This memorandum provides a summary only of only some of the more significant Canadian securities regulatory requirements that are applicable to non-resident broker-dealers, advisers and investment fund managers that trade, or provide advice respecting, securities in Canada. This memorandum has therefore been prepared, and is provided to you, for informational purposes only and should not be relied upon without first consulting with qualified Canadian counsel. We invite you to call us with any questions or comments that you may have in relation to any of the matters addressed by the memorandum.

Canadian Securities Regulatory Requirements applicable to Non-Resident Broker-Dealers, advisers and Investment Fund Managers

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Canadian Securities Regulatory Requirements applicable to Non-Resident Broker-Dealers, Advisers and Investment Fund Managers

1.00 PURPOSE

1.01 The purpose of this paper is to provide a non-resident of Canada with an overview of the dealer registration, adviser registration, investment fund manager registration and prospectus requirements that should be considered and addressed by the non-resident before it begins to trade securities with, or provide investment advice to, any person or company located in Canada, or to act as an investment fund manager in Canada. All currency amounts that are referred to in this paper are denominated in Canadian dollars.

2.00 THE CANADIAN SECURITIES REGULATORY FRAMEWORK

2.01 Like the United States, Canada has a federal system of government whereby the authority to enact legislation is divided between the federal and the provincial and territorial governments. Unlike the United States, the Canadian securities markets are currently regulated solely by the provincial and territorial governments¹. As a result, each of Canada's 10 provinces and three territories has its own legislative scheme for regulating the securities market within its own provincial or territorial jurisdiction and its own securities commission or regulatory authority (a "Securities Regulator") for administering and enforcing such legislation. Securities regulatory requirements in Canada can therefore vary from jurisdiction to jurisdiction.

2.02 Canadian securities legislation generally regulates the trading of, and advising in respect of, securities within a province or territory by requiring those who engage in, or hold themselves out as being engaged in, the business of trading in, or advising in respect of, securities to become registered or licensed as a dealer or adviser, respectively, and by requiring

¹ On May 26, 2010, the federal Minister of Finance released a draft of a proposed federal securities Act (the “Proposed Federal Securities Act”) that was intended to establish a comprehensive and uniform framework for the regulation of securities and derivatives trading and advisory activities throughout the country. Rather than introducing the Proposed Federal Securities Act to Parliament as a bill, the federal government referred it to the Supreme Court of Canada for the Court's opinion on the constitutional authority of the federal government to enact such legislation. The Supreme Court of Canada heard the case on April 13, and 14, 2011 and it rendered its decision on December 22, 2011. The Court reached the unanimous decision that the Proposed Federal Securities Act is not constitutional because the federal government does not have the power to regulate comprehensively trading in securities pursuant to its general trade and commerce power under the Constitution Act, 1867. The Supreme Court of Canada noted that although the federal government’s power to regulate trade and commerce is broadly cast, it cannot be used in a way that denies the provinces the power to regulate local matters and industries within their boundaries.
those who distribute securities to file a prospectus with, and obtain a receipt therefor from, the applicable Securities Regulator(s) unless:

(a) the securities legislation provides for an express statutory exemption from the relevant requirement; or

(b) an order or ruling can be obtained from the applicable Securities Regulator which exempts a trade, a security or a person or company from the relevant requirement.

Canadian securities legislation also requires any person or company who acts as an investment fund manager in a province or territory of Canada to become registered as such with the relevant Securities Regulator subject to certain transitional relief that has been granted pursuant to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Obligations* ("NI 31-103"). As described in greater detail below, non-resident investment fund managers are generally exempt from the investment fund manager registration requirement until December 31, 2012.

2.03 For purposes of the dealer registration and prospectus requirements of Canadian securities legislation, the term "trade" is broadly defined to include any sale or disposition of a security for valuable consideration, any receipt by a registrant of an order to buy or sell a security and any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance thereof. The term "distribution" is defined, with reference to the term "trade", to include a trade in the securities of an issuer that have not been previously issued.

2.04 For purposes of the adviser registration requirement, what constitutes carrying on the business of an adviser has been the subject of two significant decisions of the Ontario Securities Commission ("OSC"). *In the Matter of Jack Maguire & J.K. Maguire & Associates*, the OSC endorsed the following statement of the British Columbia Securities Commission made *In The Matter of Robert Anthony Donas*:

A person who does nothing more than provide factual information about an issuer and its business activities is not advising in securities. A person who recommends an investment to an issuer or a purchase or sale of an issuer’s securities, or who distributes or offers an opinion on the investment merits of an issuer or an issuer’s securities, is advising in securities. If a person advising in securities is distributing or offering the advice in a manner that reflects a business purpose, the person is required to be registered under the Act.

The OSC provided further guidance *In The Matter of Brian K. Costello* when it observed that "the trigger for registration as an adviser is not doing one or more acts that constitute the giving of advice but engaging in the business of advising". In Costello, the OSC went on to state that:

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2 (1995) 18 OSCB 4623
3 BC Weekly Summary, April 7, 1995, p. 39
4 (2003) 26 OSCB 1617
Providing mere financial information in relation to specific securities does not constitute the giving of advice, but providing an opinion on the wisdom or value or desirability of investing in specific securities does: *Re Canadian Shareholders Association* (1992), 15 OSCB 617. In *Lowe v. Securities and Exchange Commission*, 472 U.S. 181 (1985), a ‘one-on-one’ relationship involving the giving of advice on specific securities to specific individuals was found to be required to qualify as the giving of advice under U.S. law. Such a direct one-on-one relationship with an investor is not required to qualify as the giving of advice under Ontario law.

2.05 In an effort to harmonize Canadian securities laws, each of the 13 Securities Regulators in Canada have, under rule making authority granted by the provincial and territorial governments, established numerous rules, referred to as national instruments, that operate in a substantially identical manner in each province and territory. NI 31-103 is a product of this harmonization effort.

3.00 TRADING IN SECURITIES BY NON-RESIDENT BROKER-DEALERS

3.01 In lieu of becoming registered as a dealer, a non-resident that proposes to engage in the business of trading securities in Canada may elect to rely upon one of a very limited range of dealer registration exemptions. The most relevant exemptions from a non-resident’s perspective are the international dealer and registered dealer exemptions that are described below.

