sifma

Invested in America

February 26, 2014

By Email

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3

Ashlyn D'Aoust
Legal Counsel, Corporate Finance
Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4

Re: Proposed Amendments to National Instrument 33-105 *Underwriting Conflicts* ("NI 33-105")

Re: Proposed Multilateral Instrument 45-107 *Listing Representation and Statutory Rights of Action Disclosure Exemptions* ("MI 45-107")

The Securities Industry and Financial Markets Association ("**SIFMA**")[1] appreciates the opportunity to comment on the proposed amendments to NI 33-105 and proposed MI 45-107. These regulatory initiatives would implement on a permanent basis exemptive relief that many of our members ("**Wrapper Exempt Dealers**") have obtained through discretionary orders (the "**Discretionary Orders**").

[1] SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit www.sifma.org.

SIFMA welcomes the goal of the two requests for comment of facilitating the offering of securities of non-Canadian issuers to sophisticated Canadian investors. Thus the focus of our comments is on how to best achieve that goal. Based on feedback we have received from Wrapper Exempt Dealers, the Discretionary Orders have worked well on placing securities with Canadian investors as part of an offering that is registered in the United States. However, the Discretionary Orders have been of very limited benefit in improving investment opportunities for Canadian permitted clients in the much greater number of prospective offerings that are not registered in the United States, including government offerings and offerings that are made to the public in another country and are placed with U.S. investors as part of a global offering on a basis exempt from U.S. registration requirements.

The major impetus for the extension of foreign offerings into Canada is dealers responding to demand from institutional investors in Canada rather than issuer interest in expanding their institutional investor base in Canada. Sometimes an institutional client has become aware of a prospective offering and informs a dealer of its interest. However, balanced against the goal of making offerings available to Canadian institutional investors is the cost of doing so. This cost includes the underwriters' team structuring a global offering and their legal counsel, who are responsible for ensuring compliance with the securities requirements of multiple jurisdictions, being able to allocate sufficient time to deal with Canadian requirements. Even seemingly minor compliance obstacles can lead to Canadian investors or investors in particular provinces being excluded from offerings where the time needed to comply with Canadian requirements is disproportionate compared to other jurisdictions, taking account of the time available for the particular offering. For some offerings, such as many government offerings, any need to determine whether customized disclosure is mandated could derail any prospect for it to be extended into Canada. Where compliance in certain provinces requires case-by-case analysis of the applicability of potentially complex exemptive relief (see Part III.A below concerning Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Market*s), dealers might default to simply excluding certain provinces. To our knowledge, Canadian requirements for the offering of foreign securities by private placement would remain the most onerous in the world if the two initiatives are put into effect as proposed.

Due to the close relationship and overlap between the two initiatives, as well as their simultaneous comment periods, we have chosen to comment on both in one letter, in which we have also addressed other significant obstacles that, in the view of our members, impede the offering of securities to sophisticated Canadian investors.

Our response is organized as follows:

- Part I deals with the proposed amendments to NI 33-105.
- Part II deals with proposed MI 45-107.
- Part III deals with other issues that we believe have frustrated the efforts of sophisticated Canadian investors desiring to have better access to offerings made globally in the primary market. It also addresses the amendments to Ontario Securities Commission Rule 45-501 ("**Rule 45-501**") published for comment on April 25, 2013 to the extent they interact with the proposed amendments to NI 33-105.

PART I: COMMENTS ON PROPOSED AMENDMENTS TO NI 33-105

A. Permit Alternatives to Compliance Requirements for a U.S. Registered Offering

1. Compliance with U.S. Registered Offering Requirements Unworkable for Offerings that Are not Registered

The predominant ongoing obstacle to reliance on the Discretionary Orders is the condition for offerings by non-government issuers to comply with the technical details of the requirements applicable to a U.S. registered offering with respect to disclosure of underwriter conflicts of interest when the offering is not a U.S. registered offering. This is obviously not an issue when the offering is a registered offering in the United States. However, this condition has substantially limited the utility of the Discretionary Orders where a registered offering is not made in the United States and prevents Canadian institutional investors from being able to participate in global offerings in the same manner as U.S. institutional investors.

