

**THE MANITOBA SECURITIES COMMISSION**  
**MSC Rule No. 2013-20**  
(Section 149.1, *The Securities Act*)

**AMENDMENT INSTRUMENT FOR**  
**NATIONAL INSTRUMENT 41-101**  
**GENERAL PROSPECTUS REQUIREMENTS**

1. *National Instrument 41-101 General Prospectus Requirements is amended by this Instrument.*

2. *Section 1.1 is amended by adding the following definitions in alphabetical order:*

"**accredited investor**" has the same meaning as in section 1.1 of NI 45-106;

"**final prospectus notice**" means,

(a) in British Columbia, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario and Saskatchewan, a written communication relating to a final prospectus if that communication is permitted by a provision in securities legislation listed opposite the jurisdiction in Appendix E, or

(b) in every other jurisdiction of Canada, a written communication relating to a final prospectus that only

(i) identifies the security proposed to be issued,

(ii) states the price of the security, and

(iii) states the name and address of a person or company from whom purchases of the security may be made and from whom a final prospectus may be obtained;

"**investment dealer**" has the same meaning as in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

"**lead underwriter**" means, in respect of a syndicate of underwriters,

(a) the underwriter designated under the underwriting agreement to act as the manager of the syndicate, or

(b) if more than one underwriter is designated under the underwriting agreement to act as a manager of the syndicate, the underwriter designated under the agreement to have primary decision-making authority;

"**limited-use version**" means a template version in which the spaces for information have been completed in accordance with any of the following:

(a) subsection 13.7(2) or 13.8(2);

(b) subsection 7.6(2) of NI 44-101;

(c) subsection 9A.3(2) of NI 44-102;

(d) subsection 4A.3(3) of NI 44-103;

**"marketing materials"** means a written communication intended for potential investors regarding a distribution of securities under a prospectus that contains material facts relating to an issuer, securities or an offering but does not include the following:

- (a) a prospectus or any amendment;
- (b) a standard term sheet;
- (c) a preliminary prospectus notice;
- (d) a final prospectus notice;

**"preliminary prospectus notice"** means,

- (a) in a jurisdiction other than Québec, a communication relating to a preliminary prospectus if that communication is permitted by a provision in securities legislation listed opposite the jurisdiction in Appendix D, or
- (b) in Québec, a written communication relating to a preliminary prospectus that only
  - (i) identifies the security proposed to be issued,
  - (ii) states the price of the security, if determined, and
  - (iii) states the name and address of a person or company from whom purchases of the security may be made and from whom a preliminary prospectus may be obtained;

**"road show"** means a presentation to potential investors, regarding a distribution of securities under a prospectus, conducted by one or more investment dealers on behalf of an issuer in which one or more executive officers, or other representatives, of the issuer participate;

**"standard term sheet"** means a written communication intended for potential investors regarding a distribution of securities under a prospectus that contains no information other than that referred to in subsections 13.5(2) and (3), subsections 13.6(2) and (3), subsections 7.5(2) and (3) of NI 44-101, subsections 9A.2(2) and (3) of NI 44-102 or subsections 4A.2(2) and (3) of NI 44-103, relating to an issuer, securities or an offering, but does not include the following:

- (a) a preliminary prospectus notice;
- (b) a final prospectus notice;

**"template version"** means a version of a document with spaces for information to be added in accordance with any of the following:

- (a) subsection 13.7(2) or 13.8(2);
- (b) subsection 7.6(2) of NI 44-101;
- (c) subsection 9A.3(2) of NI 44-102;
- (d) subsection 4A.3(3) of NI 44-103;.

3. *Subsection 9.1(1) is amended*

(a) *by deleting "and" after subparagraph (a)(v),*

(b) *by adding the following after subparagraph (a)(vi):*

(vii) **Marketing Materials** – a copy of any template version of the marketing materials required to be filed under paragraph 13.7(1)(e); and,

(c) *in subparagraph (b)(iii), by replacing "Handbook." with "Handbook; and", and*

(d) *by adding the following after subparagraph (b)(iii):*

(iv) **Marketing Materials** – a copy of any template version of the marketing materials required to be delivered under paragraph 13.7(4)(c) or 13.12(2)(c)..

4. *Section 9.2 is amended*

(a) *by deleting "and" after subparagraph (a)(xii.1),*

(b) *by adding the following after subparagraph (a)(xiii):*

(xiv) **Marketing Materials** – a copy of any template version of the marketing materials required to be filed under paragraph 13.7(1)(e), 13.7(7)(a), 13.8(1)(e) or 13.8(7)(b) that has not previously been filed; and,

(c) *by deleting "and" after subparagraph (b)(i),*

(d) *in subparagraph (b)(ii), by replacing "listing of the exchange." with "listing of the exchange; and", and*

(e) *by adding the following after subparagraph (b)(ii):*

(iii) **Marketing Materials** – a copy of any template version of the marketing materials required to be delivered under paragraph 13.7(4)(c), 13.8(4)(c) or 13.12(2)(c) that has not previously been delivered..