**International Dealer Exemption**

3.02 A non-resident person or company that is eligible to rely on the international dealer exemption may engage in the following trading related activities without having to become registered as a dealer in reliance upon section 8.18(2) of NI 31-103 (the “International Dealer Exemption”).

(a) an activity, other than a sale of a security, that is reasonably necessary to facilitate a distribution of securities that are offered primarily in a foreign jurisdiction;

(b) a trade in a debt security with a Canadian permitted client during the security’s distribution if the debt security is offered primarily in a foreign jurisdiction and a prospectus has not been filed with a Canadian securities regulatory authority for the distribution;

(c) a trade in a debt security that is a foreign security\(^5\) with a Canadian permitted client, other than during the security’s distribution;

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\(^5\) For purposes of section 8.18 of NI 31-103, a foreign security means a security that has been issued by an issuer incorporated, formed or created under the laws of a foreign jurisdiction and a security issued by the government of a foreign jurisdiction.
(d) a trade in a foreign security with a Canadian permitted client unless the trade is made during the security’s distribution under a prospectus that has been filed with a Canadian securities regulatory authority;

(e) a trade in a foreign security with an investment dealer; and

(f) a trade in any security with an investment dealer that is acting as principal.

3.03 For purposes of the International Dealer Exemption, a Canadian permitted client is a person or company that is referred to in paragraphs (a) to (e), (g) or (i) to (r) on the list of permitted clients that is attached as Schedule A provided that:

(a) in the case of an individual, the individual is a resident of Canada;

(b) in the case of a trust, the terms of the trust expressly provide that those terms are governed by the laws of a jurisdiction of Canada; and

(c) in any other case, the permitted client is incorporated, organized or continued under the laws of Canada or a jurisdiction of Canada.

3.04 A non-resident is only eligible to rely upon the dealer registration exemption that is available pursuant to the International Dealer Exemption if all of the following terms and conditions apply:

(a) the head office or principal place of business of the non-resident is in a foreign jurisdiction;

(b) the non-resident is registered under the securities legislation of the foreign jurisdiction in which its head office or principal place of business is located in a category of registration that permits it to carry on the activities in that jurisdiction that registration as a dealer would permit it to carry on in Canada;

(c) the non-resident engages in the business of a dealer in the foreign jurisdiction in which its head office or principal place of business is located;

(d) the non-resident is acting as principal or as agent for the issuer of the securities, for a Canadian permitted client who is a Canadian resident of Canada or for another non-resident; and

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6 The Securities Regulators have recently issued orders and no-action notices to allow a non-resident person or company to rely on the International Dealer Exemption as if the term ‘Canadian permitted client’ referred to the entire list of permitted clients attached as Schedule A. See section 2 of Canadian securities administrators (“CSA”) Notice 31-329 Omnibus/Blanket Orders Exempting Registrants from Certain Provisions of NI 31-103 and Related Staff Positions (“CSA Notice 31-329”). We would be happy to discuss these orders and no-action notices with you at your convenience.
(e) the non-resident has submitted to the relevant Canadian Securities Regulator(s) a completed Form 31-103F2 Submission to Jurisdiction and Appointment of Agent for Service (“Form 31-103F2”).

3.05 In addition to the above-described terms and conditions, the International Dealer Exemption is not available to a non-resident in respect of a trade with a Canadian permitted client unless one of the following applies:

(a) the Canadian permitted client is registered as a dealer or adviser under the securities legislation of a province or territory of Canada; or

(b) the non-resident has provided the Canadian permitted client with notice (a “Client Notice”) of the following:

   (i) the non-resident is not registered in the relevant province or territory to make the trade;

   (ii) the foreign jurisdiction in which the head office or principal place of business of the non-resident is located;

   (iii) all, or substantially all, of the assets of the non-resident may be situated outside of Canada;

   (iv) there may be difficulty enforcing legal rights against the non-resident because of the above;

   (v) the name and address of the agent for service of process of the non-resident in the relevant province or territory.

Registered Dealer Exemption

3.06 A second dealer registration exemption that is available to a non-resident is the registered dealer exemption that is available pursuant to section 8.5 of NI 31-103. Section 8.5 provides that the dealer registration requirement does not apply to a person or company in respect of a trade made by the person or company if the trade is made:

(a) solely through an agent that is a registered dealer; or

(b) to a registered dealer that is purchasing as principal,

provided, in either case, that the registered dealer is registered in a category of dealer registration that permits the trade.

4.00 ADVISING IN SECURITIES BY NON-RESIDENT ADVISERS

4.01 In lieu of becoming registered as an adviser, a non-resident that proposes to engage in the business of an adviser in Canada may elect to rely on one of two adviser registration
exemptions. The first exemption is the sub-adviser exemption. As described below, the sub-adviser exemption is available as a statutory exemption in Ontario and Quebec and it is generally available as a discretionary exemption in all other provinces and territories. The second exemption is the international adviser exemption, also described below, that is available as a statutory exemption in all provinces and territories pursuant to section 8.26 of NI 31-103 (the "International Adviser Exemption").

4.02 Before describing each of the above-described adviser registration requirements, it should be noted that Ontario’s look-through approach to adviser registration was abandoned effective September 28, 2009. As a result, an adviser to an investment fund that distributes its securities into Ontario is no longer required to address adviser registration requirements, and Ontario adviser registration requirements are, like all other provincial and territorial jurisdictions, generally applicable only to advisers who provide investment advice on a separately managed account basis to person or companies, including investment funds, that are resident or otherwise located in Canada.

Sub-Adviser Exemption

4.03 As noted above, the sub-adviser exemption is only available as a statutory exemption in Ontario and Quebec. It permits a non-resident adviser to effectively jitney its advice through a registered adviser or a registered investment dealer for the benefit of the registrant’s clients.

4.04 In Ontario, the sub-adviser exemption is available pursuant to section 7.3 of OSC Rule 35-502 *Non-Resident Advisers* ("OSC Rule 35-502"). According to section 7.3, the exemption is only available if the obligations and duties of the non-resident adviser are set out in a written agreement with the Ontario registered adviser or investment dealer, as the case may be, and the Ontario registrant contractually agrees with its clients on whose behalf investment advice is, or portfolio management services are to be, provided to be responsible for any loss that arises out of the failure of the person or company so acting as an adviser to:

(a) exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the registrant and each client of the registrant for whose benefit the advice is, or the portfolio management services are, to be provided; or

(b) to exercise the degree of care, diligence and skill that a reasonable prudent person would exercise in the circumstances.

