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Re: Proposed Pre-Marketing and Marketing Amendments to the Prospectus Rules

We strongly support the objectives of the proposed amendments and commend the Canadian Securities Administrators (CSA) for acting to update these rules. Overall, these proposals are a significant improvement over the current regulation of marketing and pre-marketing and are much more consistent with current market practice.

Road shows

The proposed guidance regarding road shows for cross border IPO offerings suggests that the obligation to file road show materials may extend to road show presentations that are displayed, but not distributed to the attendees. If this is intended, further guidance or clarification should be provided. If no materials are distributed in a form that can be retained by the attendees, it is not clear that there is any rationale for the term sheet provisions to apply.

In addition, given the breadth of the proposed definition of "road show", we suggest that the CSA provide guidance regarding how the road show provisions interact with conduct that forms part of solicitations of expressions of interest permitted under section 65(2) of the *Securities Act* (Ontario) (the "Act") (and the equivalent provisions in other jurisdictions) and acts in furtherance of trades that form part of the distribution under the extended definition of "trade" in the Act that

may be undertaken in reliance on section 53 of the Act following the issuance of a receipt for the final prospectus. In particular, since the road show provisions apply to investment dealers, clarification of regarding the conduct permitted for other participants in the offering, including the issuer, would be helpful.

Amendments to bought deal agreements

We encourage the CSA to clarify the scope of the condition that amendments to bought deal agreement cannot be the culmination of a formal or informal plan. We note that the practice of adding additional underwriters to the bought deal syndicate after the transaction has been launched is relatively common due to timing constraints. It is not clear why this is problematic from a policy perspective, even if it was contemplated prior to the execution of the original agreement. Similarly, we expect that it is common for issuers and investment dealers to discuss the potential for increasing the size of the transaction prior entering into a bought deal agreement. Given the uncertainty regarding market reaction, this is not necessarily inconsistent with the underwriter making a firm commitment for the original offering size.

Express provisions for retail investors and permitted institutional investors

We disagree with the proposal to discriminate between retail and institutional investors in respect of the information that may be provided to them concerning a prospectus offering. This distinction is inconsistent with the principle that the prospectus must contain full, true and plain disclosure of all of the material facts relating to the securities offered. Any investor that is eligible to participate in an offering should have an equal opportunity to receive any disclosure provided.

If the concept of a "permitted institutional investor" is retained, we suggest that the definition be expanded to include a broader class of investors. If the intention is to exclude retail investors, we suggest that the permitted institutional investor definition should be more consistent with the accredited investor definition. In addition, the definition as currently proposed does not include foreign investment funds, which would be problematic for any transaction with a cross border component.

Comparable information

We do not agree with the proposals related to the use of comparables. Any concerns regarding comparison of the issuer to other reporting issuers should be dealt with directly, rather than requiring that the comparison be disclosed selectively only to certain investors.

The concern that investment dealers may "cherry pick" from publicly available information concerning other reporting issuers in connection with a term sheet or road show, should be adequately addressed by the proposed fair, true and plain requirements. The obligations of the registrants involved in the transaction should address concerns that retail investors may not understand the assumptions and limitations inherent in the use of comparables. Restricting the use of comparables is also inconsistent with their common use by analysts and media in the secondary market.

Thank you for this opportunity to comment. If you have any questions concerning these comments please contact David Surat (dsurat@blg.com / 416.367.6195) or Philippe Tardif (ptardif@blg.com / 416.367.6060).

Sincerely,

"Borden Ladner Gervais LLP"