5. *The title of Part 13 is amended by adding "of Issuers other than Investment Funds" after "Offerings".*

6. *Part 13 is amended by adding the following section before section 13.1:*

**Application**

**13.0(1)** This Part applies to issuers other than investment funds filing a prospectus in the form of Form 41-101F2 or Form 41-101F3.

**13.0(2)** In this Part,

"**comparables**" means information that compares an issuer to other issuers;

"**convertible security**" has the same meaning as in section 1.1 of National Instrument 45-102 *Resale of Securities*;

"**exchangeable security**" has the same meaning as in section 1.1 of National Instrument 45-102 *Resale of Securities*;

"**underlying security**" has the same meaning as in section 1.1 of National Instrument 45-102 *Resale of*

*Securities;*

**"U.S. cross-border initial public offering"** means an initial public offering of securities of an issuer being made contemporaneously in the United States of America and Canada by way of a prospectus filed with a securities regulatory authority in a jurisdiction of Canada and a U.S. prospectus filed with the SEC;

**"U.S. cross-border offering"** means an offering of securities of an issuer being made contemporaneously in the United States of America and Canada by way of a prospectus filed with a securities regulatory authority in a jurisdiction of Canada and a U.S. prospectus filed with the SEC, and includes a U.S. cross-border initial public offering;

**"U.S. prospectus"** means a prospectus that has been prepared in accordance with the disclosure and other requirements of U.S. federal securities law for an offering of securities registered under the 1933 Act.

**13.0(3)** In this Part, for greater certainty, a reference to "provides" includes showing a document to a person without allowing the person to retain or make a copy of the document..

*7. Section 13.1 is amended*

*(a) in subsection 13.1(1), by replacing "A notice, circular, advertisement, letter or other communication" with "A preliminary prospectus notice or other communication",*

*(b) by replacing subsection 13.1(2) with the following:*

**13.1(2)** If the preliminary prospectus notice or other communication is in writing, include the wording required under subsection (1) in bold type that is at least as large as that used generally in the body of the text., *and*

*(c) by adding the following after subsection 13.1(2):*

**13.1(3)** Subsection 13.1(1) does not apply to standard term sheets and marketing materials.

*8. Section 13.2 is amended*

*(a) in subsection 13.2(1), by replacing "A notice, circular, advertisement, letter or other communication" with "A final prospectus notice or other communication",*

*(b) by replacing subsection 13.2(2) with the following:*

**13.2(2)** If the final prospectus notice or other communication is in writing, include the wording required under subsection (1) in bold type that is at least as large as that used generally in the body of the text., *and*

*(c) by adding the following after subsection (2):*

**13.2(3)** Subsection (1) does not apply to standard term sheets and marketing materials.

*9. Section 13.3 is repealed.*

10. Part 13 is amended by adding the following after section 13.3:

**Testing of the waters exemption – IPO issuers**

**13.4(1)** In this section, "public issuer" means an issuer that

- (a) is a reporting issuer in a jurisdiction of Canada;
- (b) is an SEC issuer;
- (c) has a class of securities that has been assigned a ticker symbol by the Financial Industry Regulatory Authority in the United States of America for use on any of the over-the-counter markets in the United States of America;
- (d) has a class of securities that have been traded on an over-the-counter market with respect to which trade data is publicly reported; or
- (e) has any of its securities listed, quoted or traded on a marketplace outside of Canada or any other facility outside of Canada for bringing together buyers and sellers of securities and with respect to which trade data is publicly reported.

**13.4(2)** Subject to subsections (3) to (7), the prospectus requirement does not apply to a solicitation of an expression of interest in order to ascertain if there would be sufficient interest in an initial public offering of securities by an issuer pursuant to a long form prospectus if

- (a) the issuer has a reasonable expectation of filing a preliminary long form prospectus in respect of an initial public offering in at least one jurisdiction of Canada;
- (b) the issuer is not a public issuer before the date of the preliminary long form prospectus;
- (c) an investment dealer makes the solicitation on behalf of the issuer;
- (d) the issuer provided written authorization to the investment dealer to act on its behalf before the investment dealer made the solicitation;
- (e) the solicitation is made to an accredited investor; and
- (f) subject to subsection (3), the issuer and the investment dealer keep all information about the proposed offering confidential until the earlier of
  - (i) the information being generally disclosed in a preliminary long form prospectus or otherwise, or
  - (ii) the issuer confirming in writing that it will not be pursuing the potential offering.

