to the securities described in this presentation has been filed with the securities regulatory authority(ies) in [each of/certain of the provinces/provinces and territories of Canada]. A copy of the final base shelf prospectus, any amendment to the final base shelf prospectus and any applicable shelf prospectus supplement or preliminary form of shelf prospectus supplement is required to be delivered to each investor attending this presentation.

"This presentation does not provide full disclosure of all material facts relating to the securities offered. Investors should read the final base shelf prospectus, any amendment and any applicable supplement for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.".

"**13.13. Road shows for retail investors after the receipt of a final base shelf prospectus**

(1) An investment dealer must not conduct a road show for potential investors after a receipt is issued for a final base shelf prospectus, or any amendment to the final base shelf prospectus, unless

(a) the road show complies with subsections (2) to (4);

(b) the disclosure in the road show is fair, true and plain;

(c) other than contact information for the investment dealer conducting the road show, all information in the road show concerning the securities is disclosed in the final base shelf prospectus, any amendment to the final base shelf prospectus and any applicable shelf prospectus supplement or preliminary form of shelf prospectus supplement;

(d) the issuer provides written authorization to the investment dealer to conduct the road show;

(e) the road show is conducted in the local jurisdiction only if a receipt for the final base shelf prospectus was issued in the jurisdiction; and

(f) only potential investors, registered individuals and representatives of the issuer attend the road show.

(2) An investment dealer must not provide written material, other than a final base shelf prospectus, any amendment to the final base shelf prospectus and any applicable shelf prospectus supplement or preliminary form of shelf prospectus supplement, to investors attending a road show conducted under subsection (1) unless the written material is provided in accordance with section 13.7.

(3) The investment dealer must establish and follow reasonable procedures to

(a) verify the identity and keep a written record of any investor attending the road show in person, by telephone conference call, over the internet or by other electronic means;

(b) ensure that the investor has received a copy of the final base shelf prospectus, any amendment to the final base shelf prospectus and any applicable shelf prospectus supplement or preliminary form of shelf prospectus supplement; and

(c) restrict copying of any written materials.

(4) The investment dealer must commence the road show with the oral reading of the following statement, with the bracketed information completed:

"A final base shelf prospectus containing important information relating to the securities described in this presentation has been filed with the securities regulatory authority(ies) in [each of/certain of the provinces/provinces and territories of Canada]. A copy of the final base shelf prospectus, any amendment to the final base shelf prospectus and any applicable shelf prospectus supplement or preliminary form of shelf prospectus supplement is required to be delivered to each investor attending this presentation.

"This presentation does not provide full disclosure of all material facts relating to the securities offered. Investors should read the final base shelf prospectus, any amendment and any applicable supplement for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.".".

7. Form 41-101F1 of the Regulation is amended:

(1) by adding, in the general instructions and after paragraph (15), the following:

"*(16) A term sheet prepared in accordance with subsections 13.5(1) or 13.6(1) of the Regulation is the only document that can be incorporated by reference into a long form prospectus.*";

(2) by replacing, in the reference provided under paragraph (a) of item 20.2, "[its/their] assessment of the state of the financial markets" with "[describe any "market out", "disaster out", "material change out" or similar provision]";

(3) by inserting, after item 36.1, the following:

"**Item 36A Term Sheets Incorporated by Reference**

36A.1. Term sheets incorporated by reference

(1) If a term sheet is provided during the waiting period under subsection 13.5(1) of the Regulation, the issuer must

(a) include the term sheet in the final prospectus or incorporate the term sheet by reference into the final prospectus, and

(b) indicate that the term sheet is not part of the final prospectus to the extent that the term sheet's contents have been modified or superseded by a statement contained in the final prospectus and, if a statement in the term sheet has been modified or superseded, disclose how the statement in the term sheet has been modified or superseded by the statement in the final prospectus.

(2) State that any term sheet provided under subsection 13.6(1) of the Regulation to a potential purchaser after the date of the final prospectus and before the termination of the distribution is deemed to be incorporated into the final prospectus.

GUIDANCE

A term sheet does not, as a matter of law, amend a preliminary prospectus, any amendment to a preliminary prospectus, a final prospectus or any amendment to a final prospectus.";

(4) by inserting, after item 37.5, the following:

"**37.6. Term sheets**

If an issuer relied on subsection 13.5(1) of the Regulation or intends to rely on subsection 13.6(1) of the Regulation, change "prospectus" to "prospectus (which includes the term sheet[s] included or incorporated by reference)" in the first place where it appears in the statements in sections 37.2 and 37.3.".

8. Form 41-101F2 of the Regulation is amended:

(1) by replacing, in the reference provided under paragraph (1) of item 25.3, "[its/their] assessment of the state of the financial markets" with "[describe any "market out", "disaster out", "material change out" or similar provision]";

(2) by inserting, after item 37.2, the following:

"**37.3. Term Sheets Incorporated by Reference**

(1) If a term sheet is provided during the waiting period under subsection 13.5(1) of the Regulation, the issuer must

(a) include the term sheet in the final prospectus or incorporate the term sheet by reference into the final prospectus, and

(b) indicate that the term sheet is not part of the final prospectus to the extent that the term sheet's contents have been modified or superseded by a statement contained in the final prospectus and, if a statement in the term sheet has been modified or superseded, disclose how the statement in the term sheet has been modified or superseded by the statement in the final prospectus.

(2) State that any term sheet provided under subsection 13.6(1) of the Regulation to a potential purchaser after the date of the final prospectus and before the termination of the distribution is deemed to be incorporated into the final prospectus.

GUIDANCE

A term sheet does not, as a matter of law, amend a preliminary prospectus, any amendment to a preliminary prospectus, a final prospectus or any amendment to a final prospectus.”.

9. This Regulation comes into force on *(indicate the date of coming into force of this Regulation).*

REGULATION TO AMEND REGULATION 44-101 RESPECTING SHORT FORM PROSPECTUS DISTRIBUTIONS

Securities Act
(R.S.Q., c. V-1.1, s. 331.1, par. (1), (4.1), (6), (8), (11) and (34))

1. Section 4.1 of Regulation 44-101 respecting Short Form Prospectus Distributions is amended by inserting, after subparagraph (vi) of paragraph (a), the following:

"(vii) a copy of any term sheet required to be filed under subsection 13.5(1) of Regulation 41-101 respecting General Prospectus Requirements and a copy of any term sheet required to be filed under subsection 7.5(1) of this Regulation that has not previously been filed; and".

2. Section 4.2 of the Regulation is amended by adding, after subparagraph (xi) of paragraph (a), the following:

"(xii) a copy of any term sheet required to be filed under subsection 13.5(1) of Regulation 41-101 respecting General Prospectus Requirements that has not previously been filed; and".

3. The Regulation is amended by replacing sections 7.1 and 7.2 with the following:

"**7.1. Definitions and Interpretations**

(1) In this Part:

"bought deal agreement" means an agreement among an issuer and an underwriter or underwriters

(a) in which the underwriter has, or underwriters have, agreed to purchase all securities offered in a distribution under a short form prospectus of the issuer on a firm commitment basis, other than securities issuable on the exercise of an over-allotment option, and

(b) that does not have a market-out clause; and

"market-out clause" means a provision in an agreement which permits an underwriter to terminate its commitment, or underwriters to terminate their commitment, to purchase securities in the event that the securities cannot be marketed profitably due to market conditions.

(2) In this Part, a reference to "amend" includes "amend and restate".

