

Summary of SEC Regulation S Dorsey & Whitney LLP

Regulation S under the Securities Act of 1933, as amended (the “Securities Act”) is a safe harbour rule that defines when an offering of securities would be deemed to come to rest abroad so as not to be subject to the registration obligations imposed under Section 5 of the *Securities Act*. The General Statement to *Regulation S* applies a territorial approach to *Securities Act* registration by providing that offers and sales subject to Section 5 include offers and sales that occur within the United States and do not include offers and sales that occur outside the United States. *Regulation S* also includes several *safe harbour* exemptions¹ addressing specified transactions.

Each safe harbour is subject to two *general* conditions:

1. The offer or sale must occur in an “*offshore transaction*.” This means that (i) the seller reasonably believes that the buyer is offshore at the time of the offer or sale or (ii) the transaction occurs on certain “*designated offshore securities markets*,” which includes each of the Canadian stock exchanges participating in the Committee, and the transaction is not pre-arranged with a buyer in the United States.
2. That no “*directed selling efforts*” may be made in the United States by the issuer, a distributor, any of their respective affiliates, or any person acting on behalf of any of the foregoing. These activities consist of efforts reasonably expected to condition the U.S. market for the securities.

Rule 903 provides specific rules for offerings by issuers, distributors and their respective affiliates:

Category 1: (a) securities of a “*foreign issuer*” for which there is no “*substantial U.S. market interest*” (as defined below), (b) securities offered by a “*foreign issuer*” in “*overseas directed offerings*” (as defined below), (c) non-convertible debt securities of a domestic issuer offered in *overseas directed offerings* that are denominated in a currency other than U.S. dollars, and (d) securities backed by the full faith and credit of a foreign government.

An example of the restrictions that apply to Category 1 equity offerings is attached as **Exhibit A**.

In these cases, only the *general conditions* referred to above must be observed.

Category 2: (a) equity offerings by reporting *foreign* issuers, and (b) offerings of debt securities and non-convertible, non-participating preferred stock by reporting issuers or non-reporting *foreign* issuers. To be treated as a qualified reporting issuer, the issuer must have filed all required reports for at least twelve months prior to the offer or sale, or such shorter period during which the issuer was subject to the reporting obligation.

Offering Restrictions must be observed, which include prohibitions on resales to U.S. Persons during the *distribution compliance period*, in addition to the application of the general conditions. Generally, a 40day *distribution compliance period* (i.e., the period during which the restrictions required by the particular

¹ A *safe harbour* exemption is an exemption that is not the exclusive means that must be employed to fall within a more general exemption or jurisdictional limitation. By promulgating a safe harbour, the SEC is affirming that someone complying with its requirements will definitely have the benefit of the broader exemption or limitation.

category remain in effect) will apply, which will have to be codified in a written agreement with each distributor and reflected in the offering documentation and on all confirmations issued to distributors and others receiving transaction-based compensation and to purchasers during the *distribution compliance period*.

Category 3: offerings of all other securities, including (a) equity offerings by domestic reporting issuers, (b) offerings of equity securities by non-reporting *foreign issuers* for which there is a *substantial U.S. market interest* and (c) offerings by U.S. issuers that are not reporting issuers. These offerings are subject to the most stringent conditions.

For debt securities the offering restrictions are the same as for Category 2, plus the need to use a temporary global certificate to support the 40-day *distribution compliance period*.

For equity securities, the *distribution compliance period* is increased to one year, and the purchaser must also provide a certification as to its non-U.S. status and must agree not to resell to a U.S. Person except in accordance with U.S. requirements, in addition to compliance with the restrictions applicable to Category 2.

The securities of a *domestic issuer* must bear a restrictive legend, supported by stop transfer instructions. The documentation required in the case of such issuers must refer to the prohibition on certain hedging transactions during the *distribution compliance period* that would have the effect of pre-selling, the securities into the United States and distributors must agree in writing to observe this prohibition.

