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Section 607(e)
Private Placements Priced at Net Asset Value

Section 613(k)
Granting Options While Material Information Undisclosed

Plans of Arrangements and Optionholder Voting

STAFF NOTICE TO APPLICANTS, LISTED ISSUERS, SECURITIES LAWYERS AND PARTICIPATING ORGANIZATIONS

Toronto Stock Exchange ("TSX") staff is providing clarification of certain provisions of the *TSX Company Manual* (the "Manual") and guidance on the following topics:

i) private placements of securities issued at a price equal to or based on net asset value or where the market price is unknown;

ii) granting of options, rights and other entitlements when material information is undisclosed; and

iii) optionholders voting on proposed plans of arrangement.

PRIVATE PLACEMENTS PRICED AT NET ASSET VALUE

TSX staff wishes to provide guidance to its issuers and other market participants on the pricing of securities pursuant to a private placement when a listed issuer (alone or with other issuers) (the "Listed Issuer") is spinning off a portion of its business or assets by way of a plan of arrangement (an "Arrangement") to form another entity (the "New Entity") or where the market price of the securities being issued is unknown.

Some Arrangements provide for the completion of a private placement at the time of the Arrangement. These private placements often contemplate the issuance of securities to insiders of the New Entity, who may also be part of the Listed Issuer's management, at a subscription price equal to or based on the net asset value ("NAV") of the assets being acquired by the New Entity (the "NAV Private Placement"). NAV Private Placements are priced before the market price of the New Entity's securities is established. As a result, securities under the NAV Private Placement may in fact be issued at a significant discount to the eventual market price of the securities once trading begins.

Section 607(e) of the Manual provides that listed issuers can complete private placements which result in the issuance of securities at a price that is less than market price, less the maximum allowable discounts allowed by TSX, subject to the approval of security holders other than those participating in the private placement. As a result, TSX requires that NAV Private Placements be approved by security holders other than those participating in the NAV Private

Placement. The security holder approval must be in a separate and specific security holder resolution, which may be conditional upon approval of the Arrangement.

When security holders are voting on NAV Private Placements and Arrangements, TSX wants to ensure that all relevant information is clearly presented to assist security holders in forming a reasoned judgment when determining whether to approve the transactions. TSX believes there is an opportunity to improve and standardize this disclosure and will require the following disclosure in the issuer's information circular ("Circular") for NAV Private Placements:

1. A concise and consolidated summary of the payments and benefits to insiders, management and directors of both the Listed Issuer and the New Entity as a result of the NAV Private Placement, which are not otherwise available to all security holders. The summary should also be cross referenced in both the transaction overview and the executive compensation sections of the Circular, where applicable.

   The summary should include a detailed list of all recipients of securities, by category, including securities received under the NAV Private Placement, and other NAV-related grants. This summary should also include details of other payments and benefits resulting from the Arrangement, including but not limited to: retention bonuses, golden parachutes, pension fund contributions, potential gain on accelerated options, etc.

   This disclosure must be made in table form, an example of which has been provided below.

	Securities Granted To / Subscribed For		
	Number & Class	**Exercise or Subscription Price**	**Other Payments and Benefits Resulting from the Arrangement[3]**
Directors and Officers[1]			
Employees[2]			
Private placees not related to previous entity[2]			

   1. Identify individually each officer and director of the New Entity, Listed Issuer and any other surviving entity who will purchase or receive securities in the New Entity at NAV. Identify those directors deemed to be independent.
   2. Aggregated as a group.
   3. Payments and benefits should be itemized per individual or group, where applicable, and should include an explanation of how the value was arrived at. Examples include: retention bonuses, golden parachutes, pension fund contributions, potential gain on accelerated options, etc. Calculations should be based on a five (5) day volume weighted average price (VWAP) of the Listed Issuer for the 5 days prior to the date of the Circular.

2. Disclosure of the rationale for completing the NAV Private Placement and why NAV pricing is appropriate, particularly for insiders.

3. A statement that securities issued pursuant to the NAV Private Placement may be issued at a significant discount to the market price, taking into account the maximum allowable discount by TSX, of the securities of the New Entity once it begins trading on TSX (with appropriate cautionary language that no such premium may develop).

