INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

Equity Capital Markets New Issue Practices Handbook

September 2007

Updated January 2010

EQUITY CAPITAL MARKETS NEW ISSUE PRACTICES HANDBOOK

TABLE OF CONTENTS

Page No.

PREFACE **1**

INTRODUCTION **2**

I. OPERATION OF THE SYNDICATE **4**

1. Syndicate Invitation 4
2. Liability Calculation 5
3. Exempt Institutions 5
4. Selling Group 8
5. Firm Sales and Oversales 8
6. Marketing 9
7. Market Stabilization and Over-Allotment 10
8. Repurchase by the Syndicate Manager 10
9. Term 10

II. MARKETING MATTERS **12**

III. UNDERWRITING AGREEMENT MATTERS **14**

1. Out Clauses 14
2. Several Liability 15
3. Expenses 16
4. Conditions 16
5. Restrictions on Future Sales 17

IV. ACCOUNTING MATTERS **19**

1. Price Structure and Definitions 19
2. Syndicate Profit 19
3. Allowable Syndicate Expenses 19
4. Payment of Underwriting Profits 21
5. Payment of Underwriting Losses 21
6. Timely Payment 21
7. Closing Statement 21

V. OTHER MATTERS **23**

1. Conflict Resolution 23
2. Choice of Law 23
3. Examination 23

VI. GUIDANCE NOTES **24**

1. 10b-5 Opinions ……………………………………………….……………24

2. Regulation D Offerings…….…………………………………….….…..25

3. US Category 2 Issuers…………………………………..…………..26

EXHIBIT 1 29

EXHIBIT 2 30

EXHIBIT 3 31

PREFACE

The Investment Industry Association of Canada is pleased to provide you with this copy of *Equity Capital Markets New Issue Practices Handbook.* It provides "best practices" for our industry and will be invaluable to association members who are engaged in the underwriting process.

The Handbook was developed by professional experts in the Canadian securities industry with the assistance of IIAC staff. The Handbook was approved by the Investment Banking Committee of the Investment Industry Association. It provides a practical guide to the operating framework for underwriting syndicates, and the responsibilities and obligations of syndicate managers and participating firms.

The Handbook furthers the IIAC mission of helping firms effectively manage their business within an ever-changing regulatory environment. We trust that you will find this Handbook useful and that it will promote efficiency, clarity, and consistency in the ever-changing, complex process of underwriting.

Ian C.W. Russell, FCSI
President & CEO
Investment Industry Association of Canada

INTRODUCTION

Effective September 2007, the Equity Capital Markets New Issue Practices Handbook has been revised and updated in a number of significant ways:

- inclusion of a methodology for incentive or "jump-ball" economics;
- guidelines for the allocation of firm stock to syndicate members; and
- removal of earlier restrictions barring sales of firm stock to correspondent firms.

In addition, there are a number of amendments which are more housekeeping in nature, including:

- replacing the list of exempt equity institutions with a test (assets greater than CDN$100 million);
- increased obligation on lead manager to confirm institutional orders;
- updating the list of exempt preferred share institutions;
- more disclosure in the syndicate invitation about restrictions on firm stock, compensation, advertising and expense arrangements;
- introducing the concept of “out of distribution” to the deal process;
- adding underwriting agreement language about conditions and restrictions on future sales;
- extending the time of the final payment of syndicate profit from four months after closing to six months after closing; and
- giving a syndicate member limited rights of setoff for moneys owing after four months.

There are three principles underlying the Handbook. The Practices were originally published in December 1995 to provide firms in improving the *efficiency* of the underwriting process, especially in execution of bought equity deals. Another benefit of the Handbook has been to provide all firms with a better *understanding* of their responsibilities in underwriting and selling newly issued securities to the public, particularly for those firms which only occasionally participate in the underwriting business. In the intervening time, the leading underwriting firms have brought *innovation* to the business of distributing securities, necessitating some of the revisions to the Handbook described above. These three principles have been considered carefully in each of the revisions to the Handbook.

It is important to note that the guidelines in the Handbook should not be interpreted as mandatory or required conditions for an underwriting. IIAC member firms can structure corporate financings as they see fit. This document simply provides a baseline reference point for syndicate managers to indicate possible differences from the normal practice. In particular, requirements of other jurisdictions or non-Canadian syndicates may conflict with the operation of the guidelines

and it is hoped that syndicate managers will adhere as closely as practicable to the minimum requirements outlined herein.

It is equally important to note that the guidelines are not intended to lessen competition among underwriters nor to stifle innovation in the methods of distributing securities.

The Handbook revisions were undertaken by a Task Force formed by the Corporate Finance Committee, chaired by Jim Hinds. Other members of the Task Force include Paul Allison of Merrill Lynch Canada Inc., James Barltrop of Scotia Capital Inc., Sante Corona of TD Securities Inc., Roman Dubczak of CIBC World Markets Inc., Susan Monteith of National Bank Financial Inc. (formerly of Genuity Capital Markets Inc.) and Ron Sedran of Canaccord Capital Corporation. The IIAC was represented by Ian Russell and Morag MacGougan. Shawn McReynolds of Davies Ward Phillips & Vineberg LLP acted as counsel.

We received a great deal of valuable input from many people, including: Beth Shaw of Desjardins Securities Inc., Denys Calvin of Nexus Investment Management Inc., Scott Smith of CIBC World Markets Inc., Lionel Conacher of Westwind Partners Inc., David Keating of Research Capital Corporation, Jay Lewis of HSBC Securities (Canada) Inc., John Budreski of Orion Securities Inc. and Richard Corner of the Investment Dealers Association of Canada (IDA).