A comparable statutory exemption is available in Quebec and can generally be obtained by way of an application for exemptive relief in other provinces and territories.

International Adviser Exemption

4.05 The international adviser exemption that is available pursuant to section 8.26 of NI 31-103 (the "International Adviser Exemption") is similar to the International Dealer Exemption because it permits a non-resident to act as an adviser to certain Canadian permitted clients
subject to terms and conditions set out in paragraph 4.07 below that are similar to those set out in paragraph 3.04 above provided that:

(a) Canadian permitted clients do not include a person or company registered as a dealer or adviser in any province or territory of Canada; and

(b) the non-resident does not provide advice in Canada in respect of securities of Canadian issuers except to the extent that such advice is incidental to its providing advice in respect of foreign securities.

4.06 For purposes of the International Adviser Exemption, a Canadian permitted client is a person or company that is referred to in paragraphs (a) to (c), (e), (g) or (i) to (r) on the list of permitted clients that is attached as Schedule A provided that:

(a) in the case of an individual, the individual is a resident of Canada;

(b) in the case of a trust, the terms of the trust expressly provide that those terms are governed by the laws of a jurisdiction of Canada; and

(c) in any other case, the permitted client is incorporated, organized or continued under the laws of Canada or a jurisdiction of Canada.

4.07 A non-resident may only rely upon the International Adviser Exemption if all of the following terms and conditions apply:

(a) the head office or principal place of business of the non-resident is in a foreign jurisdiction;

(b) the person or company is registered, or operates under an exemption from registration, under the securities legislation of the foreign jurisdiction in which its head office or principal place of business is located, in a category of registration that permits it to carry on the activities in that jurisdiction that registration as an adviser would permit it to carry on in the local jurisdiction;

(c) the non-resident engages in the business of an adviser in the foreign jurisdiction in which its head office or principal place of business is located;

(d) during its most recently completed financial year, not more than 10% of the aggregate consolidated gross revenue of the non-resident, its affiliates and its

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7 Supra, note 5.
8 The Securities Regulators have issued orders and no-action notices to allow a non-resident person or company to rely upon the International Adviser Exemption as if the term “Canadian permitted client” referred to the entire list of permitted clients attached as Schedule A. See section 2 of CSA Notice 31-329. We would be happy to discuss these orders and no-action notices with you at your convenience.
9 For purposes of the International Adviser Exemption, aggregate consolidated gross revenue does not include the gross revenue of an affiliate of the adviser if the affiliate is registered in a jurisdiction of Canada.
affiliated partnerships was derived from the portfolio management activities of the person or company, its affiliates and its affiliated partnerships in Canada;

(e) before advising a client, the non-resident provides the client with a Client Notice; and

(f) the non-resident has submitted to the Securities Regulator a completed Form 31-103F2.

5.00 ACTING AS AN INVESTMENT FUND MANAGER

5.01 As a result of NI 31-103, any person or company that acts as an investment fund manager in a province or territory of Canada is required to become registered, or exempt from registration, as such with the relevant Securities Regulator(s) subject to certain transition period exemptions that have been granted for non-residents.

Transition Period

5.02 Section 16.6(1) of NI 31-103 provides that the investment fund manager registration requirement does not apply to a non-resident that is acting as an investment fund manager if its head office is not in a jurisdiction of Canada. Section 16.6(2) provides that section 16.6(1) is repealed on September 28, 2012 which would have required non-residents who act as investment fund managers in a Jurisdiction to become registered, or exempt from registration, as such on or before September 28, 2012 absent the transition exemption extension described below.

5.03 On July 5, 2012, the Securities Regulators issued CSA Staff Notice 31-330 Omnibus/Blanket Orders Extending Certain Transition Provisions Relating to the Investment Fund Manager Registration Requirement and the Obligation to Provide Dispute Resolution Services (“Staff Notice 31-330”) to advise, among other things, of further transitional relief that has been granted from the requirement to register as an investment fund manager. Staff Notice 31-330 advises that the Securities Regulators have issued parallel orders to extend the September 28, 2012 transition date that is contemplated by section 16.6(2) of NI 31-103 to December 31, 2012. As a result of these parallel orders, a non-resident that acts as an investment fund manager in a Jurisdiction is exempt from the investment fund manager registration requirement until the later of:

(a) December 31, 2012; and

(b) the date on which the relevant Securities Regulator accepts or refuses an application for registration as an investment fund manager that is filed with the Securities Regulator on or before December 31, 2012.

A Bifurcated Regulatory Framework

5.04 Despite the harmonization objective underlying the adoption of NI 31-103 as a national instrument effective September 28, 2009, the Securities Regulators have been unable to reach
a consensus respecting the regulation of non-resident investment fund managers. Non-resident investment fund managers must therefore contend with two distinct regulatory frameworks that will govern their activities in Canada effective September 28, 2012. Multilateral Instrument 32-102 Registration Exemptions for Non-Resident Investment Fund Managers (“MI 32-102”) will govern the activities of non-resident investment fund managers in Ontario, Québec and Newfoundland and Labrador (the “Instrument Jurisdictions”) and Multilateral Policy 31-202 Registration Requirement for Investment Fund Managers (“MP 31-202”) will govern the activities of non-resident investment fund managers in all provinces and territories other than the Instrument Jurisdictions (the “Policy Jurisdictions”).