Rule 904 provides a *safe harbour* for certain resale transactions by persons other than the issuer, a distributor, any of their respective affiliates (except any officer or director who is an affiliate solely by virtue of such office), or any person acting on their behalf. They are subject to the following conditions:

1. All permitted sellers are subject to the *general conditions*.
2. In the case of a seller who is a dealer or a person receiving any remuneration, a resale cannot be knowingly made to a *U.S. Person* prior to the end of the relevant *distribution compliance period*. A confirmation stating the applicable securities law restrictions must be sent to any other dealer or person receiving selling compensation person.
3. No special compensation can be paid if the seller is an officer or director of the issuer.
4. The safe harbour is not available to "*affiliates*" of the issuer, except where affiliation arises solely from the status of the seller as an officer or director. An "*affiliate*" is any person controlling, controlled by or under common *control* with the issuer. "*Control*" for this purpose means *de facto control*. A strong inference of control based upon voting influence often arises at the 10% threshold, although other factors may demonstrate or point away from *control*.
5. Transactions must be effected through a "*designated offshore securities market*" in a transaction not pre-arranged with a *U.S. Person* or in a transaction involving a buyer outside of the United States at the time the buy order is originated.
6. Care must be taken to ensure that the transaction does not involve a scheme to evade the *Securities Act* registration requirements, including for the purpose of *washing off* transfer restrictions.

Rule 905 provides that equity securities of domestic issuers acquired from the issuer, distributor, or any of their respective *affiliates* in a transaction subject to the *safe harbour* rules discussed above are deemed

to be *restricted securities*, and resales by any offshore purchaser must be made pursuant to *Regulation S* or another exemption from *Securities Act* registration.

The following definitions are integral to an understanding of *Regulation S*.

1. “*U.S. Person*”: For individuals, based largely on residence, rather than nationality. Entities have residence largely based upon where they are formed, with the exception of identifiable branches of entities, which may themselves be treated as the equivalent of separate organizations. *Accredited investors* can form an offshore entity that will be treated as a *non-U.S. Person* for this purpose.

Detailed rules govern trusts and estates, and other professional fiduciaries, which are designed to mitigate disadvantages to U.S. professional fiduciaries by ensuring that, subject to certain conditions, offers to them for the account of non-U.S. Persons will not trigger *Securities Act* registration, despite the making of an offer to the fiduciary in the United States.
2. “*Substantial U.S. Market Interest*” or “*SUSMI*”: present with respect to a class of equity securities if (i) U.S. securities exchanges and NASDAQ in the aggregate constituted the single largest market for such class of securities in the issuer’s prior fiscal year, or (ii) 20% or more of trading in the class of equity securities during such period occurred in such U.S. markets and less than 55% of trading in such securities took place during that period through the facilities of the securities markets or a single foreign country. Separate *SUSMI* rules apply in the case of debt securities.
3. A “foreign issuer” is a foreign organized entity other than such an entity that has more than 50 percent of its voting securities being held by U.S. residents and either (i) the business of the company is administered principally in the U.S., (ii) 50 percent or more of its directors or executive officers are U.S. residents or (iii) more than 50% of its assets are located in the United States.
4. “*Overseas Directed Offering*”: An offering by a *foreign issuer* “directed into a single country other than the United States to the residents thereof ... in accordance with the local laws and customary practices and documentation of such country....”
5. “*Offering Restrictions*”: Offering restrictions require each distributor to agree in writing that all offers and sales of the securities prior to the expiration of the *distribution compliance period* (A) shall be made only (i) in accordance with the provisions of the applicable *safe harbours*, (ii) pursuant to registration of the securities under the *Securities Act*, or (iii) pursuant to an available exemption from the registration requirements of the *Securities Act* and (B) for offers and sales of equity securities of *domestic issuers* not to engage in certain prohibited hedging transactions prior to the end of the *distribution compliance period*. The offering restrictions also require that all offering materials and documents (other than press releases) used in connection with offers and sales of the securities prior to the expiration of the *distribution compliance period* must include statements to the effect that the securities have not been registered under the *Securities Act* and may not be offered or sold in the United States or to *U.S. Persons* (other than distributors) unless the securities are registered under the *Securities Act* or an exemption from the registration requirements of the *Securities Act* is available, and, in the case of equity offerings by *domestic issuers*, statements concerning the hedging prohibition. Such statements should appear (i) on the cover or inside cover page of any prospectus or offering circular used in connection with the offer or sale of the securities, (ii) in the underwriting section of any prospectus or offering circular used in connection with the

offer or sale of the securities, and (iii) in any advertisement made or issued by the issuer, any distributor, any of their respective *affiliates*, or any person acting on behalf of any of the foregoing. Such statements may appear in a summary form on prospectus cover pages and in advertisements.