Any comments or suggestions on the Equity Capital Markets: New Issue Practices should be directed to Morag MacGougan, Vice-President, Investment Industry Association of Canada, Suite 1600, 11 King Street West, Toronto, Ontario M5H 4C7 or at mmacgougan@iiac.ca

I. OPERATION OF THE SYNDICATE

1. Syndicate Invitation

(a) **Content** The lead manager of an underwriting (or, if there is more than one lead manager, the bookrunner or, if there is more than one bookrunner, the particular bookrunner selected to be responsible for these functions) is called the "syndicate manager". The syndicate manager shall issue an invitation to syndicate members at the outset of the underwriting process and the invitation shall deal with the following issues:

(i) the financial terms and conditions of the offering;

(ii) the composition and percentages of the underwriting syndicate;

(iii) the type of distribution to be effected, such as bought or marketed, conventional economics or incentive economics, or whether there is a based-on-sales component to the deal;

(iv) the Canadian jurisdictions in which the underwritten securities are not offered for sale;

(v) foreign jurisdictions in which the underwritten securities are to be offered;

(vi) the compensation arrangements for the underwriting including the underwriting commission, drawdown price, step-up and expense arrangements;

(vii) whether there will be a tombstone advertisement on closing;

(viii) the out clause arrangements in the underwriting agreement and the date for final clearances;

(ix) exempt institution coverage;

(x) the plan for distribution of firm stock to syndicate members and any unusual arrangements limiting the syndicate members' ability to place firm stock among their clients.

(xi) whether any of the guidelines are omitted or varied in respect of the transaction.

(b) **Timing** The syndicate invitation should be finalized in writing by the time that the underwriting agreement is signed in the case of a bought deal or by the time that a preliminary prospectus is filed in other cases.

(c) **Trading Restrictions** If applicable, the syndicate manager should notify syndicate members when the period of trading restrictions begins pursuant to OSC Rule 48-501 and UMIR section 7.7.

All syndicate members should start with a base level of information which will enable them to understand the deal and its economics, to sell appropriately and to make appropriate capital provision.

The principal change to this section is a requirement that the syndicate manager notify syndicate members if the syndicate manager intends to adversely affect their economics by limiting their access to firm stock (i.e. not allocating stock pro rata) or otherwise affecting their ability to distribute (i.e. capping orders on an account-by-account basis). To be clear, the syndicate manager does have the ability to do this sort of thing, but only if it is disclosed in the syndicate invitation.

2. Liability Calculation

The liability of each member of the syndicate for the underwritten securities is calculated as follows:

- Size of underwriting;
- less: sales to exempt institutions (paragraph I.3 below);
- less: sales to selling group members (paragraph I.4 below);
- less: oversales by syndicate members (paragraph I.5 below);
- times: syndicate member's underwriting percentage;
- less: firm sales by the syndicate member (paragraph I.5 below);
- equals: syndicate member's liability.

Market stabilization done by the syndicate manager is not affected by the above calculation; stabilization is done for the account of the syndicate in proportion to the respective underwriting percentage. Reference is made to paragraph I.7.

3. Exempt Institutions

(a) Exempt List - The syndicate manager, together with such other syndicate members as it shall determine in its discretion, is authorized to offer the underwritten securities on behalf of the syndicate to certain institutional purchasers (the "Syndicate Exempt List").

(b) Equity Securities Syndicate Exempt List - The Syndicate Exempt List for equity securities shall include any Canadian mutual fund, pension fund or hedge fund manager with assets under administration in excess of CDN$100 million. In the case of a private placement into the United States (other than a Rule 144A offering), the Syndicate Exempt List shall include all U.S. purchasers.

(c) Preferred Share Syndicate Exempt List - The Syndicate Exempt List for preferred shares (or for any deal which has a split commission structure between institutions and retail) is included as Exhibit 2.

(d) Changes in the Syndicate Exempt List -The syndicate manager in its discretion may designate additional accounts to be covered on an exempt basis in the syndicate invitation.

(e) Exempt Book in Conventional Offering - Sales to the Syndicate Exempt List, if any, are for the account of the syndicate as described in paragraph I.2 above. The syndicate manager must record and ticket all orders for the exempt book and promptly communicate the status of the exempt book to all syndicate members in accordance with IDA Regulation 100.5. *Bona fide* errors and withdrawals by institutions exercising their statutory rights (in writing) shall be for the account of the syndicate on a basis proportionate to the respective underwriting participations.

(f) Disclosure of Exempt Orders - When the Syndicate Exempt List allotment has been affirmed, the syndicate lead manager shall communicate this in writing to the other syndicate members. This notification will make available to syndicate group members the option of providing reduced capital on these documented Syndicate Exempt List expressions of interest, subject to meeting all of the conditions set out in IDA Regulation 100.5(c). The following is sample language that can be used for this notification:

> "Pursuant to the IDA 100.5, which sets out the capital rules for underwriting commitments, <<*Name of manager*>>, the lead underwriter and bookrunner, confirms that the allotment of <<*exempt purchaser allotment number of shares / units*>> (for non-debt issues) OR <<*exempt purchaser allotment dollar amount*>>(for debt issues) to exempt purchasers has been affirmed and allocated."

Under no circumstances may the syndicate lead manager reduce its own capital requirement on an underwriting commitment due to the presence of documented Syndicate Exempt List expressions of interest without sending this notification to the other syndicate group members or unduly delay the sending of this notification to the other syndicate group members.

At closing, the syndicate lead manager shall communicate in writing to the other syndicate members details of the final Syndicate Exempt List customer allotment which will include, at a minimum for each customer: (i) the name of the Syndicate Exempt List customer and (ii) the quantity allocated. A sample of this allotment report is included in Exhibit 3.

(g) Incentive Economics - Where the syndicate manager has specified incentive economics in the invitation, the following guidelines shall apply. The syndicate manager shall specify a designation cap for certain syndicate members, typically the bookrunner or bookrunners. The cap will apply on an institution by institution basis such that an institution may not designate a syndicate member subject to the cap more than the cap amount on their individual order. In other words, the cap does not apply to all designations taken in the aggregate. In order for the incentive portion to function properly, the syndicate manager will circulate the institutional meeting schedule and list of attendees prior to the dates of such meetings. As soon as practical after pricing (but in any event not later than the close of business the day after pricing), the syndicate manager will circulate to the syndicate members the list of institutions that were allocated shares on the offering, but this list will not include the actual allotments. This list will give the syndicate members a list from which they can solicit designations. When the final designations are compiled, the syndicate manager will send to each syndicate member a list of that member's specific designations in shares. This final list shall only include institutions which designated that specific syndicate member. The syndicate manager will also send out a complete Syndicate Exempt List buyers' list pursuant to subparagraph (f) above.