**MI 32-102 – The Instrument Jurisdictions**

5.05 MI 32-102 comprises the instrument itself, two forms and a companion policy (“CP 32-102”). CP 32-102 provides guidance respecting the interpretation of MI 32-102. The interpretive guidance provided by CP 32-102 includes a description of the activities which will be considered to constitute acting as an investment manager for purposes of the investment fund manager registration requirement. According to CP 32-102, a person or company will be considered to be acting as an investment fund manager if it directs or manages the business, operations or affairs of one or more investment funds by engaging in some or all of the following activities:

- establishing a distribution channel for the fund;
- marketing the fund;
- establishing and overseeing the fund’s compliance and risk management programs;
- overseeing the day-to-day administration of the fund;
- retaining and liaising with the portfolio manager, the custodian, the dealers and other service providers of the fund;
- overseeing advisers’ compliance with the investment objectives and the overall performance of the fund;
- preparing the fund’s prospectus or other offering documents;
- preparing and delivering security holder reports;
- identifying, addressing and disclosing conflicts of interest;
- calculating the net asset value of the fund; and
- calculating, confirming and arranging payment of subscriptions and redemptions and/or dividends or other distributions.
5.06 If a non-resident person or company is acting as an investment fund manager, it will become subject to the investment fund registration requirement of an Instrument Jurisdiction if one or more of the investment funds that it manages distributes, or has distributed, securities to residents of the Instrument Jurisdiction. If a non-resident person or company becomes subject to the investment fund manager registration requirement of an Instrument Jurisdiction, it must either apply to become registered as an investment fund manager in the Instrument Jurisdiction or rely upon one of two registration exemptions that are available pursuant to sections 3 and 4 of MI 32-102.

5.07 Section 3 of MI 32-102 provides that the investment fund manager registration requirement does not apply to a non-resident acting as an investment fund manager of one or more investment funds if the non-resident does not have a place of business in an Instrument Jurisdiction and if one or more of the following apply:

- none of the investment funds has securityholders resident in the Instrument Jurisdiction; and/or
- neither the non-resident nor any of the investment funds has, at any time after September 27, 2012, actively solicited residents in the Instrument Jurisdiction to purchase securities of an investment fund.

5.08 Section 4(1) of MI 32-102 is more broadly cast than section 3 and provides for a Permitted Client exemption that is comparable to the International Dealer Exemption that is described above. Section 4 provides that the investment fund manager registration requirement does not apply to a non-resident investment fund manager if all securities of the investment funds managed by it that are distributed in an Instrument Jurisdiction are distributed in reliance upon a prospectus exemption to Permitted Clients only (the “International Investment Fund Manager Exemption”).

5.09 The International Investment Fund Manager Exemption contemplated by section 4(1) of MI 32-102 is not available unless all of the following apply:

- the non-resident investment fund manager does not have its head office or principal place of business in Canada;
- the non-resident investment fund manager is incorporated, formed or created under the laws of a foreign jurisdiction;
- none of the investment funds is a reporting issuer in Canada;
- the non-resident investment fund manager has submitted to the relevant Securities Regulator(s) a completed Form 32-102F1 Submission to Jurisdiction and Appointment of Agent for Service for International Investment Fund Managers;
- the non-resident investment fund manager has provided each of its Permitted Clients with notice in writing of the following:
• the investment fund manager is not registered in the relevant Instrument Jurisdiction to act as an investment fund manager;

• the foreign jurisdiction in which the head office or principal place of business of the investment fund manager is located;

• all or substantially all of the assets of the investment fund manager may be situated outside of Canada;

• there may be difficulty enforcing legal rights against the investment fund manager as a result of the foregoing; and

• the name and address of the agent for service of process of the investment fund manager in the relevant Instrument Jurisdiction(s).

5.10 Within 10 days of the date on which a non-resident investment fund manager first relies on the International Investment Fund Manager Exemption in an Instrument Jurisdiction, the non-resident must file a completed Form 32-102F2 Notice of Regulatory Action with the Securities Regulator of the Instrument Jurisdiction. If there is any change to the information previously provided on a Form 32-102F2, notice of the change must be provide to the Securities Regulator with 10 days of the change.

5.11 A non-resident investment fund manager that has relied on the International Investment Fund Manager Exemption at any time during the 12 month period preceding December 1 of a year must provide the Securities Regulator in the relevant Instrument Jurisdiction with notice of the following by December 1 of that year:

• the fact that it relied on the International Investment Fund Manager Exemption; and

• for all investment funds for which it acts as an investment fund manager, the total assets under management, expressed in Canadian dollars, attributable to securities beneficially owned by residents of the Instrument Jurisdiction as at the end of the most recently completed month.

MP 31-202 – The Policy Jurisdictions

5.12 Unlike MI 32-102, MP 31-202 adopts a principles based approach to the regulation of investment fund managers that places primary emphasis on actually acting as an investment fund manager within a Policy Jurisdiction rather than having security holders resident in the Policy Jurisdiction. MP 31-202 does not provide any “bright line” exemptions from registration. Accordingly, for purposes of the investment fund manager registration requirements of the Policy Jurisdictions, a non-resident person or company that acts as an investment fund manager must simply decide whether it is, or is not, required to register as such based on the guidance provided by MP 31-202.
5.13 Like CP 32-102, MP 31-202 begins by identifying those functions or activities that are indicative of a person or company that directs or manages the business, operations or affairs of an investment fund and thereby acts as an investment fund manager for purposes of the investment fund manager registration requirements of the Policy Jurisdictions. The functions or activities that are identified by MP 31-202 are the same as the activities identified by CP 32-102 that are set out in paragraph 5.05 above.

5.14 MP 31-202 then goes on to provide that an investment fund manager is required to register in a Policy Jurisdiction if it directs or manages the business, operations or affairs of an investment fund from a physical place of business in the Policy Jurisdiction or if its head office is located in the Policy Jurisdiction. If it does not have a physical place of business or head office in the Policy Jurisdiction, it will still be required to register if it engages in activities that result in its directing or managing the business, operations or affairs of an investment fund in the Policy Jurisdiction.

5.15 According to MP 32-102, in determining whether registration is required, a non-resident investment fund manager must consider what functions or activities, if any, that it is directing from within a Policy Jurisdiction, and, for such purpose, no single function or activity is determinative. In particular, functions or activities that are tied to the presence of security holders, the solicitation of investors or the distribution of securities in a Policy Jurisdiction are not activities that would give rise to investment fund manager registration, unless they are directed from within the Policy Jurisdiction and result in the person directing or managing the business, operations or affairs of an investment fund in the Policy Jurisdiction.

