1. An offering memorandum and a prospectus are both methods of selling shares (or other securities). The sale of shares is a "trade" and where that trade represents the sale of previously unissued securities (i.e. the sale of share from treasury), as in this case, that trade is considered to be a "distribution", which requires the company (issuer) to file a prospectus unless it can rely on one of the exemptions from the prospectus requirements. The use of an offering Memorandum (OM) is one of those exemptions.

A prospectus and an OM are both disclosure documents that provide information about the company, but there are some significant differences between the documents and the processes. The form of prospectus is mandated by the regulations. Forms 12 – 15 are the forms to be used by various types of companies, with From 12 being the one that would apply in this case. But ASC Rule 41-501 permits a company to comply with Ontario Rule 41-501 instead (but if you choose to use that rule you must comply with all of its requirements; you can not pick and choose between the both sets of rules. The required form of OM is set out in MI 45-103 (Form 45-103F3 would apply). Although both forms require disclosure about the company, the prospectus form requires more detail and, in general, will be a longer and more detailed disclosure document.

There is no limit on the number of investors that can participate under either an OM or a prospectus, nor are there any minimum or maximum dollar amounts required to be invested. However, under an OM if an investor wishes to invest more than $10,000 they must qualify as an "eligible investor", which means that they must either have net assets of $400,000 or an annual income of $75,000 (or $125,000 combined with their spouse), or get advice from a registered advisor. In addition, purchasers under an OM are required to sign a Risk Acknowledgement form, in which they acknowledge that they are making a risky investement.

Both types of documents will require financial statements to be included. The timing of the financial statements will be similar (particularly if the Ontario prospectus rule is followed), but the prospectus will require the last 3 years to be audited, while an offering memorandum will only require the most recent year end audit to be included (comparative figures for the previous year are to be included in the OM, but do not need to be audited). If applicable more recent unaudited statements will be required for both the OM and prospectus, but the prospectus will require an auditor's consent letter for the audited statements and a comfort letter for the interim statements, while the OM will not. In addition the prospectus will require comparative figures for the previous year's interim period, but the OM can exclude comparative figures for the interim period if they were not previously prepared.

However, both the OM and the prospectus are required to be certified by the officers and directors of the company. Although the wording of the certificate is somewhat different, the meaning is similar (that the document is accurate), and in both cases there will be a right of action against the company and the directors if the document contains a misrepresentation. Both the OM and the prospectus also have a 2 day right of withdrawal, although the calculation of that 2 day period is slightly different. In the case on an OM it is 2 days from the date the subscription agreement is signed (s. 4.3(1) of MI

45-103), while for a prospectus it is calculated from the day that the purchaser receives the latest prospectus (s. 130 of the Act).

There is also a big difference in the process of preparing/completing the documents. The prospectus must be filed with the Securities Commission and approved by them BEFORE is can be used to sell shares. First, a preliminary prospectus is filed with the commission, and they then review it and provide you with their comments (except for the matters set out in s. 120 of the Act, they will not be reviewing the merits of the investment, just the adequacy of the disclosure in the prospectus). After you have resolved the Commission's comments you can then file the final prospectus and use it to sell securities. (The preliminary prospectus can only be used to obtain "expressions of interest".) The OM does not need to be reviewed or approved by the Commission. It is required to be filed with the commission, but only after the fact (within 10 days of the first trade under the OM – s. 4.7 of MI 45-103), and there is no approval process. So the OM can be finalized and filed more quickly than a prospectus can. In addition to having the file the OM, within 10 days of the trade the company is also required to file a report of trade in accordance with form 45-103F4.

A prospectus will have specific time periods within which the offering is completed. In the case of an underwritten financing the offering must be completed within 6 weeks (42 days) [R. 92(2)(e)]. For a best efforts financing the minimum offering must be completed within 90 days. Once the minimum offering has been sold the offering can continue for up to a year, but that will usually not be done as it would require the prospectus to be kept "evergreen" by filing amendments for any material changes, which also exposes the company to liability to open market purchasers. In the case of an OM there are no such deadlines; the only requirement is that the OM must be updated prior to accepting a subscription if the certificate regarding the OM containing no misrepresentations is no longer true at the time of closing.

Unless an exemption is available from the registration requirements, sales of securities can only be done by a registered dealer. Sales of shares under a prospectus must be done by a broker, and a broker must be retained to sign the prospectus (who will charge commissions and possibly other fees, including their expenses). Section 4.1 of MI 45-103 provides both a prospectus and registration exemption for an OM, which means that sales under an OM do not have to be done by a broker, they can be done by anybody, and anybody can be paid a commission for sales (but they do not have to be).