"**7.2. Solicitations of Expressions of Interest**

The prospectus requirement does not apply to solicitations of expressions of interest before the issuance of a receipt for a preliminary short form prospectus for securities to be qualified for distribution under a short form prospectus in accordance with this Regulation, if

(a) before any solicitations of expressions of interest, the issuer has entered into a bought deal agreement with an underwriter or underwriters,

(b) the bought deal agreement has fixed the terms of the distribution, including the number and type of securities and the price per security, and requires that the issuer file a preliminary short form prospectus for the securities and obtain from the regulator or, in Québec, the securities regulatory authority a receipt, dated as of a date that

is not more than four business days after the date that the bought deal agreement is entered into, for the preliminary short form prospectus,

(c) the issuer files a preliminary short form prospectus for the securities in accordance with this Regulation within four business days after the date that the bought deal agreement is entered into and obtains from the regulator or, in Québec, the securities regulatory authority a receipt, dated as of a date that is not more than four business days after the date the bought deal agreement is entered into, for the preliminary short form prospectus,

(d) before any solicitations of expressions of interest, the issuer has issued and filed a news release announcing the bought deal agreement immediately upon entering into the agreement,

(e) upon issuance of a receipt for the preliminary short form prospectus, a copy of the preliminary short form prospectus is sent to each person who has expressed an interest in acquiring the securities, and

(f) except as provided in paragraph (a), no agreement of purchase and sale for the securities is entered into until the short form prospectus has been filed and a receipt obtained.".

4. The Regulation is amended by adding, after section 7.2, the following:

"**7.3. Solicitations of Expressions of Interest – Over-allotment Options**

The prospectus requirement does not apply to solicitations of expressions of interest before the issuance of a receipt for a preliminary short form prospectus for securities to be issued pursuant to an over-allotment option that are qualified for distribution under a short form prospectus in accordance with this Regulation, if

(a) before any solicitations of expressions of interest, the issuer has entered into a bought deal agreement with an underwriter or underwriters,

(b) the bought deal agreement has fixed the terms of the distribution, including the number and type of securities and the price per security, and requires that the issuer file a preliminary short form prospectus for the securities and obtain from the regulator or, in Québec, the securities regulatory authority a receipt, dated as of a date that is not more than four business days after the date that the bought deal agreement is entered into, for the preliminary short form prospectus,

(c) the issuer files a preliminary short form prospectus for the securities in accordance with this Regulation within four business days after the date that the bought deal agreement is entered into and obtains from the regulator or, in Québec, the securities regulatory authority a receipt, dated as of a date that is not more than four business days after the date the bought deal agreement is entered into, for the preliminary short form prospectus,

(d) before any solicitations of expressions of interest, the issuer has issued and filed a news release announcing the bought deal agreement immediately upon entering into the agreement,

(e) upon issuance of a receipt for the preliminary short form prospectus, a copy of the preliminary short form prospectus is sent to each person who has expressed an interest in acquiring the securities, and

(f) except as provided in paragraph (a), no agreement of purchase and sale for the securities is entered into until the short form prospectus has been filed and a receipt obtained.

"**7.4. Amendment to Bought Deal Agreement**

(1) Subject to subsections (2), (3), (4) and (5), an issuer and other parties must not amend a bought deal agreement referred to in paragraphs 7.2(a) and 7.3(a).

(2) An issuer and all parties to a bought deal agreement referred to in paragraphs 7.2(a) and 7.3(a) must not amend the agreement to increase the number of securities to be purchased by the underwriter or underwriters, unless

(a) the number of additional securities does not in the aggregate exceed ●% of the total of the base offering contemplated by the original agreement plus any securities that would be acquired upon exercise of an over-allotment option,

(b) the amended agreement is with the same underwriter or underwriters as the original agreement or additional underwriters have been added in the circumstances to which paragraphs (3)(a) to (d) apply,

(c) the amended agreement is otherwise on the same terms as the original agreement, including the price per security,

(d) the increase in the number of securities is not the culmination of a formal or informal plan to offer a larger number of securities under the short form prospectus devised before the execution of the original agreement,

(e) the issuer files a preliminary short form prospectus for the increased number of securities in accordance with this Regulation within four business days after the date that the original agreement is entered into and obtains from the regulator or, in Québec, the securities regulatory authority a receipt, dated as of a date that is not more than four business days after the date the original agreement is entered into, for the preliminary short form prospectus,

(f) the issuer has issued and filed a news release announcing the amendment to the original agreement immediately upon entering into the amendment,

(g) only one amendment is made to the original agreement to increase the number of securities to be purchased by the underwriter or underwriters; and

(h) the conditions in sections 7.2 and 7.3, if applicable, are complied with.

(3) An issuer and all parties to a bought deal agreement referred to in paragraphs 7.2(a) and 7.3(a) must not amend the agreement to add additional underwriters and to specify the number of securities to be purchased by the additional underwriters on a several basis, unless

(a) the addition of an underwriter is not the culmination of a formal or informal plan to add that underwriter devised before the execution of the original agreement,

(b) the aggregate number of securities to be purchased by the underwriters remains the same or have increased in circumstances in which paragraphs (2)(a) to (f) apply,

(c) the amended agreement is otherwise on the same terms as the original agreement, and

(d) the conditions in sections 7.2 and 7.3, if applicable, are complied with.

(4) An issuer and all parties to a bought deal agreement referred to in paragraphs 7.2(a) and 7.3(a) must not amend the agreement in order to add additional representations, warranties, indemnities and conditions, unless

(a) the amended agreement is otherwise on the same terms as the original agreement, and

(b) the conditions in sections 7.2 and 7.3 and paragraphs (2)(a) to (i) and (3)(a) to (d), to the extent applicable, are complied with.

(5) An issuer and all parties to a bought deal agreement referred to in paragraphs 7.2(a) and 7.3(a) must not terminate it unless the parties decide not to proceed with the prospectus offering.

"**7.5. Term Sheets after Announcement of Bought Deal but before the Receipt of a Preliminary Short Form Prospectus**

(1) An investment dealer that provides a term sheet to a permitted institutional investor before the issuance of a receipt for a preliminary short form prospectus is exempt from the prospectus requirement if

(a) the term sheet complies with subsections (2) to (8);

(b) the issuer is relying on the exemption in section 7.2 or section 7.3 and has complied with paragraphs (a), (b) and (d) of section 7.2 or section 7.3, as applicable;

(c) the disclosure in the term sheet is fair, true and plain;

(d) other than contact information for the investment dealer distributing the term sheet, all information in the term sheet concerning the securities is disclosed in

(i) the news release described in paragraph 7.2(d) or 7.3(d), or

(ii) a document referred to in subsection 11.1(1) of Form 44-101F1 that the issuer has filed;

(e) the term sheet is approved in writing by the issuer and the underwriters and filed before it is provided;

(f) the term sheet is provided in the local jurisdiction only if the preliminary short form prospectus will be filed in the jurisdiction; and

(g) upon issuance of a receipt for the preliminary short form prospectus, a copy of the preliminary short form prospectus is sent to each permitted institutional investor that received the term sheet.

(2) A term sheet provided under subsection (1) must be dated and state the following, on the first page, with the bracketed information completed:

"A preliminary short form prospectus containing important information relating to the securities described in this [term sheet] has not yet been filed with the securities regulatory authority(ies) in [each of/certain of the provinces/provinces and territories of Canada]. A copy of the preliminary short form prospectus and any amendment to the preliminary short form prospectus is required to be delivered to any permitted institutional investor that receives this [term sheet].

"There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final short form prospectus has been issued.

