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NATIONAL INSTRUMENT 33-105 UNDERWRITING CONFLICTS

PART 1 DEFINITIONS, INTERPRETATION AND APPLICATION

1.1 Definitions - In this Instrument

"associated party" means, if used to indicate a relationship with a person or company

- (a) a trust or estate in which
 - (i) that person or company has a substantial beneficial interest, unless that trust or estate is managed under discretionary authority by a person or company that is not a member of any professional group of which the first mentioned person or company is a member, or
 - (ii) that person or company serves as trustee or in a similar capacity,
- (b) an issuer in respect of which that person or company beneficially owns or controls, directly or indirectly, voting securities carrying more than 10 percent of the voting rights attached to all outstanding voting securities of the issuer, or
- (c) a relative, including the spouse, of that person, or a relative of that person's spouse, if
 - (i) the relative has the same home as that person, and

- (ii) the person has discretionary authority over the securities held by the relative;

"connected issuer" means, for a specified firm registrant,

- (a) an issuer distributing securities, if the issuer or a related issuer of the issuer has a relationship with any of the following persons or companies that may lead a reasonable prospective purchaser of the securities to question if the specified firm registrant and the issuer are independent of each other for the distribution:
 - (i) the specified firm registrant,
 - (ii) a related issuer of the specified firm registrant,
 - (iii) a director, officer or partner of the specified firm registrant ,
 - (iv) a director, officer or partner of a related issuer of the specified firm registrant, or
- (b) a selling securityholder distributing securities, if the selling securityholder or a related issuer of the selling securityholder has a relationship with any of the following persons or companies that may lead a reasonable prospective purchaser of the securities to question if the specified firm registrant and the selling securityholder are independent of each other for the distribution:
 - (i) the specified firm registrant,
 - (ii) a related issuer of the specified firm registrant,
 - (iii) a director, officer or partner of the specified firm registrant,
 - (iv) a director, officer or partner of a related issuer of the specified firm registrant;

"direct underwriter" means, for a distribution,

- (a) an underwriter that is in a contractual relationship with the issuer or selling securityholder to distribute the securities that are being offered in the distribution, or
- (b) a dealer manager, if the distribution is a rights offering;

"foreign issuer" has the meaning ascribed to that term in National Instrument 71-101 *The Multijurisdictional Disclosure System*;

"independent underwriter" means, for a distribution, a direct underwriter that is not the issuer or the selling securityholder in the distribution and in respect of which neither the issuer nor the selling securityholder is a connected issuer or a related issuer;

"influential securityholder" means, in relation to an issuer,

- (a) a person or company or professional group that
 - (i) holds, has the power to direct the voting of, or has direct or indirect beneficial ownership of, voting securities entitling the person or company or professional group to cast more than 20 percent of the votes for the election or removal of directors of the issuer,
 - (ii) holds, has the power to direct the voting of, or has direct or indirect beneficial ownership of, equity securities entitling the person or company or professional group to receive more than 20 percent of the dividends or distributions to the holders of the equity securities of the issuer, or more than 20 percent of the amount to be distributed to the holders of equity securities of the issuer on the liquidation or winding up of the issuer,
 - (iii) controls or is a partner of the issuer if the issuer is a general partnership, or
 - (iv) controls or is a general partner of the issuer if the issuer is a limited partnership,
- (b) a person or company or professional group that
 - (i) holds, has the power to direct the voting of, or has direct or indirect beneficial ownership of,
 - (A) voting securities entitling the person or company or professional group to cast more than 10 percent of the votes for the election or removal of directors of the issuer, or
 - (B) equity securities entitling the person or company or professional group to receive more than 10 percent of the dividends or distributions to the holders of the equity securities of the issuer, or more than 10 percent of the amount to be distributed to the holders of equity securities of the issuer on the liquidation or winding up of the issuer, and

- (ii) either
 - (A) together with its related issuers
 - (I) is entitled to nominate at least 20 percent of the directors of the issuer or of a related issuer of the issuer, or
 - (II) has officers, directors or employees who are also directors of the issuer or a related issuer of the issuer, constituting at least 20 percent of the directors of the issuer or of the related issuer, or
 - (B) is a person or company of which the issuer, together with its related issuers,
 - (I) is entitled to nominate at least 20 percent of the directors of the person or company or at least 20 percent of the directors of a related issuer of the person or company, or
 - (II) has officers, directors or employees who are also directors of the person or company or a related issuer of the person or company, constituting at least 20 percent of the directors of the person or company or of the related issuer of the person or company, or
- (c) a person or company
 - (i) of which the issuer holds, has the power to direct the voting of, or has direct or indirect beneficial ownership of,
 - (A) voting securities entitling the issuer to cast more than 10 percent of the votes for the election or removal of directors of the person or company, or
 - (B) equity securities entitling the issuer to receive more than 10 percent of the dividends or distributions to the holders of the equity securities of the person or company, or more than 10 percent of the amount to be distributed to the holders of equity securities of the person or company on the liquidation or winding up of the person or company, and