**13.4(3)** An investment dealer must not solicit an expression of interest from an accredited investor pursuant to subsection (2) unless

- (a) all written material provided to the accredited investor
  - (i) is approved in writing by the issuer before it is provided,
  - (ii) is marked confidential, and

(iii) contains a legend stating that the material does not provide full disclosure of all material facts relating to the issuer, the securities or the offering and is not subject to liability for misrepresentations under applicable securities legislation; and

(b) before providing the investor with any information about the issuer, the securities or the offering, the investment dealer obtains confirmation in writing from the investor that the investor will keep information about the proposed offering confidential, and will not use the information for any purpose other than assessing the investor's interest in the offering, until the earlier of

- (i) the information being generally disclosed in a preliminary long form prospectus or otherwise, or
- (ii) the issuer confirming in writing that it will not be pursuing the potential offering.

**13.4(4)** If any investment dealer solicits an expression of interest pursuant to subsection (2), the issuer must not file a preliminary long form prospectus in respect of an initial public offering until the date which is at least 15 days after the date on which any investment dealer last solicited an expression of interest from an accredited investor pursuant to that subsection.

**13.4(5)** An issuer relying on the exemption in subsection (2) must keep

- (a) a written record of any investment dealer that it authorized to act on its behalf in making solicitations in reliance on the exemption; and
- (b) a copy of any written authorizations referred to in paragraph (2)(d).

**13.4(6)** If an investment dealer solicits an expression of interest pursuant to subsection (2), the investment dealer must keep

- (a) a written record of any accredited investor that it solicited in reliance on the exemption;
- (b) a copy of any written material and written approval referred to in subparagraph (3)(a)(i); and
- (c) any written confirmations referred to in paragraph (3)(b).

**13.4(7)** Subsection (2) does not apply if

- (a) any of the issuer's securities are held by a control person that is a public issuer; and
- (b) the initial public offering of the issuer would be a material fact or material change with respect to the control person.

**Standard term sheets during the waiting period**

**13.5(1)** An investment dealer that provides a standard term sheet to a potential investor during the waiting period is exempt from the prospectus requirement with respect to providing the standard term sheet if

- (a) the standard term sheet complies with subsections (2) and (3);
- (b) other than contact information for the investment dealer or underwriters, all information in the standard term sheet concerning the issuer, the securities or the offering is disclosed in, or derived from, the preliminary prospectus or any amendment; and
- (c) a receipt for the preliminary prospectus has been issued in the local jurisdiction.

**13.5(2)** A standard term sheet provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A preliminary prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada].

The preliminary prospectus is still subject to completion. Copies of the preliminary prospectus may be obtained from [*insert contact information for the investment dealer or underwriters*]. There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final prospectus has been issued.

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary prospectus, the final prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

**13.5(3)** A standard term sheet provided under subsection (1) may contain only the information referred to in subsection (2) and the following information in respect of the issuer, the securities or the offering:

- (a) the name of the issuer;
- (b) the jurisdiction or foreign jurisdiction in which the issuer's head office is located;
- (c) the statute under which the issuer is incorporated, continued or organized or, if the issuer is an unincorporated entity, the laws of the jurisdiction or foreign jurisdiction under which it is established and exists;
- (d) a brief description of the business of the issuer;
- (e) a brief description of the securities;
- (f) the price or price range of the securities;
- (g) the total number or dollar amount of the securities, or range of the total number or dollar amount of the securities;
- (h) the terms of any over-allotment option;
- (i) the names of the underwriters;
- (j) whether the offering is on a firm commitment or best efforts basis;
- (k) the amount of the underwriting commission, fee or discount;
- (l) the proposed or expected closing date of the offering;
- (m) a brief description of the use of proceeds;
- (n) the exchange on which the securities are proposed to be listed, provided that the standard term sheet complies with the requirements of securities legislation for listing representations;

(o) in the case of debt securities, the maturity date of the debt securities and a brief description of any interest payable on the debt securities;

(p) in the case of preferred shares, a brief description of any dividends payable on the securities;

(q) in the case of convertible securities, a brief description of the underlying securities into which the convertible securities are convertible;

(r) in the case of exchangeable securities, a brief description of the underlying securities into which the exchangeable securities are exchangeable;

(s) in the case of restricted securities, a brief description of the restriction;

(t) in the case of securities for which a credit supporter has provided a guarantee or alternative credit support, a brief description of the credit supporter and the guarantee or alternative credit support provided;

(u) whether the securities are redeemable or retractable;

(v) a statement that the securities are eligible, or are expected to be eligible, for investment in registered retirement savings plans, tax-free savings accounts or other registered plans, if the issuer has received, or reasonably expects to receive, a legal opinion that the securities are so eligible;

(w) contact information for the investment dealer or underwriters.

**13.5(4)** For the purposes of subsection (3), "brief description" means a description consisting of no more than three lines of text in type that is at least as large as that used generally in the body of the standard term sheet.

