

CENTRAL FUND OF CANADA LTD
Form 6-K
December 04, 2006

FORM 6-K

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Report of Foreign Issuer

**Pursuant to Rule 13a-16 or 15d-16 of
the Securities Exchange Act of 1934**

For the month of **December 2006**

Commission File Number **001-09038**

CENTRAL FUND OF CANADA LIMITED

(Translation of registrant's name into English)

Suite 805, 1323 - 15th Avenue S.W., Calgary, Alberta, T3C 0X8

(Address of principal executive offices)

Indicate by check mark whether the registrant files or will file annual reports under cover Form 20-F or Form 40-F

Form 20-F Form 40-F

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(1):

Note: Regulation S-T Rule 101(b)(1) only permits the submission in paper of a Form 6-K if submitted solely to provide an attached annual report to security holders.

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(7):

Note: Regulation S-T Rule 101(b)(7) only permits the submission in paper of a Form 6-K if submitted to furnish a report or other document that the registrant foreign private issuer must furnish and make public under the laws of the jurisdiction in which the registrant is incorporated, domiciled or legally organized (the registrant's home country), or under the rules of the home country exchange on which the registrant's securities are traded, as long as the report or other document is not a press release, is not required to be and has not been distributed to the registrant's security holders, and, if discussing a material event, has already been the subject of a Form 6-K submission or other Commission filing on EDGAR.

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Indicate by check mark whether by furnishing the information contained in this Form, the registrant is also thereby furnishing the information to the Commission pursuant to rule 12g3-2(b) under the Securities Exchange Act of 1934.

Yes No

If Yes is marked, indicate below the file number assigned to the registrant in connection with Rule 12g3-2(b) 82

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

CENTRAL FUND OF CANADA LIMITED

By: /s/ J.C. Stefan Spicer
J.C. Stefan Spicer
President and CEO

Date: December 4, 2006

EXHIBIT INDEX

99.1 Underwriting Agreement dated November 30, 2006

EXHIBIT 99.1

EXECUTION COPY

UNDERWRITING AGREEMENT

SIGNATURE

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November 30, 2006

Central Fund of Canada Limited

Hallmark Estates, Suite 805

1323-15th Avenue S.W.

Calgary, Alberta

T3C 0X8

Attention: Mr. J. C. Stefan Spicer
President, CEO and Director

CIBC World Markets Inc., (the Underwriter), understands that Central Fund of Canada Limited (the Corporation) proposes to issue and sell to the Underwriter 7,200,000 class A non-voting shares (Class A Shares) in the capital of the Corporation (the Underwritten Shares). We further understand that the Corporation has prepared and filed a short form base shelf prospectus, a registration statement and all necessary documents relating thereto and will prepare and file, without delay, a (final) prospectus supplement and all necessary related documents and will take all additional necessary steps to qualify or register the Underwritten Shares for distribution in each of the Qualifying Provinces (as defined below) and in the United States, as applicable.

Based on the foregoing, and subject to the terms and conditions contained in this Agreement, the Underwriter offers to purchase from the Corporation, and by its acceptance hereof, the Corporation accepts such offer and agrees to sell to the Underwriter, the Underwritten Shares on the Closing Date (as defined below) at a price of U.S. \$9.40 per share being an aggregate purchase price of U.S. \$67,680,000 (the Purchase Price).

The Underwriter shall have an option (the Option), which Option may be exercised in the Underwriter s sole discretion and without obligation, to purchase up to an additional 1,440,000 Class A Shares of the Corporation which, if subscribed for hereunder, shall be deemed to form part of the Underwritten Shares for the purposes hereof. The Option shall be exercisable by the Underwriter, at any time prior to 4:00 p.m. (Toronto time) on the date hereof, by delivering written notice to the Corporation prior to the expiry of the Option, after which time the Option shall be void and of no further force and effect.

In consideration of the Underwriter s agreement to purchase the Underwritten Shares and in consideration of the services to be rendered by the Underwriter in connection with the distribution of the Underwritten Shares in each of the Qualifying Provinces and the United States, the Corporation will pay to the Underwriter a fee of approximately U.S. \$0.376 per Underwritten Share for an aggregate of U.S. \$2,707,200 (the Underwriting Fee). Such fee shall be due and payable at the Closing Time (as defined below) against payment by the Underwriter for the Underwritten Shares.

SIGNATURE

-2-

All actions to be undertaken by the Underwriter in connection with the offering or sale of the Underwritten Shares in the United States, shall be undertaken through its U.S. Dealer.