A huge difference between the two processes is that once the company gets a receipt for the final prospectus it will become a "reporting issuer" and become subject to the continuous disclosure requirements under the Act (and NI 51-102). An offering memorandum does not give rise to the same consequence.

A big difference for an investor is the tradability of the shares. Shares sold under a prospectus would be immediately tradable by the purchaser. Shares purchased under an OM would be subject to a 4 month restricted period under MI 45-102. If the company is not a reporting issuer (as in this case) then the hold period would be indefinite because it

only starts to run from the later of the date of trade or the date that the company becomes a reporting issuer.

If I were to be advising Bill on which was the best financing method for him, I would say that it depends primarily on two factors. The first is his ability to raise the money himself or through contacts. If he felt that he could raise the money without the help of a broker, then it may make more sense to use an OM, because the process would be faster and cheaper, and would allow him to not become a reporting issuer (assuming that was desirable). Of course, the question of the shares being free trading or restricted could have a big effect on Bill's ability to sell them. If he thought that he would need a broker to help him, then a prospectus may make more sense. The second consideration would be whether Bill wanted to take the company "public". If one of his objectives was to have a public company, then the prospectus would get him there now. If he did not want fall under the public spotlight (at least not yet), then the OM would make more sense. While other factors may come into play (such as the availability of audited financial statements), these would be the two biggest ones that I would ask Bill to assess when making a decision about which way to go.

2. As stated above, in order for Bill's company to issue shares it must file a prospectus unless an exemption is available. A registration exemption would alsos be required if the trade was not done through a registered dealer. In this case there clearly appears to be an exemption available, being s. 131(1)(l) of the Act, which allows shares to be issued in consideration for assets that have a value of at least $100,000 (the dollar amount is prescribed by section 122.1 of the regulations). The corresponding registration exemption is found in section 86(1)(s) of the Act. Another possible exemption that Bill might consider using is the isolated trade exemption [s. 86(1)(b) and s. 131(1)(b)], but I would be cautious about using this, particularly if there was a possibility of doing something similar with other suppliers. Whichever exemption was used, the company would have to file a report of trade (Form 45-103F4) within 10 days, and the supplier would need to be aware that the shares would be subject to a 4 month restricted period (which would not start running unless/until the company became a reporting issuer).

3. Bill has a number of restrictions on his ability to sell shares that he will have to be aware of. Firstly, as both an officer and principal (10%) shareholder of the company, Bill will have to deposit his shares in escrow pursuant to the provisions of National Policy 46-201. If the company is listed on Tier 1 of the TSX Venture Exchange, then the company would be an "established issuer" under that policy and Bill's shares would be released over 18 months, with 25% being released on the listing date and every 6 months thereafter. So Bill would not be able to sell any of his shares until they released from escrow.

In addition, because the company was a private issuer, Bill's shares would be subject to a seasoning period under MI 45-102 (as per s. 6.1 of MI 45-103). So even though Bill

would have some shares release from escrow immediately, he would have to wait until the company had been a reporting issuer for at least 4 months before he could sell any shares.

Further, because Bill owns more than 20% of the outstanding shares of the company, he is a control person, and any sale of shares by Bill would be considered to be a distribution. This means that for Bill to sell any shares he must either file a prospectus, find an available exemption or use the control person sales procedures under s. 2.8 of MI 45-102. Under these provisions bill must file a Notice of Intention to distribute (Form 45-102F1) at least seven days BEFORE he starts selling shares, and then file his insider report within 3 days after the sale. The ability to use these sales provisions is dependent on the company having been a reporting issuer for at least 4 months, and he must have held the shares for at least 4 months.

So, in brief, Bill can not sell any of his shares until at lest 4 months after the company becomes a reporting issuer (gets a receipt for its final prospectus) and would have to follow the procedures under s. 2.8 of MI 45-102 (and then he could only sell those shares that have been released from escrow).

Bill should also keep in mind the fact that he is an insider of the company, and in a special relationship to the company and, accordingly, must be careful not to do any trading (buying or selling) while he is has any material information that has not been generally disclosed. In addition, as an insider he will have to report any trades through an insider report, to be filed within 10 days (except where that is shortened to 3 days under s. 2.8 of MI 45-102).

4. Bill will have to worry about two sets of rules for audit committees when he sets up his Board of directors. The first is the requirements of the Alberta Business Corporations Act. Section 171 of the ABCA requires a distributing corporation to have an audit committee consisting of at least 3 directors, a majority of whom are not officers or employees (i.e. outside directors) of the corporation. The other set of rules are those set out in MI 52-110, however, the rules in that instrument dealing with the composition of the audit committee apply only to companies that are not venture issuers. The determination of if the company is a venture issuer is not based on its size, but where its shares are listed. If they are listed on the Toronto Stock Exchange or a US or non-North American exchange, then the company is not a venture issuer, and will be subject to the composition requirements (Part 3) of MI 52-110. If the company is not listed on the TSE (at present it anticipates listing on the TSX Venture Exchange) it will be exempt from the composition requirements of MI 52-110 (but not from some of its other requirements). MI 52-110 will become applicable July 1, 2005 (or sooner if the company holds an annual meeting prior to that date), so Bill will have to worry about it in the immediate future, if not now.

