

AMENDED AND RESTATED TRANSCANADA KEYSTONE PIPELINE TRUST
AGREEMENT

THIS AMENDED AND RESTATED TRUST AGREEMENT was made as of the 29th day of January, 2015 and is amended and restated as of the 1st day of October, 2015.

BETWEEN:

CIBC TRUST CORPORATION, a licensed trust company governed by the laws of Canada with a place of business located at 301 - 8th Avenue S.W. - 3rd Floor - Hollingsworth Building, Calgary Alberta, T2P 1C5

(the “**Initial Trustee**”)

AND:

TRANSCANADA KEYSTONE PIPELINE GP LTD., a corporation governed by the laws of Canada with a place of business located at 450 - 1st Street, S.W., Calgary Alberta, T2P 5H1

(the “**Settlor**”)

WHEREAS TransCanada Keystone Pipeline GP Ltd. (“**Keystone GP**”) holds the regulatory authorization allowing it to operate the pipeline described in Schedule “A” to this Agreement (the “**Pipeline**”);

AND WHEREAS Keystone GP is subject to regulation by the National Energy Board under the *National Energy Board Act* (Canada) in respect of the Pipeline and TransCanada Keystone Pipeline Limited Partnership collects the tolls, pursuant to the National Energy Board’s regulation in respect of shipping on the Pipeline;

AND WHEREAS on 26 May 2009 the National Energy Board issued the RH-2-2008 Reasons for Decision, which requires each person holding an authorization to operate a pipeline under the *National Energy Board Act* (Canada) or the *Canada Oil and Gas Operations Act* (Canada) to file a proposed process and mechanism to set aside funds to pay for the reclamation obligations in respect of the sites in Canada used for the operation of that pipeline;

AND WHEREAS on 19 April 2013, the National Energy Board issued the MH-001-2013 Hearing Order, establishing how it would consider each set-aside mechanism proposed;

AND WHEREAS on 5 May 2014 the National Energy Board ordered Keystone GP to establish the trust governed by this agreement for the purpose of setting aside funds to pay for the reclamation obligations of Keystone GP for the operation of the Pipeline;

AND WHEREAS in satisfaction of the requirements imposed by the National Energy Board, Keystone GP established this irrevocable trust for the purpose of setting aside funds to pay for the reclamation obligations in respect of the site in Canada used for the operation of the Pipeline and transferred to the Trustee the Settlement Property set forth herein to be held by it in trust and subject to the terms and conditions declared and contained herein;

boards or bodies exercising similar functions, that are applicable with respect to the matter in issue;

- (f) “**assets**” includes cash, securities, estates, property and rights of any kind whatsoever and any interests therein;
- (g) “**Beneficiary**” or “**Beneficiaries**” means a Person, acting in its own capacity or acting on behalf of a partnership, that has Reclamation Obligations in respect of the Site, including the Company and TransCanada Keystone Pipeline Limited Partnership;
- (h) “**Business Continuity Plan**” means a plan or programme to ensure the continued availability of essential services, operations and programs, including all applicable resources, which plans are activated during, or immediately after, an emergency or disruption and are aimed at permitting the rapid and cost effective resumption of critical functions;
- (i) “**Business Day**” means any day except a Saturday, Sunday or a statutory holiday in the Province of Alberta;
- (i.i) “**Clearinghouse**” means an institution that settles mutual indebtedness between a number of financial or market organizations, and is usually financed by membership subscriptions and other dues of the market;
- (j) “**Company**” means the person holding the regulatory authorization(s) to operate the Pipeline at the relevant time, whether on its own behalf or on behalf of one or more Persons, and for greater certainty, the initial Company shall be Keystone GP;
- (k) “**Company’s Notice of Termination**” has the meaning set out in section 3.04(a) of this Agreement;
- (l) “**Custodian**” means a corporate institution, appointed by the Trustee which has title to, or Trustee-authorized possession of, Fund assets with the obligation to hold secure those assets, and to deal with them as authorized by the Trustee;
- (m) “**Deactivate**” and “**Deactivation**” has the meaning set out in the definition of “deactivate” in the *National Energy Board Onshore Pipeline Regulations* (Canada), as amended from time to time;
- (n) “**Decommission**” and “**Decommissioning**” has the meaning set out in the definition of “decommission” set out in the *National Energy Board Onshore Pipeline Regulations* (Canada), as amended from time to time;
- (o) “**Default**” has the meaning set out in section 4.05(a)(ii) of this Agreement;
- (o.1) “**Depository**” means a financial corporation that is officially authorized to receive securities, commonly financial instruments in the form of stocks and bonds, and to hold them secure for the depositor;