**Standard term sheets after a receipt for a final prospectus**

**13.6(1)** An investment dealer must not provide a standard term sheet to a potential investor after a receipt for a final prospectus or any amendment is issued unless

(a) the standard term sheet complies with subsections (2) and (3);

(b) other than contact information for the investment dealer or underwriters, all information in the standard term sheet concerning the issuer, the securities or the offering is disclosed in, or derived from, the final prospectus or any amendment; and

(c) a receipt for the final prospectus has been issued in the local jurisdiction.

**13.6(2)** A standard term sheet provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A final prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada].

Copies of the final prospectus may be obtained from [*insert contact information for the investment dealer or underwriters*].

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the final prospectus, and any amendment, for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.



**13.6(3)** A standard term sheet provided under subsection (1) may contain only the information referred to in subsection (2) and the information referred to in subsection 13.5(3).

**Marketing materials during the waiting period**

**13.7(1)** An investment dealer that provides marketing materials to a potential investor during the waiting period is exempt from the prospectus requirement with respect to providing the marketing materials if

- (a) the marketing materials comply with subsections (2) to (8);
- (b) other than contact information for the investment dealer or underwriters and any comparables, all information in the marketing materials concerning the issuer, the securities or the offering is disclosed in, or derived from, the preliminary prospectus or any amendment;
- (c) other than prescribed language, the marketing materials contain the same cautionary language in bold type as contained on the cover page, and in the summary, of the preliminary prospectus;
- (d) a template version of the marketing materials is approved in writing by the issuer and the lead underwriter before the marketing materials are provided;
- (e) a template version of the marketing materials is filed on or before the day that the marketing materials are first provided;
- (f) a receipt for the preliminary prospectus has been issued in the local jurisdiction; and
- (g) the investment dealer provides a copy of the preliminary prospectus and any amendment with the marketing materials.

**13.7(2)** If a template version of the marketing materials is approved in writing by the issuer and lead underwriter under paragraph (1)(d) and filed under paragraph (1)(e), an investment dealer may provide a limited-use version of the marketing materials that

- (a) has a date that is different than the template version;
- (b) contains a cover page referring to the investment dealer or underwriters or a particular investor or group of investors;
- (c) contains contact information for the investment dealer or underwriters; or
- (d) has text in a format, including the type's font, colour or size, that is different than the template version.

**13.7(3)** If a template version of the marketing materials is divided into separate sections for separate subjects and is approved in writing by the issuer and lead underwriter under paragraph (1)(d), and that template version is filed under paragraph (1)(e), an investment dealer may provide a limited-use version of the marketing materials that includes only one or more of those separate sections.

**13.7(4)** The issuer may remove any comparables, and any disclosure relating to those comparables, from the template version of the marketing materials before filing it under paragraph (1)(e) or (7)(a) if

- (a) the comparables, and any disclosure relating to the comparables, are in a separate section of the template version of the marketing materials;

(b) the template version of the marketing materials that is filed contains a note advising that the comparables, and any disclosure relating to the comparables, were removed in accordance with this subsection, provided that the note appears immediately after where the removed comparables and related disclosure would have been;

(c) if the prospectus is filed in the local jurisdiction, a complete template version of the marketing materials containing the comparables, and any disclosure relating to the comparables, is delivered to the securities regulatory authority; and

(d) the complete template version of the marketing materials contains disclosure proximate to the comparables which

(i) explains what comparables are;

(ii) explains the basis on which the other issuers were included in the comparables and why the other issuers are considered to be an appropriate basis for comparison with the issuer;

(iii) explains the basis on which the compared attributes were included;

(iv) states that the information about the other issuers was obtained from public sources and has not been verified by the issuer or the underwriters;

(v) discloses any risks relating to the comparables, including risks in making an investment decision based on the comparables; and

(vi) states that if the comparables contain a misrepresentation, the investor does not have a remedy under securities legislation.

**13.7(5)** Marketing materials provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A preliminary prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada]. A copy of the preliminary prospectus, and any amendment, is required to be delivered with this document.

The preliminary prospectus is still subject to completion. There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final prospectus has been issued.

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary prospectus, the final prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

**13.7(6)** If marketing materials are provided during the waiting period under subsection (1), the issuer must include the template version of the marketing materials filed under paragraph 1(e) in its final prospectus, or incorporate by reference the template version of the marketing materials filed under paragraph 1(e) into its final prospectus, in the manner described in subsection 36A.1(1) of Form 41-101F1 or subsection 11.6(1) of Form 44-101F1, as applicable.

**13.7(7)** If the final prospectus or any amendment modifies a statement of a material fact that appeared in marketing materials provided during the waiting period under subsection (1), the issuer must

(a) prepare and file, at the time the issuer files the final prospectus or any amendment, a revised template version of the marketing materials that is blacklined to show the modified statement, and

(b) include in the final prospectus, or any amendment, the disclosure required by subsection 36A.1(3) of Form 41-101F1 or subsection 11.6(3) of Form 44-101F1, as applicable.

