

C. CHANGE OF CONTROL

The change of control "put" option allows bondholders to reconsider their investment decision if the Issuer is acquired by a new owner. Its purpose and rationale is obvious. However, there are many Canadian investment grade bond indentures which do not include such a put right. Additionally, those indentures which do include this mechanic do not always adequately define "Change of Control" to capture all possible scenarios where the Issuer is effectively acquired by a new owner. The model

Change of Control definition set forth below includes the five key scenarios which should, in each instance, result

in bondholders having a put right in connection with their notes. Very generally, those five scenarios are:

1. Merger, consolidation or amalgamation of the Issuer with another person (i.e. a public company stock-for-stock M&A, provided that any such public M&A where the Issuer's stockholders end up holding more than 50% of the surviving co. should be excluded);
2. Acquisition (i.e. more than 50% of voting stock) of the Issuer by another person or group of persons (i.e. a "going private" transaction);

⁶ See the "C. Change of Control" below for a more detailed description of the rating trigger provision, timing considerations and related definitions.

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3. Sale of all or substantially all of the Issuer's consolidated assets (this is in addition to the "Restriction on Amalgamation, Merger and Sale of Assets" covenant);
4. Liquidation or dissolution of the Issuer; and
5. Directors representing a majority of the Issuer's board on the issue date or at the beginning of any 12 consecutive month period, no longer represent, together with directors they approved, a majority of the board.

An additional deficiency common in change of control provisions relates to the "ratings trigger" concept.

Investment grade indentures often have a "double-trigger" before bondholders are able to exercise their

put rights in connection with a change of control. Typically, there must be both a "Change of Control" (as

defined in the indenture) as well as a temporal ratings downgrade of the notes. This second trigger relating to the ratings event is sometimes drafted in a way that is less than optimal from a bondholder perspective. Deficiencies include (a) requiring that the rating agencies publicly state that the downgrade was caused by the change of control transaction (which rating agencies are not always willing to declare),

(b) failing to capture the timing of the ratings downgrade, thereby not triggering the bondholder put right

on change of control transactions which severely compromise the credit quality of the Issuer, and (c) failing to address the possibility that one or more rating agencies may cease to rate the notes of a particular Issuer.

The model language below includes a suggested "Change of Control" definition and "Rating Event" definition (as well as corresponding defined terms). The remaining language generally included in indenture Change of Control mechanics is quite standardized and is therefore not included in full in this memo. By way of helpful context, a fairly typical Change of Control provision will often include initial language similar to the below, including the 101% put right described in clause (a) below. However, unlike

a typical Change of Control provision, the below proposal includes in clause (b) a second branch in the calculation of the put amount. Under this suggested model language, a bondholder exercising its put option upon a change of control would be entitled to receive the greater of 101% of the principal amount

of its notes and the trailing 30-day average market price of the notes on the date of announcement or public notice of such change of control. This second branch in the calculation of the put amount ensures that the put mechanic preserves for bondholders the benefit of any increase in the market price of the notes arising prior to the announcement of a change of control event.

"If a Change of Control Triggering Event occurs, unless the Issuer has exercised its right to redeem all of the Notes pursuant to Section [●] of this Indenture, the Issuer will be required to make an offer to repurchase all or, at the Holder's option, any part (equal to Cdn.\$1,000 or an integral multiple thereof) of each Holder's Notes on the terms set forth in this Section (the "Change of Control Offer"). In the Change of Control Offer, the Issuer shall be required to offer payment in cash equal to the greater of: (a) 101% of

the aggregate outstanding principal amount of Notes, and (b) the Average COC Market Price of the Notes,

together in each case with accrued and unpaid interest thereon, if any, to the date of purchase."

"Average COC Market Price" means the price for Notes, calculated and confirmed jointly by two Reference

Dealers as the arithmetic average of the Thirty-Day Average COC Market Price of the Notes which has been determined independently by each such Reference Dealer.

"Change of Control" means the occurrence of any of the following events:

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(1) the direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger, consolidation, arrangement or amalgamation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Issuer and its Subsidiaries, taken as a whole, to any Person or group or Persons acting jointly or in concert for purposes of such transaction, other than any such sale, lease, transfer, conveyance or other disposition among the Issuer and its Restricted Subsidiaries;

(2) the consummation of any transaction or series of transactions (including, without limitation, any merger, consolidation, arrangement or amalgamation), the result of which is that any Person or group of Persons acting jointly or in concert for purposes of such transaction becomes the beneficial owner, directly, or indirectly, of voting shares of the Issuer or any Restricted Subsidiary representing more than 50% of the aggregate voting power of the voting shares of the Issuer or such Restricted Subsidiary;

