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Doing Business in Canada

PART I Government, Legal System, and Business Environment
CHAPTER 1 Introduction to the Canadian Legal Business Environment

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§ 1.03 Financing

[1] Canadian Capital Markets and Market Participants

The Canadian capital markets are highly developed and regulated. In recent years, the nature of Canadian stock exchanges has been drastically changed by the computerization of stock trading. This shift has reduced the levels of communication between the investor and the market, and has allowed investors faster access to market information.

The majority of the securities traded in Canada are held by institutional investors. The major players are chartered, investment and merchant banks, trust companies, life insurance companies, pension funds, investment companies and mutual funds. Though individual Canadians do invest a portion of their savings directly in securities, most of this investment is in bank deposits, pension plan entitlements, mutual fund units and life insurance. The institutions in turn invest largely in Canadian securities, becoming an intermediary between the Canadian individual and the Canadian capital markets.

[2] Securities Legislation [113]

In Canada, unlike the United States, securities regulation is entirely a provincial

matter. There is no federal regulation of securities trading. For most provinces and territories there is a provincial or territorial securities commission that regulates trading within the province or territory. There is an organization of the provincial regulators, the Canadian Securities Administrators, [114] which serves as a forum for the securities regulators of Canada's provinces. It attempts to coordinate and harmonize regulation of the Canadian capital markets. Its function is purely advisory and it has no legislative authority. However, the association does attempt to harmonize the securities laws and procedures across the country.

The regulation of securities in Canada is thus largely the responsibility of the ten provincial and three territorial governments. Each of the 10 provinces and three territories has its own securities commission or similar regulatory authority and its own local Securities Act, Securities Act Regulations, Local Policy Statements, blanket orders and rulings, staff notices and administrative and court decisions. The leading securities law jurisdictions are British Columbia, Alberta, Ontario, and Quebec, followed by Saskatchewan, Manitoba, Nova Scotia and Newfoundland. New Brunswick, Prince Edward Island and the three territories have their own regulations but generally follow the lead of the other jurisdictions.

The Ontario Securities Commission (the "OSC") [115] regulates the largest capital market and stock exchange in Canada, the Toronto Stock Exchange (the "TSX"). Accordingly, much of the following discussion is based upon the Ontario *Securities Act* (the "OSA") [116] and other securities regulations applicable in the province of Ontario. In practice, however, if the requirements of other provinces are similar.

There has been much discussion in recent years of creating a "National Commission" to replace the existing provincial commissions, but it is unlikely that a "National Commission" will in fact be created right now because the political will needed to make it happen does not exist. It is more likely that a "National Commission" will develop "organically" rather than "politically" because as the applications of the electronic filing system ("SEDAR") are extended and the commissions continue to delegate to one another, a virtual national commission will be created. From both an operational and technological point of view a system of "one stop shopping" will exist and it will become increasingly apparent that there is no need for multiple provincial commissions.

[a] Registration Requirements

No one may trade in a security, act as an underwriter or engage in the business of advising others as to buying or selling securities without being registered (unless there is a statutory exemption or a discretionary exemption order). Many of the exemptions from the registration requirements are the same as the exemptions from the prospectus requirements discussed below.

In addition to the traditional categories of registrants, the OSC has adopted a universal registration system applicable to market intermediaries requiring almost all market participants to be registered. A market intermediary is broadly defined to include any person or company that is engaged in Ontario in the business of trading in securities as principal or agent, other than for its own account for investment only and not with a view to resale or distribution.

The universal registration system has created an international dealer category of registration, which permits dealers registered under the laws of a country other than Canada to offer securities on a limited basis to Ontario residents to facilitate a distribution of securities that are offered primarily outside Canada. International dealers are permitted to establish wholly-owned subsidiaries or to purchase domestic dealers in Ontario subject to terms and conditions.

[b] Prospectus Requirements

A distribution of securities must be made by way of a prospectus, unless a prospectus exemption is available or a discretionary exemption order is obtained. Exemptions are available for certain types of securities (such as federal or provincial government debt and commercial paper) and certain types of purchasers (such as private placement sales to sophisticated purchasers, discussed in detail later in this section, and sales to exempt purchasers).