**13.7(8)** A revised template version of the marketing materials filed under subsection (7) must comply with section 13.8.

**13.7(9)** If marketing materials are provided during the waiting period under subsection (1) but the issuer does not comply with subsection (6), the marketing materials are deemed for purposes of securities legislation to be incorporated into the issuer's final prospectus as of the date of the final prospectus to the extent not otherwise expressly modified or superseded by a statement contained in the final prospectus.

**Marketing materials after a receipt for a final prospectus**

**13.8(1)** An investment dealer must not provide marketing materials to a potential investor after a receipt for a final prospectus or any amendment is issued unless

(a) the marketing materials comply with subsections (2) to (8);

(b) other than contact information for the investment dealer or underwriters and any comparables, all information in the marketing materials concerning the issuer, the securities or the offering is disclosed in, or derived from, the final prospectus and any amendment;

(c) other than prescribed language, the marketing materials contain the same cautionary language in bold type as contained on the cover page, and in the summary, of the final prospectus;

(d) a template version of the marketing materials is approved in writing by the issuer and the lead underwriter before the marketing materials are provided;

(e) a template version of the marketing materials is filed on or before the day that the marketing materials are first provided;

(f) a receipt for the final prospectus has been issued in the local jurisdiction; and

(g) the investment dealer provides a copy of the final prospectus, and any amendment, with the marketing materials.

**13.8(2)** If a template version of the marketing materials is approved in writing by the issuer and lead underwriter under paragraph (1)(d) and filed under paragraph (1)(e), an investment dealer may provide a limited-use version of the marketing materials that

(a) has a date that is different than the template version;

(b) contains a cover page referring to the investment dealer or underwriters or a particular investor or group of investors;

(c) contains contact information for the investment dealer or underwriters; or

(d) has text in a format, including the type's font, colour or size, that is different than the template version.

**13.8(3)** If a template version of the marketing materials is divided into separate sections for separate subjects and is approved in writing by the issuer and lead underwriter under paragraph (1)(d), and that template version is filed under paragraph (1)(e), an investment dealer may provide a limited-use version of the marketing materials that includes only one or more of those separate sections.

**13.8(4)** The issuer may remove any comparables, and any disclosure relating to those comparables, from the template version of the marketing materials before filing it under paragraph (1)(e) or (7)(b) if

(a) the comparables, and any disclosure relating to the comparables, are in a separate section of the template version of the marketing materials;

(b) the template version of the marketing materials that is filed contains a note advising that the comparables, and any disclosure relating to the comparables, were removed in accordance with this subsection, provided that the note appears immediately after where the removed comparables and related disclosure would have been;

(c) if the prospectus is filed in the local jurisdiction, a complete template version of the marketing materials containing the comparables, and any disclosure relating to the comparables, is delivered to the securities regulatory authority; and

(d) the complete template version of the marketing materials contains the disclosure referred to in paragraph 13.7(4)(d).

**13.8(5)** Marketing materials provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A final prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada]. A copy of the final prospectus, and any amendment, is required to be delivered with this document.

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the final prospectus, and any amendment, for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

**13.8(6)** An investment dealer must not provide marketing materials under subsection (1) unless the issuer

(a) has included the template version of the marketing materials filed under paragraph 1(e) in its final prospectus, and any amendment, or incorporated by reference the template version of the marketing materials filed under paragraph 1(e) into its final prospectus, and any amendment, in the manner described in subsection 36A.1(1) of Form 41-101F1 or subsection 11.6(1) of Form 44-101F1, as applicable, or

(b) has included in its final prospectus, and any amendment, the statement described in subsection 36A.1(4) of Form 41-101F1 or subsection 11.6(4) of Form 44-101F1, as applicable.

**13.8(7)** If an amendment to a final prospectus modifies a statement of material fact that appeared in marketing materials provided under subsection (1), the issuer must

(a) indicate in the amendment to the final prospectus that the marketing materials are not part of the final prospectus, as amended, to the extent that the contents of the marketing materials have been modified or superseded by a statement contained in the amendment;

(b) prepare and file, at the time the issuer files the amendment to the final prospectus, a revised template version of the marketing materials that is blacklined to show the modified statement; and

(c) include in the amendment to the final prospectus the disclosure required by subsection 36A.1(3) of Form 41-101F1 or subsection 11.6(3) of Form 44-101F1, as applicable.

**13.8(8)** Any revised template version of the marketing materials filed under subsection (7) must comply with this section.

**13.8(9)** If marketing materials are provided under subsection (1) but the issuer did not comply with subsection (6), the marketing materials are deemed for purposes of securities legislation to be incorporated into the issuer's final prospectus as of the date of the final prospectus to the extent not otherwise expressly modified or superseded by a statement contained in the final prospectus.