"This [term sheet] does not provide full disclosure of all material facts relating to the securities offered. Investors should read the subsequent preliminary short form prospectus, any amendment to the preliminary short form prospectus, the final short form prospectus and any amendment to the final short form prospectus for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.".

(3) If a term sheet is provided before the issuance of a receipt for a preliminary short form prospectus under subsection (1), the issuer must

(a) include the term sheet in its preliminary short form prospectus and its final short form prospectus or incorporate by reference the term sheet into its preliminary short form prospectus and its final short form prospectus in the manner contemplated by subsection 11.6(1) of Form 44-101F1, and

(b) indicate that the term sheet is not part of the preliminary short form prospectus or the final short form prospectus to the extent that the term sheet's contents have been modified or superseded by a statement contained in the preliminary short form prospectus or the final short form prospectus and, if a statement in the term sheet has been modified or superseded, disclose how the statement in the term sheet has been modified or superseded by the statement in the preliminary short form prospectus or the final short form prospectus.

(4) If a term sheet is provided before the issuance of a receipt for a preliminary short form prospectus under subsection (1) but the issuer does not include the term sheet in its preliminary short form prospectus and its final short form prospectus or incorporate by reference the term sheet into its preliminary short form prospectus and its final short form prospectus in the manner contemplated by subsection 11.6(1) of Form 44-101F1, the term sheet is deemed for purposes of securities legislation to be incorporated into the issuer's final short form prospectus as of the date of the final short form prospectus to the extent not otherwise expressly modified or superseded by a statement contained in the final short form prospectus.

(5) If the preliminary short form prospectus modifies a statement of a material fact that appeared in a term sheet provided before the issuance of a receipt for the preliminary short form prospectus under subsection (1), the issuer must prepare a revised term sheet that highlights the modified statement and the relevant investment dealer must deliver with the preliminary short form prospectus a copy of the revised term sheet to each permitted institutional investor that received the original term sheet.

(6) Any revised term sheet provided with the preliminary short form prospectus under subsection (5) must comply with section 13.5 of Regulation 41-101 respecting General Prospectus Requirements.

(7) If the final short form prospectus, or any amendment to the final short form prospectus, modifies a statement of a material fact that appeared in a term sheet provided before the issuance of a receipt for the preliminary short form prospectus under subsection (1), the issuer must prepare a revised term sheet that highlights the modified statement and the relevant investment dealer must deliver with the final short form prospectus, or any amendment, a copy of the revised term sheet to each purchaser of securities distributed under the final short form prospectus, or any amendment, that received the original term sheet.

(8) Any revised term sheet provided with the final short form prospectus, or any amendment, under subsection (7) must comply with section 13.6 of Regulation 41-101 respecting General Prospectus Requirements.".

5. Form 44-101F1 of the Regulation is amended:

(1) by replacing, in the reference provided under paragraph (a) of item 5.1, "[its/their] assessment of the state of the financial markets" with "[describe any "market out", "disaster out", "material change out" or similar provision]";

(2) by adding, after item 11.5, the following:

"**11.6. Term Sheets Incorporated by Reference**

(1) If a term sheet is provided to a permitted institutional investor before the issuance of a receipt for a preliminary short form prospectus under subsection 7.5(1) of the Regulation, the issuer must

(a) include the term sheet in the preliminary short form prospectus and the final short form prospectus or incorporate the term sheet by reference into the preliminary short form prospectus and the final short form prospectus; and

(b) indicate that the term sheet is not part of the final short form prospectus to the extent that the term sheet's contents have been modified or superseded by a statement contained in the preliminary short form prospectus or the final short form prospectus and, if a statement in the term sheet has been modified or superseded, disclose how the statement in the term sheet has been modified or superseded by the statement in the preliminary short form prospectus or the final short form prospectus, as applicable.

(2) If a term sheet is provided during the waiting period under subsection 13.5(1) of Regulation 41-101 respecting General Prospectus Requirements, the issuer must

(a) include the term sheet in the final short form prospectus or incorporate the term sheet by reference into the final short form prospectus, by means of a statement in the final short form prospectus to that effect; and

(b) indicate that the term sheet is not part of the final short form prospectus to the extent that the term sheet's contents have been modified or superseded by a statement contained in the final short form prospectus and, if a statement in the term sheet has been modified or superseded, disclose how the statement in the term sheet has been modified or superseded by the statement in the final short form prospectus.

(3) State that any term sheet provided under subsection 13.6(1) of Regulation 41-101 respecting General Prospectus Requirements to a potential purchaser after the date of the final short form prospectus and before the termination of the distribution is deemed to be incorporated into the final short form prospectus.

GUIDANCE

A term sheet does not, as a matter of law, amend a preliminary short form prospectus, any amendment to a preliminary short form prospectus, a final short form prospectus or any amendment to a final short form prospectus.".

6. This Regulation comes into force on *(indicate the date of coming into force of this Regulation).*

AMENDMENTS TO *POLICY STATEMENT TO REGULATION 41-101 RESPECTING GENERAL PROSPECTUS REQUIREMENTS*

1. Section 3.10 of *Policy Statement to Regulation 41-101 respecting General Prospectus Requirements* is amended by inserting, after paragraph (5), the following:

"(6) A term sheet prepared under section 13.5, 13.6 or 13.7 of the Regulation cannot amend a preliminary prospectus, any amendment to a preliminary prospectus, a final prospectus or any amendment to a final prospectus.".

2. Section 6.1 of the Policy Statement is amended by replacing paragraph (2) with the following:

"(2) Issuers and other persons that engage in advertising or marketing activities should also consider the impact of the requirement to register as a dealer in each jurisdiction where such advertising or marketing activities are undertaken. In particular, the persons would have to consider whether their activities result in the party being in the business of trading in securities. For further information, refer to section 1.3 of *Policy Statement to Regulation 31-103 respecting Registration Requirements and Exemptions*.".

3. Section 6.2 of the Policy Statement is amended by adding, at the end of paragraph (9), the following paragraph:

"Although the "testing of the waters" exemption in subsection 13.4(1) of the Regulation allows an investment dealer to solicit expressions of interest from permitted institutional investors before the filing of a preliminary prospectus for an initial public offering, we note that the exemption is

- a limited accommodation to issuers and investment dealers that wanted a greater opportunity to confidentially test the waters before filing a preliminary prospectus for an initial public offering, and

- subject to a number of conditions to address our regulatory concerns, including conditions to deter conditioning of the market.".

4. The Policy Statement is amended by inserting, after section 6.3, the following:

"**6.3A. Research reports**

(1) In order to address regulatory concerns such as conditioning of the market, an investment dealer involved with a potential prospectus offering for an issuer should not issue a research report on the issuer or provide media commentary on the issuer prior to the filing of a preliminary prospectus, the announcement of a bought deal under section 7.2 of Regulation 44-101 or the filing of a shelf prospectus supplement (or preliminary form of shelf prospectus supplement) under Regulation 44-102, unless the investment dealer has appropriate "ethical wall" policies and procedures in place between:

- the business unit that proposes to issue the research report or provide media commentary, and

- the business unit that proposes to act as underwriter for the distribution.

We understand that many investment dealers have adopted written ethical wall policies and procedures designed to contain non-public information about an issuer and assist the investment dealer and its officers and employees in complying with applicable securities laws relating to insider trading and trading by "tippees" (these laws are summarized in sections 3.1 and 3.2 of National Policy 51-201 *Disclosure Standards*).

(2) Any research reports would have to comply with section 7.7 of the Universal Market Integrity Rules of the Investment Industry Regulatory Organization of Canada and any applicable local rule.".