This section contains many updates to the Handbook. First, it includes guidelines for a deal in which the syndicate manager elects to use incentive economics rather than traditional economics in respect of Syndicate Exempt List sales. Second, it defines "exempt institution" for purposes of equity securities with an objective size test, rather than specifying a list of actual institutions. Third, it clarifies responsibilities between the syndicate manager and the syndicate members with respect to handling of Syndicate Exempt List orders.

(h) Withdrawals of Expressions of Interest - Consistent with current practice, where a new issue allocation has been confirmed to an institutional investor by either the bookrunner or other syndicate member, in the event that the expression of interest that was the basis for the allocation is subsequently withdrawn, any loss incurred in connection with the allocation will be for the account of the bookrunner or other syndicate member who confirmed the allocation to the institutional investor. Where there are joint bookrunners and a loss is incurred in connection with an allocation confirmed by one of the bookrunners, such loss will be for the account of that bookrunner who confirmed the allocation, unless an agreement to the contrary exists between the joint bookrunners. The only exception to this practice is where an institutional investor has exercised its statutory rights of rescission or withdrawal to the underwriting syndicate in writing in which case any loss will be borne by the syndicate on a basis proportionate to the respective underwriting participations. Consistent with current practice, where a new issue allocation has been confirmed by the bookrunner/joint bookrunners in connection with the drawdown of firm stock, in the event the expression of interest that was the basis for the allocation is subsequently withdrawn, any loss incurred in connection with the allocation will be for the account of the syndicate member or selling group member to whom the retail stock was allocated.

4. Selling Group

(a) **Content** The syndicate manager, at its discretion, may elect to sell underwritten securities to firms which are outside the syndicate ("selling group members") on behalf of the syndicate. Such sales are made at the drawdown price. If the syndicate manager elects to sell underwritten securities to a selling group member, the invitation to the selling group should deal with the following issues:

(i) the financial terms and conditions of the offering;

(ii) the Canadian jurisdictions where the securities are not qualified for sale;

(iii) the drawdown price;

(iv) the date for final clearances;

(v) whether any of the guidelines are omitted or varied in respect of the transaction; and

(vi) the allotment to the selling group member.

(b) **Timing and Form of Acceptance** The selling group invitation should be finalized in writing by the time that the receipt for the final prospectus has been issued. Confirmation of the number of underwritten securities may be made in the selling group invitation or orally.

5. Firm Sales and Oversales

(a) Firm Sales - The syndicate manager may make underwritten securities available for sale by syndicate members to their purchasers at a price to the syndicate members equal to the drawdown price. Such allotments made by the syndicate manager and accepted by the syndicate member are called "firm sales". For greater certainty this procedure also applies to private placements unless the syndicate manager specifies to the contrary.

(b) Syndicate Manager Discretion - In general, the syndicate manager has discretion to allocate underwritten securities among exempt purchasers, selling group members and syndicate members as the syndicate manager sees fit. This discretion is subject to a number of important limitations.

First, there must be disclosure in the syndicate invitation of a plan for allocation of firm stock to syndicate members and of any unusual restrictions to be placed thereon. Reference is made to paragraph I.1(a). Of course, parties can subsequently consent to any changes to which they both agree.

Second, in a bought deal, the allocation of firm stock should be pro rata, so that syndicate members have the ability to deal with their liability as firm stock. A syndicate member can, if it wishes, leave some or all of its liability with the

syndicate manager for the syndicate manager to attempt to sell. This would not absolve the syndicate member of responsibility for its liability.

In the case of a bought deal which gets hung up during the course of a distribution, the syndicate manager can, at its option, require syndicate members to suspend further sales of firm stock to correspondents. In this case, correspondent orders received after the deal that have become hung up should be directed to the syndicate manager and filled as selling group orders on behalf of the whole syndicate.

This area is responsible for a great deal of recent controversy. The first change described earlier requires the syndicate manager to tell syndicate members its plans for firm stock at the time of the invitation. If there is significant disagreement, all parties can take it up with the issuer at that time.

The second change clarifies that syndicate members are generally entitled to have control of their pro rata share of firm stock on a bought deal.

(c) Oversales - An "oversale" is defined as a firm sale made by a syndicate member after its liability has been extinguished in accordance with the formula set forth in I.2 above. For purposes of calculating liability of remaining syndicate members, the "syndicate member's underwriting percentage" set forth in I.2 above shall be equal to the syndicate member's original percentage divided by the sum of the percentages of the remaining syndicate members with liability.

6. Marketing

The syndicate manager has the right, during the period of a distribution and prior to the termination of the syndicate, to request from syndicate members from time to time, information as to the amount of securities of the syndicate member's firm allotment remaining unsold. If during such period any syndicate member has on hand any unsold securities, and if, in the opinion of the syndicate manager such securities are needed to complete sales made by or for the syndicate, such member shall sell to the syndicate manager for syndicate account forthwith upon request the unsold amount of securities at the drawdown price.

7. Market Stabilization and Over-Allotment

(a) Stabilization - The syndicate manager is authorized, in its discretion, and in compliance with applicable laws and regulations, to purchase and sell securities of the issuer in the open market, for long or short account, at such prices as the syndicate manager may determine, and to overallot underwritten securities, and may liquidate any such position. The syndicate manager makes such purchases and sales (including over-allotments) for the accounts of the members of the syndicate in proportion to their respective underwriting percentage. At any time such positions shall not exceed 15% of the underwriting obligation.

(b) No Stabilization in Straight Debt - In connection with a straight debt offering, the syndicate manager does not have the right to engage in market stabilization activities unless the syndicate manager's intention to do so is specifically identified in the invitation.

8. Repurchase by the Syndicate Manager

If, prior to the termination of the syndicate, the syndicate manager repurchases in the market any securities which formed part of a syndicate member's firm allotment and were not effectively placed for investment, the syndicate manager at its discretion shall either charge such syndicate member's account with an amount equal to the difference between the drawdown price and retail offering price in respect thereto or may require the syndicate member to repurchase from the syndicate manager such securities at a price equal to the total cost of such repurchase by the syndicate manager.

9. Term

(a) Out of Distribution - The syndicate manager may, at its option, declare the syndicate out of distribution for purposes of market trades by individual syndicate members.

The "out of distribution" declaration is not necessarily determinative of whether the distribution has ceased for purposes of securities laws. Nor does it affect the term of the syndicate.