A significant obstacle to compliance with the requirements of a U.S. registered offering is the requirement of FINRA Rule 5121 to provide "prominent disclosure". For an offering to which section 229.508 of SEC Regulation S-K applies, "prominent disclosure" is provided in part by adding the notation "(Conflicts of Interest)" following the listing of the plan of distribution section in the table of contents. However, a situation can arise where an offering is subject to SEC Regulation S-K, but not subject to FINRA Rule 5121, and the Plan of Distribution is only included in the final version of the offering document. Thus it is not possible for the preliminary version of the offering document sent to potential investors to comply with FINRA Rule 5121 even though the document provides all material disclosure regarding underwriter conflicts.

We respectfully submit that the proposed amendments will not achieve their goal of providing increased access by Canadian permitted clients to offerings by foreign issuers if the requirement for non-U.S. registered offerings to comply in full with the underwriter disclosure requirements applicable to U.S. registered offerings is retained.

Recommendation:

We further submit that, for offerings made to permitted clients in Canada, the policy basis of NI 33-105 would be satisfied and investors adequately protected by adopting the materiality standard of section 229.508 of SEC Regulation S-K, which requires issuers to "identify each such underwriter having a material relationship with the registrant and state the nature of the relationship",[2] without imposing as a condition compliance with other disclosure requirements of section 229.508 of SEC Regulation S-K and the technical requirements of FINRA Rule 5121 that do not apply to the offering to U.S. investors.

[2] We note that section 229.508 deals with disclosure concerning the plan of distribution generally, most of which does not pertain to underwriter conflicts of interest of the nature contemplated by NI 33-105. These disclosure requirements include (i) the plan of distribution of any securities to be registered that are to be offered otherwise than through underwriters, (ii) a description of any dividend or interest reinvestment distribution plan pursuant to which the securities are offered, (iii) the compensation payable to the underwriters, any other selling dealers and any finders, (iv) a description of indemnification provisions in the underwriting agreement, (v) a description of any intended passive market making by the underwriters or selling group members, and (vi) a description of stabilization and other transactions intended to be conducted by the underwriters during the offering to stabilize, maintain or otherwise affect the market price of the offered securities.

The requirement to provide connected issuer disclosure is based on the existence of a relationship that may lead a prospective purchaser of the securities to question whether a dealer and the issuer are independent of each other (or the dealer and a selling securityholder, if applicable). If such a relationship exists, it would also fall within the concept of materiality. Our proposed resolution to this obstacle to the offering of non-Canadian securities to permitted clients is fully consistent with the statement in the summary of the proposed amendments to NI 33-105 in the Notice and Request for Comment that an offering document would be required to be "delivered to purchasers that complies with U.S. disclosure requirements on conflicts of interest between issuers and underwriters".

2. *Extension to Public Offerings in Other Jurisdictions that Have Conflicts of Interest Disclosure Requirements*

We would suggest that for offerings not registered in the United States, the exemption from complying with the disclosure requirements of NI 33-105 should be available where an offering is made by prospectus to the public in another jurisdiction that has disclosure requirements relating to underwriter conflicts of interest, either a requirement to describe conflicting interests that are material to the offering or specific disclosure requirements relating to conflicts of interest, and the dealer sends to its Canadian permitted clients either the prospectus or an equivalent global offering document.

4. *Conclusion*

The requirement that Canadian wrapper disclosure apply U.S. registration statement standards regardless of whether the securities in question are actually registered places issuers and their dealers in the anomalous position of being required to provide to Canadian permitted clients additional disclosure beyond that which is required to be provided to institutional investors in the laws of the home jurisdiction of the issuer and/or primary jurisdiction of the offering. This reverses a long-standing and common principle, under which sophisticated investors in Canada who decide to invest in foreign jurisdictions are presumed to understand that those foreign investments may not necessarily be subject to the same disclosure rules as apply in Canada.