- (ii) either
 - (A) that, together with its related issuers
 - (I) is entitled to nominate at least 20 percent of the directors of the issuer or of a related issuer of the issuer, or
 - (II) has officers, directors or employees who are also directors of the issuer or a related issuer of the issuer, constituting at least 20 percent of the directors of the issuer or of the related issuer, or
 - (B) of which the issuer, together with its related issuers
 - (I) is entitled to nominate at least 20 percent of the directors of the person or company or at least 20 percent of the directors of a related issuer of the person or company, or
 - (II) has officers, directors or employees who are also directors of the person or company or a related issuer of the person or company, constituting at least 20 percent of the directors of the person or company or of the related issuer of the person or company, or
- (d) if a professional group is within paragraph (a) or (b), the specified firm registrant of the professional group;

"professional group" means a group comprised of a specified firm registrant and all of the following persons or companies:

- (a) any employee of the specified firm registrant,
- (b) any partner, officer or director of the specified firm registrant,
- (c) any affiliate of the specified firm registrant,
- (d) any associated party of any person or company described in paragraphs (a) through (c) or of the specified firm registrant;

"related issuer" means a party described in subsection 1.2(2);

"special warrant" means a security that, by its terms or the terms of an accompanying contractual obligation, entitles or requires the holder to acquire another security without payment of material additional consideration and obliges the issuer of the special warrant or the other security to undertake efforts to file a prospectus to qualify the distribution of the other security; and

"specified firm registrant" means a person or company registered, or required to be registered, under securities legislation as a registered dealer, registered adviser or registered investment fund manager.

1.2 Interpretation

- (1) For the purposes of calculating a percentage of securities that are owned, held or under the direction of a person or company in the definition of "influential securityholder"
 - (a) the determination shall be made
 - (i) first, by including in the calculation only voting securities or equity securities that are outstanding, and
 - (ii) second, if the person or company is not an influential securityholder by reason of a calculation under subparagraph (i), by including all voting securities or equity securities that would be outstanding if all outstanding securities that are convertible or exchangeable into voting securities or equity securities, and all outstanding rights to acquire securities that are convertible into, exchangeable for, or carry the right to acquire, voting securities or equity securities, are considered to have been converted, exchanged or exercised, as the case may be, and
 - (b) securities held by a specified firm registrant in its capacity as an underwriter in the course of a distribution are considered not to be securities that the specified firm registrant holds, has the power to direct the voting of, or has direct or indirect beneficial ownership of.
- (2) A person or company is a "related issuer" of another person or company if
 - (a) the person or company is an influential securityholder of the other person or company,
 - (b) the other person or company is an influential securityholder of the person or company, or

- (c) each of them is a related issuer of the same third person or company.
- (3) Calculations of time required to be made in this Instrument in relation to a "distribution" shall be made in relation to the date on which the underwriting or agency agreement for the distribution is signed.

1.3 Application of Instrument - This Instrument does not apply to a distribution of

- (a) securities described in the provisions of securities legislation listed in Appendix A; or
- (b) mutual fund securities.

**PART 2
RESTRICTIONS ON UNDERWRITING**

2.1 Restrictions on Underwriting

- (1) No specified firm registrant shall act as an underwriter in a distribution of securities in which it is the issuer or selling securityholder, or as a direct underwriter in a distribution of securities of or by a connected issuer or a related issuer of the specified firm registrant, unless the distribution is made under a prospectus or another document that, in either case, contains the information specified in Appendix C.
- (2) For a distribution of special warrants or a distribution made under a prospectus no specified firm registrant shall act
 - (a) as an underwriter if the specified firm registrant is the issuer or selling securityholder in the distribution; or
 - (b) as a direct underwriter if a related issuer of the specified firm registrant is the issuer or selling securityholder in the distribution.
- (3) Subsection (2) does not apply to a distribution
 - (a) in which
 - (i) at least one specified firm registrant acting as direct underwriter acts as principal, so long as an independent underwriter underwrites not less than the lesser of
 - (A) 20 percent of the dollar value of the distribution, and
 - (B) the largest portion of the distribution underwritten by a specified firm registrant that is not an independent underwriter, or