If the company has to comply with the composition requirements of the MI 52-110, then the audit committee will have to consist of at least 3 directors, each of which (not just a majority) must be “independent” and “financially literate”. Independent means free of

any direct or indirect material relationship with the company. For example, someone who is an employee or officer of the company or gets paid consulting fees would not be independent. Note: this definition is somewhat broader than the outside director rules under the ABCA. As a new public company, the company would get a break from the independence requirement for a period of time; for the first 90 days only one member of the audit committee needs to be independent (however, the requirements of the ABCA will still apply) and for the first year only a majority of the audit committee needs to be independent.

Financially literate means having the ability to read and understand a set of financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the company's financial statements. It does not require a CA or other accounting designation, but will require some degree of financial and/or accounting knowledge.

So, one of the first things that Bill must determine is where the company will be listed and if it will be a venture issuer or not. That will dictate whether or not the audit committee will have to meet the composition requirements of MI 52-110. Even if it does not, it will still have to comply with the requirements of section 171 of the ABCA, and will still have to provide some (although less) disclosure about the independence and financial literacy of its audit committee as required by MI 52-110.

5. The proposed acquisition of Buildem would be a very significant transaction for Wooden Comforts given the comparative sizes of the companies (Buildem being about half the size of Wooden Comfort). The transaction would probably constitute a material change in the affairs of Wooden Comforts. This would give rise to the requirement to immediately issue and file a news release about the transaction and then to file a material change report within 10 days of the event (under Part 7 of national Instrument 51-102). A copy of the contract would also have to be filed, under section 12.2 of that Instrument. If the acquisition was completed upon the signing of the agreement, then there may only be one material change to report. But if, most likely, the agreement is signed and the transaction closes some time later, then there may be two material changes to report, being the signing of the agreement and then the completion of the acquisition.

However, given the size of the transaction (about half the size of the company), the requirement to file a Business Acquisition Report (Form 51-102F4) may also arise under Part 8 of NI 51-102. This report must be filed within 75 days of the acquisition. That BAR is required to include audited financial statements for Buildem for its last year that ended more than 45 days ago. Because Wooden Comforts is a venture issuer, the applicable significance threshold is 40% under any of the income asset or investment tests [s. 8.3(2)], then only 1 year's audit needs to be provided [s. 8.5(2)]. The BAR must also include unaudited interim financial statements for the most recently completed interim period (quarter) that ended before the date of the acquisition. So I would advise Bill that in reviewing the potential acquisition he must be sure that he will be able to obtain audited financial statements for the appropriate periods to include in the BAR.

In addition, the BAR must include pro forma financial statements that show the effect of combining the operations of the two companies.

Wooden Comforts would be exempt from the requirement to file a BAR if it filed an Information Circular the transaction in accordance with the requirements of the TSX Venture Exchange respecting and the deal was completed within 9 months of that Circular. However, that Information Circular would have to contain essentially the same information (including financial statements) as the BAR, so this exemption does not really alleviate the filing requirement, it just changes its format.

Obviously, going forward the financial statements of Wooden Comforts would have to include the financial results of Buildem, on a consolidated basis. So Bill should ensure that he will be able to obtain the information that he requires for the disclosure, particularly the audited financial information.

The question does not provide any information about the status of Buildem or how many shareholders it has. Depending on that information, it is possible that purchasing that company might give rise to take-over bid issues. If a formal take-over bid was required, then Wooden Comforts would have to prepare a take-over bid circular with the disclosure required by Form 31.

6. In this case another company has commenced a take-over bid for Wooden Comforts. Where a reporting issuer is the target of a take-over bid its directors must respond by sending to its shareholders a directors' circular within 15 days in accordance with the requirements of Form 32 of the Securities regulations (s. 172(1) of the Act and s. 181.93(g) of the regulations). The directors' circular must indicate what the board's recommendations are respecting the bid; i.e. should the shareholders accept or reject the bid. If Bill's assessment of the value of the company were accurate one would expect the board to recommend that the shareholders reject the bid. If the Board is unable to make its recommendation within that time, they must still send out a circular within that 15 days, saying so, and then issue a further circular with their recommendation at least 7 days before the bid expires.