DEFINITIONS

In this Agreement:

affiliate, **distribution**, **exchange**, **material**, **misrepresentation**, and **subsidiary** when used in connection with the Canadian Shelf Prospectus, Canadian Prospectus Supplement or any Prospectus Amendment thereto shall have the respective meanings given to them under the Canadian Securities Laws, when used in connection with the Registration Statement, the U.S. Shelf Prospectus, the U.S. Prospectus Supplement or any Prospectus Amendment thereto shall have the respective meaning (to the extent applicable) under the U.S. Securities Laws including judicial and administrative interpretations thereof, and in all other contexts shall have the respective meanings given to them under Canadian Securities Laws;

Agreement means the agreement resulting from the acceptance by the Corporation of the offer made by the Underwriter by this letter;

Applicable Securities Laws means the Canadian Securities Laws and the U.S. Securities Laws;

Applicable Time means the time identified by the Underwriter as the time of the first confirmed sale of Class A Shares pursuant to this Agreement;

ASC means the Alberta Securities Commission;

Business Day means a day which is not a Saturday, a Sunday or a statutory or civic holiday in Toronto or New York City and a day on which the office of the SEC in Washington D.C. is open for business;

Canadian Shelf Prospectus and **Canadian Prospectus Supplement** mean the Canadian short form base shelf prospectus of the Corporation dated September 29, 2006 and Canadian prospectus supplement, respectively, including in each case any Documents Incorporated by Reference, prepared by the Corporation in accordance with National Instruments 44-101 and 44-102, respectively, relating to the distribution of the Underwritten Shares and prepared and filed with the Canadian Securities Regulators in accordance with Canadian Securities Laws;

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Canadian Securities Laws means all applicable securities laws in each of the Qualifying Provinces and the respective regulations and rules under such laws together

-3-

with applicable published policy statements of the Canadian Securities Regulators in the Qualifying Provinces;

Canadian Securities Regulators means the applicable securities commission or regulatory authority in each of the Qualifying Provinces;

Canadian Transfer Agent means CIBC Mellon Trust Company, with its principal offices in the cities of Calgary, Montreal, Toronto and Vancouver;

Claim has the meaning given to it in sub-paragraph 10(a);

Class A Shares means Class A non-voting shares without par value in the capital of the Corporation;

Closing means the completion of the sale by the Corporation and the purchase by the Underwriter of the Underwritten Shares pursuant to the terms and conditions of this Agreement;

Closing Date means December 8, 2006, or such other date as the Corporation and the Underwriter may agree upon in writing or as may be changed in accordance with subparagraph 4(c) of the Agreement;

Closing Time means 8:30 am (Toronto time) on the Closing Date;

Corporation means Central Fund of Canada Limited;

Common Shares means common shares without par value in the capital of the Corporation;

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Disclosure Package means: (i) the U.S. Shelf Prospectus, as amended or supplemented; (ii) any U.S. Prospectus Supplement delivered to the Underwriter prior to the Applicable Time; (iii) the issuer free writing prospectuses, as defined in Rule 433 of the Securities Act, listed on Schedule B hereto; and (iv) the information set forth on Schedule A hereto;

Documents Incorporated by Reference means collectively:

- (a) the Annual Information Form of the Corporation dated January 12, 2006;
 - (b) the Management Information Circular of the Corporation dated January 12, 2006 in connection with the Corporation's annual meeting of shareholders on February 27, 2006;
 - (c) the audited financial statements of the Corporation as at October 31, 2005 and 2004 and for each of the years in the three year period ended October 31, 2005 together with the auditors' report thereon and consisting
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-4-

of the statements of net assets as at October 31, 2005 and 2004 and the statements of income, shareholders' equity and changes in net assets for each of the years in the three year period ended October 31, 2005;

- (d) management's discussion and analysis of financial condition and results of operations for the year ended October 31, 2005, amended as of July 27, 2006;
- (e) the unaudited interim financial statements of the Corporation for the nine month period ended July 31, 2006 with comparative figures for the corresponding period in the immediately preceding year;
- (f) management's discussion and analysis of financial condition and results of operations for the nine month period ended July 31, 2006;
- (g) the material change report of the Corporation dated November 10, 2005 disclosing the Amended and Restated Administration & Consulting Agreement effective November 1, 2005;
- (h) the material change report of the Corporation dated April 25, 2006 disclosing the Corporation's public offering of 3,208,212 Class A Shares;
- (i) the material change report of the Corporation dated August 3, 2006, disclosing the Corporation's public offering of 7,150,000 Class A Shares; and

- (j) any other document prepared by the Corporation and filed with Canadian Securities Regulators after the date of this Agreement and before the completion of the distribution of the Underwritten Shares that is of a type that is required to be incorporated by reference in the Canadian Prospectus Supplement pursuant to National Instrument 44-101, as modified by National Instrument 44-102.

