

Citation: NI 44-101 Discretionary Relief, 2006 ABASC 1359

Date: 20060518

ALBERTA SECURITIES COMMISSION

ORDER

**Section 144 of the
Securities Act, R.S.A. 2000, c. S-4 (the "Act")**

Exemption for Solicitations of Expressions of Interest

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.

Background

- 2.** 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.
- 3.** 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.
- 4.** The Commission is satisfied that the test contained in the Act that provides for the Commission to have the jurisdiction to make the order has been met.

Order

5. The decision of the Commission pursuant to section 144 of the Act is that section 110 of the Act does not apply to soliciting expressions of interest before the filing of a preliminary short form prospectus for securities to be issued under an over-allotment option, 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.

“original signed by”

Glenda A. Campbell, Q.C., Vice-Chair
Alberta Securities Commission

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Stephen R. Murison, Vice-Chair
Alberta Securities Commission