- (iii) the duty to carry out post-abandonment monitoring and remediation of the Site, where post-abandonment refers to the period of time after a Company has satisfied the conditions of an order or direction issued by the Tribunal granting leave to Abandon,

and all costs incurred and consequent thereon;

- (z) **"Settlement Property"** means the amount of \$100.00 given and transferred to the Trustee by the Settlor as described in section 2.02(a);
- (aa) **"Settlor"** shall have the meaning ascribed to such term in the recitals;
- (bb) **"Site"** means any location or locations in Canada used for the operation of the Pipeline;
- (cc) **"Standard of Care"** has the meaning set out in section 4.09 of this Agreement;
- (dd) **"Statement of Investment Policies and Procedures"** means a written statement of investment policies and procedures approved by the Company in respect of the Fund's portfolio of investments which sets out broad policies and procedures for the Qualified Investments of the Fund, which may include: categories of investments; diversification of the investment portfolio; asset mix and rate of return expectations; liquidity of investments; the retention or delegation of voting rights acquired through Fund investments; and the method of, and basis for, the valuation of investments;
- (ee) **"Tax Act"** means the *Income Tax Act* (Canada) and the regulations promulgated thereunder, as amended from time to time;
- (ff) **"Tribunal"** means the National Energy Board, a tribunal established under the NEB Act or any successor administrative body having authority to regulate the Company in respect of the operation and abandonment of the Pipeline;
- (gg) **"Trust"** means the relationship between the Trustee and a Beneficiary and Beneficiaries, including the obligations of the Trustee towards the Beneficiary or Beneficiaries both personal and with regard to the Fund, and the corresponding rights of a Beneficiary, whether those obligations and rights are created at law or by the terms of this Agreement; and in the context of this trust instrument, means a discretionary trust for the purpose of reclamation in favour of the one or several Beneficiaries that have Reclamation Obligations with regard to the Site, and also of the Orphan Pipeline Fund, and which shall be called the **"TransCanada Keystone Pipeline Trust"**; and
- (hh) **"Trustee"** means the Initial Trustee or any successor Trustee pursuant to sections 3.03 or 3.04.

1.02 Interpretation

- (a) In this Agreement, words importing the singular shall include plural and vice versa and words importing gender include all genders.

- (c) The Trustee shall have the right at any time during the continuance of the Trust to accept such further or additional property which the Settlor or any other Person may donate, settle, assign, transfer, appoint or otherwise contribute to the Trust.
- (d) The Trust hereby created shall be irrevocable and the Settlor, Company and Beneficiaries are divested of any power whatsoever to revoke this Trust or to modify its terms or to amend this Agreement in any respect, except in accordance with Article 6.
- (e) The parties hereto acknowledge that the Company shall contribute the Annual Contribution Amount to the Trust as directed by the Tribunal. The Trustee shall have no obligation to ensure that the Annual Contribution Amount is remitted. However, the Trustee may notify the Tribunal in writing if it reasonably believes that one or more contributions are due and not paid.

2.03 The Trust: Discretionary as to two or more beneficiaries

The Fund is held by the Trustee on trust for one or several Beneficiaries, the Trustee having a power to appoint at discretion, from among the Beneficiaries of the Fund responding at the time of payment to the then existing Reclamation Obligations. The Trustee may make payment to or for the benefit of the appointed Beneficiary, that is, either to the Beneficiary, or to a person or persons named by the Tribunal to conduct work in the reclaiming of the Site. Before making any discretionary payment the Trustee must receive the approval of the Tribunal, which approval will cover both the reclamation need being addressed and that person or those persons that are instructed to carry out the reclamation.

2.04 The Trust: Surplus Funds

If property remains in the Fund after all Reclamation Obligations of the Beneficiaries are discharged, then the Trustee, with the approval of the Tribunal, may distribute the Fund or any part thereof among any of the Beneficiaries and Orphan Pipeline Fund, or, where such is the case, a single Beneficiary and the said Orphan Pipeline Fund, as the Trustee in its sole discretion sees fit.