Effective Date means any date as of which the Registration Statement or any amendment thereto is declared effective under the 1933 Act;

Financial Information means the Corporation's financial statements included in the Documents Incorporated by Reference together with any auditors' report thereon and the notes thereto;

free writing prospectus has the meaning set forth in Rule 405 under the Securities Act;

Indemnified Party has the meaning given to it in subparagraph 10(b);

Indemnifier has the meaning given to it in subparagraph 11(a);

-5-

1933 Act means the United States Securities Act of 1933, as amended;

1934 Act means the United States Securities Exchange Act of 1934, as amended;

NASD means the National Association of Securities Dealers, Inc.;

National Instrument 44-101 means National Instrument 44-101 adopted by the Canadian Securities Regulators;

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National Instrument 44-102 means National Instrument 44-102 adopted by the Canadian Securities Regulators;

National Policy 43-201 means National Policy 43-201 adopted by the Canadian Securities Regulators;

notice has the meaning given to it in paragraph 19;

Option has the meaning given to it above;

Option Shares means the Class A Shares purchased by the Underwriter upon the exercise of the Option;

Prospectus Amendment means any amendment or supplement to any of the Shelf Prospectuses, the Disclosure Package, the Prospectus Supplements or the Registration Statement;

Prospectus Supplements means, collectively, the Canadian Prospectus Supplement and the U.S. Prospectus Supplement;

Purchase Price has the meaning given to it above;

Qualifying Provinces means all of the provinces (other than Québec) and territories of Canada;

Registration Statement means the registration statement number 333-136629 on Form F-10 referred to in paragraph 1(d) of this Agreement, including the U.S. Shelf Prospectus and the exhibits thereto and the Documents Incorporated by Reference therein, at the Effective Date and as thereafter amended or supplemented;

Rules has the meaning given to it in subparagraph 7(t);

SEC means the United States Securities and Exchange Commission;

Shelf Prospectuses means, collectively, the Canadian Shelf Prospectus and the U.S. Shelf Prospectus;

-6-

Stock Exchanges means the Toronto Stock Exchange and the American Stock Exchange;

Subsidiaries has the meaning ascribed thereto in the *Business Corporations Act (Alberta)*;

Underwriter has the meaning given to it above;

Underwriting Fee has the meaning given to it above;

Underwritten Shares has the meaning given to it above and includes any Option Shares purchased by the Underwriter in the event the Option is exercised;

U.S. Dealer means CIBC World Markets Corp., the U.S. broker-dealer affiliate of the Underwriter, registered as such with the SEC under Section 15 of the Securities Exchange Act of 1934, which is a member of the NASD;

U.S. Prospectus Supplement means the prospectus supplement (including the Documents Incorporated by Reference therein) prepared by the Corporation and relating to the offering of Underwritten Shares in the United States, and filed by the Corporation pursuant to General Instruction I.L.L. of Form F-10 within the time period specified by such rule;

U.S. Securities Laws means all applicable securities legislation in the United States, including without limitation the 1933 Act and 1934 Act, and the rules and regulations promulgated thereunder, including judicial and administrative interpretations thereof; and

U.S. Shelf Prospectus means the prospectus, including any supplement thereto, included in the Registration Statement on the Effective Date (including the Documents Incorporated by Reference therein) prepared by the Corporation dated September 29, 2006;

U.S. Transfer Agent means Mellon Investor Services LLC, of New York.

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Unless otherwise expressly provided in this Agreement, words importing only the singular number include the plural and vice versa and words importing gender include all genders. References to paragraphs, subparagraphs and clauses are to the appropriate paragraph, subparagraph or clause of this Agreement.

All references to dollars or \$ are Canadian dollars unless otherwise expressed.