[c] Exemptions

The securities legislation of most provinces provide for similar exemptions from the requirement ot file a prospectus. Among the exemptions are those available for distributions of securities made: (i) to "prescribed institutions," which generally include chartered banks, loan corporations, trust companies, insurance companies and various levels of government in Canada; (ii) to "exempt purchasers" who are generally persons with substantial pools of capital, sophisticated investment advisers and professionally managed pension or mutual funds who seek and obtain such status from regulators; and (iii) pursuant to the private placement exemption

which is available where the purchaser purchases as principal and the trade is in a security that costs not less than a specified amount (the prescribed amount in a number of provinces is $150,000). These exempt trades will still give rise to a requirement to file with provincial securities regulators.

In some cases, an offering memorandum must be prepared and filed. An requirements for an offering memorandum are less stringent than those for a prospectus. In certain circumstances purchase made under an offering memorandum allow the purchaser to sue the issuer for rescission or damages if the memorandum contained a misrepresentation.

[d] Prospectus Disclosure

A prospectus must be prepared in accordance with the regulations of the applicable province and must contain "full, true and plain disclosure of all material facts relating to the securities issued. [117] Under the OSA, a material fact is any fact that significantly affects, or would reasonably be expected to have a significant effect on, the market price or value of the securities to be sold. The requirements applicable to prospectuses are virtually the same in all of the jurisdictions in Canada. Required disclosure in any prospectus includes: the business of the issuer; prior issuances of securities; historical dividends; securities covered by options; details of the securities being offered; the plan of distribution; any interest of directors in material transactions; the issuer's material contracts; the remuneration of directors and senior officers; use of proceeds; and risk factors.

Purchasers who acquire securities during the distribution period have a right of rescission or, alternatively, a right of action for damages against the issuer and its directors, each underwriter who signed the prospectus and all experts (such as lawyers or accountants for the specific portions of the documents for which they have taken responsibility), if a prospectus contains a misrepresentation. Under the OSA, a misrepresentation means an untrue statement of a material fact, or an omission to state a material fact that must be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made. [118]

After filing the final prospectus, the issuer will become a "reporting issuer" in the jurisdiction in which the prospectus was filed. The issues will then be subject to rules regarding continuous disclosure and ongoing reporting requirements including those regarding timely disclosure of material changes, preparation of financial information for delivery to security holders, solicitation of proxies,

preparation of information circulars and insider reporting.

[e] Secondary Market Trading

The provincial rules governing secondary trading take one of two forms, the "closed system" and the "investment intent system". The "closed system" applies in most provinces. In the closed system, every trade by an issuer of its own securities requires the filing of a prospectus or a ruling from the provincial Securities Commission allowing the sale (unless a statutory prospectus exemption is available). Securities distributed under a prospectus exemption must be resold either by a prospectus, by reliance on a further exemption or under resale restrictions. Resale restrictions require the issuer to be a "reporting issuer" not in default. No unusual effort may be made to prepare the market for the securities being sold and the person proposing to sell the securities must have held them for a minimum hold period ranging from 6 to 18 months.

The "investment intent system," which applies in certain provinces, generally permits the resale without a prospectus of securities which have been privately placed.

[f] Continuous Disclosure Requirements

Continuous disclosure requirements deal with routine and non-routine filings. The object of disclosure is to make available all material facts the investor needs to make an informed investment decision. The filing of a prospectus is just the first instance of the continuous disclosure that is required under Canadian securities law.

There are two main types of continuous disclosure required. These are "periodic" reporting and "timely" reporting. Under periodic reporting provisions, the reporting issuer must disclose information through filing financial statements, annual reports, proxy circulars and insider trading reports. Timely reporting provisions require information on material changes to be filed as they occur through the issuance of press releases and material change reports.

Reporting issuers are required to make prompt disclosure of any "material change" in the affairs of the issuer that might reasonably be expected to affect the value of its securities. In addition to a market impact test of materiality in the securities legislation, an OSC policy sets out events that are deemed to be material changes, including actual or proposed changes in the control of the issuer, the acquisition or

disposition of material assets, indicated changes in earnings upwards or downwards of more than recent average size and changes in dividends.