5. Section 6.4 of the Policy Statement is amended:

(1) by replacing, in paragraph (2), the words "exception to" with the words "exemption from" and the words "exception is" with the words "exemption is";

(2) by replacing paragraph (4) with the following:

"(4) We consider that a distribution of securities commences at the time when

- a dealer has had discussions with an issuer or a selling securityholder, or with another dealer that has had discussions with an issuer or a selling securityholder about the distribution, and

- those distribution discussions are of sufficient specificity that it is reasonable to expect that the dealer (alone or together with other dealers) will propose to the issuer or the selling securityholder an underwriting of the securities.

CSA staff do not agree with interpretations that a distribution of securities does not commence until a later time (e.g., when a proposed engagement letter or a proposal for an underwriting of securities with indicative terms is provided by a dealer to an issuer or a selling securityholder).

Similarly, we do not agree with interpretations that if an issuer rejects a proposed engagement letter or a proposal for an underwriting from a dealer, the "distribution" has ended and the dealer could immediately resume communications with potential investors concerning their interest in purchasing securities of the issuer. In these situations, we expect the dealer not to resume communications with potential investors until after a "cooling off" period. We have concerns that such interpretations would allow dealers to circumvent the pre-marketing restrictions by continuing to test the waters between a series of rejected proposals in close succession until the issuer finally accepts a proposal.

By way of example, the following are situations which would indicate that "sufficient specificity" has occurred and a distribution of securities has commenced:

- Following discussions with an issuer, a dealer provides the issuer with a document outlining possible prospectus financing scenarios at one or more specified share price ranges. Subsequently, management of the issuer recommends to its board of directors that the issuer pursue a prospectus financing at a share price range contemplated by the dealer, the directors of the issuer give management broad authority to execute on a prospectus financing opportunity within that share price range if one arose and the dealer is advised of this approval.

- Following discussions with an issuer, a dealer advises the issuer that the market was looking good for a possible prospectus offering and that the dealer would likely provide indicative terms for an offering later that day.

CSA staff are aware that a practice has developed for "non-deal road shows" where issuers and dealers will meet with institutional investors to discuss the business and affairs of the issuer. If such a non-deal road show was undertaken in anticipation of a prospectus offering, it would be prohibited under securities legislation by virtue of the prospectus requirement. CSA staff would also have selective disclosure concerns if the issuer provides the institutional investors with material information that has not been publicly disclosed. In this regard, see the guidance in Part V of National Policy 51-201, *Disclosure Standards*.";

(3) by adding, after paragraph (7), the following:

"(8) One of the conditions to the bought deal exemption in section 7.2 of Regulation 44-101 is that the issuer has entered into a bought deal agreement with an underwriter who has, or underwriters who have, agreed to purchase the securities on a firm commitment basis. If the agreement contains a "market-out clause" (as defined in section 7.1 of Regulation 44-101), the agreement would not constitute a bought deal agreement for the purposes of the bought deal exemption.

"(9) Section 7.4 of Regulation 44-101 allows a bought deal agreement to be amended in certain circumstances. Subsection 7.4(2) sets out conditions for any amendment to increase the number of securities to be purchased by the underwriters. Subsection 7.4(3) sets out conditions for any amendment to add additional underwriters. Subsection 7.4(4) sets out conditions for any amendment to add additional representations, warranties, indemnities and conditions. Subsection 7.4(5) sets out conditions for any termination of the agreement.".

6. The Policy Statement is amended by inserting, after section 6.4, the following:

"**6.4A. Testing of the waters exemption – IPO issuers**

(1) The testing of the waters exemption for IPO issuers in subsection 13.4(1) of the Regulation is intended for issuers that have a reasonable expectation of filing a long form prospectus in respect of an initial public offering in at least one jurisdiction in Canada.

(2) The testing of the waters exemption for IPO issuers permits an investment dealer to solicit expressions of interest from a permitted institutional investor if the conditions of the exemption are met. Any investment dealer relying on this exemption would be required to be registered as an investment dealer (unless an exemption from registration is available in the circumstances) in any jurisdiction where it engages in the business of trading, including engaging in acts in furtherance of a trade (which would include soliciting expressions of interest).

(3) Paragraph 13.4(3) of the Regulation requires an issuer to keep a written record of any investment dealer that it authorized to act on its behalf in making solicitations in reliance on the testing of the waters exemption for IPO issuers in subsection 13.4(1) of the Regulation. The issuer must also keep copies of the written authorizations referred to in paragraph 13.4(1)(d). To meet this requirement, we would expect the issuer to record the name of a contact person for each investment dealer that it authorized and contact information for that person. During compliance reviews, securities regulators may ask the issuer to provide them with copies of these documents.

(4) Paragraph 13.4(4)(a) of the Regulation requires an investment dealer to keep a written record of the permitted institutional investors that it solicits in reliance on the exemption, a copy of any written material referred to in paragraph 13.4(2)(a) and a copy of the written confirmations referred to in paragraph 13.4(2)(b). To meet this requirement, we would expect the investment dealer to record the name of the contact person for each permitted institutional investor that it solicited and contact information for that person. During compliance reviews, securities regulators may ask the investment dealer to provide them with copies of these documents.

(5) An investment dealer soliciting expressions of interest in accordance with the testing of the waters exemption for IPO issuers in subsection 13.4(1) of the Regulation may only solicit expressions of interest from a permitted institutional investor if certain conditions are met. One condition in paragraph 13.4(2)(b) of the Regulation is that before providing the investor with information about the proposed offering, the investment dealer must obtain confirmation in writing from the investor that the investor will keep the information confidential. An investment dealer may obtain this written confirmation from a permitted institutional investor by return email. Here is a sample email that an investment dealer could use:

"We want to provide you with information about a proposed offering of securities. Before we can provide you with this information, you must confirm by return email that:

- You agree to receive certain confidential information about a proposed initial public offering by an issuer.

- You agree to keep the information confidential.".

A permitted institutional investor may respond to this email by simply stating "I so confirm".

(6) Since soliciting permitted institutional investors under the testing of the waters exemption for IPO issuers would be an act in furtherance of a trade, an issuer and an investment dealer acting on behalf of the issuer would not be able to rely on the exemption if the issuer was subject to a cease trade order.".

7. Section 6.5 of the Policy Statement is amended:

(1) by replacing paragraph (1) with the following:

"(1) Securities legislation provides for certain exceptions to the prospectus requirement for limited advertising or marketing activities during the waiting period between the issuance of the receipt for the preliminary prospectus and the receipt for the final prospectus. Despite the prospectus requirement, it is permissible during the waiting period to

(a) distribute notices, circulars, advertisements, letters or other communications permitted by applicable securities legislation that

- "identify" the securities proposed to be issued,

- state the price of such securities, if then determined, and

- state the name and address of a person from whom purchases of securities may be made,

provided that any such notice, circular, advertisement, letter or other communication states the name and address of a person from whom a preliminary prospectus may be obtained and contains the legend required by subsection 13.1(1) of the Regulation,

(b) distribute the preliminary prospectus,

(c) provide a term sheet, if the conditions in section 13.5 of the Regulation are complied with; and

(d) solicit expressions of interest from a prospective purchaser, if prior to such solicitation or forthwith after the prospective purchaser indicates an interest in purchasing the securities, a copy of the preliminary prospectus is forwarded to the prospective purchaser.";

(2) by inserting, in paragraph (3) and after the word "security", "contemplated by paragraph 6.5(1)(a) above";

(3) by inserting, in paragraph (4) and after the words "For the purpose of identifying a security", "as contemplated by paragraph 6.5(1)(a) above".