-7-

TERMS AND CONDITIONS

1. Compliance With Securities Laws - Filing of Prospectuses

The Corporation represents and warrants to, and covenants and agrees with, the Underwriter that:

- (a) the Corporation has filed the Canadian Shelf Prospectus in each of the Qualifying Provinces pursuant to National Policy 43-201 and has obtained an MRRS decision document evidencing receipts by each of the Canadian Securities Regulators for the Canadian Shelf Prospectus;
- (b) the Corporation shall fulfil or cause to be fulfilled to the reasonable satisfaction of the Underwriter's counsel all relevant provisions of Canadian Securities Laws that are required to be fulfilled by the Corporation to permit the distribution of the Underwritten Shares in each of the Qualifying Provinces, by or through the Underwriter who shall comply with the relevant provisions of Canadian Securities Laws;
- (c) the Corporation shall, as soon as possible, fulfill all legal requirements to enable the distribution of the Underwritten Shares and in any event shall file the Canadian Prospectus Supplement in each of the Qualifying Provinces on or prior to 4:30 pm (Toronto time) on December 4, 2006;
- (d) (i) the Corporation has prepared and filed with the SEC the Registration Statement including the Canadian Shelf Prospectus (with such deletions therefrom and additions thereto as are permitted or required by Form F-10 under the 1933 Act and the Rules) and a written irrevocable consent and power of attorney of the Corporation on Form F-X (the Form F-X); (ii) the Registration Statement became effective on September 29, 2006 pursuant to Rule 467(a) of the 1933 Act; (iii) no stop order suspending the effectiveness of the Registration Statement has been issued by the SEC, nor has any proceeding with respect thereto been instituted or threatened; and (iv) the Corporation fulfilled and complied with, to the reasonable satisfaction of the Underwriter, the U.S. Securities Laws required to be fulfilled or complied with by the Corporation to enable the Underwritten Shares to be lawfully distributed to the public in the United States;

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- (e) the Corporation is not an ineligible issuer in connection with the offering pursuant to Rules 164, 405 and 433 under the 1933 Act. Any free writing prospectus that the Corporation is required to file pursuant to Rule 433(d) under the 1933 Act has been, or will be, filed with the SEC in accordance with the requirements of the 1933 Act and the applicable rules and regulations of the SEC thereunder. Each free writing prospectus that the Corporation has filed, or is required to file, pursuant to Rule 433(d) under the 1933 Act or that was prepared by or behalf of or used or referred to by

-8-

the Corporation complies or will comply in all material respects with the requirements of the 1933 Act and the applicable rules and regulations of the SEC thereunder. Except for the free writing prospectuses, if any, identified in Schedule B hereto, and electronic road shows, if any, furnished to the Underwriter before first use, the Corporation has not prepared, used or referred to, and will not, without the Underwriter's prior consent, prepare, use or refer to, any free writing prospectus.

2. Due Diligence

Prior to the filing of the Prospectus Supplements, the Corporation shall permit the Underwriter and its counsel to review and provide comments on drafts of each of the Prospectus Supplements and the Registration Statement and shall allow the Underwriter to conduct any due diligence investigations which it reasonably requires in order to fulfill its obligations as an underwriter under the Applicable Securities Laws and in order to enable the Underwriter to responsibly execute the certificate in the Canadian Prospectus Supplement required to be executed by it.

3. (a) Deliveries on Filing of Prospectus Supplements

No later than the time of filing of the Prospectus Supplements with the Canadian Securities Regulators and with the SEC, unless otherwise indicated below, the Corporation shall deliver to the Underwriter:

- (i) a copy of each of the Prospectus Supplements, including all Documents Incorporated by Reference, in the English language, signed, filed and certified as required by the Applicable Securities Laws;
- (ii) a copy of each other document filed by the Corporation at or prior to the time of filing the Canadian Prospectus Supplement in compliance with Applicable Securities Laws in connection with the distribution of the Underwritten Shares; and
- (iii) at the Applicable Time, a long-form comfort letter of Ernst & Young LLP, dated as of the date of the Prospectus Supplement (with the requisite procedures to be completed by Ernst & Young LLP within two Business Days of the date of the Canadian Prospectus Supplement), addressed to the Underwriter and the board of directors of the Corporation, in form and substance satisfactory to the Underwriter, acting reasonably, with respect to certain financial and accounting information relating to the Corporation in the Prospectus Supplements or the Disclosure Package including all Documents Incorporated by Reference, which letter shall be in addition to the auditors report incorporated by

-9-

reference into the Prospectus Supplements or the Disclosure Package.

(b) **Prospectus Amendments**

In the event that the Corporation is required by Applicable Securities Laws to prepare and file a Prospectus Amendment, the Corporation shall prepare and deliver promptly to the Underwriter signed and certified copies of such Prospectus Amendment along with all Documents Incorporated by Reference that have not been previously delivered. Any Prospectus Amendments shall be in form and substance satisfactory to the Underwriter acting reasonably. Concurrently with the delivery of any Prospectus Amendment, the Corporation shall deliver to the Underwriter with respect to such Prospectus Amendment, documents similar to those referred to in clauses 3(a)(ii) and (iii).