2.05 The Trust: Duration of the Trust

This Agreement shall have no specific term but shall commence on the date first mentioned above and shall continue until terminated in writing by the Company, with the approval of the Tribunal.

In the event that

- (a) the Trust ceases to qualify as a Qualifying Environmental Trust, in circumstances other than those contemplated by section 2.04, or
- (b) the Trustee is of the view that the period permitted by the perpetuity legislation of Alberta may expire in not more than five years,

then, as soon as practicable,

3.03 Resignation

If the Trustee desires to resign:

- (a) it shall notify the Company in writing thereof not less than one hundred and twenty (120) days prior to the intended resignation date and, during this period the Company shall appoint a successor Trustee, subject to the written approval of the Tribunal as provided in section 3.01; and
- (b) if a successor Trustee is not appointed within sixty (60) days of receipt of the written notice of resignation, the Trustee, at the expense of the Fund, shall have the right to seek appointment of a successor Trustee from the Tribunal or a court of competent jurisdiction.

3.04 Removal

- (a) If the Company delivers a written notice ("**Company's Notice of Termination**") to the Trustee specifying the intent to terminate the appointment of the Trustee hereunder for any reason, such appointment shall terminate on the thirtieth (30th) day following the date that the Company's Notice of Termination is issued.
- (b) The Trustee shall cease to hold the office of Trustee if convicted of an offence involving dishonest conduct, becomes insolvent with the appointment of a receiver or is in bankruptcy proceedings, or becomes a corporation that is dissolved or in liquidation.
- (c) If the Trustee ceases to hold office pursuant to 3.04(a) and (b), with the approval of the Tribunal, the Company shall appoint a successor Trustee meeting the requirements of section 3.02.

3.05 Obligations upon Resignation or Removal

Following the resignation or removal of the Trustee and subject to its rights hereunder, the Trustee:

- (a) shall continue to hold in trust the: (i) Fund; and (ii) all documents, information, and books and records created, received or maintained by the Trustee which relate to or arise or have arisen in connection with the performance by the Trustee of its duties hereunder (collectively with the Fund, the "**Fund Property**");
- (b) upon receipt of payment for any outstanding amount for its services and expenses then unpaid, shall transfer, deliver and pay over to the successor trustee, the Fund and all Fund Property on deposit with or in the possession of the Trustee; and
- (c) shall have no duties, responsibilities or liability with respect to the acts or omissions of the successor trustee.

The successor Trustee shall, in its capacity as Trustee, take title to the Fund and possession of the Fund Property, secure the same and receive all accretions to the Fund (including contributions), and shall have no duties, responsibilities or liability with respect to the acts or

4.04 Funds to be Used for Reclamation Obligations

Except as otherwise expressly provided herein, the Trustee may only make distributions from the Fund for the sole purpose of funding the discharge of the Reclamation Obligations of the Beneficiaries of the Trust. For greater certainty, access to the Fund, including the precise amount of the Fund to be released for payment of amounts required to satisfy the Reclamation Obligations of the Beneficiaries, is subject to the Tribunal's written approval.

4.05 Release of Funds to a Beneficiary

- (a) The Trustee may release monies from the Fund to a Beneficiary to pay for the Reclamation Obligations on presentation by the Beneficiary of the following to the Trustee:
 - (i) a written direction or an order from the Tribunal issued in the name of the Beneficiary confirming the amount to be disbursed from the Fund and the timing of the disbursement; and
 - (ii) a certificate of an officer of the Beneficiary stating that the Beneficiary has not (1) ceased to carry on business; (2) become insolvent or committed any act of bankruptcy; (3) filed a petition for bankruptcy, or suffered a petition for bankruptcy being filed, against it; (4) made any proposal to or sought arrangement with its creditors; (5) made an assignment for the benefit of creditors; (6) appointed or suffered the appointment of a receiver in respect of its property and/or assets; or (7) had or suffered proceedings being commenced (voluntarily or involuntarily) for the liquidation, dissolution or winding up of itself (any one or more of the foregoing events, a "**Default**"), and that to the officer's knowledge, the Beneficiary will not suffer Default within the one (1) year period after the certificate is issued.

4.06 Release of Funds to a Third Party

The Trustee may release funds that are held in accordance with this Agreement to any third party for the purposes of funding the discharge of the Reclamation Obligations of a Beneficiary on presentation of a written direction or an order from the Tribunal issued in the name of the third party, with such direction or order confirming the amount to be disbursed from the Fund, and the timing of the disbursement. On receipt of the written direction or order, the Trustee may release the requested funds to the third party set out in the order or direction of the Tribunal.