8. The Policy Statement is amended by inserting, after section 6.5, the following:

"**6.5A. Term sheets**

(1) The term sheet provisions in sections 13.5, 13.6 and 13.7 of the Regulation and section 7.5 of Regulation 44-101 permit an investment dealer to provide a term sheet to a potential investor if the conditions of the applicable provision are met. In the case of a bought deal announced in accordance with the bought deal exemption in Part 7 of Regulation 44-101, the term sheet provision in section 7.5 of Regulation 44-101 only permits a term sheet to be provided to a permitted institutional investor before the issuance of a receipt for the subsequent preliminary short form prospectus.

Any investment dealer relying on these provisions would be required to be registered as an investment dealer (unless an exemption from registration is available in the circumstance) in any jurisdiction where it engages in the business of trading, including engaging in acts in furtherance of a trade (which would include providing a term sheet to an investor).

(2) Since a term sheet is not required to contain the same information as a prospectus, it cannot meet the prospectus standard of "*full*, true and plain" disclosure. Consequently, paragraphs 13.5(1)(b), 13.6(1)(b) and 13.7(1)(b) of the Regulation and paragraph 7.5(1)(c) of Regulation 44-101 require that any term sheet be "*fair*, true and plain". We would consider a term sheet to be "fair, true and plain" if

- It is honest, impartial, balanced and not misleading.

- It does not give undue prominence to a particular fact or statement in the prospectus (or, in the case of a term sheet under paragraph 7.5(1) of Regulation 44-101, a document referred to in paragraph 7.5(1)(d) of Regulation 44-101).

- It does not contain promotional language.

A term sheet must also contain the legends required by subsections 13.5(2), 13.6(2) or 13.7(2) of the Regulation or subsection 7.5(2) of Regulation 44-101, as applicable.

Furthermore, paragraphs 13.5(1)(d), 13.6(1)(d) and 13.7(1)(d) of the Regulation provide that if the face page or summary of the prospectus contains cautionary language, other than prescribed legends, in bold type (e.g., the suitability of the investment, a material condition to the closing of the offering or a key risk factor), the term sheet must contain the same cautionary language. For example, if the face page of the prospectus contained cautionary language in bold type that the offering is suitable only to those investors who are prepared to risk the loss of their entire investment, the term sheet must contain the same warning.

(3) Paragraphs 13.5(1)(c), 13.6(1)(c) and 13.7(1)(c) of the Regulation require that all information in a term sheet concerning securities must be disclosed in the prospectus. We note that:

- If an investment dealer wanted to include information in the term sheet that compared the issuer to other issuers, they could only do so if that information was also disclosed in the prospectus and therefore subject to prospectus liability.

- If an issuer decides to include information in the prospectus that compares the issuer to other issuers, that information should be accompanied by appropriate cautionary and risk factor language so that the prospectus does not contain a misrepresentation.

- It is permissible for a term sheet to summarize information from the prospectus or to include graphs or charts based on numbers in the prospectus.

Similarly, in the case of a term sheet for a bought deal under Part 7 of Regulation 44-101 that is provided before the filing of the preliminary prospectus, all information in the term sheet must be disclosed in a document referred to in paragraph 7.5(1)(d) of Regulation 44-101.

(4) In addition to the requirements on term sheets in the Regulation, issuers and investment dealers should review other securities legislation for limitations and prohibitions on advertising intended to promote interest in an issuer or its securities. For example,

- Any term sheet must not contain any representations prohibited by securities legislation, such as:
  - prohibited representations on resales, repurchases or refunds, and
  - prohibited representations on future value.
- Any term sheet must comply with the requirements of securities legislation on listing representations.

(5) Paragraphs 13.5(1)(e), 13.6(1)(e) and 13.7(1)(e) of the Regulation and paragraph 7.5(1)(e) of Regulation 44-101 provide that a term sheet must be approved in writing by the issuer and the underwriters before it is provided. A lead underwriter may obtain this written approval from the issuer and other underwriters in a syndicate by return email. Furthermore, underwriters in a syndicate may authorize the lead underwriter to approve a term sheet on their behalf.

(6) Paragraphs 13.5(1)(g), 13.6(1)(g) and 13.7(1)(g) of the Regulation provide that a term sheet can only be provided by an investment dealer with a copy of the prospectus and any amendment to the prospectus. The term sheet can only be provided in a local jurisdiction if a receipt for the prospectus was issued in the jurisdiction.

Similarly, in the case of a term sheet for a bought deal under Part 7 of Regulation 44-101 that is provided before the filing of the preliminary short form prospectus, the term sheet can only be provided in a local jurisdiction if the prospectus will be filed in the jurisdiction. Paragraph 13.5(1)(g) of the Regulation provides that upon issuance of a receipt for the preliminary prospectus for the bought deal, a copy of that prospectus must be sent to each permitted institutional investor that received the term sheet.

Policy Statement 11-201 respecting Electronic Delivery of Documents sets out the circumstances in which a prospectus can be delivered by electronic means. If the investment dealer previously delivered a paper or electronic copy of the prospectus and any amendment to an investor in accordance with applicable securities legislation, it can include a hyperlink to an electronic copy of the prospectus and any amendment with any subsequent term sheet sent to the investor if no additional amendment to the prospectus has been filed and receipted. The investment dealer should ensure that it is clear to the recipient which of the documents being delivered in the hyperlink constitute the prospectus.

(7) Paragraphs 13.5(1)(e), 13.6(1)(e) and 13.7(1)(e) of the Regulation require that a term sheet must be filed on SEDAR before it is provided to an investor.

- When a term sheet is filed on SEDAR as part of a prospectus filing, it will generally be made public within one business day.
- Since staff of securities regulatory authorities will not be "pre-clearing" term sheets, responsibility for ensuring that a term sheet complies with applicable securities legislation and policies remains with the issuer, the relevant investment dealers and their advisors, and is in no way mitigated by staff's subsequent review or the issuance of a receipt for the final prospectus.

- If an issuer files a term sheet after staff of a securities regulatory authority have completed their review of a preliminary prospectus filing and indicated that they are "clear for final" on SEDAR, the filing of the term sheet may result in staff revising the filing's SEDAR status to indicate that staff are "not clear for final" so that staff may have an opportunity to review the term sheet.

In the case of a term sheet for a bought deal under Part 7 of Regulation 44-101 that is provided before the filing of the preliminary prospectus, paragraph 7.5(1)(e) of Regulation 44-101 also requires that the term sheet must be filed on SEDAR before it is provided to a permitted institutional investor. However, the term sheet will not be made public on SEDAR until after the preliminary prospectus is filed and receipted.

(8) As noted in Item 36A of Form 41-101F1, Item 37.3(2) of Form 41-101F2 and Item 11.6 of Form 44-101F1, a term sheet does not, as a matter of law, amend a preliminary prospectus, any amendment to a preliminary prospectus, a final prospectus or any amendment to a final prospectus.

(9) We note that a term sheet is required to be included in the final prospectus or incorporated by reference into the final prospectus. An investor who purchases a security distributed under the final prospectus may therefore have remedies under the civil liability provisions of applicable securities legislation if the term sheet contains a misrepresentation. Furthermore, an investor who purchases a security of the issuer on the secondary market may have remedies under the civil liability for secondary market disclosure provisions of applicable securities legislation if the term sheet contains a misrepresentation since:

- The term sheet is required to be included in the final prospectus or incorporated by reference into the final prospectus (a final prospectus is a "core document" under the secondary market liability provisions), and

- The term sheet is required to be filed and is therefore a "document" under the secondary market liability provisions.