**Unregistered Investment Fund Manager Annual Fee – Ontario Only**

5.16 Currently, if a non-resident acts as an investment fund manager in Ontario by managing an investment that has Ontario residents as its security holders without being registered as an investment fund manager under the Securities Act (Ontario) (an “Unregistered Investment Fund Manager”), the Unregistered Investment Fund Manager is required to pay a capital markets participation fee to the OSC pursuant to OSC Rule 13-502. As part of the fee payment, the Unregistered Investment Fund Manager must file a Form 13-502F4 after completing Parts III and IV thereof, and it must also pay the required fee shown in Appendix B to OSC Rule 13-502, within 90 days of the Unregistered Investment Fund Manager’s financial year end.

5.17 If the Unregistered Investment Fund Manager fails to pay a capital markets participation fee in a timely way, an additional late fee is payable that is equal to one-tenth of 1% of the unpaid fee for each business day on which the capital markets participation fee remains unpaid.

5.18 Accordingly, even though a non-resident investment fund manager will be exempt from the investment fund registration requirements of Ontario until December 31, 2012, it will be required to pay a capital markets participation fee in Ontario if it distributes the securities of any investment fund it manages into Ontario prior to the end of this year.
6.00 REGISTRATION REQUIREMENTS APPLICABLE TO OFFSHORE PRIVATE EQUITY FUND OFFERINGS INTO CANADA

6.01 When considering the application of the dealer registration and investment fund manager registration requirements to the offering of offshore funds into Canada, it is important to consider whether the collective investment vehicle is an investment fund or a venture capital or private equity fund (in either case, a “PE Fund”) for Canadian securities law purposes.

6.02 The dealer registration and investment fund manager registration requirements may apply to the offering of an offshore investment fund into Canada but will not necessarily apply to offerings of offshore PE Funds into Canada.

6.03 For Canadian securities regulatory purposes, an investment fund is either an open end or closed end investment fund that offers liquidity, takes passive positions in securities and does not try to exercise control or otherwise influence the day-to-day business of the investee issuer. Unlike investment funds, a PE Fund raises capital for the purpose of investing in issuers that are not publicly traded and becoming actively involved in the management of such issuers, often over a period of several years. As a result, persons or companies that invest in a PE Fund must generally agree to remain invested in the PE Fund for a period of time and thereby agree to forego the liquidity that is generally characteristic of an investment in an investment fund.

6.04 Examples of active management in an issuer include a PE Fund having:

- representation on the board of directors;
- direct involvement in the appointment of managers; and/or
- a say in material management decisions.

The PE Fund looks to realize on the investment either through a public offering of the issuer's securities, or a sale of the business conducted by the issuer. At this point, the investors' money can be returned to them, along with any profit.

6.05 Investors rely on a PE Fund manager's expertise in selecting and managing the issuers it invests in. In return, the PE Fund manager receives a management fee or “carried interest” in the profits generated from these investments. They do not receive compensation for raising capital or trading in securities. By contrast, investors rely on investment fund managers to manage an investment fund but not to manage in any way the underlying businesses that are included in the investment portfolio of the investment fund.

6.06 Applying these considerations to the dealer registration and investment fund manager registration requirements, the Securities Regulators have, by way of interpretive guidance, advised that if a PE Fund manager is not compensated for either the raising or investment of money received from investors, and the investment of such money is occasional, the dealer registration requirement should not apply to the PE Fund manager in respect of its capital raising activities on behalf of the PE Fund. Similarly, the PE Fund manager would not be subject
to the investment fund manager registration requirement because it would be managing a private equity fund rather than an investment fund.

6.07 This dealer registration and investment fund manager registration analysis may be different if the PE Fund engages in activities other than those described above.

7.00 ANNUAL REGISTRATION EXEMPTION FILING REQUIREMENTS

Annual Notice of Continued Reliance

7.01 It is a condition of both the International Dealer Exemption and International Adviser Exemption, that a non-resident that has relied on either exemption during the 12 month period preceding December 1 of a year must notify the applicable Securities Regulator(s) of such reliance by December 1 of that year. There is no prescribed form for such notification and it can therefore be given by way of a letter or an email. In Ontario, a non-resident relying on either exemption is not required to comply with this notification requirement if it complies with the annual capital markets participation fee requirements described below. In Saskatchewan, a filing fee is payable at the time the annual notification is provided.

Ontario Annual Capital Markets Participation Fee

7.02 In Ontario, a non-resident that relies on the International Dealer Exemption or the International Adviser Exemption is required to pay an annual capital markets participation fee that is comparable to the annual fee, described above, that must be paid by Unregistered Investment Fund Managers. Like the fee that is payable by Unregistered Investment Fund Managers, the annual capital markets participation fee payable by non-residents relying on the International Dealer or International Adviser Exemption must be calculated by completing Form 13-502F4. Form 13-502F4 must be completed and filed electronically with the OSC, then printed, signed and retained by the non-resident by December 1 of each year.

7.03 The amount of the capital markets participation fee that is payable by an exempt international dealer or adviser is based on the non-resident’s specified Ontario revenue and is determined with reference to the capital markets participation fee table attached as Appendix B to OSC Rule 13-502. For firms having a December 31 year end, this amount will be based on an estimate of the firm’s specified Ontario revenue and the amount will therefore be subject to adjustment once the firm’s annual financial statements have been prepared.

7.04 Exempt international dealers and advisers must generally pay their capital markets participation fees by cheque prior to December 31.

7.05 An annual fee in the amount of $750 must also be paid by non-residents that rely on the International Dealer Exemption or the International Adviser Exemption in Saskatchewan.

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10 Sections 8.18(5), 8.18(6), 8.26(5) and 8.26(6) of NI 31-103.
8.00 PROSPECTUS REQUIREMENTS

8.01 As described above, an issuer that proposes to distribute its securities in Canada must either qualify the distribution pursuant to a prospectus prepared and filed in accordance with applicable Canadian securities regulatory requirements or it must conduct the distribution in reliance upon a prospectus exemption. The prospectus exemptions that are most commonly relied upon for capital raising purposes are the accredited investor exemption and the minimum investment exemption.11

Accredited Investor Exemption

8.02 The accredited investor exemption (the “Accredited Investor Exemption”) is available for distributions that are made to persons or companies who are accredited investors and who purchase the securities as principal.12 A list of persons and companies that are considered accredited investors (“Accredited Investors”) for purposes of the Accredited Investor Exemption is attached as Schedule B.