The securities legislation and policies of most provinces in Canada provide that when a reporting issues undergoes a material change the corporation must issue and file a press release for dissemination to the investing public as well as a material change report with the securities commission.

National Policy 51-201 of the Canadian Securities Administrators provides that immediate disclosure of material information is necessary to ensure that such information is properly available to all investors and to prevent insider trading. [119] NP 51-201 also provides that any announcement of material information should be factual and balanced, neither over-emphasizing favourable news nor under-emphasizing unfavourable news. Overall, the guiding principal should be to communicate clearly and accurately the nature of the information, without including unnecessary details, exaggerated reports or editorial commentary designed to colour perception of the announcement.

In addition to the disclosure requirements imposed under securities legislation, issuers with securities listed on a stock exchange in Canada will be subject to timely disclosure requirements imposed by the exchange. In some instances, the disclosure requirements may be more specific than provided for in the securities legislation.

[g] Take-Over Bids

A take-over bid (or tender offer) is an offer to acquire outstanding voting or equity securities of a class made to shareholders of the target when the securities subject to the offer, together with the offeror's existing holdings, constitute 20% or more of the outstanding securities of that class.

If a take-over bid is not exempt, it must be made to all Canadian holders of securities of the class subject to the bid and to holders of securities that may be converted into securities of that class before the expiry of the bid.

All shareholders of the target must be offered identical consideration. Therefore, agreements that have the effect of paying an indirect premium to certain shareholders are prohibited.

An offeror may attach almost any condition to its obligation to complete a take-over

bid. Common conditions include: a minimum number of shares being deposited in acceptance of the bid (typically 66 2/3% or 90%); the completion of satisfactory due diligence investigations; the consent of government authorities when required; and the absence of any material changes in the business and affairs of the target between the date of the bid and the date of its expiry. The offer may not, however, be conditional upon financing.

The offeror must prepare a take-over bid circular and send it to the target, its Canadian shareholders and applicable Canadian securities regulatory authorities. The offeror's circular must contain certain prescribed information, including: the terms of the offer; disclosure of the ownership and prior trading in securities of the target by the offeror and its insiders; the method and time of payment for the shares of the target; the source of funds to be used for payment; disclosure of arrangements between the offeror and the directors or senior officers of the target; the offeror's intention to purchase securities of the target in the market; and a summary of any valuation which the offeror may have obtained. If the offeror is offering securities as full or partial consideration, the offeror's circular must contain prospectus-level disclosure (including pro forma financial statements) concerning the business, affairs and financial condition of the offeror. After its circular has been mailed, the offeror is obliged to issue a notice of change to shareholders of the target in the event of a material change in the information contained in its circular.

Within 15 days of the bid the directors of the target must issue a circular (to the shareholders of the target, the offeror and securities regulators) containing the directors' recommendation to accept or reject the bid and the reasons for making the recommendations or, if no recommendation is made, the reasons for not making a recommendation. The directors' circular must also describe any defensive tactics, alternative transactions or other responses being adopted in connection with the bid. After their circular has been mailed, the directors must issue a notice of change to shareholders in the event of a material change in the information contained in the circular.

Canadian securities laws require immediate disclosure, by press release and report, of the acquisition of 10% or more of any class of voting or equity securities of a Canadian public company. Similar disclosure must be made whenever a further 2% interest is acquired. A moratorium on further acquisitions is imposed on the reporting party, expiring one business day after the date on which the required report is filed. Limited exemptions are available for eligible institutional investors that choose to comply with an optional monthly reporting regime.

Once a take-over bid has commenced, any person or company (other than the party making the bid) who acquires more than 5% of the securities subject to the bid must issue and file a press release containing the information described above. Similar disclosure must be made whenever a further 2% is acquired.

