



2006-0003

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**Sections 603 and Subsection 607(e)  
Private Placements Priced at Net Asset Value:  
Previously Financed Issuers**

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

Toronto Stock Exchange ("TSX") staff is providing guidance on the following topics:

- i) private placements priced at net asset value or where market price is unknown ("NAV Private Placements") for previously financed issuers applying to list on TSX;
- ii) valuation requirements where an issuer spins off a portion of its business or assets (the "Transferred Assets") by way of a plan of arrangement and completes a NAV Private Placement;
- iii) escrow requirements for NAV private placements; and
- iv) complications resulting from the failure of issuers to cancel securities purchased under a normal course issuer bid ("NCIB") prior to a dividend or distribution record date, and an update on the status of proposed Sections 628 to 629.3..

**Section 603 and Subsection 607(e)—NAV Private Placements—Previously Financed Issuers**

Listed issuers (alone or in combination with other issuers) proposing to spin off a portion of their business or assets into another entity ("Spinco") which involves the completion of a NAV Private Placement in Spinco are required to provide disclosure and obtain security holder approval in accordance with the Staff Notice #2005-0003. Since the publication of Staff Notice #2005-0003, TSX staff has become aware of the use of certain previously existing issuers, including tax loss

entities, being used as Spincos. In certain cases, these Spincos have completed private placements immediately prior to entering into agreements with listed issuers for a spin off.

TSX staff is concerned about the potential abuse of this practice and perceived avoidance of TSX rules. Accordingly, any private placement in a Spinco which has closed within three months preceding the date of the signing of an agreement for the use of Spinco will be deemed to be a NAV Private Placement for the purposes of Staff Notice #2005-0003. Accordingly, these NAV Private Placements must comply with TSX disclosure and security holder approval requirements summarized in Staff Notice #2005-0003.

### **Section 603—NAV Private Placements—Valuation Requirements**

TSX staff has become aware of certain issuers listed in categories other than Oil and Gas proposing to spin off a portion of their business or assets (the "Transferred Assets") into a Spinco by way of a plan of arrangement. Historically, the value of Transferred Assets for oil and gas issuers is supported by independent technical reports prepared in accordance with National Instrument 51-101—*Standards of Disclosure for Oil and Gas Activities* ("NI 51-101"). Generally, issuers listed in categories other than Oil and Gas do not have similar disclosure requirements which would support the value of Transferred Assets.

TSX staff is concerned about the lack of independence and standardization of valuation methodologies used by issuers that are not subject to NI 51-101 and proposing a NAV Private Placement based on the value of Transferred Assets. As a result, TSX staff will expect the completion of an independent valuation of the Transferred Assets (and any other material assets of Spinco) which supports the pricing of a NAV Private Placement. A summary of the valuation must be disclosed in the listed issuer's information circular being provided to security holders in connection with the plan of arrangement. Listed issuers should prepare Spinco valuations and disclosure in accordance with Part 6 of Ontario Securities Commission Rule 61-501—*Insider Bids, Issuer Bids, Business Combinations and Related Party Transactions*. These valuation requirements are in addition to the disclosure and security holder approval requirements detailed in Staff Notice #2005-0003.

### **Appendix C—NAV Private Placements—Escrow Requirements**

Generally, the stated purpose of NAV Private Placements is a combination of the following: (i) to allow insiders and other service providers to increase their ownership position in Spinco in a manner which encourages continued employment; (ii) to align the interest of placees through the capital commitment being made under the NAV Private Placements by insiders and service providers; (iii) to allow Spinco to meet the challenges in retaining qualified personnel in a very competitive employment market; and (iv) to provide additional capital to Spinco. Given these stated purposes, securities placed under a NAV Private Placement are generally accompanied by a negotiated contractual escrow in order to facilitate the retention of insiders and other service providers.

TSX staff has become aware of certain NAV Private Placements which have been proposed without a negotiated contractual escrow. Staff is concerned that these securities are generally immediately freely tradable once Spinco lists on TSX as they are not subject to resale restrictions and are not directly captured by National Policy 46-201—*Escrow for Initial Public Offerings* ("NP 46-201") or the TSX Escrow Policy contained in Appendix C of the *Company Manual*.

Accordingly, if a satisfactory escrow has not been negotiated between the Spinco and the Principals, TSX may use its discretion to impose escrow on the Principals (as such term is defined in NP 46-201) of Spinco for any securities placed under a NAV Private Placement on terms consistent with those in NP 46-201 and the TSX Escrow Policy. Staff will expect that the release schedule for securities subject to a negotiated escrow will, at a minimum, be equivalent to the release schedule provided for under NP 46-201 and the TSX Escrow Policy.

**Appendix F (Proposed Sections 628 to 629.3)—Timely Cancellation of Securities Purchased Pursuant to a Normal Course Issuer Bid and Status of Proposed Sections 628 to 629.3**

Repealed February 4, 2011.