- (ii) each specified firm registrant acting as direct underwriter acts as agent and is not obligated to act as principal, so long as an independent underwriter receives a portion of the total agents' fees equal to an amount not less than the lesser of
 - (A) 20 percent of the total agents' fees for the distribution, and
 - (B) the largest portion of the agents' fees paid or payable to a specified firm registrant that is not an independent underwriter; and
- (b) the identity of the independent underwriter and disclosure of the role of the independent underwriter in the structuring and pricing of the distribution and in the due diligence activities performed by the underwriters for the distribution is contained in
 - (i) a document relating to the special warrants that is delivered to the purchaser of the special warrants before that purchaser enters into a binding agreement of purchase and sale for the special warrants, for a distribution of special warrants, or
 - (ii) the prospectus, for a distribution made under a prospectus.

2.2 Calculation Rules - The following rules shall be followed in calculating the size of a distribution and the amount of independent underwriter involvement required for purposes of subsection 2.1(3):

- (a) For a distribution that is made entirely in Canada, the calculation shall be based on the aggregate dollar value of securities distributed in Canada or the aggregate agents' fees relating to the distribution in Canada, and the aggregate dollar value of the distribution underwritten, or aggregate dollar value of agents' fees received, by the independent underwriter in Canada.
- (b) For a distribution that is made partly in Canada of securities of an issuer that is not a foreign issuer, the calculation shall be based on the aggregate dollar value of securities distributed in Canada and outside of Canada or the aggregate agents' fees relating to the distribution in Canada and outside of Canada, and the aggregate dollar value of the distribution underwritten, or aggregate dollar value of agents' fees received, by the independent underwriter in Canada and outside of Canada.
- (c) For a distribution that is made partly in Canada by a foreign issuer and that is not exempt from the requirements of subsection 2.1(2) by

subsection 2.1(3) or by section 3.2, the calculation shall be based on the dollar value of securities distributed in Canada or the agents' fees relating to the distribution paid or payable in Canada, and the dollar value of the distribution underwritten, or aggregate dollar value of agents' fees received, by the independent underwriter in Canada.

PART 3 NON-DISCRETIONARY EXEMPTIONS

3.1 Exemption from Disclosure Requirement - Subsection 2.1(1) does not apply to a distribution that

- (a) is made under a document other than a prospectus if each of the purchasers of the securities
 - (i) is a related issuer of the specified firm registrant,
 - (ii) purchases as principal, and
 - (iii) does not purchase as underwriter; or
- (b) is made under section 2.8 of National Instrument 45-102 *Resale of Securities*.

3.2 Exemption from Independent Underwriter Requirement - Subsection 2.1(2) does not apply to a distribution of securities of a foreign issuer if more than 85 percent of the aggregate dollar value of the distribution is made outside of Canada or if more than 85 percent of the agents' fees relating to the distribution are paid or payable outside of Canada.

3A.1 Definitions - In this Part,

"eligible foreign security" means a security offered primarily in a foreign jurisdiction as part of a distribution of securities in either of the following circumstances:

- (a) the security is issued by an issuer
 - (i) that is incorporated, formed or created under the laws of a foreign jurisdiction,
 - (ii) that is not a reporting issuer in a jurisdiction of Canada,
 - (iii) that has its head office outside of Canada, and
 - (iv) that has a majority of the executive officers and a majority of the directors ordinarily resident outside of Canada;

- (b) the security is issued or guaranteed by the government of a foreign jurisdiction;

“executive officer” means, for an issuer, an individual who

- (a) is a chair, vice-chair or president,
- (b) is a chief executive officer or chief financial officer,
- (c) is a vice-president in charge of a principal business unit, division or function including sales, finance or production, or
- (d) performs a policy-making function in respect of the issuer;

“exempt offering document” means:

- (a) in New Brunswick, Nova Scotia, Ontario and Saskatchewan, an offering memorandum as defined under the securities legislation of that jurisdiction, and
- (b) in all other jurisdictions, a document including any amendments to the document, that
 - (i) describes the business and affairs of an issuer, and
 - (ii) has been prepared primarily for delivery to and review by a prospective purchaser to assist the prospective purchaser in making an investment decision in respect of securities being distributed pursuant to an exemption from the prospectus requirement;

“FINRA” means the self regulatory organization in the United States of America known as the Financial Industry Regulatory Authority;

“permitted client” has the same meaning as in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

3A.2 Application - This Part does not apply to a distribution if a prospectus has been filed with a Canadian securities regulatory authority for the distribution.