If, within 120 days of the offer, at least 90% of the shares of the target are tendered to the bid, an offeror may take steps to acquire the remaining securities of the target by resorting to the "compulsory acquisition" provisions found in some corporate statutes. These provisions permit the offeror to acquire the remaining shares of the target at the same price as those acquired pursuant to the take-over bid. For example, the procedure prescribed by the *Canada Business Corporations Act* (the "CBCA") [120] permits the offer to acquire the remaining outstanding shares of a target CBCA corporation, subject only to the remaining shareholders' rights to dissent and be paid fair value for their shares. The CBCA also permits shareholders to compel the offeror to purchase their shares if the offeror has not exercised its right of compulsory acquisition within a prescribed period.

If fewer than 90% of the shares of the target are tendered to the bid, the offeror may requisition a meeting of the target's shareholders and, for this purpose, may vote its shares acquired during the bid to cause the target to enter into a "second stage" transaction. A second stage transaction might take the form of an amalgamation, plan of arrangement or some other form of reorganization involving the offeror or one of its affiliates. A second stage transaction is a "going private transaction" and/or a "related party" transaction for the purposes of Canadian Securities laws.

Directors of Canadian companies have a common law fiduciary duty to act honestly and in good faith with a view to the best interests of the corporation. In circumstances involving a take-over bid, these obligations may require the target's directors to ensure that the target's shareholders receive the highest price for their shares.

There are a number of defensive tactics that can be employed by the target's directors in the face of a take-over bid. A simple defensive tactic is to encourage shareholders to reject a bid by demonstrating that the value of the target is greater than the price offered by the offeror. Another defensive tactic is to challenge the legality of the bid before the courts or securities regulatory authorities on the grounds that the offeror did not comply with the securities laws or other legal requirements applicable to the bid. A third defensive tactic is the so-called "crown

jewel" defense where the target disposes of valuable assets in the face of a take-over bid, thereby depriving an offeror of the strategic value perceived to be held by the target.

A number of public Canadian companies have established shareholder rights plans (commonly known as "poison pills"). Most poison pills are structured to encourage an offeror to make a permitted bid or to negotiate the terms of the offer with the board of directors of the target. Failure to do either creates the potential for substantial dilution of the offeror's position.

[h] Insider Trading

A person or company is an "insider" of a reporting issuer if the person is a director or senior officer of the issuer, the person or company beneficially owns voting shares of the issuer carrying more than 10% of the voting rights, or the person is a director or senior officer of a corporation that is itself an insider of the issuer.

Insiders must disclose ownership and changes in ownership of securities of a reporting issuer, including the grant and exercise of options and non-voting as well as voting securities. Generally, upon becoming an insider, the person or company must file an initial insider trading report on a prescribed form. Thereafter insiders must report all trades in the securities of the relevant issuer that they own, directly or indirectly, legally or beneficially, and also securities over which hey exercise control or direction. The report must be filed within 10 days of the initial or subsequent transactions, as applicable.

The securities legislation prohibits any person in a "special relationship" with a "reporting issuer" from purchasing or selling "securities" of the issuer with knowledge of a "material fact or material change" with respect to the issuer that has not been "generally disclosed". Each of the phrases in "quotation marks" represents an element that must be satisfied before the prohibition against insider trading applies, and each is defined in the securities legislation. Insider trading and tipping are statutory offenses carrying criminal penalties. Civil remedies are also available to a purchaser and seller of securities, and the issuer, where the trade involves such activity.

[i] Multi-Jurisdictional Disclosure System

On July 1, 1991, the CSA and the United States Securities and Exchange

Commission (SEC) adopted a multi-jurisdictional disclosure system (MJDS) intended to facilitate cross-border securities offerings, issuer bids, take-over bids, business combinations and continuous disclosure filings. The MJDS permits eligible Canadian and United States issuers to satisfy certain offering and reporting requirements by submitting disclosure documents that comply with the requirements of the home country of the issuer supplemented with certain additional domestic disclosure requirements. Under the MJDS a U.S. issuer can extend the distribution of securities to Canada without having to produce an entirely new prospectus conforming to the requirements and obligations of Canadian securities law.