Broker-dealers must ensure that they are not unlawfully effecting distributions of Canadian securities in the United States in violation of *Regulation S* and other U.S. securities law requirements. This may result, for example, from purchases of small cap issues by foreign accounts from the issuer, a promoter or affiliated entities ostensibly using *Regulation S* or some other purported exemption for resale into the United States for the purpose of effecting a distribution. Such transactions may be found to violate the registration requirements of the *Securities Act* and have severe consequences.

If you have any questions, please do not hesitate to contact [Charles L. Potuznik](#) at 612-340-2914 or; [Benjamin Catalano](#) at 212-415-9346.

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EXHIBIT A**RULE 506 U.S. PRIVATE PLACEMENTS IN
CONJUNCTION WITH CATEGORY 1 OFFSHORE OFFERINGS**

As used in this Exhibit A capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Agency Agreement to which this Exhibit is annexed and the following terms shall have the definitions set forth below:

“Directed Selling Efforts” means directed selling efforts as that term is defined in Rule 902(b) of Regulation S. Without limiting the foregoing, but for greater clarity in this Exhibit, it means, subject to the exclusions from the definition of directed selling efforts contained in Regulation S, any activity undertaken for the purpose of, or that could reasonably be expected to have the effect of, conditioning the market in the United States for any of the **[insert title of securities and underlying securities]**, and includes the placement of any advertisement in a publication with a general circulation in the United States that refers to the offering of the **[insert title of securities and any underlying securities]**;

“Foreign Issuer” means a foreign issuer as that term is defined in Rule 902(f) of Regulation S;

“Institutional Accredited Investor” means an institutional accredited investor as that term is defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D.

“Offshore Transaction” means offshore transaction as that term is defined in Rule 902(i) of Regulation S;

“Regulation D” means Regulation D adopted by the SEC under the U.S. Securities Act; **“Regulation S”** means Regulation S adopted by the SEC under the U.S. Securities Act; **“SEC”** means the United States Securities and Exchange Commission.

“Substantial U.S. Market Interest” means substantial U.S. market interest as that term is defined in Rule 902(n) of Regulation S;

“United States” means the United States of America, its territories and possessions, any state of the United States, and the District of Columbia;

“U.S. Person” means a U.S. Person as that term is defined in Rule 902(o) of Regulation S, and includes (i) any natural person resident in the United States and (ii) any partnership or corporation organized or incorporated under the laws of the United States, among other persons specified in such Rule;

“U.S. Securities Act” means the United States Securities Act of 1933, as amended.

Representations Warranties and Covenants of the Agent

The Agent acknowledges that the **[title of securities and underlying securities]** have not been and will not be registered under the U.S. Securities Act and may be offered and sold only in transactions exempt from or not subject to the registration requirements of the U.S. Securities Act and state securities or “Blue Sky” laws. Accordingly, the Agent represents and warrants to and covenants with the Company that:

1. Except for offers and sales made in the manner described in paragraphs 2 to 6 hereof (the “U.S. Private Placement”), the Agent has offered and sold, and will offer and sell the **[title of securities]** only in offshore transactions in accordance with Rule 903 of

Regulation S or as provided in paragraphs 2 through 6 below. Accordingly, except in respect of the U.S. Private Placement, neither the Agent, its affiliates nor any persons acting on behalf of any of them has made or engaged in or will make or engage in any (i) offer to sell, any solicitation of an offer to buy or any sale of any **[title of securities]** to any person in the United States, (ii) sale of **[title of securities]** to any purchaser unless, at the time the buy order was or will have been originated, the purchaser was outside the United States or such Agent or person acting on its behalf reasonably believed that such purchaser was outside the United States, or (iii) Directed Selling Efforts in the United States with respect to the **[title of securities]**.