Put bluntly, for a U.S. issuer offering its securities on a private placement basis, in a global offering made primarily outside of Canada, why should a Canadian pension fund receive more detailed disclosure than is required by U.S. law to be provided to a U.S. pension fund manager investing in the same offering? The thrust of the wrapper exemption should be to allow securities of non-Canadian issuers to be offered in Canada on the same basis as they are being offered in the United States and elsewhere, not to create a more onerous disclosure obligation for an offering to Canadian investors.

Recommendation:

We recommend that section 3A.2 of the proposed amendments to NI 33-105 should be revised as follows:

> "**3A.2 Exemption based on foreign disclosure** -- Subsection 2.1(1) does not apply to a distribution of a designated foreign security if 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; and

(c) if the distribution is registered under the 1933 Act, 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; or

(d) if the distribution is made in the United States but not registered under the 1933 Act, the exempt offering document identifies each underwriter having a material relationship with the issuer and states the nature of the relationship, as would be required by section 229.508 of SEC Regulation S-K under the 1933 Act if the distribution was registered under the 1933 Act; or

(e) if the distribution is not made in the United States, the exempt offering document is a prospectus prepared in accordance with the prospectus requirements of a foreign jurisdiction that mandates disclosure of underwriter conflicts of interest or a global offering document containing substantially the same disclosure as the prospectus for the distribution.

B. Remove Disclosure Requirements for Offerings of Foreign Government Securities

Although the Discretionary Orders contain less stringent requirements for offerings of foreign government securities than for other non-Canadian securities, they have failed to achieve the goal of enabling sophisticated Canadian investors to participate in offerings of foreign government securities that are rated lower than A. Demand for foreign government securities often far exceeds the supply made available to international institutional investors, so issuers fail to perceive any justification for considering the applicability, or not, of additional compliance requirements to make sales to Canadian investors. Foreign government issuers and underwriters often leave out Canada rather than deal with the distinction between related issuers and connected issuers. Thus to have the desired effect for offerings of foreign government securities, our understanding is that proposed section 3A.3, regarding the exemption for foreign government securities, should be further simplified by deleting requirement (b), which requires consideration of whether customized disclosure is needed for Canadian investors only. We respectfully submit that sophisticated Canadian investors would be adequately protected by receiving the same disclosure concerning issuers of government securities as other sophisticated investors receive.

Recommendation:

We recommend that paragraph (b) should be deleted from proposed section 3A.3 of NI 33-105.

C. Remove Limitation to Non-Reporting Issuers

A limitation on the use of the exemption for which a policy basis has not been suggested is the restriction that the issuer may not be "a reporting issuer in a jurisdiction of Canada". As a result of the possibility that a non-Canadian entity that is a reporting issuer in a Canadian jurisdiction may be entitled to make its filings in paper format pursuant to section 2.1 of National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*, in order for a dealer to be assured that a security falls within the definition of "designated foreign security" in the proposed amendments to NI 33-105, it has to check not only the list of reporting issuers on SEDAR, but also the reporting issuer lists maintained by each of the 13 Canadian provincial and territorial securities regulatory authorities, including by telephone during business hours where the list is not readily available on a website or is updated on a periodic basis.

We respectfully submit that the various other restrictions included in the definition of "designated foreign security" are sufficient for the purpose of the proposed amendments without the restriction on the issuer not being a reporting issuer in any Canadian jurisdiction. The other

restrictions include the issuer being non-Canadian in terms of its jurisdiction of formation and head office and the residency of a majority of its executive officers and directors and that the offering be made primarily in a foreign jurisdiction.