(10) For guidance on term sheets for income trusts and other indirect offerings, see Part 5 of *Policy Statement 41-201 respecting Income Trusts and Other Indirect Offerings*.".

9. The Policy Statement is amended by replacing sections 6.6 and 6.7 with the following:

"**6.6. Green sheets**

(1) Some dealers prepare summaries of the principal terms of an offering, sometimes referred to as green sheets, for the information of their registered representatives during the waiting period. However, any green sheet that is distributed to the public will be considered a "term sheet" and would contravene the prospectus requirement unless it complied with subsection 13.5(1) of the Regulation.

(2) Including material information in a green sheet or other marketing communication that is not contained in the preliminary prospectus could indicate a failure to provide in the preliminary prospectus full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and result in the prospectus certificate constituting a misrepresentation. For additional guidance on pricing information in a green sheet, see subsection 4.2(2) of this Policy Statement and subsection 4.3(2) of *Policy Statement to Regulation 44-101 respecting Short Form Prospectus Distributions*.

(3) We may request copies of green sheets as part of our prospectus review procedures. Any discrepancies between the content of a green sheet and the preliminary prospectus could result in the delay or refusal of a receipt for a final prospectus and, in appropriate circumstances, could result in enforcement action.

(4) For guidance on green sheets for income trusts or other indirect offerings, see Part 5 Sales and Marketing Materials of *Policy Statement 41-201 respecting Income Trusts and Other Indirect Offerings*.

"**6.7. Advertising or marketing activities following the issuance of a receipt for a final prospectus**

Advertising or marketing activities that are permitted during the waiting period may also be undertaken on a similar basis after a receipt has been issued for the final prospectus. In addition, the prospectus and any document filed with or referred to in the prospectus may be distributed.".

10. Section 6.8 of the Policy Statement is amended by deleting, after the words "the prospectus requirement through", the word "the".

11. Section 6.9 of the Policy Statement is amended:

(1) by inserting, in the French text of paragraph (1) and after the words "de deposer", the word "un";

(2) by inserting, after paragraph (2), the following:

"(3) Nevertheless, we realize that reporting issuers need to consider whether the decision to pursue a potential offering is a material change under applicable securities legislation. If the decision is a material change, the news release and material change report requirements in Part 7 of Regulation 51-102 and other securities legislation apply. However, in order to avoid contravening the pre-marketing restrictions under applicable securities legislation, any news release and material change report filed before the filing of a preliminary prospectus or the announcement of a bought deal under section 7.2 of Regulation 44-101 should be carefully drafted so that it could not be reasonably regarded as intended to promote a distribution of securities or condition the market. The information in the news release and material change report should be limited to identifying the securities proposed to be issued without a summary of the commercial features of the issue (those details should instead be dealt with in the preliminary prospectus which is intended to be the main disclosure vehicle).

Furthermore, after the filing of the news release,

- the issuer should not grant media interviews on the proposed offering; and

- an investment dealer would not be able solicit expressions of interest until a receipt was issued for a preliminary prospectus or a bought deal was announced in compliance with section 7.2 of Regulation 44-101.".

12. Section 6.10 of the Policy Statement is replaced with the following:

"**6.10. Disclosure practices**

At a minimum, participants in all prospectus distributions should consider the following to avoid contravening securities legislation:

- We do not consider it appropriate for a director or an officer of an issuer to give interviews to the media immediately prior to or during the waiting period. It may be appropriate, however, for a director or officer to respond to unsolicited inquiries of a factual nature made by shareholders, securities analysts, financial analysts, the media and others who have an interest in such information.

- Because of the prospectus requirement, an issuer is not permitted to provide information during a prospectus distribution that goes beyond what is disclosed in the prospectus. Therefore, during the prospectus distribution (which commences as

described in subsection 6.4(4) of this Policy Statement and ends following closing), a director or officer of an issuer can only make a statement constituting a forecast, projection or prediction with respect to future financial performance if the statement is also contained in the prospectus. Forward looking information included in a prospectus must comply with sections 4A.2, 4A.3 and Part 4B, as applicable, of Regulation 51-102.

- We understand the underwriters and legal counsel sometimes only advise the working group members of the pre-marketing and marketing restrictions under securities legislation. However, there are often situations where officers and directors of the issuer outside of the working group also come into contact with the media before or after the filing of a preliminary prospectus. Any discussions between these individuals and the media will also be subject to these same restrictions. Working group members, including underwriters and legal counsel, will usually want to ensure that any other officers and directors of the issuer (as well as the officers and directors of a promoter or a selling securityholder) who may come into contact with the media are also fully aware of the marketing and disclosure restrictions.

- One way for issuers, dealers and other market participants to ensure that advertising or marketing activities contrary to securities legislation are not undertaken (intentionally or through inadvertence) is to develop, implement, maintain and enforce disclosure procedures.

If a director or officer of an issuer (or a promoter, selling securityholder, underwriter or any other party involved with a pending offering) makes a statement to the media after a decision has been made to file a preliminary prospectus or during the waiting period, our regulatory concerns include circumvention of the pre-marketing and marketing restrictions, selective disclosure and unequal access to information, conditioning of the market and the lack of prospectus liability. In addition to the sanctions and enforcement proceedings discussed in section 6.8, staff of a securities regulatory authority may require the issuer to take other remedial action, such as:

- explaining why the issuer's disclosure procedures failed to prevent the party from making the statement to the media and how those procedures will be improved,

- instituting a "cooling-off period" before the filing of the final prospectus,

- including the statement in the prospectus so that it will be subject to statutory civil liability, or

- issuing a news release refuting the statement if it cannot be included in the prospectus (e.g., because the statement is incorrect or unduly promotional) and disclosing the reasons for the news release in the prospectus.".

13. The Policy Statement is amended by adding, after section 6.11, the following:

"**6.12. Road shows for permitted institutional investors**

(1) Sections 13.8, 13.10 and 13.12 of the Regulation provide for road shows for permitted institutional investors. As these provisions provide that only permitted institutional investors, registered individuals and representatives of the issuer can attend, members of the media should not be invited.

(2) Subsections 13.8(3), 13.10(3) and 13.12(3) of the Regulation provide that the investment dealer conducting the road show must establish and follow reasonable procedures to:

- Verify the identity and keep a written record of any permitted institutional investor attending the road show in person, by telephone conference call, over the internet or by other electronic means;

- Ensure that the permitted institutional investor has received a copy of the prospectus and any amendment to the prospectus; and

- Restrict copying of any written materials.

For a road show held in person, these procedures may include putting a legend on the first page of the written materials which indicates that the materials are only intended for permitted institutional investors and are not to be copied or provided to others.

For a road show held by telephone conference call, these procedures may include, if the permitted institutional investor is provided or given access to written materials before or after the conference call, putting a legend on the first page of the written materials which indicates that the materials are only intended for permitted institutional investors and are not to be copied or provided to others.

For a road show held over the internet or by other electronic means, please see the recommended procedures in section 2.7 of National Policy 47-201 *Trading Securities Using the Internet and Other Electronic Means* and, in Québec, *Notice 47-201 related to Trading Securities Using the Internet and Other Electronic Means*.