4.07 Duties of the Trustee Regarding Release of the Requested Funds

- (a) Except as otherwise expressly provided herein, the Trustee shall only draw on the Fund for the purpose of paying or reimbursing payment of the costs incurred to discharge Reclamation Obligations as and when required by section 4.05 and 4.06 and, then, only in accordance with the applicable direction or order from the Tribunal.

- (c) At the end of each calendar year during which the Trustee has held the Fund, the Trustee shall cause to be issued to the Company a form T-5, or other form as appropriate pursuant to the Tax Act, in respect of any interest, dividend, capital gains or other earnings or losses on the Fund.

4.09 Standard of Care

- (a) In the exercise and discharge of its obligations and duties at law or hereunder, the Trustee shall:
 - (i) act honestly and in good faith;
 - (ii) exercise that degree of care, diligence and skill that a reasonably prudent institutional trustee acting in like capacity would exercise in comparable circumstances; and
 - (iii) comply with the terms of this Agreement and Applicable Law, rules and regulations in respect of the Trustee's dealing with, or handling of the Fund pursuant to the terms hereof(collectively, the "Standard of Care").
- (b) The Trustee shall be responsible for loss occasioned by reason of the failure of the Trustee to comply with its obligations at law or duties under this Trust, or its negligence or willful misconduct on the part of itself, its employees, officers or agents.

4.10 Appointment of Advisors

- (a) The Trustee shall not enter into, amend, terminate or waive performance under contracts or agreements for service with a third party, including investment management, Custodian and advisory entities, unless the Trustee has first consulted with the Company in regard thereto.
- (b) Subject to the Standard of Care, the Trustee may appoint or retain such legal counsel, accountants, financial advisors, appraisers or other experts or advisors as may be reasonably required for the purpose of discharging its duties or exercising its powers hereunder and shall not be responsible for any loss occasioned by, or misconduct on the part of, any of them. The Trustee may pay out of the Fund reasonable remuneration for all services performed for it by such advisors in the discharge of its duties or exercise of its powers hereunder without taxation for costs or fees of any counsel, solicitor or attorney, including solicitor fees on a solicitor and own client basis. The Trustee shall be responsible for holding such advisors to a commercially reasonable standard of care under their contract of appointment. Where such advisor has caused a loss to the Trust, the Trustee agrees, upon written request by the Company that the Trustee will pursue commercially reasonable remedies on behalf of the Trust against the advisor. If the Company has requested the Trustee to take such action and the Trustee is not doing so promptly or is not diligently pursuing such action, the Company may

4.11 Safekeeping of Funds

So far as is allowed by Applicable Law, the Trustee shall control and hold in trust, in such form and manner as may be necessary to impress a trust thereon as against any creditor or creditors of the Beneficiaries, all funds held pursuant to the terms hereof until such funds are disbursed or otherwise dealt with in accordance with the terms and conditions of this Agreement.

4.12 Acceptance of Obligations

The Trustee hereby accepts the covenants and obligations set out in this Agreement and agrees to discharge the same upon the terms and conditions herein set forth, and to hold and exercise the rights, privileges and benefits conferred upon it by this Agreement for the purposes of the Trust.

4.13 Decision to Act or Not Act

The Trustee shall retain the right not to act and shall not be held liable for refusing to act unless it has received clear documentation which complies with the terms of this Agreement. The Trustee shall not retain the right not to act and shall be held liable for refusing to act where documentation which complies with the terms of this Agreement requires the exercise of any discretion or independent judgment on the part of the Trustee.

4.14 Trustee Not to Expend Own Funds or Borrow

None of the provisions contained in this Agreement shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

The Trustee shall not, at any time, loan funds to, or borrow any funds for or on behalf of, the Trust.