We respectfully submit that the status of the issuer as a reporting issuer in a Canadian jurisdiction does not itself make a class of its securities more "Canadian" than a class of securities of a non-Canadian issuer that is not a reporting issuer. For example, a non-Canadian issuer might use its status as a reporting issuer in a Canadian jurisdiction to act as a credit supporter enabling a Canadian finance subsidiary to qualify to file a short form prospectus pursuant to section 2.4 of National Instrument 44-101 *Short Form Prospectus Distributions* and to use the shelf system pursuant to section 2.4 of National Instrument 44-102 *Shelf Distributions*. The type of anomalous situation that can arise is a non-Canadian bank holding company needing a "Canadian wrapper" to offer its notes by private placement to Canadian permitted clients, while its non-Canadian bank subsidiaries are able to offer notes in Canada without a wrapper.

Our view is that there is insufficient policy basis for excluding securities of non-Canadian issuers from the benefits of the proposed amendments to NI 33-105 merely on the basis of reporting issuer status in Canada, especially since checking the SEDAR website alone is not sufficient to verify that a non-Canadian issuer is not a reporting issuer in any Canadian jurisdiction.

Recommendation:

We recommend that subparagraph (a)(ii) should be deleted from the definition of "designated foreign security".

D. Manner of Providing Notice to Permitted Clients

Based on discussions with Wrapper Exempt Dealers, proposed section 3A.6 (Manner of Notice) of NI 33-105 will facilitate use of the proposed exemptive relief. The deletion in the proposed amendments of the requirement to obtain an acknowledgement and the availability of alternatives for providing notice to investors is a marked improvement over the notice and acknowledgement conditions of the Discretionary Orders. We believe the difficulty of complying with these conditions has significantly reduced use of the exemptive relief provided by the Discretionary Orders. Notice and acknowledgement procedures are not readily centralized where the relationships between the Wrapper Exempt Dealers and their Canadian permitted clients are personal with a particular representative or representatives. As a result, it can become necessary to coordinate with each of those representatives the sending of the notices and, particularly, confirming the receipt of acknowledgements, tracking that receipt for future reliance, and following up where acknowledgements are not received. All of this must be completed under the Discretionary Orders before even a preliminary version of the first offering memorandum may be sent to a particular client.

Enabling the notice to be provided in the exempt offering document (as defined in the proposed amendments) and, like other disclosure in the document, not requiring receipt of an acknowledgement, will enable better centralization for particular offerings, including assuring that all underwriters authorized to sell into the applicable Canadian jurisdictions are able to rely on the exemption. It would correspond with the practice commonly followed in offering documents globally.

E. Clarify that Exempt International Dealers are Specified Firm Registrants

"Specified firm registrant" is defined in NI 33-105 as "a person or company registered, *or required to be registered,* under securities legislation as a registered dealer, registered adviser or registered

investment fund manager" (emphasis added). That definition may be interpreted to include persons or companies that rely on the international dealer exemption of section 8.18 of National Instrument 31-103 *Registrant Requirements, Exemptions and Ongoing Registrant Obligations* ("**NI 31-103**"). However, an interpretation that such persons or companies are not specified firm registrants also is tenable on the basis that a person or company that is relying on an exemption from the registration requirement has ceased to be a person or company required to be registered. In light of our understanding that many of the dealers actively using the relief provided by the Discretionary Orders are relying on the international dealer exemption, we submit this would be an opportune occasion to amend the definition of specified firm registrant to clarify whether it includes, or does not include, persons or companies that are relying on an exemption from the registration requirement.

Recommendation:

We recommend that the following should be inserted at the end of the definition of "specified firm registrant": ", including a person or company relying on an exemption from a requirement to be registered".

PART II: COMMENTS ON PROPOSED MI 45-107

A. Requirement to Provide Description of Statutory Rights

Although MI 45-107 was proposed simultaneously with the proposed amendments to NI 33-105 and it relies on those proposed amendments, such as using the same definition of "designated foreign security" and a definition of "exempt offering document" that is effectively the same, and incorporating by reference the definition of "specified firm registrant" in NI 33-105, the proposed disclosure requirement in MI 45-107 does not mesh with the notice requirement of the proposed amendments to NI 33-105. In particular, the proposed amendments to NI 33-105 would permit a notice describing the terms and conditions of the exemptions to be provided in the exempt offering document (see Part I.A above), while proposed MI 45-107 would only provide for alternative means by which the statutory rights of action could be described.