2. The Agent, acting through its U.S. broker-dealer affiliate or other U.S. registered brokerdealer (the "Selling Agent") may offer and sell the **[title of securities]** in the United States to Institutional Accredited Investors, with which the Selling Agent or the Company has a preexisting relationship, pursuant to an exemption from the registration requirements of the U.S. Securities Act for non-public offerings.
3. Immediately prior to soliciting any offerees located in the United States, the Agent had reasonable grounds to believe and did believe that each such offeree was an Institutional Accredited Investor.
4. No form of general solicitation or general advertising (as those terms are used in Regulation D) has been or will be used by the Agent, its affiliates or persons acting on behalf of any of them, including advertisements, articles, notices or other communications published in any newspaper, magazine or similar media or broadcast over radio or television or any seminar or meeting whose attendees had been invited by general solicitation or general advertising, in connection with the offer or sale of the **[title of securities]** in the United States.
5. All purchasers of the **[title of securities]** in the United states shall be informed that the **[title of securities and underlying securities]** have not been and will not be registered under the U.S. Securities Act and the **[title of securities]** are being offered and sold to such purchasers in reliance on an exemption from the registration requirements of the U.S. Securities Act for non-public offerings.

[6. Each offeree in the United States shall be provided with a U.S. private placement memorandum (the "U.S. Memorandum"), which shall include the Preliminary Prospectus and/or the Prospectus used in any contemporaneous Canadian public offering, and each purchaser will have received at the time of purchase of any [title of securities] the U.S. Memorandum, including the final Prospectus used in the Canadian public offering. The U.S. Memorandum shall contain disclosure in substantially the form set forth below:

"The [title of securities and underlying securities] have not been and will not be registered under the U.S. Securities Act and are being offered and sold within the United States only to Institutional Accredited Investors (as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the U.S. Securities Act). Prospective purchasers of [title of securities] are hereby notified that the seller of [title of securities] may be relying upon the exemption from the provisions of Section 5 of the U.S. Securities Act provided in Section 4(2) of the U.S. Securities Act for non-public offerings. The [title of securities] offered hereby are not transferable except in accordance with the restrictions described herein.

"Each purchaser of (title of securities) offered hereby will, by its purchase of the [title of securities], be deemed to have represented, warranted and agreed for the benefit

of the Company, the Agent and their respective affiliates and persons acting on their behalf as follows:

[Insert representations, warranties and covenants from Section 6 below modified as the context requires.]

As a condition of the purchase of the [title of securities], each U.S. purchaser will be required to execute and deliver to the Agent a U.S. Subscription Agreement to the foregoing effect, among other terms and conditions.]

7. Prior to completion of any sale of **[title of securities]** in the United States, each U.S. purchaser of such securities (the "Subscriber") will be required to have represented, warranted and agreed for the benefit of the Company, the Agent and their respective affiliates and persons acting on their behalf in a U.S. Subscription Agreement executed by each of them and delivered to the Agent as follows, among other terms and conditions:

a. The Subscriber understands that the **[title of securities and underlying securities]** have not been and will not be registered under the United States Securities Act of 1933, as amended (the "U.S. Securities Act") and that the sale contemplated hereby is being made in reliance on an exemption from registration under the U.S. Securities Act for nonpublic offerings;

b. The Subscriber is an institutional "accredited investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the U.S. Securities Act;

c. The Subscriber understands that all documents, records and books pertaining to this investment have been made available for inspection by the Subscriber or its representatives, and that the books and records of the Company will be available, upon reasonable notice, for inspection by prospective investors during reasonable business hours at the Company's principal place of business. The Subscriber acknowledges that it and its representatives have had a reasonable opportunity to ask questions of and receive answers from management of the Company, or a person or persons acting on its behalf concerning the offering of **[title of securities]**, and all such questions have been answered to the full satisfaction of the Subscriber;

d. The Subscriber acknowledges that an investment in **[title of securities]** is speculative and that it has such knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of an investment in **[title of securities]** and it is able to bear the economic risk of loss of such investment;

e. The Subscriber is purchasing the **[title of securities]** for its own account or for the account of another Institutional Accredited Investor with respect to which it exercises sole investment discretion for investment purposes only and not with a view to resale or distribution in violation of the U.S. securities laws and, in particular, the Subscriber has no agreement, understanding or intention to distribute, sell, transfer or pledge any of the **[title of securities and underlying securities]** or any part thereof (each, a "Transfer"), directly or indirectly, in the United States or to "U.S. Persons"; provided, however, that if the Subscriber decides to Transfer any of the **[title of securities and underlying securities]** in the future it will do so only in accordance with applicable legal requirements and the conditions set forth in paragraph (g) hereof;

