

NOTICE AND REQUEST FOR COMMENT

**Proposed National Instrument 41-101 *General Prospectus Requirements* and
Companion Policy 41-101CP *General Prospectus Requirements***

**Proposed Repeal of
National Instrument 41-101 *Prospectus Disclosure Requirements*,**

Proposed Amendments to National Instrument 14-101 *Definitions*

**Proposed Amendments to National Instrument 44-101 *Short Form Prospectus
Distributions* and Companion Policy 44-101CP *Short Form Prospectus Distributions***

**Proposed Amendments to National Instrument 44-102 *Shelf Distributions* and
Companion Policy 44-102CP *Shelf Distributions***

**Proposed Amendments to National Instrument 44-103 *Post-Receipt Pricing* and
Companion Policy 44-103CP *Post-Receipt Pricing***

Proposed Amendments to National Instrument 45-101 *Rights Offerings*

**Proposed Amendments to National Instrument 51-102 *Continuous Disclosure
Obligations* and Companion Policy 51-102CP *Continuous Disclosure Obligations***

**Proposed Amendments to National Instrument 81-101 *Mutual Fund Prospectus
Disclosure* and Companion Policy 81-101CP *Mutual Fund Prospectus Disclosure***

**Proposed Amendments to National Instrument 81-104 *Commodity Pools* and
Companion Policy 81-104CP *Commodity Pools***

and

**Proposed Amendments to National Policy 43-201 *Mutual Reliance Review System for
Prospectuses***

December 21, 2006

We, the Canadian Securities Administrators (CSA) are publishing for a 90-day comment period the following:

- Proposed National Instrument 41-101 *General Prospectus Requirements* (Proposed NI 41-101);

- Proposed Form 41-101F1 *Information Required in a Prospectus* of NI 41-101 (Proposed Form 1);
- Proposed 41-101F2 *Information Required in an Investment Fund Prospectus* of NI 41-101 (Proposed Form 2);
- Proposed Companion Policy 41-101CP *General Prospectus Requirements* (the Proposed CP);

(collectively, Proposed Rule).

We are also publishing for a 90-day comment period proposed amendments to the following:

- National Instrument 14-101 *Definitions* (NI 14-101);
- National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101);
- Form 44-101F1 *Short Form Prospectus* of NI 44-101 (Form 44-101F1);
- National Instrument 44-102 *Shelf Distributions* (NI 44-102);
- National Instrument 44-103 *Post-Receipt Pricing* (NI 44-103);
- Form 45-101F *Information Required in a Rights Offering Circular* of National Instrument 45-101 *Rights Offerings* (Form 45-101F);
- National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102);
- Form 51-102F2 *Annual Information Form* of NI 51-102 (Form 51-102F2);
- National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (NI 81-101);
- Form 81-101F1 *Contents of Simplified Prospectus* of NI 81-101 (Form 81-101F1);
- Form 81-101F2 *Contents of Annual Information Form* of NI 81-101 (Form 81-101F2);
- National Instrument 81-104 *Commodity Pools* (NI 81-104);

(collectively, Rule Consequential Amendments).

We are also publishing for a 90-day comment period amendments to the following:

- Companion Policy 44-101CP to National Instrument 44-101 *Short Form Prospectus Distributions* (44-101CP);
- Companion Policy 44-102CP to National Instrument 44-102 *Shelf Distributions* (44-102CP);
- Companion Policy 44-103CP to National Instrument 44-103 *Post-Receipt Pricing* (44-103CP);
- Companion Policy 51-102CP to National Instrument 51-102 *Continuous Disclosure Obligations* (51-102CP);
- Companion Policy 81-101CP to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (81-101CP);
- Companion Policy 81-104CP to National Instrument 81-104 *Commodity Pools* (81-104CP);
- National Policy 43-201 *Mutual Reliance Review System for Prospectuses* (NP 43-201);

(collectively, Policy Consequential Amendments, and with the Rule Consequential Amendments, Consequential Amendments). Other than in Ontario, we expect to separately publish for a 90-day comment period, proposed amendments to Multilateral Instrument 11-101 *Principal Regulator System*.

We are also proposing, upon the coming into force of the Proposed Rule, to rescind the following policies or in Québec to repeal the following rules:

- National Policy 14 *Acceptability of Currencies in Material Filed with Securities Regulatory Authorities* because parts of it are now redundant as a result of the coming into force of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107) and the remaining parts of it will be redundant upon the coming into force of the requirements in General Instruction (10) and section 1.5 of Proposed Form 1;
- National Policy 21 *National Advertising – Warnings* because it will be redundant upon the adoption of the guidance in Part 6 of the Proposed CP.