"**6.13. Road shows for retail investors**

(1) Sections 13.9, 13.11 and 13.13 of the Regulation provide for road shows for retail investors (although any potential investor can attend). As these provisions provide that only potential investors, registered individuals and representatives of the issuer can attend, members of the media should not be invited to attend a road show for retail investors, although members of the media may attend the road show on their own initiative as potential investors. However, we note that road shows are intended to be presentations for potential investors and not press conferences for members of the media. In this regard, see the guidance in sections 6.9 and 6.10 of this Policy Statement.

(2) Subsections 13.9(3), 13.11(3) and 13.13(3) of the Regulation provide that the investment dealer conducting the road show must establish and follow reasonable procedures to:

- Verify the identity and keep a written record of any investor attending the road show in person, by telephone conference call, over the internet or by other electronic means;

- Ensure that the investor has received a copy of the prospectus and any amendment to the prospectus;

- Restrict copying of any written materials.

For a road show held in person, these procedures may include putting a legend on the first page of the written materials which indicates that the materials are only intended for road show participants and are not to be copied or provided to others.

For a road show held by telephone conference call, these procedures may include, if the investor is provided or given access to written materials before or after the conference call, putting a legend on the first page of the written materials which indicates that the materials are only intended for road show participants and are not to be copied or provided to others.

For a road show held over the internet or by other electronic means, please see the recommended procedures in section 2.7 of National Policy 47-201 *Trading*

Securities Using the Internet and Other Electronic Means and, in Québec, *Notice 47-201 related to Trading Securities Using the Internet and Other Electronic Means*.

(3) Section 13.9 of the Regulation applies to road shows for retail investors during the waiting period and can be used in connection with a concurrent initial public offering in the United States where the issuer is required to comply with Rule 433(d)(8)(ii) under the 1933 Act. We note that:

- In the past, issuers conducting internet road shows for cross-border IPOs applied for relief from the "restricted access" requirements of Canadian securities legislation. This was because Rule 433(d)(8)(ii) required the issuers to either file the internet road show materials with the SEC or make them "available without restriction by means of graphic communication to any person". The issuers felt that if they were to file the road show materials with the SEC on EDGAR, then they would contravene Canadian waiting period restrictions. However, since section 13.9 of the Regulation would now require the road show materials to be filed on SEDAR, cross-border IPO issuers will be able to file the same materials on EDGAR. As a result, absent unusual circumstances, we do not expect to grant similar relief in the future and will instead expect these issuers to comply with section 13.9 of the Regulation and comply with Rule 433(d)(8)(ii) under the 1933 Act by filing the road show materials on EDGAR.

- Similarly, we do not propose to grant relief from the "restricted access" requirements in subsection 13.9(3) of the Regulation. These requirements provide evidence as to who attended a road show in person, by telephone conference call, over the internet or by other electronic means. We think that it is important to know what persons attended a road show so that they can be provided with any revised materials and for evidentiary reasons (e.g., complaints, compliance reviews, litigation or enforcement proceedings).

- In the past, issuers conducting internet road shows for cross-border IPOs also applied for relief from the dealer registration requirements of Canadian securities legislation. If a road show is conducted on behalf of an issuer under section 13.9 of the Regulation, the issuer will not require relief from the dealer registration requirement since the road show will be conducted by an investment dealer that is registered in the appropriate jurisdictions (see subsection 6.14(1) of this Policy Statement). Consequently, we no longer plan to grant the relief from the dealer registration requirements that has been granted in the past to cross-border IPO issuers.

"**6.14. Road shows - general**

(1) The road show provisions in sections 13.8 to 13.13 of the Regulation permit an investment dealer to conduct a road show for potential investors if the conditions of the applicable provision are met. As noted above, a road show may be conducted in person, by telephone conference call, over the internet or by other electronic means. Unless an exemption from the requirement to register as a dealer is available in the circumstances, any investment dealer relying on one of these provisions would have to be registered as an investment dealer in any jurisdiction where it engages in the business of trading, including engaging in acts in furtherance of a trade (which would include conducting a road show for potential investors). For example, if one or more investment dealers acting as underwriters for a prospectus offering allow potential investors in each jurisdiction of Canada to participate in a road show that the dealers conduct by telephone conference call, then at least one of those dealers must be registered as an investment dealer in every jurisdiction of Canada.

(2) Paragraphs 13.8(1)(c), 13.9(1)(c), 13.10(1)(c), 13.11(1)(c), 13.12(1)(c), and 13.13(1)(c) of the Regulation require that all information in a road show concerning securities must be disclosed in the prospectus. We note that:

- The Regulation nevertheless provides that road shows for permitted institutional investors can include information that compares the issuer to other issuers even if that information is not contained in the prospectus.

- In contrast, if an investment dealer wanted to include information in a road show for retail investors that compared the issuer to other issuers, they could only do so if that information was also disclosed in the prospectus and therefore subject to prospectus liability.

- If an issuer decides to include information in the prospectus that compares the issuer to other issuers, that information should be accompanied by appropriate cautionary and risk factor language so that the prospectus does not contain a misrepresentation.

- It is permissible for a road show to summarize information from the prospectus or to include graphs or charts based on numbers in the prospectus.

(3) For guidance on road show materials for income trusts and other indirect offerings, see Part 5 of *Policy Statement 41-201 respecting Income Trusts and Other Indirect Offerings*.".

AMENDMENTS TO *POLICY STATEMENT 41-201 RESPECTING INCOME TRUSTS AND OTHER INDIRECT OFFERINGS*

1. Sections 5.1 and 5.2 of *Policy Statement 41-201 respecting Income Trusts and Other Indirect Offerings* are replaced with the following:

"**5.1. What are our concerns about sales and marketing materials?**

Registrants often solicit interest from potential investors during the "waiting period" between the issuance of a receipt for a preliminary prospectus and the issuance of a receipt for the prospectus, and in the period following the receipt for the prospectus until the primary distribution is completed. Along with the distribution of the preliminary prospectus (or prospectus, if then available) to potential investors, that process often involves the preparation and distribution of materials such as:

- green sheets, for the benefit of registered salespersons and banking group members; or

- term sheets or road show materials prepared in accordance with *Regulation 41-101 respecting General Prospectus Requirements*.

The information included in green sheets is typically a simplified summary version of the disclosure in the prospectus, and should be limited to information included in, or directly derivable from, the prospectus (the exceptions are information about the basic terms of comparable offerings and general market information not specific to the issuer).

The information included in terms sheets and road show materials must comply with the conditions in *Regulation 41-101 respecting General Prospectus Requirements*.

Marketing materials used in the context of income trust offerings often include prominent reference to "yield". We are concerned that expressions of "yield" in these marketing materials may not be clearly understood, both because the term itself may have connotations or common usages that are not consistent with the attributes of income trust units and because the relationship between the "yield" described in the marketing materials and the information in the prospectus may not be clear.

"Yield" is generally used in the context of income trust offerings to refer to the return that would be generated over a one-year period, as a percentage of the offering price of the units, if the amounts intended to be distributed by the income trust according to its distribution policy are so distributed. In connection with their ongoing approach to disclosure, issuers should carefully consider yield expectations previously communicated to investors through sales and marketing materials or otherwise. Whether and to what extent those yield expectations are met are important aspects of overall disclosure of performance. Issuers should include in their interim and annual MD&A, where applicable, a comparison between the expected yield figure previously communicated and the actual yield.

"**5.2. What information do we expect green sheets, term sheets and road show materials to contain?**

We are concerned that use of the term "yield" in these marketing materials may imply that the entitlement of unitholders to distributions is fixed. We expect expressions of yield to be accompanied by disclosure that, unlike fixed-income securities, there is no obligation of the income trust to distribute to unitholders any fixed amount, and reductions in, or suspensions of, cash distributions may occur that would reduce yield based on the offering price.