(b) Term - The syndicate shall cease on the closing date of the underwriting unless the syndicate is extended by the syndicate manager by notice to the syndicate members as referred to in IV.7(c). The syndicate manager has the right by notice to the syndicate members to extend any syndicate for a period not exceeding 30 days, except in the case of a greenshoe, in which event the maximum term extension is the expiry of the greenshoe. Further extensions of term require the agreement of each syndicate member.

The term of the syndicate does not affect obligations which are intended to survive closing; in particular, the timing payment of syndicate profits is as set forth in IV.6.

The termination provision assists in the timely disposition of syndicate remnants, either of unsold new issue positions or associated market stabilization positions. The syndicate manager tries to clean up positions at closing; failing which, it automatically extends for 30 days after; failing which it either achieves consent from the syndicate to hold it together or breaks it up.

II. MARKETING MATTERS

By accepting the syndicate invitation or the selling group invitation, as the case may be, each syndicate member and each selling group member accepts and agrees with the following:

(a) Price Discipline

Unless the syndicate manager agrees otherwise, all transactions in the underwritten securities during the term of the syndicate by any syndicate member or selling group member with any purchaser take place at the public offering price. No firm may withhold from sale to the public underwritten securities in order to make sales at higher prices during some later time frame.

Transfers within the syndicate of firm allotments or sales to selling group members or sales to correspondents shall be made at the drawdown price.

(b) Distribution Certificate

Each syndicate member and selling group member will complete a distribution certificate and deliver it to the syndicate manager within 21 days of the closing date. The distribution certificate will set out the number of securities sold in each province or territory of Canada, in the United States and elsewhere, and shall be in the form set forth in Exhibit 1.

(c) Compliance with Securities Laws

Each syndicate member and selling group member represents and warrants that it will not offer for sale, or solicit an offer to buy, any of the underwritten securities in any jurisdiction where it is not legally qualified to distribute securities to the public and that it will distribute the securities in compliance with applicable securities laws.

(d) Advertising

Each syndicate member and selling group member agrees not to advertise the offering without the syndicate manager's prior consent.

Unless a syndicate member has notified the syndicate manager in writing to the contrary, the syndicate manager may include the name of the syndicate member in any tombstone advertisement in the style appearing on the underwriters' certificate page of the prospectus.

(e) Settlement

Unless specifically identified otherwise in the invitation, the syndicate manager shall use the New Issue Distribution Service of CDS for an underwriting. Syndicate members and selling group members must be participants in CDS.

The syndicate manager shall ensure that underwritten securities will be available for delivery at the principal office of the transfer agent identified in the prospectus. Each syndicate member and selling group member shall advise the transfer agent of its required splits and registrations for redelivery in a timely fashion. Failing timely receipt of such advice by the syndicate manager, all shares are delivered to such syndicate member or selling group member in Toronto.

III. UNDERWRITING AGREEMENT MATTERS

1. Out Clauses

Identified below are some of the standard features of an underwriting agreement and the particular wording that parties in the business have come to expect. Any deviations of these clauses or this wording shall be specifically brought to the attention of syndicate members by the syndicate manager.

(a) **Form of Out Clauses** Set out below is the form of "disaster out" clause and the form of “market out” clause specified in IDA Regulation 100.5 together with a form of "material change" out clause and "rating change" out clause:

"disaster out clause" means a provision substantially in the following form:

"The obligations of the Underwriter (or any of them) to purchase (the Securities) under this agreement may be terminated by the Underwriter (or any of them) at its option by written notice to that effect to the Company at any time prior to the Closing if there should develop, occur or come into effect or existence any event, action, state, condition or major financial occurrence of national or international consequence or any law or regulation which in the opinion of the Underwriter seriously adversely affects, or involves, or will seriously adversely affect, or involve, the financial markets or the business, operations or affairs of the Company and its subsidiaries taken as a whole;"

"market out clause" means a provision substantially in the following form:

"If, after the date hereof and prior to the Time of Closing, the state of financial markets in Canada or elsewhere where it is planned to market the Securities is such that, in the reasonable opinion of the Underwriters (or any of them), the Securities cannot be marketed profitably, any Underwriter shall be entitled, at its option, to terminate its obligations under this agreement by notice to that effect given to the Company at or prior to the Time of Closing;"

"material change out" clause means a provision substantially in the following form:

"If, after the date hereof and prior to the Time of Closing, there shall occur any material change or change in a material fact which, in the reasonable opinion of the Underwriters (or any of them), would be expected to have a significant adverse effect on the market price or value of the Securities, any Underwriter shall be entitled, at its option, to terminate its obligations under this agreement by written notice to that effect, given to the Company at or prior to the Time of Closing;"

"rating change out" clause means a provision substantially in the following form:

"If, after the date hereof and prior to the Time of Closing, there shall occur a change in the generic rating applicable to the Securities or any of the securities of the Company by one of the statistical rating organizations or if one of such organizations shall place any of the securities of the Company on credit watch any Underwriter shall be entitled, at its option, to terminate its obligations under this agreement by written notice to that effect, given to the Company at or prior to the Time of Closing."

(b) **Applicability of Out Clauses** Different practices concerning out clauses have evolved depending upon the type of security being underwritten — debt, preferred share or equity — and the process by which the deal is done — bought or marketed. Common to all is the presence of a disaster out clause. Out clauses may or may not be present in a transaction depending upon the type of security offered. Set out below is the current Canadian practice with respect to out clauses:

	Marketed Deal	**Bought Deal**
Equity Securities	Disaster, Market and Material Change	Disaster and Material Change
Preferred shares	Disaster, Market, Material Change and Rating Change	Disaster, Material Change and Rating Change
Debt Securities	Disaster, Material Change and Rating Change	Disaster, Material Change and Rating Change

For greater certainty, "equity" securities include convertible debentures, non-retractable convertible preferred shares and trust or limited partnership units. For greater certainty, "marketed" deals are those in which a preliminary prospectus has been filed before an underwriting agreement has been signed; agency deals are deemed to be marketed deals.

