

REGULATION 45-107 RESPECTING LISTING REPRESENTATION AND STATUTORY RIGHTS OF ACTION DISCLOSURE EXEMPTIONS

Securities Act
(chapter V-1.1, s. 331.1, par. (1), (11) and (34))

1. Definitions

In this Regulation

“designated foreign security” means a security offered primarily in a foreign jurisdiction in either of the following circumstances:

- (a) the security is issued by an issuer that
 - (i) is incorporated, formed or created under the laws of a foreign jurisdiction,
 - (ii) is not a reporting issuer in a jurisdiction of Canada,
 - (iii) has its head office outside of Canada, and
 - (iv) has a majority of its executive officers and directors resident outside of Canada;
- (b) the security is issued or guaranteed by the government of a foreign jurisdiction;

“executive officer” means, for an issuer, an individual who is

- (a) a chair, vice-chair or president,
- (b) a chief executive officer or chief financial officer,
- (c) a vice-president in charge of a principal business unit, division or function including sales, finance or production, or
- (d) performing a policy-making function in respect of the issuer;

“exempt offering document” means:

- (a) in New Brunswick, Nova Scotia and Saskatchewan, an offering memorandum as defined under the securities legislation of that jurisdiction;
- (b) in all other jurisdictions, a document including any amendments to the document, if the document
- (c) describes the business and affairs of an issuer, and
- (d) has been prepared primarily for delivery to and review by a prospective purchaser to assist the prospective purchaser in making an investment decision in respect of securities being distributed pursuant to an exemption from the prospectus requirement;

“listing representation” means a representation that a security will be listed on an exchange or quoted on a quotation and trade reporting system, or that application has been or will be made to list the security on an exchange or quote the security on a quotation and trade reporting system located in a foreign jurisdiction;

“listing representation prohibition” means the prohibition in the securities legislation set out in Appendix A;

“permitted client” has the same meaning as in section 1.1 of Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations (chapter V-1.1, r. 11);

“specified firm registrant” has the same meaning as in section 1.1 of Regulation 33-105 respecting Underwriting Conflicts (chapter V-1.1, r. 11);

“statutory rights of action disclosure requirement” means the provision in the securities legislation set out in Appendix B.

2. Exemption from Listing Representation Prohibition

The listing representation prohibition does not apply to a listing representation made in an exempt offering document in connection with a distribution of a designated foreign security if

- (a) the distribution is made to a permitted client by a specified firm registrant acting as an underwriter,
- (b) the listing representation does not contain a misrepresentation, and
- (c) the listing representation is made in compliance with the by-laws and rules of the exchange or quotation and trade reporting system referred to in the listing representation.

3. Alternative Disclosure of Statutory Rights

In New Brunswick, Nova Scotia and Saskatchewan, the statutory rights of action disclosure requirement is satisfied in respect of a prospective purchaser that is a permitted client in connection with a distribution of a designated foreign security if the specified firm registrant either

- (a) provides the required statutory rights of action disclosure at the same time that it provides an exempt offering document to the permitted client, or
- (b) has previously provided written notice to the permitted client describing the applicable rights of action and advising that the specified firm registrant may, from time to time, distribute securities to the permitted client and that the statutory rights of action apply in respect of each such distribution.

4. Limitation of Application

Sections 2 and 3 do not apply to a distribution of a designated foreign security if a prospectus has been filed with a Canadian securities regulatory authority for the distribution.

5. Effective Date

This Regulation comes into force on •.

APPENDIX A LISTING REPRESENTATION PROHIBITION

Alberta:	Subsection 92(3) of the <i>Securities Act</i> (Alberta)
Manitoba:	Subsection 69(3) of the <i>Securities Act</i> (Manitoba)
New Brunswick:	Subsection 58(3) of the <i>Securities Act</i> (New Brunswick)
Newfoundland and Labrador:	Subsection 39(3) of the <i>Securities Act</i> (Newfoundland and Labrador)
Northwest Territories:	Subsection 147(1) <i>Securities Act</i> (Northwest Territories)
Nova Scotia:	Subsection 44(3) of the <i>Securities Act</i> (Nova Scotia)
Nunavut:	Subsection 147(1) of the <i>Securities Act</i> (Nunavut)
Prince Edward Island:	Subsection 147(1) of the <i>Securities Act</i> (Prince Edward Island)
Quebec:	Subsection 199(4) of the <i>Securities Act</i> (Quebec)
Saskatchewan:	Subsection 44(3) of the <i>Securities Act</i> (Saskatchewan)
Yukon:	Subsection 147(1) of the <i>Securities Act</i> (Yukon)

**APPENDIX B STATUTORY RIGHTS OF ACTION DISCLOSURE
REQUIREMENT**

New Brunswick: Section 2.2 of Local Rule 45-802
*Implementing National Instrument 45-106 –
Prospectus and Registration Exemptions*

Nova Scotia: Subsection 65(3) of the *Securities Act*
(Nova Scotia)

Saskatchewan: Subsection 80.2(1) of the *Securities Act*
(Saskatchewan)