National Instrument 71-101 ("NI 71-101") [121] sets out the substantive requirements of the MJDS that apply in all Canadian jurisdictions. In general, the MJDS allows a U.S. public issuer to distribute common shares if the issuer satisfies certain criteria including having a minimum public float of US $75 million. The purpose of the public float requirement is to single out issuers whose size ensures there is already a large amount of publicly disseminated information about them and that they have a significant market following. For non-convertible debt or preferred shares the public float requirement does not apply, however, U.S. issuers are required to meet an investment grade rating in order to distribute such securities under the MJDS. Certain rights to acquire securities of the issuer may also be offered under the MJDS subject to additional requirements.

In general, a U.S. issuer is required to file a preliminary and final MJDS prospectus that consists of an SEC prospectus supplemented with any additional information and disclosure requirements required under NI 71-101 with the SEC and with each jurisdiction in Canada where it intends to distribute securities. These additional requirements generally consist of legends or wraparounds that indicate that the prospectus is prepared in accordance with U.S. securities laws and that the financial statements contained therein have not been prepared in accordance with Canadian generally accepted accounting principles. Once the SEC has reviewed and approved the relevant materials a receipt will usually be issued by each of the relevant Canadian securities administrators subject to any special circumstances that may exist.

[3] Initial Public Offerings

An initial public offering (an "IPO") of securities of an issuer is the conventional way of "going public" in each of the provinces in Canada. It is the first sale of a

corporation's common shares to investors on a public stock exchange. An IPO is made by means of a prospectus, which must be filed with the provincial securities commission in each of the provinces in which securities are to be distributed. In Quebec, all prospectuses filed with the Quebec Securities Commission must be translated into French, which will increase the cost of the offering. The process of prospectus clearance with the provincial regulatory authorities in Canada is fundamentally similar to that of the Securities and Exchange Commission in the United States.

Once the decision to "go public" has been made, an issuer must file a preliminary prospectus, which will be reviewed and commented on by the regulators in each province in which the securities are being offered to the public. The clearing of the preliminary prospectus is often an urgent matter as generally the issuer is anxious to receive the proceeds of the offering and the underwriters (or agents) have determined that the markets are appropriately receptive to the offering, subject to adverse market changes occurring prior to closing, and are eager to commence the "road shows" with registered representatives (e.g. salespersons) and potential purchasers regarding the issuer and the proposed offering.

The regulatory authority outlines any deficiencies in or comments on the preliminary prospectus in a comment letter. Typically, the issuer's counsel, together with the assistance of the issuer, the underwriters and the auditors), responds to this comment letter. Once agreement on the form of the prospectus has been reached, the authority issues a receipt for the preliminary prospectus, which commences what is known as the "waiting period". During this period, issuers can distribute the preliminary prospectus to institutions and other prospective purchasers and solicit "expressions of interests" from them, provided a copy of the preliminary prospectus is forwarded to the investors as soon as they indicate an interest in purchasing the securities.

Generally, an original listing application is made to a stock exchange after a receipt is received for the preliminary prospectus. The exchange grants a conditional listing to the issuer, subject to the fulfillment of certain standard conditions, including obtaining a receipt for the final prospectus, the closing of the offering, minimum distribution of securities and delivery of certain documentation.

In order to facilitate the review of the preliminary prospectus by multiple jurisdictions, the Canadian securities administrators have adopted a national policy for the review of documents filed in more than one province with one provincial

securities commission assuming principal jurisdiction over the offering. Non-principal jurisdictions work directly with the principal jurisdiction in reviewing, commenting and receipting a prospectus filed by an issuer. The process of receiving a receipt for a final prospectus to a national initial public offering generally takes between 60 and 120 days from the date of filing the preliminary prospectus.

[4] Private Placements

[a] General

Private placements were one of the most often used exemptions to the requirement for filing a prospectus. In Canada, the private placement exemption most commonly used required the purchaser, as principal, to purchase securities having a cost of not less than $150,000 or $97,000, depending on the jurisdiction. This and other traditional exemptions have been replaced in all jurisdictions other than Quebec, New Brunswick and the Yukon Territory, as discussed below.