This presents the following difficulties:

1. The statutory rights of action differ among the four provinces that have disclosure requirements for the statutory rights of action. Thus the full description of the statutory rights of action, in contrast to a notification that statutory rights of action are available, is very lengthy, and, we submit, excessively long for standard inclusion in an offering document being delivered globally.

2. Although a fully comprehensive description of the statutory rights of action could be provided, we submit that this may be less useful to investors than a description of statutory rights of action that is tailored to the particular offering. For example, the legislation of some provinces provides for a right of action for damages against every individual performing a similar function or occupying a similar position for the issuer as the directors of a company. However, in the preponderance of offerings for which proposed MI 45-107 would be used, the issuer would be an entity having directors so a description of a right of action against individuals performing a similar function as directors would be inapplicable and make the description of the statutory rights to be unnecessarily complex.

The Discretionary Orders permit the Wrapper Exempt Dealers to provide a notification of the existence of statutory rights of action to permitted clients instead of a description of the statutory rights of action. This corresponds with the requirement for distributions made by a prospectus

filed with the Canadian securities regulatory authorities of providing a brief, prescribed notice rather than a description of statutory rights of action.

We respectfully submit that for sophisticated investors such as permitted clients, this notification is adequate and would make the alternative proposed in the amendments to NI 33-105 of providing notice within the exempt offering document much more workable.

Recommendation:

We recommend that proposed section 3A.5 be drafted to include a form of notice, in the manner set out in Schedule A to this letter. The notice would serve the purpose of informing potential investors that are permitted clients of the nature of applicable rights and obligations and would be of suitable length for inclusion in an exempt offering document. The proposed disclosure with respect to statutory rights parallels that provided in a prospectus filed with the Canadian securities regulators.

B. Remove Limitation to Non-Reporting Issuers

Please see discussion under Part I.D above.

PART III: OTHER OBSTACLES TO OFFERINGS OF SECURITIES OF FOREIGN ISSUERS

In this part of our letter, we briefly mention additional obstacles created by securities legislation not currently subject to a request for comment that cause our members to decide not to offer securities of non-Canadian issuers in particular provinces, as well as a concern with Rule 45-501 in light of the proposed amendments to NI 33-105.

A. Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets ("MI 51-105")*

MI 51-105 may impose substantial ongoing requirements on an issuer whose securities are offered into any province other than Ontario and Quebec if the issuer does not have securities listed on a specified exchange or a primary listing on a specified exchange on the basis of a U.S. over-the-counter market ("**OTC**") quotation, whether or not it has securities with a U.S. OTC quotation at the time of the offering or whether or not the U.S. OTC quotation is at the issuer's initiative or even with the issuer's consent.

We understand that provinces other than Ontario and Quebec often are excluded from offerings as a result of MI 51-105 even where an exemption may be available, for example as a result of a primary listing on a specified exchange, so that the underwriters can avoid the need to make a determination as to the possible availability of an exemption from the requirements of MI 51-105. Even if the underwriters wish to make the determination, it may not be feasible. For example, an issuer could have securities that have been listed for a long time on the Luxembourg Stock Exchange and NYSE Euronext. If the first listing was on the Luxembourg Stock Exchange, the issuer would be exempt from MI 51-105, but if the first listing was on NYSE Euronext, or its predecessors, based on our understanding, it would not be exempt.

The Autorité des marchés financiers ("**AMF**") has provided an exemption in its blanket decision made July 31, 2012 that is simple and dovetails well with the proposed amendments to NI 33-105 and proposed MI 45-107 because it is generally available for offerings to permitted clients.