Minimum Investment Exemption

8.03 The minimum investment exemption (the “Minimum Investment Exemption”) is available to accommodate distributions of securities that have an aggregate acquisition cost to the purchaser of the securities that is not less than CAD $150,000 paid in cash at the time of the distribution provided the purchaser purchases the securities as principal.13 The Minimum Investment Exemption is only available in respect of the securities of a single issuer and is unavailable if the purchaser of the securities was created, or is used, solely to purchase or hold securities in reliance upon the Minimum Investment Exemption.

Offering Memorandum Requirement

8.04 If an offering document is to be used to solicit sales of foreign securities, including securities of investment funds, that are to be distributed in Canada in reliance upon either the Accredited Investor Exemption or the Minimum Investment Exemption, the offering document will probably be considered an offering memorandum. Generally speaking, any material prepared in connection with such a private placement, other than a “term sheet” that is limited to describing the terms of the securities being issued rather than describing the business and affairs of the issuer, will be considered an offering memorandum. Purchasers who receive an offering memorandum have a statutory right of action for rescission or damages for any misrepresentation in the offering memorandum. The statutory right of action must be described in the offering memorandum and two copies of the offering memorandum must be delivered to the relevant Securities Regulator(s) within ten (10) days of the distribution. If a foreign prospectus is used as an offering memorandum, it is common to attach a stand alone Canadian

11 The Securities Regulator has recently announced plans to review the Accredited Investor Exemption and Minimum Investment Exemption. See CSA Staff Consultation Note 45-401 Review of Minimum Amount and Accredited Investor Exemptions.
12 Section 2.3 of NI 45-106.
13 Section 2.10 of NI 45-106.
“wrapper” to describe the statutory rights of action and to address other related disclosure requirements.

Exempt Trade Reporting and Filing Fee Requirements

8.05 If the securities of an issuer are distributed into a province or territory of Canada in reliance upon either the Accredited Investor Exemption or the Minimum Investment Exemption, the issuer is required to file a completed Form 45-106F1 exempt trade report with the applicable Securities Regulator(s) within ten (10) days of the distribution and the filing of the report must be accompanied by the payment of a prescribed filing fee that varies from jurisdiction to jurisdiction. Alternatively, an investment fund can comply with the exempt trade reporting and filing fee requirements by filing the Form 45-106F1 and the related filing fee with the Securities Regulator(s) within 30 days of the end of the investment fund’s fiscal year end in lieu of the ten (10) day period noted above.

9.00 EXTRA-PROVINCIAL REGISTRATION

Ontario

9.01 The carrying on of securities trading or advising businesses by non-resident dealers and advisers in Canada in reliance upon the International Dealer and International Adviser Exemptions, respectively, will trigger a filing requirement in some Canadian jurisdictions under extra-provincial corporation legislation. For example, in Ontario, a corporation incorporated under the laws of a jurisdiction outside Canada may not carry on business in Ontario unless it has obtained a license to do so under the Extra-Provincial Corporations Act (Ontario). The licence is obtained by making over-the-counter filings of prescribed forms. The licensing process also includes the appointment of an agent for service of process which can be the same agent that is appointed for purposes of the International Dealer and International Adviser Exemptions discussed above.

Other Canadian Jurisdictions

9.02 If a non-resident adviser or dealer intends to rely on the International Dealer or International Adviser Exemption in another Canadian jurisdiction, we recommend reviewing the local requirements to determine whether the dealer or adviser should register under extra-provincial corporation legislation.

10.00 LIMITED PARTNERSHIP SECURITIES OFFERINGS

10.01 Some investment fund issuers are organized as limited partnerships. In some Canadian jurisdictions this raises registration issues for the investment fund under limited partnership legislation. For example, the Limited Partnerships Act (Ontario) (the “LPA”) provides that no limited partnership formed in a jurisdiction outside Ontario (an “extra-provincial limited partnership”) shall “carry on business” in Ontario unless it has filed a declaration with the Ministry of Consumer and Business Services (the “Ministry”). An extra-provincial limited partnership is deemed to “carry on business” in Ontario if, among other things, it effects a
distribution of securities in Ontario by way of an offering memorandum in compliance with Ontario securities law.

10.02 The prescribed form of declaration requires disclosure of the name of the extra-provincial limited partnership, the nature of its business, the general partner’s name and address and the name of the extra-provincial limited partnership’s attorney for service in Ontario. The declaration expires five years after its date of filing.

10.03 The extra-provincial limited partnership must also sign a power of attorney appointing a person resident in Ontario to be the attorney and representative in Ontario of the extra-provincial limited partnership.

10.04 The general partner of an extra-provincial limited partnership must also maintain a current record of the limited partners. The record must set out the name of each limited partner, an address for service and the amount of money and the value of other property contributed or to be contributed by the limited partner to the limited partnership. The attorney and representative in Ontario for the extra-provincial limited partnership must keep the record of limited partners. Any person would be able to inspect the record of limited partners during normal business hours of the limited partnership’s attorney and representative and may make copies of, and take extracts from, it. Every extra-provincial limited partnership must also keep at its attorney and representative in Ontario at the address stated in the power of attorney, copies of, among other things, the partnership agreement, the declaration and the power of attorney. Any partner may inspect any such documents that are required to be kept with the attorney and representative during normal business hours of the partnership’s attorney and representative. Any person who has a business relationship with the partnership may inspect any of the documents (other than the partnership agreement) during normal business hours of the partnership’s attorney and representative. There is no requirement under the LPA to file a copy of the partnership agreement with a governmental authority.

10.05 A failure to file the required documentation under the LPA would not affect the limitation of liability of limited partners of the extra-provincial limited partnership resident in Ontario, nor would that render void or voidable any contract entered into between the extra-provincial limited partnership and a holder of notes in Ontario. The chief practical consequence of failing to file the required documentation is that the extra-provincial limited partnership and any member of the extra-provincial limited partnership would not be capable of maintaining a proceeding in an Ontario court without leave of the court.