#### **Road shows during the waiting period**

**13.9(1)** An investment dealer that conducts a road show for potential investors during the waiting period is exempt from the prospectus requirement with respect to that road show if

(a) the road show complies with subsections (2) to (4); and

(b) a receipt for the preliminary prospectus has been issued in the local jurisdiction.

**13.9(2)** Subject to section 13.12, an investment dealer must not provide marketing materials to an investor attending a road show conducted under subsection (1) unless the marketing materials are provided in accordance with section 13.7.

**13.9(3)** If an investment dealer conducts a road show, the investment dealer must establish and follow reasonable procedures to

(a) ask any investor attending the road show in person, by telephone conference call, on the internet or by other electronic means to provide their name and contact information;

(b) keep a record of any information provided by the investor; and

(c) provide the investor with a copy of the preliminary prospectus and any amendment.

**13.9(4)** If an investment dealer permits an investor, other than an accredited investor, to attend a road show, the investment dealer must commence the road show with the oral reading of the following statement or a statement to the same effect:

This presentation does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary prospectus, the final prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

#### **Road shows after a receipt for a final prospectus**

**13.10(1)** An investment dealer must not conduct a road show for potential investors after a receipt for a final prospectus or any amendment is issued unless

- (a) the road show complies with subsections (2) to (4); and
- (b) a receipt for the final prospectus has been issued in the local jurisdiction.

**13.10(2)** Subject to section 13.12, an investment dealer must not provide marketing materials to an investor attending a road show conducted under subsection (1) unless the marketing materials are provided in accordance with section 13.8.

**13.10(3)** If an investment dealer conducts a road show, the investment dealer must establish and follow reasonable procedures to

- (a) ask any investor attending the road show in person, by telephone conference call, on the internet or by other electronic means to provide their name and contact information;
- (b) keep a record of any information provided by the investor; and
- (c) provide the investor with a copy of the final prospectus and any amendment.

**13.10(4)** If an investment dealer permits an investor, other than an accredited investor, to attend a road show, the investment dealer must commence the road show with the oral reading of the following statement or a statement to the same effect:

This presentation does not provide full disclosure of all material facts relating to the securities offered. Investors should read the final prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

**Exception from procedures for road shows for certain U.S. cross-border initial public offerings**

**13.11(1)** Subject to subsection (2), the following provisions do not apply to an investment dealer that conducts a road show in connection with a U.S. cross-border initial public offering:

- (a) paragraphs 13.9(3)(a) and (b);
- (b) paragraphs 13.10(3)(a) and (b).

**13.11(2)** Subsection (1) does not apply unless

- (a) the issuer is relying on the exemption from United States filing requirements in Rule 433(d)(8)(ii) under the 1933 Act in respect of the road show; and
- (b) the investment dealer establishes and follows reasonable procedures to
  - (i) ask any investor attending the road show in person, by telephone conference call, on the internet or by other electronic means to voluntarily provide their name and contact information; and
  - (ii) keep a record of any information voluntarily provided by the investor.

**Exception from filing and incorporation requirements for road shows for certain U.S. cross-border offerings**

**13.12(1)** Subject to subsections (2) to (4), if an investment dealer provides marketing materials to a potential investor in connection with a road show for a U.S. cross-border offering, the following provisions do not apply to the template version of the marketing materials relating to the road show:

- (a) paragraphs 13.7(1)(e) and 13.8(1)(e);

(b) subsections 13.7(6) to (9);

(c) subsections 13.8(6) to (9);

(d) paragraphs 36A.1(1)(b) and (c), paragraph 36A.1(3)(b), subsection 36A.1(4) and section 37.6 of Form 41-101F1;

(e) paragraphs 11.6(1)(b) and (c), paragraph 11.6(3)(b) and subsection 11.6(4) of Form 44-101F1.

**13.12(2)** Subsection (1) does not apply unless

(a) the underwriters have a reasonable expectation that the securities offered under the U.S. cross-border offering will be sold primarily in the United States of America;

(b) the issuer and the underwriters who sign the prospectus filed in the local jurisdiction provide a contractual right containing the language set out in subsection 36A.1(5) of Form 41-101F1, or words to the same effect, except that the language may specify that the contractual right does not apply to any comparables provided in accordance with subsection (3); and

(c) if the prospectus is filed in the local jurisdiction, the template version of the marketing materials relating to the road show is delivered to the securities regulatory authority.

**13.12(3)** If the template version of the marketing materials relating to the road show contains comparables, the template version of the marketing materials must contain the disclosure referred to in paragraph 13.7(4)(d).

**13.12(4)** For greater certainty, subsection (1) does not apply to marketing materials other than the marketing materials provided in connection with the road show.