A related concern is that disclosure of a yield in green sheets may cause confusion because yield is not typically disclosed in the prospectus. If a green sheet

contains an expression of yield, we expect the statement to be tied to the disclosure in the prospectus on which the marketing is based (including, in particular, the pro forma presentation of distributable cash in the prospectus). Specifically, expressions of yield in green sheets for income trust offerings should be accompanied by disclosure indicating the proportion of the pro forma distributable cash (as set out in the prospectus) that the stated yield would represent. Guidance for the disclosure about distributable cash in the green sheets is set out in section 6.5.2 of this Policy Statement.

Under *Regulation 41-101 respecting General Prospectus Requirements*, all information in term sheets or road show materials must be disclosed in the prospectus on which the marketing is based.

In addition, if reference is made to tax efficiencies that may be realized on distributions (such as returns of capital to investors), we expect that disclosure to be clear and, to the extent practical, quantified. For example, the estimated tax-deferred portion of distributions for the foreseeable period, and the tax implications, should be clearly stated or cross-referenced.".

2. Section 5.3 of the Policy Statement is amended:

(1) by inserting, in the title and after the words "**green sheets**", "**, term sheets and road show materials**";

(2) by deleting, at the beginning of the paragraph, "Yes.";

(3) by adding, after the paragraph, the following paragraph:

"Under *Regulation 41-101 respecting General Prospectus Requirements*, term sheets and road show materials must be filed before use.".

3. Section 6.5.2 of the Policy Statement is amended by replacing the last paragraph with the following:

"In order to meet the requirements for MD&A, disclosure of an issuer's distributable cash for a period should be accompanied by the information referred to in sections 2.5, 2.6, 2.7 and 2.8, as applicable, as well as the above table and accompanying narrative. Issuers should also refer to the guidance in sections 2.5, 2.6, 2.7, 2.8 and 6.5.2 of this Policy Statement when considering how to present disclosure of an issuer's distributable cash, including disclosure contained in:

- annual and interim MD&A,
- news releases, and
- sales and marketing materials such as:
    - green sheets, and
    - term sheets and road show materials prepared in accordance with *Regulation 41-101 respecting General Prospectus Requirements*.

See also Part 5 of this Policy Statement.".

AMENDMENTS TO *POLICY STATEMENT TO REGULATION 44-101 RESPECTING SHORT FORM PROSPECTUS DISTRIBUTIONS*

1. *Policy Statement to Regulation 44-101 respecting Short Form Prospectus Distributions* is amended by adding, after section 1.7, the following:

"**1.8. Bought deal provisions**

Issuers and investment dealers relying on the bought deal provisions in Part 7 of Regulation 44-101 should refer to the guidance in Part 6 of the Policy Statement to Regulation 41-101.".

2. Section 3.6 of this Policy Statement is amended:

(1) by inserting, in the title and after the word "**Reports**", the words "**or Term Sheets**";

(2) by inserting, after the words "a subsequently filed material change report", the words "or a subsequently filed term sheet".

AMENDMENTS TO *POLICY STATEMENT TO REGULATION 44-102 RESPECTING SHELF DISTRIBUTIONS*

1. *Policy Statement to Regulation 44-102 respecting Shelf Distributions* is amended by replacing section 1.3 with the following:

"**1.3. Marketing before the Filing of a Shelf Prospectus Supplement**

After a receipt has been issued for a base shelf prospectus, we do not have the same regulatory concerns about "marketing" before the filing of a shelf prospectus supplement as we do about "pre-marketing" before the filing of a short form prospectus or a long form prospectus (see section 6.4 of Policy Statement to Regulation 41-101).

A preliminary form of shelf prospectus supplement describing a tranche of securities to be offered under the shelf procedures (a "drawdown") may be used in marketing the securities before the public offering price is determined. Issuers are reminded that the ability to use a preliminary form of shelf prospectus supplement in this manner for a distribution of equity securities under an unallocated base shelf prospectus is subject to the requirement in section 3.2 of Regulation 44-102 to issue a news release once the issuer or selling securityholder has formed a reasonable expectation that the distribution will proceed.

Issuers should also consider whether the decision to pursue a drawdown under an allocated base shelf prospectus is material change under applicable securities legislation. If the decision is a material change, the news release and material change report requirements in Part 7 of Regulation 51-102 and other securities legislation apply.

In order to address selective disclosure concerns, an issuer will generally file any preliminary form of shelf prospectus supplement on SEDAR and ask their principal regulator to make it public. In certain circumstances, a preliminary form of shelf prospectus supplement is required to be filed (see paragraph 13.7(1)(c) of Regulation 41-101). However, staff of securities regulatory authorities will not be "pre-clearing" any preliminary form of shelf prospectus supplement (unless the issuer is filing a draft supplement pursuant to an undertaking previously given to securities regulatory authorities).

If an issuer does not issue a news release about a potential drawdown under a base shelf prospectus, then the relevant investment dealers should consider measures to ensure compliance with applicable securities laws relating to selective disclosure, insider trading and trading by "tippees" (these laws are summarized in sections 3.1 and 3.2 of National Policy 51-201 *Disclosure Standards*) before circulating a preliminary form of shelf prospectus supplement to investors.

Issuers and investment dealers should also refer to the guidance on marketing activities in Part 6 of the Policy Statement to Regulation 41-101.".

AMENDMENTS TO *NOTICE 47-201 RELATING TO TRADING SECURITIES USING THE INTERNET AND OTHER ELECTRONIC MEANS*

1. Section 1.1 of *Notice 47-201 relating to Trading Securities Using the Internet and Other Electronic Means* is amended by replacing, in the definition of the terms "securities legislation" and "securities regulatory authorities", "National Instrument 14-101 Definitions" with "*Regulation 14-101 respecting Definitions*".

2. Section 2.7 of the Notice is replaced with the following:

"**2.7 Road shows**

(1) For the purposes of this Notice, "road show" has the meaning assigned in *Regulation 41-101 respecting General Prospectus Requirements* ("Regulation 41-101").

(2) Regulation 41-101 sets out the circumstances in which an investment dealer may hold a road show in connection with a distribution of securities, including a road show held over the internet or by other electronic means.

(3) Sections 13.8 to 13.13 of Regulation 41-101 require that access to electronic road show materials be restricted and that the investment dealer must establish and follow reasonable procedures to

(a) verify the identity and keep a written record of any investor attending the road show over the internet or by other electronic means;

(b) ensure that the investor has received a copy of the prospectus and any amendment to the prospectus: and

(c) restrict the copying of any materials provided in connection with the road show.

(4) In this connection, the following procedures are recommended for a road show held over the internet or by other electronic means:

(a) Pursuant to securities legislation, a copy of the filed prospectus is required to be made available to each viewer before each road show transmission, and each transmission should contain visual statements emphasizing that the information conveyed through the road show does not contain all of the information in the prospectus, which should be reviewed for complete information. A copy of the prospectus could be sent electronically to viewers in accordance with the guidelines contained in *Notice 11-201 related to the Delivery of Documents by Electronic Means*.

(b) Electronic access to the transmission of a road show over the internet or by other electronic means should be controlled by the investment dealer conducting the roadshow, using such means as password protection, in order to ensure that all viewers are identified and have been offered a prospectus.

(c) An investment dealer should not transmit a road show to a person unless that person has agreed not to copy or further distribute the transmissions. An investment dealer should take reasonable steps to prevent copying or further distribution of transmissions.".