3A.3 Exemption based on U.S. disclosure - Subsection 2.1(1) does not apply to a distribution of a security described in paragraph (a) of the definition of eligible foreign security if all of the following apply:

- (a) the distribution is made to a permitted client through a registered dealer or international dealer;
- (b) the registered dealer or international dealer delivers a written notice to the permitted client before or during the distribution of the eligible

foreign security that specifies the exemption relied on and a reference to this section;

- (c) an exempt offering document prepared with respect to the distribution is delivered to the permitted client;
- (d) a concurrent distribution of the security is made by the issuer to investors in the U.S.;
- (e) the exempt offering document contains the same disclosure as that provided to investors in the U.S.;
- (f) if applicable, the disclosure provided in the exempt offering document for a distribution referred to in paragraph (d) is made in compliance with FINRA rule 5121, as amended from time to time;
- (g) the distribution referred to in paragraph (d) is made in compliance with applicable U.S. federal securities law.

3A.4 Exemption for foreign government securities - Subsection 2.1(1) does not apply to a distribution of a security described in paragraph (b) of the definition of eligible foreign security if:

- (a) the distribution is made to a permitted client through a registered dealer or international dealer, and
- (b) the registered dealer or international dealer delivers a written notice to the permitted client, before or during the distribution of the eligible foreign security that specifies the exemption relied on and a reference to this section.

3A.5 Manner of notice – For greater certainty, a notice required under paragraphs 3A.3(b) and 3A.4(b) may be incorporated into the exempt offering document delivered to the permitted client.

3A.6 Alternative compliance with notice requirement - A notice will be considered to have been delivered to a permitted client in compliance with paragraph 3A.3(b) or 3A.4(b), if

- (a) the registered dealer or international dealer has previously delivered a notice to the permitted client in compliance with paragraph 3A.3(b) or 3A.4(b), and
- (b) the notice stated that the registered dealer or international dealer intends to rely on the exemption in paragraph 3A.3(b) or 3A.4(b), as applicable, for any distribution in the future of an eligible foreign security to the permitted client.

**PART 4
VALUATION REQUIREMENT**

4.1 Valuation Requirement - A purchaser of securities offered in a distribution for which information is required to be given under subsection 2.1(1) shall be given a document that contains a summary of a valuation of the issuer by a member of the Canadian Institute of Chartered Business Valuators, a chartered accountant or by a registered dealer of which the issuer is not a related issuer, and that specifies a reasonable time and place at which the valuation may be inspected during the distribution, if

- (a) the issuer in the distribution
 - (i) is not a reporting issuer,
 - (ii) is a registered dealer, or an issuer all or substantially all of whose assets are securities of a registered dealer,
 - (iii) is issuing voting securities or equity securities, and
 - (iv) is effecting the distribution other than under a prospectus; and
- (b) there is no independent underwriter that satisfies subsection 2.1(3).

**PART 5
EXEMPTION**

5.1 Exemption

- (1) The regulator or securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.

5.2 Evidence of Exemption - Without limiting the manner in which an exemption under section 5.1 may be evidenced, the issuance by the regulator of a receipt for a prospectus or an amendment to a prospectus is evidence of the granting of the exemption if

- (a) the person or company that sought the exemption has delivered to the regulator, on or before the date that the preliminary prospectus or an amendment to the preliminary prospectus was filed, a letter or memorandum describing the matters relating to the exemption and indicating why consideration should be given to the granting of the exemption; and

- (b) the regulator has not sent written notice to the contrary to the person or company that sought the exemption before, or concurrent with, the issuance of the receipt.

PART 6
EFFECTIVE DATE

6.1 Effective Date - This National Instrument comes into force on 11 May 2005.

APPENDIX A

EXEMPT SECURITIES

Jurisdiction	Securities Legislation Reference
All	Sections 2.20, 2.21, 2.35, 2.38 and 2.39 of National Instrument 45-106 <i>Prospectus Exemptions</i>
All except Ontario	Sections 2.34, 2.36 and 2.37 of National Instrument 45-106 <i>Prospectus Exemptions</i>
Alberta	Section 87(h), (h.1) and (h.2) of the Securities Act (Alberta)
Manitoba	Subsection 19(2)(g) and (h) of the Securities Act (Manitoba)
Newfoundland and Labrador	Subsections 36(2)(h) and (i) of the Securities Act (Newfoundland and Labrador)
Nova Scotia	Clause 41(2)(i) of the Securities Act (Nova Scotia)
Ontario	Paragraphs 73(1)(a) and (b) of the Securities Act (Ontario) Sections 2.4 to 2.6 of OSC Rule 45-501 Paragraphs 2.34(2)(b),(d.1),(e) and (f) of National Instrument 45-106 <i>Prospectus Exemptions</i>
Prince Edward Island	Subsection 2(4)(f) and (g) of the Securities Act (Prince Edward Island)
Quebec	Section 41 of the Securities Act (Québec)
Saskatchewan	Subsection 39(2)(i) and (j) of The Securities Act, 1988 (Saskatchewan)

