

THE SECURITIES ACT

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Order No. 5070

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Section 20(1)

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May 19, 2006

### Prospectus Exemption for Pre-Marketing

#### WHEREAS:

(A) Staff of The Manitoba Securities Commission (the "Commission") apply under s. 20(1) of The Securities Act, R.S.M. 1988, c. S50 (the "Act") for an order exempting from the prospectus requirement pre-marketing of underwriters' options issued in connection with a bought deal as more fully described below.

(B)

#### Definitions

1. In this Order

"*NI 44-101*" means National Instrument 44-101 Short Form Prospectus Distributions;

"*over-allocation position*" means the amount by which the total number or principal amount of securities that are the subject of offers to purchase received by all underwriters of a distribution exceeds the total number or principal amount of securities that all underwriters have agreed to purchase under an enforceable agreement with the issuer;

"*over-allotment option*" means a right granted to the underwriters by an issuer or a selling security holder in connection with the distribution of securities under a short form prospectus to acquire additional securities of the same class as was distributed under the short form prospectus; and

"*short form prospectus*" means a short form prospectus filed under NI 44-101.

2. Terms defined in National Instrument 14-101 Definitions and National Instrument 44-101 Short Form Offering Prospectus Distributions ("NI 44-101") have the same meaning in this Order.

#### Background

3. Paragraph 7.1(a) of Part 7 of NI 44-101 provides an exemption from the prospectus requirement for solicitations of expressions of interest before the filing of a preliminary short form prospectus for securities to be issued under a bought deal offering.

4. The exemption in Part 7 of NI 44-101 does not extend to the solicitation of expressions of interest for securities to be issued under an over-allotment option.

(C) The Commission is of the opinion that it would not be prejudicial to the public interest to grant the order requested.

**IT IS ORDERED:**

**1. THAT** under subsection 20(1) of the Act, soliciting expressions of interest before the filing of a preliminary short form prospectus for securities to be issued under an over-allotment option are exempt from section 37 of the Act, provided that:

(a) the issuer satisfies the conditions in paragraph 7.1 (a) to (e) of NI 44-101; and

(b) the over-allotment option

(i) is granted for the purposes of covering the underwriters' over-allocation position;

(ii) expires not more than 60 days after the date of closing of the distribution; and

(iii) is limited to the lesser of

(A) the over-allotment position determined as at the closing of the distribution; and

(B) 15% of the number or principal amount of the securities qualified for the distribution, other than the securities issuable on the exercise of the over-allotment option.

**BY ORDER OF THE COMMISSION**

**Deputy Director**