TSX must pre-clear the required disclosure in the draft Circular. If the Circular does not provide the appropriate disclosure and the required level of disinterested security holder approval, TSX may not accept notice of the NAV Private Placement.

In order to allow time for a sufficient review of the disclosure, please provide the draft Circular to TSX a minimum of five (5) business days prior to finalization and printing.

TSX may apply similar disclosure requirements to other transactions where the market price of the securities being issued is unknown.

GRANTING OF OPTIONS, RIGHTS AND OTHER ENTITLEMENTS WHEN MATERIAL INFORMATION IS UNDISCLOSED

TSX staff reminds its listed issuers of certain provisions of the Manual relating to the granting of options, rights and other entitlements (collectively "Options") under a security based compensation arrangement (a "Compensation Arrangement") when material information is undisclosed.

Section 613(k) of the Manual states that:

> "...Listed issuers may not set option exercise prices, or prices at which securities may otherwise be acquired, on the basis of market prices which do not reflect material information of which management is aware but which has not been disclosed to the public. ..."

When such undisclosed material information exists, it is not appropriate for the board of directors (or a duly appointed committee of the board) of a listed issuer to grant Options under a Compensation Arrangement. This remains the case even if the recipient of the Option is not aware of the undisclosed material information.

TSX allows two exceptions to this rule:

a) employees may acquire securities under a share purchase plan on specified terms if they previously committed to the acquisition at a time when they did not have knowledge of the undisclosed material information; and

b) a person or company who is neither an employee nor an insider of the listed issuer may be granted Options at a price set when the material information is still undisclosed if the grant relates to the undisclosed event (such as an acquisition by a listed issuer of another company).

Staff has become aware that listed issuers may not be adhering to the requirements of Section 613(k) of the Manual, particularly in the context of ongoing consideration or negotiation of strategic alternatives for the listed issuer. During such periods, if material information has not

been disclosed, TSX will not permit Options to be granted. Staff does not view regular annual grants during such periods as a mitigating factor. Staff also cautions listed issuers about granting Options during a blackout period, whether or not the blackout period is directly related to the material undisclosed event.

If TSX becomes aware of Options having been granted while material information is undisclosed, it will require that those Options be cancelled, forfeited or re-priced to a price established after the material information has been disclosed to the market and the impact on the trading price of the securities underlying the Options is known. In addition, TSX may require disclosure in the continuous disclosure documents of the issuer of the cancellation, forfeit or re-pricing and the circumstances that led to such action. TSX may also suspend or delist an issuer depending on the severity and/or repeated violation of this provision.

PLANS OF ARRANGEMENT AND OPTIONHOLDER VOTING

An increasing number of listed issuers have been using the provisions of the *Canadian Business Corporations Act* (the "CBCA") and provincial corporate legislation to facilitate, by way of arrangement ("Arrangement"), the completion of transactions such as mergers, reorganizations and conversions into income trusts. In some instances where allowed under the relevant corporate legislation, issuers have allowed optionholders, warrantholders and other security holders (collectively, the "Optionholders") to vote together with holders of common shares (the "Shareholders") on the proposed Arrangement.

Despite any voting privileges granted to Optionholders under relevant corporate legislation, TSX requires that all such Arrangements receive the approval of the majority of Shareholders. Shareholders have fully paid for their common shares (the "Shares"), acquired either directly from the listed issuer or from secondary market purchases, while Optionholders have only been granted a contractual right by the listed issuer to subscribe for Shares at a given price for a certain period of time. In addition, unlike Shares, options are non-participating and do not confer on their holders the right to receive residual property upon wind-up or liquidation of the corporation. We also believe that allowing Optionholders to vote on Arrangements is contrary to the provisions of most stock option plans, which specifically provide that Optionholders do not have any rights as Shareholders until options have been duly exercised and paid for and until the underlying securities have been issued to the Optionholder. However, TSX will not preclude an issuer from seeking approval of its Optionholders, in addition to the Shareholder approval TSX requires.

Accordingly, TSX will require, as one of the conditions to its approval of an Arrangement, evidence that Shareholders of the listed issuer have approved the Arrangement, without taking into account of votes cast by Optionholders.

We also wish to remind issuers that TSX must pre-clear the draft Circular prepared for an Arrangement. Please provide the draft Circular and related materials to staff a minimum of five (5) business days prior to finalization and printing.