(c) **Commercial Copies**

The Corporation shall cause commercial copies of the Shelf Prospectuses and the Prospectus Supplements to be delivered, without charge, to the Underwriter in Toronto and in such other cities in North America and in such quantities as the Underwriter may reasonably request by oral instructions to the printer of such documents. Such delivery of the Prospectus Supplements shall be effected as soon as possible but, in any event, on or before 10:00 a.m. (Toronto time) on December 5, 2006. Such deliveries shall constitute the consent of the Corporation to the Underwriter's use of the Shelf Prospectuses and Prospectus Supplements in connection with the distribution of the Underwritten Shares in the Qualifying Provinces and in the United States in compliance with the provisions of this Agreement and Applicable Securities Laws.

(d) **Qualification of Securities**

The Corporation will promptly from time to time take such action as the Underwriter may reasonably request to qualify the Underwritten Shares for offering and sale under the Applicable Securities Laws or Blue Sky laws of such United States or Canadian jurisdictions as the Underwriter may request and to comply with such laws so as to permit the continuance of sales and dealings therein in such jurisdictions for so long as may be necessary to complete the distribution of the Underwritten Shares until 30 days after the date hereof; provided that in connection therewith, the Corporation shall not be required to amend its charter documents or bylaws or to qualify as a foreign corporation or to file a general consent to service of process in any jurisdiction or subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject.

(e) **Distribution of Shares**

The Underwriter shall (and require any selling firm to agree with such Underwriter, for the benefit of the Corporation, to):

- (i) offer the Underwritten Shares for sale to the public only as permitted by applicable law and at a price not exceeding the per share Purchase Price;
- (ii) not solicit offers to purchase Underwritten Shares from, or sell Underwritten Shares to, any person resident in any jurisdiction other than the Qualifying Provinces or the United States, except in a manner which is exempt from registration and prospectus requirements under applicable securities laws and which does not require the Corporation to register any of its securities or comply with ongoing filing or disclosure requirements or other similar requirements and further provided that in connection therewith, the Corporation shall not be required to amend its charter documents or by-laws or to qualify as a foreign corporation or to file a general consent to service of process in any jurisdiction or subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject;
- (iii) not make use of any green sheet or information memorandum in respect of the Corporation or the distribution of the Underwritten Shares in the United States and not make use of any such green sheet or information memorandum in Canada that has not first been approved by the Corporation; and
- (iv) offer and sell the Underwritten Shares in the United States only through the U.S. Dealer.

(f) **Notice of Completion of Distribution**

After the Closing Time, the Underwriter shall:

- (i) use its best efforts to complete the distribution of the Underwritten Shares as promptly as possible; and
- (ii) give prompt written notice to the Corporation when, in the opinion of the Underwriter, the Underwriter has completed distribution of the Underwritten Shares, including a breakdown of the gross proceeds realized therefrom in each of the Qualifying Provinces, in the United States and in any other applicable jurisdiction.

4. Material Changes During Distribution

(a) Corporation Material Change

During the period from the date of this Agreement to the completion of distribution of the Underwritten Shares, the Corporation shall promptly notify the Underwriter in writing of:

- (i) any material change (actual, anticipated, or threatened, financial or otherwise) in the business, affairs, operations, assets, liabilities (contingent or otherwise) or capital of the Corporation that is not otherwise referred to in the Disclosure Package or the Shelf Prospectuses as supplemented by the Prospectus Supplements;
- (ii) any material fact which has arisen or been discovered that would have been required to have been stated in the Disclosure Package, the Shelf Prospectuses as supplemented by the Prospectus Supplements or the Registration Statement had such fact arisen or been discovered on, or prior to, the date of such document; and
- (iii) any change in any material fact (which for the purposes of this Agreement shall be deemed to include the disclosure of any previously undisclosed material fact) contained in the Disclosure Package, the Shelf Prospectuses as supplemented by the Prospectus Supplements or the Registration Statement, including all Documents Incorporated by Reference, which fact or change is, or may be, of such a nature as to render any statement in the Disclosure Package, the Shelf Prospectuses as supplemented by the Prospectus Supplements or the Registration Statement misleading or untrue or which would result in a misrepresentation in the Disclosure Package, the Shelf Prospectuses as supplemented by the Prospectus Supplements or the Registration Statement or which would result in the Disclosure Package, the Shelf Prospectuses as supplemented by the Prospectus Supplements or the Registration Statement not complying (to the extent that such compliance is required) with Applicable Securities Laws.