Other Canadian Jurisdictions

10.06 If an investment fund distributes securities in a Canadian jurisdiction outside Ontario, we recommend reviewing local requirements to determine whether the investment fund must be registered as extra-provincial limited partnership in that jurisdiction.

11.00 TERRORIST FINANCING REPORTING OBLIGATIONS

11.01 On July 30, 2010, the CSA published CSA Staff Notice 31-317 (Revised) Reporting Obligations Related to Terrorist Financing (“CSA Notice 31-317”). CSA Notice 31-317 was
published to clarify that Canadian federal monthly terrorist financing reporting obligations apply to foreign dealers and foreign advisers that engage in business in Canada in reliance upon either of the International Dealer or International Adviser Exemptions. A monthly report, in the form of the report attached to CSA Notice 31-317, is due on the 14th day of each month even if a “nil” response is provided. The monthly report must be scanned and filed with the Securities Regulator that is the foreign dealer’s or foreign adviser’s “principal regulator”. The CSA considers the principal regulator for a foreign dealer or foreign adviser to be the Securities Regulator in the provincial or territorial jurisdiction where most of the Canadian clients of the foreign dealer or foreign adviser reside. The website address for each Securities Regulator is set out on Appendix A to CSA Notice 31-317. Further information in relation to Canadian terrorist financing reporting obligations is available on the website of the Office of the Superintendent of Financial Institutions, Canada’s banking regulator.

If you have any questions regarding the foregoing please do not hesitate to call any of the lawyers in our Securities Regulation and Investment Products Group.

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SCHEDULE A

Permitted Clients

Each of the persons or companies identified below is a “permitted client” for purposes of National Instrument 31-103-Registration Requirements, Exemptions and Ongoing Obligations.

(a) a Canadian financial institution or a Schedule III bank;

(b) the Business Development Bank incorporated under the Business Development Bank of Canada Act (Canada);

(c) a subsidiary of any person or company referred to in paragraph (a) or (b), if the person or company owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of the subsidiary;

(d) a person or company registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer, other than as a scholarship plan dealer or a restricted dealer;

(e) a pension fund that is regulated by either the federal Office of the Superintendent of Financial Institutions or a pension commission or similar regulatory authority of a jurisdiction of Canada or a wholly-owned subsidiary of such a pension fund;

(f) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (e);

(g) the Government of Canada or a jurisdiction of Canada, or any Crown corporation, agency or wholly-owned entity of the Government of Canada or a jurisdiction of Canada;

(h) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government;

(i) a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l’Île de Montréal or an intermunicipal management board in Québec;

(j) a trust company or trust corporation registered or authorized to carry on business under the Trust and Loan Companies Act (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a managed account managed by the trust company or trust corporation, as the case may be;

(k) a person or company acting on behalf of a managed account managed by the person or company, if the person or company is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a
foreign jurisdiction;

(l) an investment fund if one or both of the following apply:

(i) the fund is managed by a person or company registered as an investment fund manager under the securities legislation of a jurisdiction of Canada;

(ii) the fund is advised by a person or company authorized to act as an adviser under the securities legislation of a jurisdiction of Canada;

(m) in respect of a dealer, a registered charity under the *Income Tax Act* (Canada) that obtains advice on the securities to be traded from an eligibility adviser, as defined in section 1.1 of National Instrument - 45-106 – *Prospectus Exemptions* (“NI-45-106”), or an adviser registered under the securities legislation of the jurisdiction of the registered charity;

(n) in respect of an adviser, a registered charity under the *Income Tax Act* (Canada) that is advised by an eligibility adviser, as defined in section 1.1 of NI 45-106, or an adviser registered under the securities legislation of the jurisdiction of the registered charity;

(o) an individual who beneficially owns financial assets, as defined in section 1.1 of NI 45-106, having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $5 million;

(p) a person or company that is entirely owned by an individual or individuals referred to in paragraph (o), who holds the beneficial ownership interest in the person or company directly or through a trust, the trustee of which is a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction;

(q) a person or company, other than an individual or an investment fund, that has net assets of at least $25 million as shown on its most recently prepared financial statements; and

(r) a person or company that distributes securities of its own issue in Canada only to persons or companies referred to in paragraphs (a) to (q).
Note: For purposes of the definition of the term “permitted client”, the following terms have the meanings ascribed to them below:

“Canadian financial institution” means

(i) an association governed by the Cooperative Credit Associations Act (Canada) or a central cooperative credit society for which an order has been made under section 473(1) of that Act, or

(ii) a bank, loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;

“company” means any corporation, incorporated association, incorporated syndicate or other incorporated organization; and

“entity” means a company, syndicate, partnership, trust or unincorporated organization.

“director” means (i) a member of the board of directors of a company or an individual who performs similar functions for a company; and (ii) with respect to a person that is not a company, an individual who performs functions similar to those of a director of a company;

“financial assets” means cash, securities, or any contract of insurance or deposit or evidence thereof that is not a security for the purposes of the securities legislation;

“fully managed account” or “managed account” means an account of a client for which a person makes the investment decisions if that person has full discretion to trade in securities for the account without requiring the client’s express consent to a transaction;

“investment fund” means a mutual fund or a non-redeemable investment fund, and, for greater certainty in British Columbia, includes an employee venture capital corporation that does not have a restricted constitution, and is registered under Part 2 of the Employee Investment Act (British Columbia) and whose business objective is making multiple investments, and a venture capital corporation registered under Part 1 of the Small Business Venture Capital Act (British Columbia) whose business objective is making multiple investments;

“non-redeemable investment fund” means an issuer

(i) whose primary purpose is to invest money provided by its security holders,

(ii) that does not invest

A. for the purpose of exercising or seeking to exercise control of an issuer, other than an issuer that is a mutual fund or a non-redeemable investment fund, or
B. for the purpose of being actively involved in the management of any issuer in which it invests, other than an issuer that is a mutual fund or a non-redeemable investment fund, and

C. that is not a mutual fund.

“person” includes an individual, a corporation, a partnership, trust, fund and an association, syndicate, organization, or other organized group of persons, whether incorporated or not, and an individual or other person in that person’s capacity as a trustee, executor, administrator, or personal or other legal representative;

“related liabilities” means liabilities incurred or assumed for the purpose of financing the acquisition or ownership of financial assets or liabilities that are secured by financial assets;

“spouse” means, an individual who,

(i) is married to another individual and is not living separate and apart within the meaning of the Divorce Act (Canada), from the other individual,

(ii) is living with another individual in a marriage-like relationship, including a marriage-like relationship between individuals of the same gender, or

(iii) in Alberta, is an individual referred to in paragraph (a) or (b), or is an adult interdependent partner within the meaning of the Adult Interdependent Relationships Act (Alberta);

In NI 45 – 106 an issuer is an “affiliate” of another issuer if one is a subsidiary of the other or if each of them is controlled by the same person or company.