The IDA Regulations have for a number of years prescribed reduced levels of margin for Members with respect to underwriting obligations if the relevant underwriting agreement contains a "disaster out clause" in prescribed form. Similarly margin is able to be reduced if the underwriting agreement permits an underwriter to terminate its commitment to purchase in the event of unsaleability due to market conditions — i.e. a market out.

2. Several Liability

Underwriting agreements generally contain a provision substantially in the following form:

"The obligation of the Underwriters to purchase the Securities at the Time of Closing shall be several and not joint and the liability of each of the Underwriters shall be limited to the following percentages of the Securities to be purchased at that time:

No Underwriter shall be obligated to take up and pay for any of the Securities to be purchased by it unless the other Underwriters simultaneously take up and pay for the percentage of Securities set out opposite their names above.

> If one or more of the Underwriters shall fail to purchase its or their applicable percentage of the total number of Securities at the Time of Closing for any reason each of the other Underwriters (the "Remaining Underwriters") shall be relieved of its obligations hereunder provided that, notwithstanding the provisions of this section the Remaining Underwriters may, but shall not be obligated to, purchase the total number of Securities in such proportion as may be agreed upon by the Remaining Underwriters and the Remaining Underwriters shall have the right, by notice to the Company to postpone the Time of Closing by not more than 72 hours to effect such purchase. Nothing in this section shall oblige the Company to sell to the Underwriters less than all of the Securities or shall relieve from liability to the Company any Underwriter who shall be in default."

It is Canadian practice that the obligation of each underwriter to purchase securities from the issuer is several as opposed to joint.

3. <u>Expenses</u>

Expense arrangements as between the issuer and the syndicate as set forth in the underwriting agreement are usually drafted as set out below:

> "All expenses of or incidental to the creation, issue, delivery and sale of the securities shall be borne by the issuer, including, without limitation, the cost of any institutional and retail roadshows, expenses payable in connection with the qualification of the securities for sale to the public, the fees and expenses of the issuer's counsel, all advertising expenses, all costs incurred in connection with the preparation, printing and delivery of the prospectus and any prospectus amendment including commercial copies thereof and of the definitive certificates representing the securities and any stock exchange listing fees. The fees and disbursements of the underwriters' counsel and the underwriters' “out-of-pocket” expenses (other than those referred to above) shall be borne by the underwriters except that the underwriters will be reimbursed by the issuer for the underwriters' reasonable fees, disbursements and expenses (including the fees and disbursements of the underwriters' counsel) if the underwriting is not completed other than by reason of a default by the underwriters."

4. <u>Conditions</u>

There is normally a clause in underwriting agreements substantially in the following form:

> "All representations, warranties, covenants and other terms of this Agreement shall be and shall be deemed to be conditions, and any breach or failure to comply with any of them will entitle the Underwriters to terminate their obligation to purchase the

Securities, by written notice to that effect given to all other parties hereto at or prior to the Time of Closing."

It is Canadian practice to allow the underwriters to cancel an underwriting if the issuer or vendor does not or cannot comply with its obligations specified in the underwriting agreement without the underwriters bearing the burden of establishing the materiality of the breach.

5. Restrictions on Future Sales

Underwriting agreements generally contain a provision requiring approval of the lead manager(s) for further issuance of sales of equity securities for a period of time following closing.

For the purpose of ensuring the continued investment by insiders in the securities of the issuer after a public offering and to give trading in the securities issued in the public offering sufficient time to settle before more securities come on the market, it has been customary for underwriters to obtain "lock-up" arrangements for an agreed time period with the issuer and, in some cases, with security holders as a condition of closing the public offering. Generally this is accomplished by providing in the underwriting agreement as follows:

“It shall be a condition of the underwriter's obligation to complete the offering at the time of closing that it shall have received from the issuer (and from such other parties such as securityholders as are appropriate) an agreement to the effect that such parties agree not to offer to sell, contract to sell, or otherwise sell, dispose of, loan, pledge or grant any rights with respect to the relevant securities, any options or warrants to purchase any of the relevant securities or any securities convertible into or exchangeable or exercisable for the relevant securities without the prior written consent of the Syndicate Manager (or Lead Manager(s)), which consent will not be unreasonably withheld, for a period of 90 to 180 days after closing.”

An agreement with a securityholder would generally include exceptions for *bona fide* gifts, provided that the recipient of the gift agrees in writing with the underwriters to be bound by the restrictions contained in the agreement, transactions arising as a result of the death of the securityholder, provided the transferee agrees in writing with the underwriters to be bound by the restrictions contained in the agreement, and sales pursuant to a *bona fide* third party take-over bid made to all holders of the relevant class of securities. The agreement with a securityholder would generally also include an acknowledgement that the agreement precludes the securityholder from engaging in any hedging or other transaction which is designed to, or reasonably expected to, lead to or result in a disposition of securities during the lock-up period, even if such securities would be disposed of by someone other than the securityholder. Such prohibited hedging or other transactions include, without limitation, any short sale or any purchase, sale or grant of any right (including, without limitation, any put or call option) with respect to any of the relevant securities or with respect to any security (other

than a broad-based market basket or index) that includes, relates to or derives any significant part of its value from, the relevant securities.

The normal time periods range from 90 days for treasury issues by seasoned issuers to 180 days for initial public offerings.

IV. ACCOUNTING MATTERS

1. Price Structure and Definitions

The "public offering price" is the offering price on the cover of the prospectus. The "drawdown price" is the price set by the syndicate manager for intra-syndicate transfers. The "cost of the issue" is the price net of underwriting fees disclosed on the cover of the prospectus. Each of these prices is expressed on a per-security basis.

The "selling concession" is the difference between the offering price and the drawdown price. The syndicate manager specifies other types of price structure (such as any "based on sales" incentive fee) in the Invitation.

2. Syndicate Profit

The syndicate profit or loss on an underwriting for a syndicate member is determined in the following manner:

The gross profit on the issue being the underwriting fee times the number of securities underwritten;

Less: selling concession on firm sales and selling group, being the selling concession times the number of securities sold above;

Less: any "based on sales" incentive fees;

Less: the costs of covering over-allotments, being the difference between purchase price and drawdown price times the number of securities over-allotted;

Less: allowable syndicate expenses;

Times: the syndicate member's percentage

Less: the costs of liquidating the long position, being the difference between ultimate disposal price (including agency commissions, if any) and the drawdown prices times the number of securities held for the liability account of the individual syndicate member according to the calculation set forth in I.2.