f. The Subscriber acknowledges that it has not purchased the **[title of securities]** as a result of any form of general solicitation or general advertising, including advertisements, articles, notices or other communications published in any newspaper, magazine or similar media or broadcast over radio, or television, or any seminar or, meeting whose attendees have been invited by general solicitation or general advertising;

g. The Subscriber understands that the **[title of securities]** are restricted securities and agrees that if it decides to Transfer any of the **[title of securities and underlying securities]**, it will not do so, directly or indirectly, except (i) to the Company; (ii) outside the United States in a transaction meeting the requirements of Rule 904 of Regulation S under the U.S. Securities Act and in compliance with applicable local laws and regulations of the jurisdiction(s) in which such sale is made; (iii) inside the United States pursuant to the exemption from the registration requirements provided by Rule 144A under the U.S. Securities Act, if available, and in accordance with applicable state securities laws; or (iv) in a transaction that does not require registration under the U.S. Securities Act or applicable state securities laws, and the Subscriber has, prior to such sale, furnished to the Company an opinion to that effect of counsel reasonably satisfactory to the Company to the foregoing effect;

h. The Subscriber understands and acknowledges that upon the original issuance of the **[title of securities]**, and until no longer required under the U.S. Securities Act or applicable state securities laws, the certificates representing the **[title of securities and underlying securities]** will bear the following legend:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "U.S. SECURITIES ACT"). THE HOLDER HEREOF, BY PURCHASING SUCH SECURITIES AGREES FOR THE BENEFIT OF THE COMPANY THAT SUCH SECURITIES MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (A) TO THE COMPANY, (B) OUTSIDE THE UNITED STATES IN ACCORDANCE WITH RULE 904 OF REGULATION S UNDER THE U.S. SECURITIES ACT AND IN COMPLIANCE WITH APPLICABLE LOCAL LAWS AND REGULATIONS, (C) PURSUANT TO THE EXEMPTION FROM THE REGISTRATION REQUIREMENTS UNDER THE U.S. SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER, IF AVAILABLE, AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS, OR (D) PURSUANT TO ANOTHER EXEMPTION FROM REGISTRATION AFTER PROVIDING A SATISFACTORY LEGAL OPINION TO THE COMPANY. DELIVERY OF THIS CERTIFICATE MAY NOT CONSTITUTE "GOOD DELIVERY" IN SETTLEMENT OF TRANSACTIONS ON STOCK EXCHANGES IN CANADA. A NEW CERTIFICATE, BEARING NO LEGEND, DELIVERY OF WHICH WILL CONSTITUTE "GOOD DELIVERY" MAY BE OBTAINED FROM THE COMPANY UPON DELIVERY OF THIS CERTIFICATE AND A DULY EXECUTED DECLARATION, IN A FORM SATISFACTORY TO THE COMPANY AND ITS REGISTRAR AND TRANSFER AGENT, TO THE EFFECT THAT THE SALE OF THE SECURITIES REPRESENTED HEREBY IS BEING MADE IN COMPLIANCE WITH RULE 904 OF REGULATION S UNDER THE U.S. SECURITIES ACT OR AS PRESCRIBED BY THE COMPANY FROM TIME TO TIME;"

and that any certificate representing securities issued in exchange therefor or in substitution thereof will bear the same legend; provided that if the **[title of securities and underlying securities]**, as the case may be, are being sold under paragraph (g)(ii), the legend may be removed by providing a declaration to the Company's registrar and transfer agent to the following effect (or as the Company may prescribe from time to time), and provided that the Company may at any time rescind this procedure for the removal of restrictive legends if it determines that this procedure no longer complies with applicable legal requirements:

