Appendix B

Schedule B-2

Proposed Amendments to
Companion Policy 41-101CP *Companion Policy to National Instrument 41-101 General Prospectus Requirements*

1. Companion Policy 41-101CP Companion Policy to National Instrument 41-101 General Prospectus Requirements is amended.

2. Section 3.10 is amended by adding the following after subsection (5):

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

3. Subsection 6.1(2) is replaced with the following:

(2) Issuers and other persons or companies 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 or companies 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 Companion Policy 31-103CP *Registration Requirements and Exemptions*.**.**

4. Subsection 6.2(9) is amended by adding the following as a second paragraph:

Although the "testing of the waters" exemption in subsection 13.4(1) of the Instrument 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.**.**

5. The following is added after section 6.3:

Research reports

6.3A(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 NI 44-101 or the filing of a shelf prospectus supplement (or preliminary form of shelf prospectus supplement) under NI 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.

6. Section 6.4 is amended

(a) in subsection (2)

(i) by replacing "exception to***" with "***exemption from***", and***

(ii) by replacing "exception is***" with "***exemption is***",***

(b) by replacing subsection (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*.**,**

(c) in subsection (7)

(i) by replacing "Investment Dealers Association***" with "***Investment Industry Regulatory Organization of Canada (IIROC)***", and***

(iii) by replacing "IDA by-law***" with "***IIROC Rule***", and***

(d) by adding the following after subsection (7):

(8) One of the conditions to the bought deal exemption in section 7.2 of NI 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 NI 44-101), the agreement would not constitute a bought deal agreement for the purposes of the bought deal exemption.

(9) Section 7.4 of NI 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.

Testing of the waters exemption – IPO issuers

6.4A(1) The testing of the waters exemption for IPO issuers in subsection 13.4(1) of the Instrument 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 Instrument 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 Instrument. 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 Instrument 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 Instrument 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 Instrument 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 is amended

(a) by replacing subsection (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 or company 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 or company from whom a preliminary prospectus may be obtained and contains the legend required by subsection 13.1(1) of the Instrument;

(b) distribute the preliminary prospectus;

(c) provide a term sheet, if the conditions in section 13.5 of the Instrument 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.

(b) in subsection (3), by adding "contemplated by paragraph 6.5(1)(a) above***" after "***security***",***

(c) in subsection (4), by adding in the first sentence "as contemplated by paragraph 6.5(1)(a) above***" after the first reference to "***security***".***

8. The following is added after section 6.5:

Term sheets

6.5A(1) The term sheet provisions in sections 13.5, 13.6 and 13.7 of the Instrument and section 7.5 of NI 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 NI 44-101, the term sheet provision in section 7.5 of NI 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 Instrument and paragraph 7.5(1)(c) of NI 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 NI 44-101, a document referred to in paragraph 7.5(1)(d) of NI 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 Instrument or subsection 7.5(2) of NI 44-101, as applicable.

Furthermore, paragraphs 13.5(1)(d), 13.6(1)(d) and 13.7(1)(d) of the Instrument 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 Instrument 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 NI 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 NI 44-101.

(4) In addition to the requirements on term sheets in the Instrument, 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 Instrument and paragraph 7.5(1)(e) of NI 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 Instrument 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 NI 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 Instrument 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.

National Policy 11-201 *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 Instrument 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 NI 44-101 that is provided before the filing of the preliminary prospectus, paragraph 7.5(1)(e) of NI 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 National Policy 41-201 *Income Trusts and Other Indirect Offerings*.**.**

9. Section 6.6 is amended

(a) by replacing subsection (1) with the following:

(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 Instrument.**,**

(*b) by replacing subsection (2) with the following:*

(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 and subsection 4.3(2) of 44-101CP.**,**

(c in subsection (3), by deleting "and other advertising or marketing materials***", and***

(d) by adding the following after subsection (3):

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

10. Section 6.7 is replaced with the following:

Advertising or marketing activities following the issuance of a receipt for a final prospectus

6.7 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..

11. Section 6.8 is amended by deleting "the***" before the first reference to "***advertising***".***

12. Section 6.9 is amended by adding the following after subsection (2):

(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 NI 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 NI 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 NI 44-101..

13. Section 6.10 is replaced with the following:

Disclosure practices

6.10 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 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 NI 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..

14. Part 6 is amended by adding the following after section 6.11:

Road shows for permitted institutional investors

6.12(1) Sections 13.8, 13.10 and 13.12 of the Instrument 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 Instrument 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*.

Road shows for retail investors

6.13(1) Sections 13.9, 13.11 and 13.13 of the Instrument 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.

(2) Subsections 13.9(3), 13.11(3) and 13.13(3) of the Instrument 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 Instrument 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 Instrument 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 Instrument 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 Instrument. 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 Instrument, 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). 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.

Road shows - general

6.14(1) The road show provisions in sections 13.8 to 13.13 of the Instrument 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 Instrument require that all information in a road show concerning securities must be disclosed in the prospectus. We note that:

- The Instrument 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 National Policy 41-201 *Income Trusts and Other Indirect Offerings*.**.**

15. These amendments become effective on ●.