Recommendation:

We respectfully submit that the additional obstacle created by MI 51-105 in the other jurisdictions in which MI 51-105 is in in force should be removed by the provision of blanket relief in those jurisdictions similar to that provided by the AMF where promotional activities are directed only to permitted clients.

B. Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers* ("MI 32-102")

The definition of foreign issuer in the proposed amendments includes investment funds. However, the wrapper exemption granted by the Discretionary Orders is rarely used, if ever, for offerings by foreign investment funds because of the investment fund manager ("**IFM**") registration requirement.

MI 32-102, which is applicable in Ontario, Quebec and Newfoundland and Labrador, provides for exemptive relief from the IFM registration requirement for a non-Canadian IFM where all of the investors are permitted clients. However, the requirement to complete and file Form 32-102F2 *Notice of Regulatory Action* ("**Form 32-102F2**") and keep it updated, particularly for an IFM having large numbers of affiliates, can be sufficiently onerous for IFM to decide not to offer securities of the funds they manage into the provinces that have implemented MI 32-102 and, given the relative size of the institutional market in those provinces relative to the size of the institutional market in Canada as a whole, into any Canadian jurisdiction.

An example of a situation where the IFM registration requirement can become onerous is where special purpose investment funds are set up, each with the same investment adviser, but each having a different general partner. Just a single permitted client in Ontario, Quebec or Newfoundland and Labrador investing in each fund after being solicited would require each general partner acting as an IFM to make the required filings for exemptive relief under MI 32-102.

Imposing more stringent requirements, in particular the filing and ongoing updating of Form 32-102F2, on non-Canadian IFMs relying on the permitted client exemption of MI 32-102 relative to the requirements for reliance on the international adviser and international dealer exemptions in NI 31-103 does not seem to be justifiable from a policy perspective in light of the nature of the relative roles played by those types of service providers, with the investment fund manager largely having only an administrative and marketing role.

Given the breadth of the definition of investment fund, which may extend to exchange listed, actively managed mortgage real estate investment trusts, for example, the impact of the requirements imposed by MI 32-102 on the utility of the proposed amendments are greater than they might first appear. We respectfully submit that it would be useful in the context of the proposed amendments for the Canadian Securities Administrators to reconsider the application of the IFM registration requirement to investment fund managers that manage foreign funds offshore.

Recommendations:

1. We recommend the deletion of subsections 4(4) and 4(5) of MI 32-102.

2. We recommend reconsideration of the application of the IFM registration requirement to investment fund managers that manage foreign funds offshore.

C. Proposed Amendments to Rule 45-501

Please see discussion under Part II.A above.

* * *

Please contact the undersigned at 212-313-1118 or sdavy@sifma.org or Pamela Hughes at Blakes, Cassels & Graydon LLP at 416-863-2226 or pamela.hughes@blakes.com if you would like to further discuss these issues or would like further assistance in considering the requirements of other countries in respect of the disclosure of conflicts of interest between underwriters and issuers.

Sincerely yours,

SCHEDULE A

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, in the following form:

"**Selling and Resale Restrictions**

The [securities] may be sold only to purchasers purchasing as principal that are both "accredited investors" as defined in National Instrument 45-106 *Prospectus and Registration Exemptions* and "permitted clients" as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. Any resale of the [securities] must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements and in compliance with the registration requirements of applicable securities laws.

Relationship Between [the Issuer or Selling Securityholder] and the Underwriters

This [document] is exempt from the requirements of National Instrument 33-105 *Underwriting Conflicts* to provide disclosure of a "related issuer" or a "connected issuer" relationship between [the issuer or a selling securityholder] and any of the underwriters and their affiliates.

Statutory Rights of Action in the Event of a Misrepresentation

Securities legislation in certain of the provinces [and territories] of Canada provides a purchaser with remedies for rescission or, in some jurisdictions, damages if this document and any amendment thereto contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province [or territory]. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province [or territory] for the particulars of these rights or consult with a legal adviser."