BMO Capital Markets

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February 23, 2012

Dear Sirs/Mesdames:

Re: Notice of Proposed Pre-Marketing and Marketing Amendments to the Prospectus Rules (the "*Notice*")

BMO Nesbitt Burns Inc. ("***BMO***" or "***we***") appreciates the opportunity to provide comments on the Notice that was published November 25, 2011. BMO supports the Canadian Securities Administrators initiative regarding the new pre-marketing and marketing rules for public offerings. As noted below, we are particularly supportive of the proposed rule that would allow investment dealers to "test the waters" on a confidential basis with permitted institutional investors in advance of an IPO. We also believe that the proposed rules are useful insofar as they clarify and codify existing practices. Our comments with respect to the Notice are provided below.

Testing of the Waters Exemption for IPO Issuers

It is our opinion that the proposed testing of the waters exemption for IPO issuers would be very useful to both issuers and investment dealers because institutional investors are key market participants in public offerings and, therefore, this would permit issuers contemplating IPO's to obtain important information regarding potential IPO transactions. Moreover, given the considerable costs and expenses associated with IPO's, we believe that the testing of the waters exemption would enable parties involved in the IPO to assess whether there would be sufficient interest for the IPO and the basis of such interest. We expect that the testing of the waters exemption will be used frequently by both small and large issuers on an equal basis. Lastly, it is our opinion that confidential

the information provided to permitted institutional investors should be limited to the information that would be disclosed in the prospectus.

It is our opinion that the definition of "Permitted Institutional Investor" should be consistent with the current definition of "Accredited Investor" contained in National Instrument 45-106 – Prospectus and Registration Exemptions ("NI 45-106"). Accordingly, we recommend utilizing the definition of Accredited Investor in NI 45-106 instead of the definition of Permitted Institutional Investor in the proposed rule or changing the definition of Permitted Institutional Investor to include more of the categories included in the definition of Accredited Investor under NI 45-106.

In our opinion there should not be any additional record keeping involved with this exemption. We are concerned that the proposed documentation requirements will add unnecessary costs and administrative burdens without corresponding significant benefit.

Based on the potential benefits of the testing of the waters exemption noted above, it is our opinion that there should not be any time limitations when marketing to permitted institutional investors prior to the filing of the preliminary prospectus for an offering.

Enlargement of Bought Deals

In our opinion it is not necessary to have a cap on upsizing bought deals. However, if a cap is required, we would support a cap of 100% of the original bought deal size and this level would be particularly beneficial for smaller issuers.

We are not supportive of the provision which states that additional underwriters may not join the syndicate if the addition of a particular underwriter was not the culmination of a formal or informal plan to add that underwriter devised before the execution of the original agreement. There are many instances when a lead syndicate member (i.e. abookrunner) would like the flexibility to allow additional dealers (i.e. co-manager) to join the syndicate, and would like to afford them sufficient time to seek approval. In our opinion the inclusion of these co-managers does not have any negative consequences on the offering or the marketplace as a whole. As such, this restriction should be removed.

Additional Guidance on "Sufficient Specificity"

In our opinion any amendments to subsection 6.4(4) of 41-101 CP regarding "sufficient specificity" should not be made. It is our opinion that the existing guidance in the Companion Policy of when a distribution of securities commences is clear to investment dealers. However, if a change is made, we would support language that provides that "there must be a *bona fide* intention on the part of <u>both</u> the dealer and the issuer to engage in the public distribution of securities". Our issue with your proposed language is that a distribution may commence if the intention is only with the dealer.

Term Sheet Provisions for Bought Deals

We support the proposed amendments regarding the use of bought deal term sheets, subject to the following comments:

(a) It is our opinion that the proposed rule which states that "all information concerning securities in the term sheet must be in the bought deal news release or the issuer's continuous disclosure record" should be modified to include the word "material" after the word "all" because certain information contained in the news release (*i.e* the security identifier) would not be material to investors. Moreover, because investors participating in a bought deal offering will receive the information through the term sheet or in the prospectus, it is not clear why "all information concerning securities" should be included in the bought deal news release.

(b) In our opinion there are no benefits in filing a bought deal term sheet on SEDAR prior to launching a public offering. In our opinion this requirement is impractical given the timing involved in launching a bought deal offering, which involves many parties and documentation. Accordingly, it is our opinion that any additional filing requirement prior to launching a bought deal offering would delay the process and does not benefit investors.

(c) Given that all the information in the term sheet must be included in the prospectus, we do not see any benefits including the actual term sheet in the prospectus because this information would be redundant.

(d) In our opinion potential investors that receive a term sheet do not need to also receive the subsequent preliminary prospectus if those investors do not participate in the offering. This requirement imposes an unnecessary burden for dealers without any clear investor protection benefit.

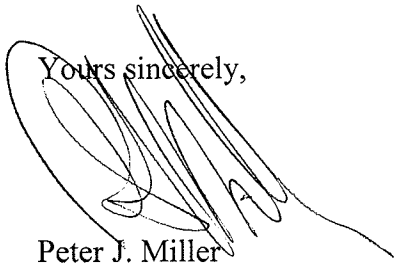
In our opinion providing a bought deal term sheet to retail investors should be consistent with the proposed rule for institutional investors and there should not be a distinction between these two categories of investors, particularly because it is proposed that all information contained in the bought deal term sheet must be included in the news release that is issued in connection with the transaction. In our opinion retail investors should benefit from the same information as institutional investors in making their investment decisions.

Roadshows and Comparable Multiples

In our opinion the current practises and requirements are sufficient with respect to roadshows and inclusion of comparable multiples. Comparable multiples should continue to be part of roadshow presentations and available to both institutional investors and retail brokers. In our opinion comparable multiples should not be made available to retail investors.

We have appreciated the opportunity to express our view regarding the Notice. We would be pleased to answer any questions that you may have about our comments.

Yours sincerely,



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