The Corporation will in good faith discuss with the Underwriter any event described in clauses (i), (ii) or (iii) above that occurs or is discovered during the period from the date of this Agreement to the completion of distribution of the Underwritten Shares which is of such a nature that there may be reasonable doubt as to whether notice need be given to the Underwriter pursuant to this subsection 4(a). If at any time during the period from the date of this Agreement to the completion of distribution of the Underwritten Shares, any event described in clauses (i), (ii) or (iii) above occurs or any condition exists as a result of which it is necessary, in the reasonable opinion of counsel for the Corporation or the Underwriter, to amend the Registration Statement or amend

-12-

or supplement the Disclosure Package or the Shelf Prospectuses as supplemented by the Prospectus Supplements, as the case may be, in order that the Disclosure Package or the Prospectus Supplements will not include any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it is delivered to a

SIGNATURE

purchaser, or if it shall be necessary, in the opinion of any such counsel, at any such time to amend the Registration Statement or amend or supplement the Disclosure Package, the Shelf Prospectuses as supplemented by the Prospectus Supplements, as the case may be, in order to comply with the requirements under Applicable Securities Laws or other applicable laws, the Corporation will promptly prepare and file such Prospectus Amendment as may be necessary to correct such statement or omission or to make the Registration Statement, the Disclosure Package or the Shelf Prospectuses as supplemented by the Prospectus Supplements, as the case may be, comply with such laws, and the Corporation will furnish to the Underwriter such number of copies of such amendment or supplement as the Underwriter may reasonably request.

The Corporation shall not file any Prospectus Amendment or other document, however, without first obtaining approval from the Underwriter, after consultation with the Underwriter with respect to the form and content thereof, which approval shall not be unreasonably withheld or delayed. The Corporation further covenants with the Underwriter (i) to furnish to it a copy of each proposed free writing prospectus to be prepared by or on behalf of, used by, or referred to by the Corporation and not to use or refer to any proposed free writing prospectus to which the Underwriter reasonably objects; and (ii) not to take any action that would result in the Underwriter or the Corporation being required to file with the SEC pursuant to Rule 433(d) under the 1933 Act a free writing prospectus prepared by or on behalf of the Underwriter that the Underwriter otherwise would not have been required to file thereunder.

(b) **Change in Applicable Securities Laws**

If during the period of distribution of the Underwritten Shares, there shall be any change in the Applicable Securities Laws which, in the opinion of the Underwriter, acting reasonably, requires the filing of a Prospectus Amendment, the Corporation shall, to the satisfaction of the Underwriter, acting reasonably, promptly prepare and file such Prospectus Amendment with the appropriate securities regulatory authority in each jurisdiction where such filing is required.

(c) **Change in Closing Date**

If a material change occurs or an undisclosed material fact has arisen or been discovered prior to the Closing Date, then, subject to paragraph 9, the Closing Date shall be, unless the Corporation and the Underwriter otherwise agree in writing or unless otherwise required under the Applicable Securities Laws, the later of:

- (i) the third Business Day following the date on which all applicable filings or other requirements of the Applicable Securities Laws with

-13-

respect to such material change or change in a material fact have been made or complied with in all relevant jurisdictions and any appropriate receipts obtained for such filings and notice of such filings from the Corporation or its counsel have been received by the Underwriter; and

- (ii) the fifth Business Day following the date upon which the commercial copies of any Prospectus Amendment have been delivered in accordance with subparagraph 3(b).

In no event, however, shall the Closing Date be later than December 15, 2006.

(d) **Notification**

During the period commencing on the date hereof until the Underwriter notifies the Corporation of the completion of the distribution of the Underwritten Shares, the Corporation will promptly inform the Underwriter of the full particulars of:

- (i) any request of any Canadian Securities Regulator or the SEC for any amendment to the Shelf Prospectuses, the Prospectus Supplements, the Registration Statement or any Supplementary Material or for any additional information in respect of the offering of the Underwritten Shares;
- (ii) the receipt by the Corporation of any material communication, whether written or oral, from any Canadian Securities Regulator, the SEC, either Stock Exchange or any other competent authority, relating to the Shelf Prospectuses, the Prospectus Supplements, the Registration Statement or the distribution of the Underwritten Shares;
- (iii) any notice or other correspondence received by the Corporation from any governmental body requesting any information, meeting or hearing relating to the Corporation, the offering, the issue and sale of the Underwritten Shares or any other event or state of affairs, that the Corporation reasonably believes would have a material adverse effect on the business, assets, financial condition, liabilities or operations of the Corporation; or
- (iv) the issuance by any Canadian Securities Regulator, the SEC, either Stock Exchange or any other competent authority, including any other governmental or regulatory body, of any order to cease or suspend trading or distribution of any securities of the Corporation or of the institution, threat of institution of any proceedings for that purpose or any notice of investigation that could potentially result in

-14-

an order to cease or suspend trading or distribution of any securities of the Corporation.