APPENDIX B

REPEALED

APPENDIX C

REQUIRED INFORMATION

REQUIRED INFORMATION FOR THE FRONT PAGE OF THE PROSPECTUS OR OTHER DOCUMENT

1. A statement in bold type, naming the relevant specified firm registrant or specified firm registrants, that the issuer or the selling securityholder is a connected issuer or a related issuer of a specified firm registrant or specified firm registrants in connection with the distribution.
2. A summary, naming the relevant specified firm registrant or specified firm registrants, of the basis on which the issuer or selling securityholder is a connected issuer or a related issuer of the specified firm registrant or specified firm registrants.
3. A cross-reference to the applicable section in the body of the prospectus or other document where further information concerning the relationship between the issuer or selling securityholder and specified firm registrant or specified firm registrants is provided.

REQUIRED INFORMATION FOR THE BODY OF THE PROSPECTUS OR OTHER DOCUMENT

4. A statement, naming the relevant specified firm registrant or specified firm registrants, that the issuer or the selling securityholder is a connected issuer or a related issuer of a specified firm registrant or specified firm registrants for the distribution.
5. The basis on which the issuer or selling securityholder is a connected issuer or a related issuer for each specified firm registrant referred to in paragraph 4, including
 - (a) if the issuer or selling securityholder is a related issuer of the specified firm registrant, the details of the holding, power to direct voting, or direct or indirect beneficial ownership of, securities that cause the issuer or selling securityholder to be a related issuer;
 - (b) if the issuer or selling securityholder is a connected issuer of the specified firm registrant because of indebtedness, the disclosure required by paragraph 6 of this Appendix; and
 - (c) if the issuer or selling securityholder is a connected issuer of the specified firm registrant because of a relationship other than indebtedness, the details of that relationship.
6. If the issuer or selling securityholder is a connected issuer of the specified firm registrant because of indebtedness,
 - (a) the amount of the indebtedness;
 - (b) the extent to which the issuer or selling securityholder is in compliance with the terms of the agreement governing the indebtedness,

- (c) the extent to which a related issuer has waived a breach of the agreement since its execution;
 - (d) the nature of any security for the indebtedness; and
 - (e) the extent to which the financial position of the issuer or selling securityholder or the value of the security has changed since the indebtedness was incurred.
7. The involvement of each specified firm registrant referred to in paragraph 4 and of each related issuer of the specified firm registrant in the decision to distribute the securities being offered and the determination of the terms of the distribution, including disclosure concerning whether the issue was required, suggested or consented to by the specified firm registrant or a related issuer of the specified firm registrant and, if so, on what basis.
8. The effect of the issue on each specified firm registrant referred to in paragraph 4 and each related issuer of that specified firm registrant, including
- (a) information about the extent to which the proceeds of the issue will be applied, directly or indirectly, for the benefit of the specified firm registrant or a related issuer of the specified firm registrant, or
 - (b) if the proceeds will not be applied for the benefit of the specified firm registrant or a related issuer of the specified firm registrant, a statement to that effect.
9. If a portion of the proceeds of the distribution is to be directly or indirectly applied to or towards
- (a) the payment of indebtedness or interest owed by the issuer, an associate or related issuer of the issuer, a person or company of which the issuer is an associate, the selling securityholder, an associate or related issuer of the selling securityholder, a person or company of which the selling securityholder is an associate, to the specified firm registrant or a related issuer of the specified firm registrant, or
 - (b) the redemption, purchase for cancellation or for treasury, or other retirement of shares other than equity securities of the issuer, an associate or related issuer of the issuer, a person or company of which the issuer is an associate, the selling securityholder, an associate or related issuer of the selling securityholder, or of a person or company of which the selling securityholder is an associate, held by the specified firm registrant or a related issuer of the specified firm registrant particulars of the indebtedness or shares in respect of which the payment is to be made and of the payment proposed to be made.
10. Any other material facts with respect to the relationship or connection between each specified firm registrant referred to in paragraph 4, a related issuer of each specified firm registrant and the issuer that are not required to be described by the foregoing.

SPECIFIED FIRM REGISTRANT AS ISSUER OR SELLING SECURITYHOLDER

11. If the specified firm registrant is the issuer or selling securityholder in the distribution, then the information required by this Appendix shall be provided to the extent applicable.