3. Allowable Syndicate Expenses

The following expenses may be incurred and paid by the syndicate manager on behalf of the syndicate:

(a) all fees charged by the Canadian Depository for Securities for settling a new issue;

(b) Investment Dealers Association of Canada levies charged on public and privately placed offerings;

(c) all fees charged by legal counsel for the underwriters;

(d) all reasonable fees and costs of currency conversions;

(e) all travel expenses (airfares, hotel, meals, etc.) for Member firm employees and professionals engaged by syndicate members involved in carrying out due diligence responsibilities proximate to the offering. Travel expenses include visits to issuer offices, location of operations and offices of related companies;

(f) the cost of all printing, photocopying, courier, telephone and facsimile charges related to the offering;

(g) the cost of advertising in newspapers and other media (if previously indicated in the Syndicate Invitation);

(h) the cost of all financing charges incurred on behalf of the syndicate by the lead manager, including (1) over-certification charges in connection with settling with the issuer at closing, and (2) carrying costs associated with market stabilization and unsold new issue security positions and late settlement of exempt sales;

(i) the cost of meals, meeting rooms and related expenses in carrying out syndicate responsibilities including "road show" expenses (audio visual equipment, presentation costs and ancillary expenses) not borne by the issuer;

(j) the reasonable cost of all entertainment, such as the closing dinner, related to the offering;

(k) the cost of all gift and mementos related to the offering provided to representatives of the issuer and members of the underwriting syndicate; and

(l) any miscellaneous charges related to the offering such as secretarial overtime, cab fares, etc.

For greater certainty the following expenses are not considered proximate to the offering: expenses in connection with regular coverage or entertainment of the account and extraordinary presentation expenses.

4. **Payment of Underwriting Profits**

Following is the schedule for payment of underwriting profits:

(a) the selling concession is paid to syndicate members and selling group members by settling with the members at the draw-down price on closing date on firm allotments;

(b) any "based on sales" incentive fees is payable at Closing: and

(c) the syndicate profits are to be paid in two instalments. An interim payment amounting to 80% of the estimated syndicate profits is paid within one month of the closing date and the final payment is made within six months of the closing date.

5. **Payment of Underwriting Losses**

Payments in respect of underwriting losses are made by syndicate members in full one month after receipt of a statement from the syndicate manager.

6. **Timely Payment**

In the event that a syndicate member or a syndicate manager has not been paid amounts owing in a timely manner, it can apply to the Investment Dealers Association to set off the amount owed to it against other amounts it owes to the offending firm.

7. **Closing Statement**

(a) **Timing** At closing, the syndicate manager sends out a statement to syndicate members, setting forth the information below to the extent that it is then known. If the syndicate is extended or if a greenshoe option is still exists, the syndicate manager sends out a further statement containing final information at the end of the extension period or greenshoe exercise or expiry.

(b) **Content** The Closing Statement contains the following information to the extent that it is known:

(i) name and sale amount to each exempt institution (reference is made to I.3(f));

(ii) aggregate sales to the Selling Group (reference is made to I.4(a));

(iii) sales by each syndicate members;

(iv) whether the syndicate is long, or whether over-allotment or market stabilization activities have been liquidated, whether there was a greenshoe and whether it has been exercised, has expired or remains an option and an estimate of the cost or profit of each of these activities;

(v) identification of any atypical sales, confirmation problems, settlement problems or unusual expenses.

(c) **Term Extension** The syndicate manager may elect to extend the term of the syndicate for a period not exceeding the longer of 30 days past closing of the underwriting or the expiry of any greenshoe option. Notice to that effect may be made in the Closing Statement. Reference is made to I.9(b).

V. **OTHER MATTERS**

1. **Conflict Resolution**

Except as noted below any dispute arising out of these arrangements and which the parties cannot resolve shall be decided by each side agreeing to be bound by the decision of an independent syndicate manager of their choice; if they cannot agree on one independent syndicate manager, then each side shall nominate one independent syndicate manager and the two independent managers shall agree on a third and the majority decision of the three shall be determinative.

2. **Choice of Law**

The agreement evidencing the syndicate arrangements shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

3. **Examination**

Each syndicate member including the syndicate manager shall agree to permit a chartered accountant selected by the syndicate manager to examine the syndicate member's records relating to sales of the securities which are the subject of the distribution to determine whether the offering terms or business practices set out in the syndicate arrangements are being or have been complied with and to report the results of such examination or examinations to the syndicate or syndicate manager, as the case may be.

IIAC Practice Guidance Note

US 10b-5 Opinions

Suggested Practices with Regard to Offerings into the United States:

Members should be reminded of the importance of 10b-5 opinions when participating in offerings that are either fully registered in the United States with the Securities and Exchange Commission (the "SEC") or filed with the SEC under the Multi-Jurisdictional Disclose System ("MJDS").

In general, a 10b-5 opinion or 10b-5 statement is given by both issuers' and underwriters' counsel on a transaction. This statement confirms to the underwriters that nothing has come to the attention of counsel that causes counsel to believe that the registration statement contains or incorporates by reference any material misstatement or omit any material information.

10b-5 statements typically carve out financial and sometimes statistical information, as well as information provided by other experts. 10b-5 statements are not, strictly speaking legal "opinions", but a statement of belief as to factual matters. However, as a result of having to deliver a 10b-5 opinion with respect to the information contained or incorporated by reference in the offering documents, the U.S. counsel(s) play a very active role in not only in drafting the offering documents but also ensuring that the other aspects of due diligence are conducted to counsel's satisfaction. Hence the 10b-5 statement is viewed as a valuable component of due diligence.

Given the importance of the 10b-5 opinions in establishing a due diligence defence in the United States, it is suggested practice that the underwriting syndicate receive 10b-5 opinions, at a minimum, from both issuers' U.S. counsel and underwriters' U.S. counsel (which should be separate law firms) on all offerings that are either fully registered in the United States with the SEC or filed with the SEC under MJDS**.**

IIAC Practice Guidance Note

Effect of Publication of Research under a Regulation D Distribution

Members should be aware of situations that due to an regulatory gap between exemptions provided in Canadian regulation (National Instrument 48-501, and section 7.7(4) of the Universal Market Integrity Rules (UMIR), and Rule 129 in the US, certain distributions into the United States may be compromised by the dissemination of research by a member of an underwriting syndicate during the distribution period.