[b] Ontario

In Ontario, many traditional private placement exemptions have been repealed, including the minimum acquisition exemption, the exempt purchaser exemption, the seed capital exemption and the "private company" exemption. These have been replaced with new exemptions available to "accredited investors" (a category of investors that is similar, but not identical, to the accredited investor exemption under Regulation D of the U.S. Securities Act of 1933), "closely-held issuers" and securities of mutual funds or non-redeemable investment funds.

Accredited investors include: Canadian and foreign banks and loan, trust and insurance companies; Canadian and foreign dealers and advisers (other than limited market dealers); Canadian and foreign federal, state, provincial or municipal governments; Canadian and foreign pension funds; individuals who alone, or who together with a spouse beneficially own, financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $1,000,000; individuals whose net income before taxes exceeded $200,000 in each of the two most recent years or whose net income before taxes, combined with that of a spouse, exceeded $300,000 in each of those years and who, in either case, have a reasonable expectation of exceeding the same net income level in the current year; promoters of the issuer and their affiliates; a company, limited partnership, limited liability partnership, trust or estate, other than a mutual fund or non-redeemable

investment fund, that had net assets of at least $5,000,000 as reflected in its most recently prepared financial statements; a mutual fund or non-redeemable investment fund that, in Ontario, distributes its securities only to accredited investors or under a prospectus qualified in Ontario; and a managed account if it is acquiring a security that is not a security of a mutual fund or non-redeemable investment fund.

Closely-held issuers are issuers (other than mutual funds or non-redeemable investment funds) whose securities are subject to restrictions on transfer requiring the approval of the board of directors or shareholders of the issuer; whose outstanding securities are beneficially owned by not more than 35 shareholders, exclusive of accredited investors and persons who are current or former directors, officers or employees of the issuer or one of its affiliates, or current or former consultants of the issuer, who own securities issued under a compensation or incentive plan of the issuer or its affiliate. The closely-held issuer exemption is only available if: following the trade, the issuer will continue to be a closely-held issuer, and the aggregate proceeds received by the issuer, and other issuers engaged in a common enterprise with the issuer, in reliance on this exemption will not exceed $3,000,000; no promoter of the issuer has acted as the promoter of any other issuer that has relied on this exemption within the preceding 12 months; and no selling or promotional expenses are paid or incurred in connection with the trade, except for services performed by a registered dealer.

If a trade is made on reliance on the close-held issuer exemption, the seller must provide an information statement in the prescribed form at least four days prior to the date of the trade, unless, following the trade, the issuer will not have more than five beneficial holders of its securities.

Securities of a mutual fund or non-redeemable investment fund are not eligible for the closely-held issuer exemption. However, trades in securities of these funds are exempt from the prospectus requirements if the fund is not a reporting issuer, the purchaser purchases as principal, the security has an aggregate acquisition cost to the purchaser of not less than $150,000 or, alternatively, the security is issued by a fund in which the purchaser already owns securities having either an aggregate acquisition cost or an aggregate net asset value of not less than $150,000, and the fund is managed by a portfolio adviser or trust corporation registered under the Ontario *Loan and Trust Corporations Act*. [122] Trades in securities of these funds are also exempt from the prospectus requirements if the fund is not a reporting issuer, the purchaser purchases as principal, the security has an aggregate acquisition cost to the purchaser of not less than $150,000 and the fund is managed by a person or

company, not ordinarily resident in Ontario, who is not required to be registered as an existing registration exemption available to non-resident advisers. Corresponding dealer registration exemptions for sales of these funds are available.

[c] All Provinces Except Quebec, Ontario New Brunswick and the Yukon Territory

In these jurisdictions, there are four new exemptions from the prospectus and registrations requirements: a private issuer exemption, a family, friends and business associates exemption, an accredited investor exemption (comparable, but not identical, to the U.S. exemption), and an offering memorandum exemption, permitting issuers to sell securities in any amount provided they deliver an offering memorandum in the prescribed form and obtain a risk acknowledgement form from investors.

[d] Off-Short Private Placements

The OSC interpretation note provides that a distribution of securities outside Ontario by an Ontario issuer might not require a prospectus or a prospectus exemption if "reasonable precaution and restrictions" are taken to ensure that such securities "come to rest outside Ontario."