4.15 Other Powers and Duties of the Trustee

For greater certainty, subject to the Standard of Care in administering the Trust and investing the Fund, the Trustee shall be specifically authorized to:

- (a) **Appoint Custodians.** Appoint or cause to be appointed domestic Custodians, including Affiliates of the Trustee, as to part or all of the Fund Property, provided the Trustee shall not be responsible or liable for any losses or damages suffered by the Trust arising as a result of the insolvency of any such Custodian, except to the extent the Trustee failed to adhere to the Standard of Care in the selection, appointment, supervision or continued retention of such Custodian. The Trustee shall be responsible for holding its Custodians to a commercially reasonable standard of care under their contract of appointment. Upon request by the Company, the Trustee shall provide the Company with a list of its current Custodians. Where a Custodian has caused a loss to the Trust, the Trustee agrees, upon written request by the Company that the Trustee will pursue commercially reasonable remedies on behalf of the Trust against any such Custodian. If the Company has requested the Trustee to take such action and the Trustee is not

- (h) **Collect Income and Proceeds.** Collect income payable to and distributions due to the Trust and sign on behalf of the Trust any declarations, affidavits, certificates of ownership and other documents required to collect income and other payments, including tax reclamations, rebates and other withheld amounts and collect proceeds in respect of Fund Property that mature, provided that whenever an issuer of a Fund Property offers the Trustee the option of receiving dividends in shares or cash, the Trustee may elect to receive shares or cash as it determines in its sole discretion.
- (i) **Redeem Securities.** Present for redemption or exchange any Fund Property which may be called, redeemed, withdrawn or retired.
- (j) **Execute Instruments.** Make, execute and deliver any and all documents, agreements or other instruments as are necessary or desirable for the accomplishment of any of the powers and duties in this Agreement.
- (k) **Determine Value.** Determine the fair market value of the Fund Property not less frequently than quarterly and as at December 31 of each fiscal year, in accordance with methods consistently followed and uniformly applied and in accordance with the Statement of Investment Policies and Procedures.
- (l) **Power to do any Necessary Act.** Generally take all action, whether or not expressly authorized, which the Trustee may deem necessary or desirable, acting in accordance with the Standard of Care, for the fulfillment of its duties hereunder.
- (m) **Self Dealing.** Deal with any Person which is an Affiliate of the Trustee, in which event neither the Trustee nor the Affiliate shall be accountable for any profit earned in the course of such dealing, provided that when the Trustee directly retains or appoints a Person at the expense of the Trust who is an Affiliate, the terms of such appointment, retainer, or other dealing shall be on a commercially reasonable basis and consistent with the terms and conditions of this Agreement, including the Standard of Care.

ARTICLE 5 REMUNERATION AND EXPENSES OF THE TRUSTEE

5.01 Trustee's Fees and Expenses of the Trustee

- (a) The Trustee shall be paid out of the Fund, as compensation for acting as Trustee, the fees, reimbursement and other compensation in the amount and manner as determined by the Company and the Trustee.
- (b) Such remuneration and all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration of its duties hereunder (including legal fees and expenses on a solicitor and own client basis, investment expenses, including management and advisory expenses, and the reasonable compensation and disbursements of all other advisers, agents or experts employed or retained pursuant to this Agreement) shall be paid from the Fund.

for the benefit of the Trust, but no property from the Fund may be used for such purposes.

5.04 Business Continuity

The Trustee shall, at all times that this Agreement is in force, maintain a commercially reasonable Business Continuity Plan.

ARTICLE 6 AMENDMENT AND TERMINATION OF THE TRUST

6.01 Amendment

The Trustee may, by agreement with the Company, amend the terms of the Trust, including the terms and schedules of this Agreement. No amendment to the terms of the Trust or the terms of this Agreement will be binding or effective unless the Tribunal approves the amendment.

6.02 Trust Irrevocable

The Trust and the schedules hereto, which are hereby incorporated into the Trust, may not be revoked by the Company, Beneficiaries or any of them, or the Trustee, except that the Tribunal in its total discretion may direct a termination of the Trust, and order such successive arrangements as are appropriate.

6.03 Sale of the Pipeline or a Portion Thereof

For greater certainty, assets from the Fund may be transferred to another QET for the purpose of funding Reclamation Obligations in accordance with this Agreement upon the Tribunal's direction or order, including any such direction or order that is made part of the Tribunal's direction or order approving the sale, assignment, transfer or other disposition of the Pipeline or a portion thereof from a Beneficiary to another person pursuant to paragraphs 74(1)(a), (b) and (c) of the NEB Act.

ARTICLE 7 NOTICES

7.01 Acting on Written Notice

The Trustee shall not incur liability for acting in reliance on any written notice, request, consent, certificate, receipt, affidavit, statutory declaration or other paper or document furnished to it by or on behalf of any Person authorized to do so by the terms of this Agreement, not only as to its due execution and the validity and effectiveness of its provisions but also as to the verity of any information therein contained, provided the Trustee's reliance thereon is in accordance with the Standard of Care.