The regulatory gap exists between the US safe harbours for the publication of research for large and liquid issuers during a distribution, and the Canadian regulations. Unlike the Canadian regulations, the US safe harbours do not extend to all private placements. This is often an issue as most cross border financing are done as private placements into the US.

Members should be aware of this situation, and ensure that when they are conducting distributions under Regulation D, that it does not publish or disseminate research that would preclude its reliance on Regulation D for the offering.

Specifically the issue arises under the following set of circumstances:

- Under National Instrument 48-501, and the UMIR rules in section 7.7(4) derived there-from, there is an exemption from the standard research distribution prohibitions for those issuers whose securities are on the "highly liquid" list as published by IIROC on a daily basis.

- US securities laws have similar exemptions which are promulgated under Rule 139.

- Rule 139 provides a safe harbour for issuers similar to those on the IIROC highly liquid list but his safe harbour is only available for:

  (i) Registered Offerings in the US, eg. an MJDS offering and
  (ii) Rule 144A Offerings.

- In order to access US purchasers with AUM under $100MM, cross border private placements are sold under Regulation D as well as Rule 144A.

- The result is that the publication and dissemination of research to US accounts (including availability on the dealer's website) eliminates the ability to rely upon Regulation D for a valid US private placement at any time after the publication of research.

IIAC Practice Guidance Note

US Category 2 Issuers

Suggested Representation in the Underwriting Agreement:

Members should be aware that when conducting distributions where the Issuer is considered to be a "Category 2" issuer for purposes of Regulation S under the U.S. Securities Act of 1933, underwriters are subject to a series of U.S. rules that are designed to ensure that, during the offering and the subsequent aftermarket trading, the underwriters are not engaged in an unregistered, non-exempt distribution of shares into the U.S. capital markets. The SEC has recently become more aware of compliance problems with these provisions, and may be conducting more aggressive reviews in this regard.

As such, in order to ensure firms are aware of this issue and its implications, the addition of the provision below is recommended to assist firms in remaining on-side the US regulations.

By way of background, if a Canadian issuer has a "substantial U.S. market interest" (SUSMI) in its shares, it will be considered to be a "Category 2" issuer. A Canadian issuer has SUSMI for its equity securities if either (i) the United States constituted the largest trading market for the issuer's shares in its last fiscal year; or (ii) 20% or more of all trading took place in the United States and less than 55% of trading took place in any other single foreign country in the issuer's last fiscal year. In those circumstances, the likelihood that shares initially distributed outside the United States will come to rest within the United States is much greater. As a result, for Category 2 issuers, four additional items must be complied with beyond satisfying the offshore transaction and directed selling efforts requirements.

- First, the offer of shares cannot be made to a "U.S. person" as defined in Regulation S (including a U.S. person outside the United States;

- Second, a "distribution compliance period" (DCP) applies to the distributors, which prohibits them from offering or selling (1) unsold allotments at any time except in offshore transactions to non-U.S. persons, or (2) other shares of the company sold in the offering and repurchased in the market by the underwriters or dealers during the 40 days after the closing date, except in offshore transactions to non-U.S. persons (unless, in each case, the offer or sale of shares is treated as part of the U.S. private placement tranche – i.e., the purchasers would have to be institutional "accredited" investors and would receive shares with U.S. legends, among other requirements);

- Third, disclosure of U.S. offering restrictions must be included in the Canadian prospectus or other offering document (this standard language is added to the Canadian prospectus);

- Fourth, each distributor who sells shares to another dealer during the 40-day DCP (or allotment shares at any time) must deliver a confirmation or other notice stating that the purchaser is subject to the same restrictions on offers and sales as the distributor (see below).

These additional requirements are designed to put the burden on the distributors to ensure that the shares of a Category 2 issuer "come to rest" outside the United States to alleviate the SEC's concern that shares sold offshore by a Category 2 issuer will find their way into the hands of the U.S. public shortly after the deal.

Note that allotment shares for this purpose generally include securities acquired in any stabilization activities. In addition, as noted above, the restrictions also apply to shares initially sold in the offering and repurchased on the market by the distributors during the 40-Day DCP.

As a practical matter, it may be difficult or impossible to determine whether shares purchased in the aftermarket by a distributor in the offering were initially sold in the offering because of the fungibility of the shares and absence of identifying legends. Therefore, during the 40-day DCP (or at any time for allotment shares), the distributor must either:

(i) take itself out of the market for sales of the Issuer's shares, as principal;

(ii) confirm that the Issuer's shares being sold by the distributor, as principal, were not shares sold in the offering (e.g., this may be possible if the Issuer's shares were in a segregated investment account of the underwriter prior to the offering); or

(iii) implement internal procedures to take reasonable steps to confirm that any sales of the Issuer's shares by the distributor, as principal, are not made to a U.S. person or person in the United States (e.g., the underwriters would need to take reasonable steps to confirm that the buyer on the other side of a trade effected over the TSX was not a U.S. person or person within the United States – note that the SEC does not provide guidance on the appropriate steps but leaves this up to the distributor).

It should be noted that the Category 2 restrictions may also apply to agency trades effected during the 40-day DCP unless the distributor is simply acting as an agent in effecting a trade for a beneficial owner of the Issuer's shares in a customary "broker's transaction" as contemplated by Rule 144(g) under the U.S. Securities Act) at the request of the customer (but they would apply if the distributor facilitated the trade by purchasing the shares as principal).

The Category 2 restrictions also would not apply if another U.S. exemption from registration was available for the transaction (e.g., Section 4 (1½); note, however, that the exemption from registration provided by Section 4(1) itself would not be available with respect to those shares during the DCP).

We suggest that in connection with an offering, each of the underwriters should make the following representation to the Issuer to enable the company's U.S. securities counsel to deliver the standard "no registration" opinion in the deal .