In NI 45 – 106 a person is considered to “control” another person if

(i) the first person, directly or indirectly, beneficially owns or exercises control or direction over securities of the second person carrying votes which, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation,

(ii) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership, or

(iii) the second person is a limited partnership and the general partner of the limited partnership is the first person.
Accredited Investors

Each of the persons or companies identified below is an “accredited investor” for purposes of National Instrument 45-106 Prospectus and Registration Exemptions:

(a) a Canadian financial institution, or a Schedule III bank;

(b) the Business Development Bank of Canada incorporated under the Business Development Bank of Canada Act (Canada);

(c) a subsidiary of any person referred to in paragraphs (a) or (b), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary;

(d) a person registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer, other than a person registered solely as a limited market dealer registered under the Securities Act (Ontario) or the Securities Act (Newfoundland and Labrador);

(e) an individual registered or formerly registered under the securities legislation of a jurisdiction of Canada as a representative of a person referred to in paragraph (d);

(f) the Government of Canada or a jurisdiction of Canada, or any crown corporation, agency or wholly-owned entity of the Government of Canada or a jurisdiction of Canada;

(g) a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l’Île de Montréal or an intermunicipal management board in Québec;

(h) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government;

(i) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a pension commission or similar regulatory authority of a jurisdiction of Canada;
(j) an individual who, either alone or jointly with a spouse, beneficially owns, directly or indirectly, financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds C$1,000,000;

(k) an individual whose net income before taxes exceeded C$200,000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded C$300,000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year;

(l) an individual who, either alone or with a spouse, has net assets of at least C$5,000,000;

(m) a person, other than an individual or investment fund, that has net assets of at least C$5,000,000 as shown on its most recently prepared financial statements;

(n) an investment fund that distributes or has distributed its securities only to:

(i) a person that is or was an accredited investor at the time of the distribution,

(ii) a person that acquires or acquired securities in the circumstances referred to in sections 2.10 (minimum amount investment), and 2.19 (additional investment in investment funds) of NI 45-106, or

(iii) a person described in paragraph (i) or (ii) that acquires or acquired securities under section 2.18 Investment fund reinvestment of NI 45-106;

(o) an investment fund that distributes or has distributed securities under a prospectus in a jurisdiction of Canada for which the regulator or, in Québec, the securities regulatory authority, has issued a receipt;

(p) a trust company or trust corporation registered or authorized to carry on business under the Trust and Loan Companies Act (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a fully managed account managed by the trust company or trust corporation, as the case may be;

(q) a person acting on behalf of a fully managed account managed by that person, if that person:

(i) is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction, and

(ii) in Ontario, is purchasing a security that is not a security of an investment fund;
(r) a registered charity under the *Income Tax Act* (Canada) that, in regard to the trade, has obtained advice from an eligibility adviser or an adviser registered under the securities legislation of the jurisdiction of the registered charity to give advice on the securities being traded;

(s) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (d) or paragraph (i) in form and function;

(t) a person in respect of which all of the owners of interests, direct, indirect or beneficial, except the voting securities required by law to be owned by directors, are persons that are “accredited investors”;

(u) an investment fund that is advised by a person registered as an adviser or a person that is exempt from registration as an adviser; or

(v) a person that is recognized or designated by the securities regulatory authority or, except in Ontario and Québec, the regulator as:

(i) an accredited investor, or

(ii) an exempt purchaser in Alberta or British Columbia after September 14, 2005.

**Note:** For the purposes of the definition of the term “accredited investor”, the following terms have the meanings ascribed to them below:

*Canadian financial institution* means:

(a) an association governed by the *Cooperative Credit Associations Act* (Canada) or a central cooperative credit society for which an order has been made under section 473(1) of that Act, or

(b) a bank, loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, *caisse populaire*, financial services cooperative, or league that, in each case, is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;

*company* means any corporation, incorporated association, incorporated syndicate or other incorporated organization;

*director* means a member of the board of directors of a company or includes a person acting in a capacity similar to that of a director;

*entity* means a company, syndicate, partnership, trust or unincorporated organization;

*financial assets* means cash, securities, or any contract of insurance or deposit or evidence thereof that is not a security for the purposes of the securities legislation;
“fully managed account” means an account of a client for which a person makes the investment decisions if that person has full discretion to trade in securities for the account without requiring the client’s express consent to a transaction;

“investment fund” has the same meaning as a National Instrument 81-106 Investment Fund Continuous Disclosure;

“person” includes an individual, a corporation, a partnership, trust, fund and an association, syndicate, organization, or other organized group of persons, whether incorporate or not, and an individual or other person in that person’s capacity as a trustee, executor, administrator, or personal or other legal representative;

“related liabilities” means liabilities incurred or assumed for the purpose of financing the acquisition or ownership of financial assets or liabilities that are secured by financial assets;

“spouse” means, an individual who,

(a) is married to another individual and is not living separate and apart within the meaning of the Divorce Act (Canada), from the other individual,

(b) is living with another individual in a marriage-like relationship, including a marriage-like relationship between individuals of the same gender, or

(c) in Alberta, is an individual referred to in paragraph (a) or (b), or is an adult interdependent partner within the meaning of the Adult Interdependent Relationships Act (Alberta).

In NI 45-106 an issuer is an “affiliate” of another issuer if one is a subsidiary of the other or if each of them is controlled by the same person or company.

In NI 45-106 a person is considered to “control” another person if:

(a) the first person, directly or indirectly, beneficially owns or exercises control or direction over securities of the second person carrying votes which, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation;

(b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the units of the partnership; or

the second person is a limited partnership and the general partner of the limited partnership is the first person.