(3) the merger, consolidation, arrangement or amalgamation of the Issuer with or into another Person or the merger, consolidation, arrangement or amalgamation of another Person with or into the Issuer or the merger, consolidation, amalgamation or arrangement of any Person with or into a Subsidiary of the Issuer, unless the holders of more than 50% of the aggregate voting power of the voting shares of the Issuer, immediately prior to such transaction, hold securities of the surviving or transferee Person that represent, immediately after such transaction, more than 50% of the aggregate voting power of the voting shares of the surviving or transferee Person;

(4) during any period of twelve consecutive calendar months, individuals who at the beginning of

such period constituted the Board of Directors of the Issuer (together with any new directors who were nominated for election or elected to such board of directors with the approval of a majority of the directors then still in office who were either directors at the start of such period or whose election or nomination for election was previously so approved), cease for any reason to constitute a majority of such Board of Directors of the Issuer then in office; or
(5) the adoption of a plan relating to the liquidation or dissolution of the Issuer.

"Change of Control Announcement Event" means the earliest to occur of (a) the occurrence of a Change of Control and (b) public notice of the Issuer's intention or agreement to effect a Change of Control.

"Change of Control Triggering Event" means the occurrence of both a Change of Control and a Rating Event.

"Investment Grade Rating" means a rating equal to or higher than Baa3 (or the equivalent) by Moody's, BBB- (or the equivalent) by S&P or BBB (low) (or the equivalent) by DBRS, or the equivalent investment grade rating from any other Specified Rating Agency.

"Rating Date" means the date which is 90 days prior to the earlier of (i) a Change in Control and (ii) public notice of the occurrence of a Change of Control or of the Issuer's intention or agreement to effect a Change of Control.

"Rating Event" means (a) where the Notes are rated by three Specified Rating Agencies on the Rating Date:

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(i) in the event the Notes are assigned an Investment Grade Rating by at least two of the three Specified Rating Agencies on such Rating Date, the rating of the Notes by at least two of the Specified Rating Agencies being below an Investment Grade Rating, or

(ii) in the event the Notes are not assigned an Investment Grade Rating by at least two of the three Specified Rating Agencies on such Rating Date, the rating of the Notes by at least two of the three Specified Rating Agencies being decreased by one or more gradations (including gradations within rating categories as well as between rating categories);

and (b) where the Notes are rated by less than three Specified Rating Agencies on the Rating Date:

(i) in the event the Notes are assigned an Investment Grade Rating by all of the Specified Rating

Agencies which rate the Notes on such Rating Date, the rating of the Notes by each such Specified Rating Agency being below an Investment Grade Rating, or

(ii) in the event the Notes are not assigned an Investment Grade Rating by all of the Specified Rating Agencies which rate the Notes on such Rating Date, the rating of the Notes by each such Specified Rating Agency being decreased by one or more gradations (including gradations within rating categories as well as between rating categories),

in each case on any date within the 90-day period (which period shall be extended so long as the rating of

the Notes is under publicly announced consideration for possible downgrade by any of the Rating Agencies) after the earlier of (a) the occurrence of a Change of Control and (b) public notice of the occurrence of a Change of Control or of the Issuer's intention or agreement to effect a Change of Control.

"Reference Dealer" means any nationally recognized Canadian investment dealer selected by the Issuer, provided such investment dealer shall have undertaken to the Issuer:

to determine the Thirty-Day Average COC Market Price of the Notes;

to participate with one other Reference Dealer selected by the Issuer in confirming the Average COC Market Price of the Notes; and

to deliver to the Issuer and the Trustee, within five (5) business days of being selected, a written report prepared and jointly signed with such other Reference Dealer setting forth the Average COC Market Price

so calculated.

"Specified Rating Agency" means each of Moody's, S&P and DBRS as long as, in each case, it has not ceased

to rate the Notes or failed to make a rating of the Notes publicly available for reasons outside of the Issuer's control; provided that if one or more of Moody's, S&P or DBRS ceases to rate the Notes or fails to

make a rating of the Notes publicly available for reasons outside of the Issuer's control, the Issuer may select any other "designated rating organization" within the meaning of National Instrument 25-101 of the Canadian Securities Administrators as a replacement agency for such one or more of them, as the case

may be, and provided further that the Issuer shall maintain a rating with at least one Specified Rating

Agency at all times.

"Thirty-Day Average COC Market Price" means the price calculated, independently by each of two Reference Dealers selected by the Issuer, as the arithmetic average of the closing price of the Notes on

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each of the thirty consecutive business days ending on the business day immediately prior to the date of the Change of Control Announcement Event.