Category 2 Representation in the Underwriting Agreement:

"Each underwriter agrees that, at or prior to confirmation of the sale of the Offered Securities, it will have sent to each distributor, dealer or person receiving a selling concession, fee or other remuneration that purchases Offered Securities from it during the Distribution Compliance Period a confirmation or notice to substantially the following effect:

'The securities covered hereby have not been registered under the U.S. Securities Act of 1933 (the "1933 Act"), and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (i) as part of their distribution at any time or (ii) otherwise until 40 days after the later of the commencement of the offering and closing date, except in either case in accordance with Regulation S under the 1933 Act. Terms used herein have the meanings given to them in Regulation S.'

In addition, prior to the expiration of the Distribution Compliance Period, all subsequent offers and sales of the Offered Securities by such Underwriter shall be made only in accordance with the provision of Rule 903 or 904 of Regulation S; pursuant to a registration of the Offered Securities under the 1933 Act; or pursuant to an available exemption from the registration requirements of the 1933 Act."

EXHIBIT 1

DISTRIBUTION CERTIFICATE

[NAME OF DEAL]

[DEAL DESCRIPTION]

To: **[Syndicate Manager]**
[Investment Dealer] Due Date: **[mm/dd/yy]**

In accordance with the syndicate and/or selling group arrangements formed in conjunction with the above issue, we hereby certify that we have completed distribution of this issue to the public and that the distribution with respect to our allotment is as stated in the following table. In compiling this list we have indicated that province in which the customer resides and not the location of our sales office. We understand that this distribution certificate is to be returned to you immediately following our completion of distribution to the public.

Analysis of Sales

# of Purchasers	Size of Lots	# of Shares
	1 — 99	
	100—499	
	500—999	
	1,000—1,999	
	2,000—2,999	
	3,000—3,999	
	4,000—4,999	
	over 5,000	
	Totals	

	NUMBER OF SALES	NUMBER OF SHARES
British Columbia		
Alberta		
Saskatchewan		
Manitoba		
Ontario		
Quebec		
New Brunswick		
Nova Scotia		
P.E.I.		
Newfoundland		
Yukon		
Nunavut		
Northwest Territories		
U.S.A.		
Other/International		
Totals		

EXHIBIT 2

SYNDICATE EXEMPT LIST – FOR PREFERRED SHARES

AS OF JULY, 2007

SOURCES OF INFORMATION, IFIC, INVESTOR ECONOMICS, BENEFITS CANADA

AEGON Capital Management Inc.

AGF Management Limited

Agilerus Investment Management Limited

Alliance Capital Management, L.P.

Altamira Investment Services Inc.

AVIVA Insurance Company of Canada

Baker Gilmore & Associates Inc.

Bank of Montreal

Bank of Nova Scotia

Barrantagh Investment Management Inc.

Beacon Securities Company Limited

Bissett Investment Management

BLC-Edmond de Rothschild Asset Management Inc.

BMO Investments Inc.

Canadian Western Bank

Canadian Imperial Bank of Commerce

CI Investments Inc.

Coastal Investment Inc.

Co-Operators Investment Counselling Limited

Desjardins-Laurentian Financial Corp.

E-L Financial Corporation

Economical Mutual Insurance Co.

Empire Life Insurance Company of Canada

Equitable Life of Canada

The Equitable Trust Company

Felcom Management Corp.

Fiera Capital Management Inc.

Genus Capital Management Inc.

Goodman & Company, Investment Counsel Ltd.

Great-West Life Assurance Company

The Guarantee Company of North America

Guardian Capital Inc.

Hamblin Watsa Investment Counsel Ltd.

Hartford Investment Management Company

Home Capital Group Inc.

HSBC Asset Management Canada Ltd.

Industrial Alliance and Financial Services Inc.

Industrial Alliance Fund Management Inc.

ING Investment Management Inc.

Investors Group Inc.

Jarislowsky Fraser Limited

Laurentian Bank of Canada

Lutheran Life Insurance Society of Canada

The Manufacturers Life Insurance Company

Mavrix Fund Management Inc.

MFC Global Investment Management

MMA Investment Managers Limited

Natcan Investment Management Inc.

National Bank of Canada

Optimum Group Inc.

Pacific & Western Bank of Canada

Phillips, Hager & North Investment Management Limited

Power Corporation of Canada

Reitmans (Canada) Limited

Royal Bank of Canada

Sceptre Investment Counsel Limited

SCOR Reinsurance Co. of Canada

Scotia Cassels Investment Counsel Limited

Sentry Select Capital Corp.

Sionna Investment Managers

Strathy Investments Ltd.

Sun Life Assurance Company of Canada

Synergy Asset Management Inc.

TAL Global Asset Management Inc.

TD Asset Management Inc.

The Toronto-Dominion Bank

Trilon Securities Corporation

UBS Global Asset Management (Canada) Co.

EXHIBIT 3

SAMPLE SYNDICATE LEAD ALLOTMENT REPORT SENT TO SYNDICATE GROUP AT CLOSE DATE

Name of issuer	ABC Co.
Name of securities offering	Common shares
Description of securities offering (if necessary)	
Offering price per share / unit	$5.00
Number of shares / units in offering	10,000,000
Offering amount	$50,000,000
Offering close date	September 30, 2007

Syndicate Group - Syndicate Exempt List	**Number of shares / units***
<<Complete with client name>>	1,500,000
<<Complete with client name>>	1,100,000
<<Complete with client name>>	950,000
<<Complete with client name>>	600,000
<<Complete with client name>>	450,000
<<Complete with client name>>	350,000
<<Complete with client name>>	250,000
<<Complete with client name>>	200,000
<<Complete with client name>>	175,000
<<Complete with client name>>	150,000
<<Complete with client name>>	125,000
<<Complete with client name>>	75,000
<<Complete with client name>>	40,000
<<Complete with client name>>	20,000
<<Complete with client name>>	15,000
Total Syndicate Exempt List	**6,000,000**

Syndicate Group - Retail	**Number of shares / units***
<<Complete with syndicate group **lead** dealer name>>	2,450,000
<<Complete with syndicate group dealer name>>	700,000
<<Complete with syndicate group dealer name>>	175,000
<<Complete with syndicate group dealer name>>	175,000
Total Syndicate Retail	**3,500,000**

	Number of shares / units*
Selling Group – Retail	**500,000**
Total number / amount	**10,000,000**

***Use dollar amounts for debt issues**