

APPENDIX A

Proposed Amendments to National Instrument 33-105 *Underwriting Conflicts*

1. *National Instrument 33-105 Underwriting Conflicts is amended by this Instrument.*
2. *The following Part is added:*

PART 3A – NON-DISCRETIONARY EXEMPTIONS - DESIGNATED FOREIGN SECURITIES

3A.1 Definitions - In this Part,

“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, Ontario and Saskatchewan, an offering memorandum as defined under the securities legislation of that jurisdiction, and
- (b) in all other jurisdictions, a document including any amendments to the document, if the document
 - (i) describe the business and affairs of an issuer, and
 - (ii) 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;

“FINRA Rule 5121” means Rule 5121 – *Public Offerings of Securities with Conflicts of Interest* of the United States Financial Industry Regulatory Authority, as amended from time to time;

“permitted client” has the same meaning as in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

3A.2 Exemption based on U.S. disclosure - Subsection 2.1(1) does not apply to a distribution of a designated foreign security if all of the following apply:

- (a) the distribution is made to a permitted client by a specified firm registrant;
- (b) an exempt offering document prepared with respect to the distribution is delivered to the permitted client;
- (c) the exempt offering document complies with the requirements of section 229.508 of SEC Regulation S-K under the 1933 Act and FINRA Rule 5121, whether or not those requirements apply to the distribution.

3A.3 Exemption for foreign government securities - Subsection 2.1(1) does not apply to a distribution of a designated foreign security if all of the following apply:

- (a) the distribution is made to a permitted client by a specified firm registrant;
- (b) the issuer is a connected issuer but not a related issuer of the specified firm registrant; and
- (c) the designated foreign security is issued or guaranteed by the government of a foreign jurisdiction.

3A.4 Relief from front page disclosure requirements - The requirement in subsection 2.1(1) to provide the information specified in items 1, 2 and 3 of Appendix C does not apply to a distribution of a designated foreign security if all of the following apply:

- (a) the distribution is made to a permitted client by a specified firm registrant;
- (b) the issuer is a related issuer of the specified firm registrant; and
- (c) the designated foreign security is issued or guaranteed by the government of a foreign jurisdiction.

3A.5 Notice to permitted clients - A specified firm registrant that intends to rely on one or more of the exemptions described in sections 3A.2, 3A.3 or 3A.4 must deliver a notice to a permitted client, prior to or contemporaneously with the distribution of a designated foreign security to the permitted client, that describes the terms and conditions of the exemptions being relied on.

3A.6 Manner of notice - The notice requirement under section 3A.5 is satisfied if either of the following apply:

- (a) the specified firm registrant provides notice that the specified firm registrant intends to rely on the exemptions in section 3A.2, 3A.3 or 3A.4 for a distribution of a designated foreign security, including any future distributions of a designated foreign security, to the permitted client;
- (b) If the notice referred to in subsection (a) is not provided to the permitted client,
 - (i) the specified firm registrant provides the notice required under section 3A.5 in the exempt offering document delivered to the permitted client for a distribution of a

designated foreign security, or

- (ii) the specified firm registrant provides the notice required under section 3A.5 in a document delivered to the permitted client that accompanies, but does not form part of, the exempt offering document.

3A.7 Application - This Part does not apply to a distribution if a prospectus has been filed with a Canadian securities regulatory authority for the distribution.

3. *This Instrument comes into force on* •