7.02 Mode of Giving Notice

Any notice or other document required to be given or delivered hereunder will be valid and effective if given by registered letter (postage prepaid), courier, by personal delivery, by email

ARTICLE 8 MISCELLANEOUS

8.01 Assignment and Enurement

This Agreement shall:

- (a) be binding upon the parties hereto and their respective successors and permitted assigns;
- (b) enure to the benefit of and be enforceable by the Company, any Beneficiary and its successors and permitted assigns; and
- (c) be enforceable against the Trustee by the Tribunal or Her Majesty in right of Canada.

No party may assign this Agreement or any benefits or obligations hereunder without the approval of the Tribunal.

8.02 Applicable Law

This Agreement (and any amendments hereto) shall be governed by the law of the Province of Alberta and the laws of Canada applicable therein.

8.03 Residence

The Company and the Trustee represent that they are, respectively, a resident of Canada within the meaning of the Tax Act.

8.04 Severability

In the event that any provision hereof shall be determined to be invalid or unenforceable in any respect, such determination, so far as permitted under Applicable Law, shall not affect such provision in any other respect or any other provisions hereof, all of which shall remain in full force and effect.

8.05 Entire Agreement and Amendment


For greater certainty, this Agreement represents the entire agreement amongst the parties respecting the Trust and supersedes all prior discussions, agreements and understandings of every kind and nature amongst them.


8.06 Right to Disclose

The Trustee shall have the right to disclose any information disclosed or released to it if, in the opinion of the Trustee or its legal counsel, it is required to disclose under any Applicable Law, court order or administrative directions. The Trustee shall not be responsible or liable to any party for any loss or damage arising out of or in any way sustained or incurred relating to such disclosure.


IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date set forth above.


TRANSCANADA KEYSTONE PIPELINE GP LTD.

Per: 
Joel Hunter, Vice-President, Finance & Treasurer

Per: 
Christine Johnston, Vice-President
Law & Corporate Secretary

CIBC TRUST CORPORATION

Per:  Faith Gwatidah
Trust Officer
CIBC Trust Corporation

Per: 
LAURIE JOHNSTON
REGIONAL TRUST MANAGER

Schedule "B"

The relevant paragraphs of the definition of "qualified investment" in section 204 currently read as follows:

- (a) money (other than money the fair market value of which exceeds its stated value as legal tender in the country of issuance or money that is held for its numismatic value) and deposits (within the meaning assigned by the *Canada Deposit Insurance Corporation Act* or with a branch in Canada of a bank) of such money standing to the credit of the trust,
- (b) debt obligations described in paragraph (a) of the definition "fully exempt interest" in subsection 212(3) *[being a bond, debenture, note, mortgage, hypothecary claim or similar debt obligation]*
 - (i) *of, or guaranteed (otherwise than by being insured by the Canada Deposit Insurance Corporation) by, the Government of Canada,*
 - (ii) *of the government of a province,*
 - (iii) *of an agent of a province,*
 - (iv) *of a municipality in Canada or a municipal or public body performing a function of government in Canada,*
 - (v) *of a corporation, commission or association to which any of paragraphs 149(1)(d) to (d.6)¹ applies or*

¹ The relevant paragraphs read as follows:

(d) **[corporations owned by the Crown]** — a corporation, commission or association all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is Her Majesty in right of Canada or Her Majesty in right of a province;

(d.1) **[corporations 90% owned by the Crown]** — a corporation, commission or association not less than 90% of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is Her Majesty in right of Canada or Her Majesty in right of a Province;

(d.2) **[wholly-owned [by Crown corporation] corporations]** — a corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which this paragraph or paragraph (d) applies for the period;

(d.3) **[90% [Crown] owned corporations]** -- a corporation, commission or association not less than 90% of the shares (except directors' qualifying shares) or of the capital of which was owned by:

(i) one or more persons each of which is Her Majesty in right of Canada or a Province or a person to which paragraph (d) or (d. 2) applies for the period, or

(ii) one or more municipalities in Canada in combination with one or more persons each of which is Her Majesty in right of Canada or a Province or a person to which paragraph (d) or (d.2) applies for the period;