If Bill disagrees with the Board's recommendation (e.g. if they recommend accepting the bid because they do not share his views on the value of the company), then Bill (as an officer) can send out his own Circular with his own recommendation in accordance with Form 33 (s. 173). The company would be obligated to send such circular to the shareholders at the company's expense.

Another response that will be required of Wooden Comforts relates to the list of its shareholders. Upon announcing its take-over bid Big Block will be required to request a list of shareholders from Wooden Comforts. Wooden Comforts will have to provide that list (assuming that the request complies with the ABCA requirements) within 10 days of getting the request (s. 22 of the ABCA).

Because Bill has such a large number of shares, and because his job as president may well be on the line if someone else takes over the company, he may be considered to have a vested interest in the outcome of the bid, and the Board might decide to set up an independent committee (excluding Bill) to review the bid and make a recommendation to the full Board. The Board (or independent committee) may also decide to retain an independent advisor to prepare a valuation or fairness opinion, or otherwise advise them on the value of the company to assist them in their review of the bid.

On the question of if Bill can be forced to sell his shares, the answer would be "no", even if all the other shareholders tendered their shares under the bid. There are, practically, two ways to get rid of minority shareholders that do not participate in a take-over bid. One is to use the compulsory acquisition process under the Alberta business Corporations Act. In order to rely upon that the acquiror must acquire at 90% of the outstanding shares that he did not already own. Since Bill owns 70% of the shares that would be impossible if he did not participate. If you get less than 90% it may still be possible to eliminate the minority through a "squeeze out" amalgamation, but that would require the passing of a special resolution which, under Alberta law, requires approval of at least two-thirds of the shares voted on the resolution. Since Bill owns 70% of the shares this would be impossible unless Bill failed to vote against the motion. So Bill's shares are safe, thanks to his greater than two-thirds majority position.

7. Most of the company's shareholders will not have their shares registered in their name; instead, they will have them on deposit with their brokerage firm, meaning that the shares will be registered either in the broker's name or, more likely, in the name of CDS Inc. The company will not know who these shareholders are because their names will not appear on the list of shareholders. National Instrument 54-101 provides a mechanism for public companies to communicate with their non-registered (beneficial) shareholders. A NOBO is a non-objecting beneficial owner. This means that they own shares in the company that are on deposit with a broker, and they do not object to their ownership information (name, address, shareholdings) being disclosed to the company.

When a reporting issuer calls a shareholder meeting it must send the proxy material relating to that meeting to all of its shareholders. It sends the material to registered shareholders directly (because it has their names) at least 21 days before the meeting. Material is sent to OBOs (objecting beneficial owners) indirectly by sending the information to the brokers (at least 21 days before the meeting plus 4 business days) who, in turn, send it to their clients. With respect to NOBOs the company has a choice: it can treat them like the OBOs and just send their material to the brokers, or it can ask the brokers to send the NOBO ownership information to the company and then treat them like a registered shareholder (send the proxy material to them directly). In requesting the NOBO list the company will have to complete an undertaking that the list will only be used for the prescribed corporate purposes.

Since you have to pay the broker's for their costs if they do the NOBO mail out, there will be very little difference between the two methods in the cost of the mail out; it may

be slightly cheaper to do it yourself, but then you have to deal with the logistics of the mail out – it might boil down to a question of a slight difference in cost vs. a slight difference in convenience. The bigger distinction is that you will get a better idea of whom your shareholders actually are, because you will get to see the NOBO list. Of course, as the shares are bought and sold this list can get out of date fairly quickly.

8. As a reporting issuer Wooden Comforts is required to provide certain disclosure if there is a change in its auditors, under section 4.11 of NI 51-102 the decision to not reappoint the auditors is a "termination" giving rise to the requirement to provide disclosure under that section. The decision to ask shareholders to appoint new auditors is an "appointment" giving rise to corresponding disclosure requirements. The company is required to prepare a notice of the change, and then send that to both the old (former) and new (successor) auditors and ask them each to issue a response indicating whether or not they are in agreement with the information contained in the notice. The notice is to indicate the change, whether it was considered by the audit committee or the board, and whether there have been any reportable events (such as disagreement, consultation or unresolved issue). The notice is to be sent out within 10 days, and the auditors are to be requested to respond within 20 days of the change. Then, within 30 days of the change, the board is to review the letters and the reporting package is to be filed with the securities commission. In addition, if there have been any reportable events, a news release must be issued. (It is possible, although not likely, that the change of auditor or the existence of a reportable event might be considered to be a material change; if such was the case then the news release and material change report requirements would arise under Part 7 of NI 51-102.) A copy of the Reporting Package is to be included with the information circular for the meeting at which the appointment of auditors will be dealt with, and the circular will have to include a summary of the contents of that package.