"The undersigned acknowledges that the sale of the securities to which this declaration relates is being made in reliance on Rule 904 of Regulation S under the United States Securities Act of 1933 (the "U.S. Securities Act"), and the undersigned certifies that: (1) the seller is not an affiliate of the Company (as defined in Rule 405 under the U.S. Securities Act); (2) the offer of such securities was not made to a person in the United States and either (a) at the time the buy order

was originated, the buyer was outside the United States, or the seller and any person acting on its behalf reasonably believes that the buyer was outside the United States, or (b) the transaction was executed in, on or through the facilities of the Vancouver Stock Exchange, The Toronto Stock Exchange, the Montreal Exchange or any other designated offshore securities market, and neither the seller nor any person acting on its behalf knows that the transaction has been prearranged with a buyer in the United States; (3) neither the seller nor any affiliate of the seller nor any person acting on any of their behalf has engaged in any directed selling efforts in the United States in connection with the offer and sale of such securities; (4) the sale is bona fide and not for the purpose of “washing off” the resale restrictions imposed because the securities are “restricted securities” (as such term is defined in Rule 144(a)(3) under the U.S. Securities Act), and (5) the contemplated sale is not a transaction or part of a series of transactions which, although in technical compliance with Regulation S is part of a plan or scheme to evade the registration provisions of the U.S. Securities Act. Terms used herein have the meanings given to them by Regulation S under the U.S. Securities Act.”

i. The Subscriber consents to the Company making a notation on its records or giving an instruction to the Company’s registrar and transfer agent to make a notation in order to implement the restrictions on transfer set forth herein;

j. The address of the Subscriber at which it received and accepted the offer to purchase the Securities is the address listed on the signature page of this Agreement and the Subscriber has not been formed for the specific purpose of acquiring the **[title of securities]**;

k. The Subscriber acknowledges that the resale of **[title of securities and underlying securities]** acquired by the Subscriber are subject to certain resale restrictions under Canadian securities laws and stock exchange rules, and the Subscriber agrees to comply with such resale restrictions;

l. Upon acceptance, this Agreement will constitute a legal, valid and binding contract enforceable against the Subscriber in accordance with its terms and will not violate or conflict with the terms of any restriction, agreement or undertaking made by it or to which it or its properties is or are subject, and the Subscriber is authorized and otherwise empowered to purchase and hold the **[title of securities]**; and

m. In the case of a purchase by the Subscriber of **[title of securities]** acting as trustee or as agent for a beneficiary or principal, whether disclosed or undisclosed, the Subscriber is duly authorized to execute and deliver this Agreement on behalf of such beneficiary or principal.

Representations Warranties and Covenants of the Company

The Company represents, warrants, covenants and agrees that:

1. The Company is a Foreign Issuer and reasonably believes that there is no Substantial U.S. Market Interest in the **[title of securities and underlying securities]**.
2. The Company is not now and as a result of the sale of the **[title of securities]** contemplated hereby will not be, an “investment company” as defined in the United States Investment Company Act of 1940, as amended.
3. Except with respect to offers and sales made to implement the U.S. Private Placement, neither the Company nor any of its affiliates, nor any person acting on their behalf, has made or will make: (i) any offer to sell or any solicitation of an offer to buy any of the **[title of securities]** to any person located in the United States, or (ii) any sale of **[title of**

securities] unless, at the time the buy order was or will have been originated, the purchaser was outside the United States or the Company, its affiliates and any person acting on their behalf reasonably believe that the purchaser was outside the United States.

4. During the period in which the **[title of securities and underlying securities]** are offered for sale, neither the Company nor any of its affiliates nor any person acting on their behalf has made or will make any Directed Selling Efforts in the United States or has taken or will take any action that would cause the exemption afforded by Regulation S under the U.S. Securities Act to be unavailable for offers and sales of the **[title of securities]** outside of the United States.
5. Neither the Company, its affiliates nor any person acting on their behalf has engaged or will engage in any form of general solicitation or general advertising (as those terms are used in Regulation D) with respect to offers or sales of the **[title of securities]** in the United States, including advertisements, articles, notices or other communications published in any newspaper, magazine or similar media or broadcast over radio or television or any seminar or meeting whose attendees had been invited by general solicitation or general advertising, in connection with the offer or sale of the **[title of securities]** in the United States or has taken or will take any action that would cause the exemption afforded by Section 4(2) of the U.S. Securities Act to be unavailable for offers and sales of the **[title of securities]** in the United States pursuant to the terms of this Agreement.