Typically, appropriate restrictions or precautions would include an agreement or undertaking by the purchaser not to sell or otherwise transfer the securities to Ontario residents or in Ontario, and a legend on the share certificate to the effect that the securities are not qualified for sale in Ontario and may not be offered or sold directly or indirectly to residents of Ontario for a certain period of time. There is some question whether the appropriate restriction period would be 90 days (which is expressly applicable under the note to Eurobond or Eurodollar financings) or the hold period that would have been applicable if the private placement had taken place in Ontario.

The Toronto Stock Exchange also has internal guidelines about foreign offerings. These guidelines permit private placements or distributions of securities listed on the Exchange to be conducted outside Canada without complying with the requirement to complete and file the Private Placement Questionnaire and Undertaking, if the following circumstances exist:

- if the securities are issued at a premium to the market price of at least 5%: the purchaser is a non-resident of Canada; the private placement is

made in compliance with the OSC interpretation note, including the provisions requiring hold periods; and a legal opinion to the effect that the private placement has been made in compliance with the OSC interpretation note is provided to the TSX once the private placement is completed; or

- if the securities are not issued at a premium to the market price of at least 5%, but: the securities are issued at a price which is not lower than 5% below the market price; the purchasers are non-residents of Canada; the private placement is made in compliance with the OSC interpretation note, including the provisions requiring hold periods; there are at least 20 purchasers of the securities and no one purchaser buys more than 5% of the number of securities which are outstanding (on a non-diluted basis) prior to giving effect to the issue (but if any purchaser does buy more than 5% of that number, that purchaser must complete and file the Private Placement Questionnaire and Undertaking).

[5] Canadian Stock Exchanges

[a] The Toronto Stock Exchange, the Montreal Exchange, and the TSX Venture Exchange

[i] Toronto Stock Exchange

The Toronto Stock Exchange (the "TSX") is the senior stock exchange in Canada and third largest exchange in North America (in terms of dollar value traded). The TSX is Canada's sole exchange for the trading of senior equities.

In 2002, the Alberta, British Columbia, Manitoba, Ontario and Quebec Securities Commissions recognized Market Regulation Services Inc. ("RS Inc.") as a regulation services provider for purposes of the ATS rules. RS Inc., a joint venture of the TSX and the Investment Dealers Association of Canada, is currently the only regulation services provider recognized in Canada. RS Inc. has agreed to provide regulation services to the TSX and the TSX Venture Exchange, and to monitor and enforce compliance with its Uniform Market Integrity Rules.

On the TSX listing application form, an issuer wishing to list its securities on the

TSX must demonstrate that the issuer is able to meet the minimum listing requirements of the TSX. The issuer must also sign a listing agreement to comply with the TSX requirements for the continuance of its listing. Companies applying for listing on the TSX must be able to show evidence of a successful operation, or, where the issuer is relatively new and its business record is limited, there must be other evidence of management experience and expertise. In all cases, the quality of management of an applicant issuer is an important factor in the consideration of a listing application. Evidence must be supplied to the TSX indicating that there are enough public security holders to ensure an adequate market.

The Stock List Committee of the TSX is responsible for considering and approving original listing applications. Issuers applying for a listing on the TSX are placed in one of three categories: Industrial (including investment and real estate companies); Mining; or Oil and Gas. If the primary nature of a business cannot be distinctly categorized, the TSX will exercise its discretion to make the designation after an examination of the applicant's financial statements and other supporting documents.

[ii] Montreal Exchange

The Montreal Exchange (the "MX") was founded in 1874 and is Canada's oldest stock market. [123] It is a fully electronic exchange dedicated to the development of the Canadian derivative markets. As the sole financial derivatives exchange in Canada, MX today exerts its leadership in the following areas of expertise:

- Financial derivatives markets
- Information technology solutions
- Clearing services

[iii] TSX Venture Exchange

The TSX Venture Exchange, owned by the TSX, is the stock exchange for junior and intermediate mining and exploration companies. [124] The TSX Venture Exchange (formerly called the Canadian Venture Exchange, or CDNX) is a merger of the Vancouver Stock Exchange, at one time the world's leading venture capital market for junior mining companies, and the Alberta Stock Exchange, historically the

primary capital source for the North American junior oil and gas market, the smaller Winnipeg Stock Exchange and the Canadian Dealing Network--the OTC dealer market.