5. Services Provided by Underwriter and Underwriting Fee

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In consideration for the Underwriter's services in assisting in the preparation of the Shelf Prospectuses, the Prospectus Supplements, the Registration Statement and any Prospectus Amendments, in distributing the Underwritten Shares, both directly and to other registered dealers as brokers, and in performing administrative work in connection with the distribution of the Underwritten Shares, the Corporation agrees to pay to the Underwriter the Underwriting Fee. The Underwriting Fee shall be payable as provided for in subparagraph 6(a). The Underwriting Fee shall be payable by way of set-off of the amount of the Underwriting Fee against, and deduction of the Underwriting Fee from, the Purchase Price.

6. Delivery of Purchase Price, Underwriting Fee and Certificate

(a) Deliveries

The purchase and sale of the Underwritten Shares shall be completed at the Closing Time at the offices of Fraser Milner Casgrain LLP, 1 First Canadian Place, 39th Floor, 100 King Street West, Toronto, Ontario, or at such other place as the Underwriter and the Corporation may agree upon.

At the Closing Time, the Corporation shall deliver to the Underwriter one or more definitive share certificate(s) representing the Underwritten Shares in favour of the Underwriter or its nominee(s), against payment by the Underwriter to the Corporation of the Purchase Price, less the Underwriting Fee, by wire transfer, or if permitted under applicable laws, certified cheque or bank draft (in any case, as may be directed by the Corporation) in U.S. dollars (based on the exchange rate for the Canadian dollar expressed in United States dollars as set forth on the first page of this Agreement) together with a receipt signed by the Underwriter for such definitive certificate(s) and a receipt for the Underwriting Fee.

(b) Delivery of Certificate(s) to Transfer Agent

The Corporation shall, prior to the Closing Date, make all necessary arrangements for the exchange of the definitive certificate(s) representing the Underwritten Shares, on the Closing Date, at the principal offices of the Canadian Transfer Agent in the City of Toronto and the U.S. Transfer Agent in the City of New York for certificates representing such number of Underwritten Shares registered in such names as shall be designated by the Underwriter not less than 48 hours (or 72 hours if the Closing Date is a Monday) prior to the Closing Time.

The Corporation shall pay all fees and expenses payable to the Canadian Transfer Agent and the U.S. Transfer Agent in connection with the preparation, delivery,

-15-

certification and exchange of the Underwritten Shares, contemplated by this subparagraph 6(b) and the fees and expenses payable to the Canadian Transfer Agent and the U.S. Transfer Agent in connection with the initial or additional transfers as may be required in the course of the distribution of the Underwritten Shares.

SIGNATURE

17

7. Representations and Warranties of the Corporation

The Corporation represents and warrants to the Underwriter that, and acknowledges that the Underwriter is relying upon, such representations and warranties in purchasing the Underwritten Shares:

- (a) the Corporation is a company duly continued, organized and validly existing under the laws of Alberta and is properly registered under the laws of all jurisdictions in which its business is carried on except where the failure to be so registered would not have a material adverse effect on the business or operations of the Corporation;
- (b) the Corporation is (i) a reporting issuer not in default in any material respect of any requirement under Canadian Securities Laws, and (ii) not in default in any material respect of any requirement under U.S. Securities Laws;
- (c) the Corporation has the requisite corporate power, authority and capacity to enter into this Agreement and to perform the transactions contemplated herein and the Corporation has the requisite corporate power, authority and capacity to own, lease and to operate its property and assets including licences or other similar rights and to carry on the business customarily carried on by it and has all the requisite corporate power and authority to carry on its business as currently carried on or as currently proposed to be carried on. The Corporation is conducting its business in compliance with all applicable laws, rules and regulations of each jurisdiction in which its business is carried on and is duly licensed, registered or qualified in all jurisdictions in which it owns, leases or operates its property or carries on business to enable its business to be carried on as now conducted and its property and assets to be owned, leased and operated except where such non-compliance or failure to obtain such licence, registration or qualification would not have a material adverse effect on the business or operations of the Corporation and all such licences, registrations and qualifications are valid and subsisting and in good standing;
- (d) the Corporation has authorized share capital consisting of an unlimited number of Class A Shares and 50,000 Common Shares of which 40,000 Common Shares and 104,654,532 Class A Shares and no more are validly issued and outstanding as fully paid and non-assessable. No person, firm or corporation has any agreement or option, or right or