(d.4) **[combined [Crown] ownership]** -- a corporation all of the shares (except directors' qualifying shares) or of the capital of which was owned by one or more persons each of which is a corporation, commission or association to which this paragraph or any of paragraphs (d) to (d.3) applies for the period;

- (c) debt obligations issued by
 - (i) a corporation, mutual fund trust or limited partnership the shares or units of which are listed on a designated stock exchange in Canada,²
 - (ii) a corporation the shares of which are listed on a designated stock exchange outside Canada,³ or
 - (i) an authorized foreign bank⁴ and payable at a branch in Canada of the bank,

² A “designated stock exchange” is defined in subsection 248(1) of the Tax Act as a stock exchange, or that part of a stock exchange, for which a designation by the Minister of Finance under Section 262 of the Tax Act is in effect. Section 262 gives the Minister the authority to designate a stock exchange or part thereof for the purposes of the Tax Act. Pursuant to subsection 262(4) of the Tax Act, the Minister of Finance is required to post on the internet website of the Department of Finance or by any other means considered appropriate, the names of the stock exchanges or parts thereof that are designated under Section 262. The current list can be found at <http://www.fin.gc.ca/act/fim-imf/dse-bvd-eng.asp>. In Canada, the designated stock exchanges include the Canadian National Stock Exchange (CNSX), the Montreal Exchange, the TSX Venture Exchange (Tiers 1 and 2) and the Toronto Stock Exchange.

³ *Ibid*; The Department of Finance website referred to also includes the list of designated stock exchanges outside Canada.

⁴ An “authorized foreign bank” is defined in subsection 248(1) of the Tax Act as having the meaning in Section 2 of the *Bank Act* (Canada), being “a foreign bank that is the subject of an order under subsection 524(1)”. Subsection 524(1) states that on application by a foreign bank, the Minister may make an order permitting the foreign bank to establish a branch in Canada to carry on business in Canada under Part XII.1 of the *Bank Act* (Canada). The definition of “foreign bank” is found in Section 2 of the *Bank Act*. It reads:

“foreign bank”, subject to Section 12, means an entity incorporated or formed by or under the laws of a country other than Canada that (a) is a bank according to the laws of any foreign country where it carries on business, (b) carries on a business in any foreign country that, if carried on in Canada, would be, wholly or to a significant extent, the business of banking, (c) engages, directly or indirectly, in the business of providing financial services and employs, to identify or describe its business, a name that includes the word “bank”, “banque”, “banking” or “bancaire”, either alone or in combination with other words, or any word or words in any language other than English or French corresponding generally thereto, (d) engages in the business of lending money and accepting deposit liabilities transferable by cheque or other instrument, (e) engages, directly or indirectly, in the business of providing financial services and is affiliated with another foreign bank, (f) controls another foreign bank, or (g) is a foreign institution, other than a foreign bank within the meaning of any of paragraphs (a) to (f), that controls a bank incorporated or formed under this Act, but does not include a subsidiary of a bank named in Schedule I as that Schedule read immediately before the day section 184 of the *Financial Consumer Agency of Canada Act* comes into force, unless the Minister has specified that subsection 378(1) no longer applies to the bank.

- (i) a person or partnership that has contributed property to, or that is a beneficiary under, the trust,
- (ii) a person that is related to, or a partnership that is affiliated with, a person or partnership that has contributed property to, or that is a beneficiary under, the trust, or
- (iii) a particular person or partnership if
 - (A) another person or partnership holds significant interest (within the meaning assigned by subsection 207.01(4) with any modifications that the circumstances require)⁸ in the particular person or partnership, and
 - (B) the holder of that significant interest has contributed property to, or is a beneficiary under, the trust.

⁸ Subsection 207.01(4) reads:

(4) **[Significant interest]** — An individual has a significant interest in a corporation, partnership or trust at any time if

- (a) in the case of a corporation, the individual is a specified shareholder of the corporation at that time [...];
- (b) in the case of a partnership, the individual, or the individual together with persons and partnerships with which the individual does not deal at arm's length, holds at that time interests as a member of the partnership that have a fair market value of 10% or more of the fair market value of the interests of all members in the partnership; and
- (c) in the case of a trust, the individual, or the individual together with persons and partnerships with which the individual does not deal at arm's length, holds at that time interests as a beneficiary (in this paragraph, as defined in subsection 108(1)) under the trust that have a fair market value of 10% or more of the fair market value of the interests of all beneficiaries under the trust.