Companies can list on the TSX Venture Exchange by way of an initial public offering, by way of a reverse take-over and, in certain circumstances, through a capital pool company. The TSX Venture Exchange classifies issuers into different Tiers based on standards, including historical financial performance, stage of development and financial resources. There are currently three Tiers, with Tier 1 being the premier tier, reserved for more advanced companies with more significant financial resources and Tier 3 being reserved for those companies previously quoted on the Canadian Dealing Network.

Tier 1 companies have less onerous filing and Exchange approval requirements. Minimum listing requirements for issuers in each Tier are specified for each of the industry segments, including mining, oil and gas, manufacturing, technology/ industrial, research and development and real estate/investment and other segments. Companies must also have a board of directors, officers, a corporate governance structure in compliance with Exchange requirements, be sponsored by a TSX Venture Exchange member firm and submit all documentation and agreements.

[6] Personal Property Security [125]

Secured transactions in personal property a generally governed by provincial legislation because of the constitutional authority of the provinces over matters pertaining to property and civil rights. [126] All provincial jurisdictions, with the exception of Quebec, have legislation that is modeled on Chapter 9 of the pre-2002 United States Uniform Commercial Code. However, there is no true uniform regime of personal property security legislation in Canada. The Acts of each jurisdiction have many variations, and in considering the application of the legislation to a particular circumstance, the Act of the province or territory in question must be reviewed in detail.

The legislation generally governs the creation, perfection and enforcement of security interests and establishes a statutory scheme to assign priority to competing interests in the same collateral. The legislation will apply to any transaction, regardless of form that in substance creates a security interest in personal property.

In Quebec personal property is generally called moveable property (as opposed to

the other form of property, immovable property--mainly real estate). The principal form of security in Quebec is the hypothec. A hypothec may be granted to secure any obligation and may create a charge on moveable of immovable property, present of future. Under the Civil Code, specified hypothecary rights are available to secured creditors for the enforcement of their security. These rights include taking possession of the property for the purpose of administration, taking the property in payment of the debt, sale by judicial authority or sale by the creditor.

Rights of secured creditors under hypothecs on moveable property become enforceable against third parties by "publication". Publication is accomplished either by possession of the hypothecated property by the secured creditor, or by registration in the central register for the Province. For the most part, priority among secured creditors is determined by the time of publication.

The federal government has passed legislation dealing with personal property security in limited areas of federal authority, such as shipping and some security taken by banks. Federal laws may also apply to the registration of security interests in intellectual property.

FOOTNOTES:

Footnote 113. For more information, *please see* Chapter 21, "Securities Law & Regulations".

Footnote 114. Its web site is at <www.csa-acvm.ca/home.html> accessed December 12, 2006.

Footnote 115. Its web site is at <www.osc.gov.on.ca/index.jsp> accessed February 28, 2007.

Footnote 116. R.S.O. 1990, c. S.5.

Footnote 117. OSA, s. 56.

Footnote 118. OSA, s. 1(1).

Footnote 119. The Policy is available form the B.C. Securities Commission at <www.bcsc.bc.ca/uploadedFiles/NP51-201.pdf> accessed February 28, 2007.

Footnote 120. R.S.C. 1985, c. C-44.

Footnote 121. Available from the B.C. Securities Commission at <www.qp.gov.bc.ca/statreg/reg/S/Securities/343_98.htm> accessed February 28, 2007.

Footnote 122. R.S,O, 1990, c. L.25.

Footnote 123. Its web site is at <www.m-x.ca/profil_bref_en.php> accessed February 28, 2007.

Footnote 124. Information on this exchange appears on the TSX web site at <www.tsx.com> accessed February 28, 2007.

Footnote 125. For more information, please see Chapter 8, "Secured Transactions in Personal Property."

Footnote 126. The one notable exception is security taken by banks under the federal Bank Act S.C. 1991, c. 46.