Burnet,
Duckworth
& Palmer LLP
Law Firm

February 23, 2012

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Authorité 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

c/o the Addressees set forth in Schedule "A" hereto

Dear Sirs/Mesdames:

Re: Request for Comments – Notice of Proposed Pre-Marketing and Marketing Amendments to Prospectus Rules (the "Request for Comments")

We are writing in response to the Request for Comments and your invitation to provide comments in connection with the proposed Pre-Marketing and Marketing Amendments to the Prospectus Rules as contained therein. Capitalized words and phrases used herein but not defined have the same meanings herein as in the Request for Comments.

Please note that the comments provided herein are those of certain members of our firm's securities group and should not be taken to represent the position of the firm generally nor of any of our clients, who have not been consulted in connection herewith.

Bought Deal Exemption

We do not see any reason to limit the amount of enlargement of a bought deal to a specified percentage. We have not seen in our experience that issuers and underwriters have colluded to enter into an initial bought deal letter agreement in respect of a small offering intending to increase and in size with the purpose of avoiding the premarketing rules. We believe the general language proposed that the enlargement cannot be the culmination of a formal or informal planned to offer a larger amount devised before the execution of the original agreement should provide sufficient protection if any is necessary.

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Frank L. Burnet Q.C. (1890-1982) | Thomas J. Duckworth Q.C. (1925-2007) | The Hon. W. Kenneth Moore C.M., Q.C., LL.D., Counsel

Term Sheet Provision for Bought Deals

We are unclear as to the rationale for not permitting the bought deal term sheet to be given to retail investors before the receipt for the preliminary prospectus. Although we understand the majority of pre-marketing that is conducted before the preliminary prospectus is most often with institutional investors we are not certain of the concern of having to provide a copy of the preliminary prospectus with the term sheet, as long as the preliminary prospectus is provided once it is available. If an investment dealer is able to solicit expression of interest from retailer investors before filing a preliminary prospectus is it better that they do say without any documentation, or is it better to at least permit them to provide a document (ie. the term sheet) that provides 'fair, true and plain' disclosure to be followed up with a copy of the preliminary prospectus. We believe the latter is preferable.

Other Comments

The following are some specific and other comments in relation to the proposed amendments.

The following are specific comments on Schedule B-1 to the Request for Comments, being the Proposed Amendments to National Instrument 41.101 *General Prospectus Requirements*. The section numbers referred to below are to the section numbers in NI 41-101.

Section 13.4(1) – third line, - consider removing the words "offering of securities of an issuer" and replacing it with "offering by an issuer". This may not be absolutely necessary given that the issuer must not be a reporting issuer in any jurisdiction in any event, but may more properly reflect the intent. In other words, it is an initial public offering by the issuer; not of a specific class or kind of securities of the issuer.

Section 13.5(3)(4)(5) and (6) – these are somewhat confusing given that any term sheet and revised term sheet either have to be specifically incorporated by reference or will be deemed to be incorporated by reference into the prospectus. For example, in sub-paragraph 13.5(3)(b) it states that one must 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. Would it not be clearer if it simply stated that any statement in the term sheet that is modified or superseded is deemed also to be modified or superseded by the statement in the final prospectus?

Section 13.8(c) – should the information in the road show be limited to "written" information and should it not relate not only to the securities but also to the issuer? If so, consider deleting "all information in the road show concerning the securities is disclosed in the preliminary prospectus" and replacing it with "all written information in the road show concerning the securities or the issuer is disclosed in the preliminary prospectus....".

Section 13.8(f) – given that permitted institutional investors are not individuals, should not the representative of the portfolio manager or other registrant representing the permitted institutional investor etc. be permitted to attend the road show?

Section 13.8(3)(b) – should it not be sufficient if the permitted institutional investor has access to a copy of the preliminary prospectus or any amendment rather than requiring that it actually has received the same?

Section 13.9(1)(c) – see comments on Section 13.8(1)(c).

Section 13.10(1)(f) – see comments on Section 13.8(f).

The following are comments on Schedule B-2 – Proposed Amendments to Companion Policy 41-101CP Companion Policy to National Instrument to 41-101. Again, reference to section numbers are to section numbers in the companion policy.

Section 6.4(b), last paragraph – The phrase "If such a non-deal road show was undertaken in anticipation of a prospectus offering" may in some cases cause interpretation issues – ie. exactly what "in anticipation of a private prospectus offering" means. It may therefore also be helpful to provide a safe harbour which would provide that road show would also be a "non-deal a road show" if a specified period has elapsed since the road show prior to commencement of the offering.

Section 6.4A(5), last bullet – consider modifying to:

"you agree to keep the information confidential until it is otherwise in the public domain."

Section 6.9(3) – this provision attempts to clarify what may be in a news release or material change report filed before filing the preliminary prospectus or announcement of a bought deal and limits the information to identifying the securities proposed to be issued without a summary of commercial features of the issue. We would note, however, that in certain instances the bought deal itself may trigger a requirement to disclose certain other facts that may in and of themselves be material facts or material changes. For example, a prospectus offering of a resource issuer may result in a change to a capital expenditure budget for the coming year which may be material and would need to also be disclosed in the news release and material change report. Another example is if a significant acquisition is announced together with a financing, both of which may constitute material information and require disclosure and possible material change reporting. We would suggest therefore that it may be more appropriate for this guidance to clarify that the news release and material change report only include the information required to be included to comply with applicable law including disclosure of all material facts and of the material change.

The following are comments on Appendix D – Proposed Amendments to National Instrument 44-101 Short Form Prospectus Distributions and Companion Policy.

Section 7.4(4) – we are unclear as to the meaning of this provision. It appears to permit the amendment of the original bought deal agreement to add additional representations, warranties, indemnities and conditions if the amended agreement is otherwise on the same terms as the original agreement. This seems to be circular? Generally the original bought deal letter agreement is superseded by the actual underwriting agreement which will contain various additional representations, warranties and conditions and the specific indemnities. We would suggest that perhaps Section 7.4(4)(a) be clarified that the amended agreement be on the same terms as to number of shares and price as the original agreement.

We would also offer the following additional comments.

An issue that has arisen in the past and for which there does not appear to be sufficient clarity is the application of the pre-marketing rules in a situation where there is an attempt to effect a financing by way of private placement that is abandoned and a public offering is proceeded with. We note that the IDA (now IIROC) notice with respect to pre-marketing dated May 1, 2007 (the "**Pre-Marketing Notice**") in section 3 thereof contemplates the situation where a bonafide intention to affect an exempt distribution is abandoned in favour of a prospectus offering. The Pre-Marketing Notice states that it is not until it is reasonable to expect that a bonafide exempt distribution will be abandoned, that any subsequent pre-marketing activities will be subject to the IIROC by-law on pre-marketing activities. Given the uncertainty that arises in this context, you

may consider taking this opportunity to clarify the issue by adopting the principles enunciated in the Pre-Marketing Notice.

Thank you for allowing us to provide our input and comment on the issues raised by the Request for Comments and the proposed amendments.

If we can clarify or expand upon any of the foregoing, kindly contact Grant Zawalsky, Alyson Goldman, Ted Brown or Steve Cohen of our office at your convenience.

Yours truly,

BURNET, DUCKWORTH & PALMER LLP

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