-16-

privilege (whether pre-emptive or contractual) capable of becoming an agreement or option, for the purchase from the Corporation of any unissued shares of the Corporation except as otherwise referred to in the Disclosure Package and the Shelf Prospectuses as supplemented by the Prospectus Supplements;

- (e) except as disclosed in the Disclosure Package and the Shelf Prospectuses as supplemented by the Prospectus Supplements, to the best of the Corporation's knowledge, there is no action, proceeding or investigation pending or threatened against the Corporation before or by any federal, provincial, municipal or other governmental department, commission, board or agency, domestic or foreign, which is reasonably expected to result in any material change in the business or in the condition (financial or otherwise) of the Corporation or its properties or assets (taken as a whole), or which questions the validity of any action taken or to be taken by the Corporation pursuant to or in connection with this Agreement or as contemplated by the Disclosure Package and the Shelf Prospectuses as supplemented by the Prospectus Supplements;

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- (f) since October 31, 2006, there have been no changes in the assets or liabilities of the Corporation from the position thereof as set forth therein, except changes arising from transactions in the ordinary course of business which, in the aggregate, have not been material to the Corporation and except for changes that are disclosed in the Disclosure Package and the Shelf Prospectuses as supplemented by the Prospectus Supplements;
 - (g) the financial statements of the Corporation, including the notes thereto, incorporated in Disclosure Package, the Prospectus Supplements and the Registration Statement have been prepared in conformity with Canadian generally accepted accounting principles and in a manner that is consistent with U.S. generally accepted accounting principles and in accordance with the 1933 Act and the Rules, including the requirements of Form F-10, in each case applied on a consistent basis throughout the periods involved;
 - (h) the financial statements of the Corporation as incorporated by reference in the Disclosure Package and the Shelf Prospectuses as supplemented by the Prospectus Supplements present fairly in all material respects the financial position of the Corporation as at the dates of such statements;
 - (i) the Corporation is not in material violation of, and the execution and delivery of this Agreement and the performance by the Corporation of its obligations under this Agreement will not result in any material breach or, violation of, or be in material conflict with, or constitute a material default under, or create a state of facts which after notice or lapse of time, or both,
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-17-

would constitute a material default under any term or provision of the charter documents or by-laws of the Corporation or any resolution of the directors or shareholders of the Corporation or any material contract, mortgage, note, indenture, joint venture or partnership arrangement, agreement (written or oral), instrument, lease, judgment, decree, order, statute, rule, licence or regulation applicable to the Corporation;

- (j) no approval, authorization, consent or other order of, and no filing, registration or recording with, any governmental authority is required of the Corporation in connection with the execution and delivery or with the performance by the Corporation of this Agreement except as disclosed in the Disclosure Package and the Shelf Prospectuses as supplemented by the Prospectus Supplements and compliance with the Applicable Securities Laws with regard to the distribution of the Underwritten Shares in the Qualifying Provinces and the United States;
- (k) this Agreement has been duly authorized, executed and delivered by the Corporation and constitutes a valid and binding obligation of the Corporation, enforceable in accordance with its terms, except as enforcement hereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and except as limited by the application of equitable principles when equitable remedies are sought and subject to the fact that rights of indemnity and contribution may be limited by applicable law and enforceability of paragraph 12 would be determined only in the discretion of a court;
- (l) to the knowledge of the Corporation, no securities commission, stock exchange or comparable authority has issued any order preventing or suspending the use or effectiveness of the Shelf Prospectuses, the Disclosure Package, the Prospectus Supplements, the Registration Statement or any Prospectus Amendment or preventing the distribution of the Underwritten

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Shares in any Qualifying Province or the United States nor instituted proceedings for that purpose and, to the knowledge of the Corporation, no such proceedings are pending or contemplated;

- (m) the Corporation is eligible in accordance with the provisions of National Instrument 44-101 to file a short form prospectus under National Instrument 44-102 with Canadian Securities Regulators;
- (n) the Corporation is not, and upon consummation of the transactions contemplated hereby will not be, an investment company or an entity controlled by an investment company as such terms are defined in ~~the~~ *United States Investment Company Act of 1940*, as amended;