## PART 13A – ADVERTISING AND MARKETING IN CONNECTION WITH PROSPECTUS OFFERINGS OF INVESTMENT FUNDS

### **Application**

**13A.1** This Part applies to investment funds filing a prospectus in the form of Form 41-101F2 or Form 41-101F3.

### **Legend for communications during the waiting period**

**13A.2(1)** A preliminary prospectus notice or other communication used in connection with a prospectus offering during the waiting period must contain the following legend, or words to the same effect:

A preliminary prospectus containing important information relating to these securities has been filed with securities commissions or similar authorities in certain jurisdictions of Canada. The preliminary prospectus is still subject to completion or amendment. Copies of the preliminary prospectus may be obtained from *[insert name and contact information for dealer or other relevant person or company]*. There will not be any sale or acceptance of an offer to buy the securities until a receipt for the final prospectus has been issued.

**13A.2(2)** If the preliminary prospectus notice or other communication is in writing, include the wording required under subsection (1) in bold type that is at least as large as that used generally in the body of the text.

**Legend for communications following receipt for the final prospectus**

**13A.3(1)** A final prospectus notice or other communication used in connection with a prospectus offering following the issuance of a receipt for the final prospectus must contain the following legend, or words to the same effect:

This offering is made only by prospectus. The prospectus contains important detailed information about the securities being offered. Copies of the prospectus may be obtained from *[insert name and contact information for dealer or other relevant person or company]*. Investors should read the prospectus before making an investment decision.

**13A.3(2)** If the final prospectus notice or other communication is in writing, include the wording required under subsection (1) in bold type that is at least as large as that used generally in the body of the text.

**Advertising during the waiting period**

**13A.4** If the issuer is an investment fund, an advertisement used in connection with a prospectus offering during the waiting period may state only the following information:

- (a) whether the security represents a share in an incorporated entity or an interest in an unincorporated entity;
- (b) the name of the issuer;
- (c) the price of the security;
- (d) the fundamental investment objectives of the investment fund;
- (e) the name of the manager of the investment fund;
- (f) the name of the portfolio manager of the investment fund;
- (g) the name and address of a person or company from whom a preliminary prospectus may be obtained and purchases of securities may be made;
- (h) how many securities will be made available;
- (i) whether the security is or will be a qualified investment for a registered retirement savings plan, registered retirement income fund, registered education savings plan or tax free savings account or qualifies, or will qualify, the holder for special tax treatment..

11. The general instructions of Form 41-101F1 Information Required in a Prospectus are amended by adding the following instruction after instruction (15):

*(16) Marketing materials prepared in accordance with subsections 13.7(1) or 13.8(1) of the Instrument are the only documents that can be incorporated by reference into a long form prospectus..*

12. Paragraph 20.2(a) of Form 41-101F1 is amended by replacing "[its/their] assessment of the state of the financial markets" with "[describe any "market out", "disaster out", "material change out" or similar provision]".



13. Form 41-101F1 is amended by adding the following after Item 36:

**ITEM 36A: Marketing Materials**

**Marketing materials**

**36A.1(1)** If marketing materials were provided under subsection 13.7(1) or 13.8(1) of the Instrument, the issuer must

(a) include a section, under the heading "Marketing Materials", proximate to the beginning of the prospectus that contains the disclosure required by this Item,

(b) subject to subsection (2), include the template version of the marketing materials filed under the Instrument in the final prospectus, or incorporate by reference the template version of the marketing materials filed under the Instrument into the final prospectus, and

(c) indicate that the template version of the marketing materials is not part of the final prospectus to the extent that the contents of the template version of the marketing materials have been modified or superseded by a statement contained in the final prospectus.

**36A.1(2)** An issuer may comply with paragraph (1)(b) by including the template version of the marketing materials filed under the Instrument in the section of the prospectus under the heading "Marketing Materials" or in an appendix to the prospectus that is referred to in that section.

**36A.1(3)** If the prospectus or any amendment modifies a statement of material fact that appeared in marketing materials provided earlier,

(a) provide details of how the statement in the marketing materials has been modified, and

(b) disclose that, pursuant to subsection 13.7(7) or 13.8(7) of the Instrument,

(i) the issuer has prepared a revised template version of the marketing materials which has been blacklined to show the modified statement, and

(ii) the revised template version of the marketing materials can be viewed under the issuer's profile on [www.sedar.com](http://www.sedar.com).

**36A.1(4)** State that any template version of the marketing materials filed under the Instrument after the date of the final prospectus and before the termination of the distribution is deemed to be incorporated into the final prospectus.

**36A.1(5)** If the issuer relies on the exception in subsection 13.12(1) of the Instrument, include the following statement, or words to the same effect:

"Before the filing of the final prospectus, the issuer and underwriters held road shows on *[insert dates and brief description of road shows for U.S. cross-border offering eligible for the exception in subsection 13.12(1) of the Instrument or other prospectus rule]* to which potential investors in *[insert the jurisdictions of Canada where the prospectus was filed]* were able to attend. The issuer and the underwriters provided marketing materials to those potential investors in connection with those road shows.

