

WORLD CLASS FOREIGN ISSUER EXEMPTION

Adopted September 10, 1996

Section 402. Exemptions

(a) The following securities are exempted from sections 301 and 403:

(12) Securities meeting all of the following conditions:

(i) The securities are:

(A) Equity securities except options, warrants, preferred stock, subscription rights, securities convertible into equity securities or any right to subscribe to or purchase such options, warrants, convertible securities or preferred stock;

(B) Units consisting of equity securities permitted by (A) and warrants to purchase the same equity security being offered in the unit;

(C) Non-convertible debt securities that are rated in one of the four highest rating categories of Standard and Poor's, Moody's, Dominion Bond Rating Services of Canadian Bond Rating Services or such other rating organization which the Administrator by rule or order may designate. For purposes of this subparagraph, non-convertible debt securities means securities that cannot be converted for at least one year from the date of issuance and then only into equity shares of the issuer or its parent; or

(D) American Depository receipt representing securities described in (A), (B) or (C).

COMMENTARY: The original draft provided on exemption for equity securities other than options, warrants, convertible securities and preferred stock (or right to subscribe to or purchase any of the foregoing) which securities may have restrictions on voting rights if disclosed in writing to the investor prior to purchase.

Interim drafts did not permit a World Class Issuer to rely upon the exemption to offer and sell investment grade debt which was either non-convertible or convertible only after one year into the securities of the issuer or its parent. It would appear appropriate to include quality debt securities within the ambit of the exemption. Investment grade is defined as having a nationally recognized statistical rating organization rating the security in one of its four highest rating categories. Current financing appears to favor unit offerings consisting of shares of stock and warrants to purchase those shares. Since this is but a variation on a basic stock offering, it is permitted. These provisions are similar to those in the Multi- jurisdictional Disclosure System (MJDS).

(ii) The issuer is not organized under the laws of the United States, or of any state, territory or possession of the United States, or of the District of Columbia or Puerto Rico.

COMMENTARY: *This provision is designed to ensure the basic foreign nature of the Exemption. Domestic issuers would still have the full range of existing exemptions available to them.*

(iii) The issuer, at the time an offer or sale is made under this subsection, has been a going concern engaged in continuous business operations for the immediate past five years and during that period, has not been the subject of a proceeding relating to insolvency, bankruptcy, involuntary administration, receivership or similar proceeding. For purposes of this subparagraph, the operating history of any predecessor that represented more than 50% of the value of the assets of the issuer that otherwise would have met the conditions of this section may be used toward the five year requirement.

COMMENTARY: *The provision has been part of the Exemption from the first draft and is designed to ensure the stability of the issuer.*

(iv) The issuer, at the time an offer or sale is made under this subsection, has public float of US \$1 billion or more. For purposes of this subparagraph:

(A) Public float means the market value of all outstanding equity shares owned by non-affiliates.

(B) Equity shares means common shares, non-voting equity shares and subordinate or restricted voting equity shares, but does not include preferred shares.

(C) An affiliate of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10% of the outstanding equity shares if such person.

COMMENTARY: *This indicator shows the value of freely tradable securities of non-affiliates available to the public for buying and selling. Public float would have the same meaning as under MJDS which is the market value of all outstanding equity shares owned by non-affiliates. An affiliate of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10% of the outstanding equity shares of such person. This requirement approximates the CDN \$1 billion public float requirement under the proposed Canadian National Policy.*

(v) The market value of the issuer's equity shares, at the time an offer or sale is made under this subsection, is US \$3 billion or more. For purposes of this subparagraph, equity shares means common shares, non-voting equity shares and subordinate or restricted voting equity shares, but does not include preferred shares.

COMMENTARY: *The Committee feels that measuring assets, by definition, usually means acceptance of the accounting practices and procedures of the country in which the company is domiciled. By assets, the world's largest companies are the major Japanese banks. Their assets, however, consist of many property loans which are non-performing or under-performing. The proposed Canadian National Policy has determined to establish its eligibility criteria on the public float of the issuer's equity securities and the market capitalization of those equity*

securities. The market capitalization test is CDN \$3 billion. All of the 200 top foreign companies listed by market value would meet the Canadian market capitalization criteria. This criteria also reflects the market's assessment of a company's value and performance. The Committee fees that market capitalization is a more readily available statistic for broker-dealers to obtain.

(vi) The issuer, at the time an offer or sale is made under this subsection, has a class of equity securities listed for trading on or through the facilities of a foreign securities exchange or recognized foreign securities market included in Rule 902(a)(1) or successor rule promulgated under the Securities Act of 1933 or designated by the U.S. Securities and Exchange Commission under Rule 902(a)(2) promulgated under the Securities Act of 1933.

COMMENTARY: *The Committee fees that, while a listing on a stock exchange should not be the sole determinant in affording an exemption, it did provide for an independent means whereby the market's perception of the issuer could be communicated to public investors. The tie-in to SEC Rule 902 allows the states to be uniform with the SEC where a listing on a foreign securities exchange is used as a condition of the availability of a state registration exemption.*