In doing so, the issuer and the underwriters relied on a provision in applicable securities legislation that allows issuers in certain U.S. cross-border offerings to not have to file marketing materials relating to those road shows on SEDAR or include or incorporate those marketing materials in the final prospectus.

The issuer and the underwriters can only do that if they give a contractual right to investors in the event the marketing materials contain a misrepresentation.

Pursuant to that provision, the issuer and the underwriters signing the certificate contained in this prospectus have agreed that in the event the marketing materials relating to those road shows contain a misrepresentation (as defined in securities legislation in *[insert the jurisdictions of Canada where the prospectus was filed]*), a purchaser resident in *[insert the jurisdictions of Canada where the prospectus was filed]* who was provided with those marketing materials in connection with the road shows and who purchases the securities offered by this prospectus during the period of distribution shall have, without regard to whether the purchaser relied on the misrepresentation, rights against the issuer and each underwriter with respect to the misrepresentation which are equivalent to the rights under the securities legislation of the jurisdiction in Canada where the purchaser is resident, subject to the defences, limitations and other terms of that legislation, as if the misrepresentation was contained in this prospectus.

However, this contractual right does not apply to the extent that the contents of the marketing materials relating to the road shows have been modified or superseded by a statement in this prospectus. In particular, *[insert a description of how any statement in the marketing materials has been modified or superseded by a statement in the prospectus]."*

**GUIDANCE**

*Marketing materials do not, as a matter of law, amend a preliminary prospectus, a final prospectus or any amendment..*

14. Item 37 of Form 41-101F1 is amended by adding the following after section 37.5:

**Marketing materials**

**37.6** If an issuer filed a template version of marketing materials under paragraph 13.7(1)(e) of the Instrument or intends to file a template version of marketing materials under paragraph 13.8(1)(e) of the Instrument, change "prospectus" to "prospectus (which includes the marketing materials included or incorporated by reference)" where it first appears in the statements in sections 37.2 and 37.3..

15. The following is added after Appendix C:

**APPENDIX D TO NATIONAL INSTRUMENT 41-101  
GENERAL PROSPECTUS REQUIREMENTS**

**PRELIMINARY PROSPECTUS NOTICE PROVISIONS**

<b>Jurisdiction</b>	<b>Securities Legislation Reference</b>
Alberta	Paragraph 123(a) of the <i>Securities Act</i> (Alberta)
British Columbia	Paragraph 78(2)(a) of the <i>Securities Act</i> (British Columbia)
Manitoba	Paragraph 38(b) of the <i>Securities Act</i> (Manitoba)
New Brunswick	Paragraph 82(2)(a) of the <i>Securities Act</i> (New Brunswick)
Newfoundland and Labrador	Paragraph 66(2)(a) of the <i>Securities Act</i> (Newfoundland and Labrador)
Northwest Territories	Paragraph 97(a) of the <i>Securities Act</i> (Northwest Territories)

Nova Scotia	Paragraph 70(2)(a) of the <i>Securities Act</i> (Nova Scotia)
Nunavut	Paragraph 97(a) of the <i>Securities Act</i> (Nunavut)
Ontario	Paragraph 65(2)(a) of the <i>Securities Act</i> (Ontario)
Prince Edward Island	Paragraph 97(a) of the <i>Securities Act</i> (Prince Edward Island)
Saskatchewan	Paragraph 73(2)(a) of <i>The Securities Act, 1988</i> (Saskatchewan)
Yukon	Paragraph 97(a) of the <i>Securities Act</i> (Yukon)

**APPENDIX E TO NATIONAL INSTRUMENT 41-101  
GENERAL PROSPECTUS REQUIREMENTS**

**FINAL PROSPECTUS NOTICE PROVISIONS**

<b>Jurisdiction</b>	<b>Securities Legislation Reference</b>
British Columbia	Paragraph 82(c) of the <i>Securities Act</i> (British Columbia)
New Brunswick	Section 86 of the <i>Securities Act</i> (New Brunswick), but only in respect of a communication described in paragraph 82(2)(a) of that Act
Newfoundland and Labrador	Section 70 of the <i>Securities Act</i> (Newfoundland and Labrador), but only in respect of a communication described in paragraph 66(2)(a) of that Act
Nova Scotia	Section 74 of the <i>Securities Act</i> (Nova Scotia), but only in respect of a communication described in paragraph 70(2)(a) of that Act
Ontario	Section 69 of the <i>Securities Act</i> (Ontario), but only in respect of a communication described in clause 65(2)(a) of that Act
Saskatchewan	Paragraph 77(c) of <i>The Securities Act, 1988</i> (Saskatchewan).

16. This Instrument comes into force on August 13, 2013.

17. This Instrument may be cited as MSC Rule-2013-20.