We are also proposing to withdraw the following notices upon the coming into force of the Proposed Rule:

- CSA Staff Notice 42-303 *Prospectus Requirements* because it will no longer be relevant upon the coming into force of the Proposed Rule;

- CSA Staff Notice 44-301 *Frequently Asked Questions Regarding the New Prospectus Rules* because Part A of it will no longer be relevant upon the coming into force of the Proposed Rule and we intend to update and replace Parts B and C of it before the Proposed Rule comes into force;
- Canadian Securities Administrators' Notice 3 *Pre-Marketing Activities in the Context of Bought Deals* because it will be redundant upon the adoption of the guidance in Part 6 of the Proposed CP.

Background

In Ontario, Ontario Securities Commission Rule 41-501 *General Prospectus Requirements* (OSC Rule 41-501) came into force in December 2000. In Quebec, Regulation Q-28 *Respecting General Prospectus Requirements* (Q-28) came into force in December 2000 and is substantially the same as OSC Rule 41-501 (OSC Rule 41-501 and Q-28 are collectively referred to as Rule 41-501). OSC Rule 41-501 has been adopted as the long form prospectus rule by all other jurisdictions in Canada. Some other jurisdictions, however, have kept local rules, including forms, relating to long form prospectuses so that issuers would have the option of complying with the local requirements.

Since December 2000, a number of national instruments prescribing continuous disclosure requirements for all issuers have been adopted, including NI 51-102 and National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106). These instruments collectively set out a comprehensive and national continuous disclosure regime.

A national short form prospectus regime was adopted at the same time as Rule 41-501. The short form prospectus requirements were streamlined and harmonized with the continuous disclosure regime when amended and restated NI 44-101 came into force in December 2005.

The Proposed Rule and the Consequential Amendments are another step towards harmonizing the prospectus and continuous disclosure requirements across Canada.

The text of the Proposed Rule is being published concurrently with this Notice and can be obtained on websites of CSA members, including the following:

www.bcsc.bc.ca
www.albertasecurities.com
www.sfsc.gov.sk.ca
www.msc.gov.mb.ca
www.osc.gov.on.ca
www.lautorite.qc.ca
www.gov.ns.ca/nssc/
www.nbsc-cvmnb.ca

We are publishing

- Proposed NI 41-101 (Schedule 1 of Appendix B);
- Proposed Form 1 (Schedule 2 of Appendix B);
- Proposed Form 2 (Schedule 3 of Appendix B);
- the Proposed CP (Schedule 4 of Appendix B);
- amendment instruments for
 - NI 14-101 (Appendix C);
 - NI 44-101 (Schedule 1 of Appendix D);
 - Form 44-101F1 (Schedule 2 of Appendix D);
 - NI 44-102 (Schedule 1 of Appendix E);
 - NI 44-103 (Schedule 1 of Appendix F);
 - Form 45-101F (Appendix G);
 - NI 51-102 (Schedule 1 of Appendix H);
 - Form 51-102F2 (Schedule 2 of Appendix H)
 - NI 81-101, Form 81-101F1 and Form 81-101F2 (Schedule 1 of Appendix I);
 - NI 81-104 (Schedule 1 of Appendix J);
- amendments for
 - 44-102CP (Schedule 2 of Appendix E);
 - 44-103CP (Schedule 2 of Appendix F);
 - 51-102CP (Schedule 3 of Appendix H);
 - 81-101CP (Schedule 2 of Appendix I);
 - 81-104CP (Schedule 2 of Appendix J);
 - NP 43-201 (Appendix K);

- black-lined version of 44-101CP (Schedule 3 of Appendix D).

Black-lined versions of NI 44-101 are available on the websites of certain CSA members.

Target implementation of the Proposed Rule and the Consequential Amendments is December 2007. Depending in part on the comments received, the Proposed Rule and the Consequential Amendments may be adopted in their entirety or in part.

Substance and purpose of the Proposed Rule and the Consequential Amendments

A. Generally

The purpose of the Proposed Rule is to create a comprehensive, seamless and transparent set of national prospectus requirements for all issuers including investment funds (investment funds should also refer to the supplemental discussion on investment fund issues below). The purpose of adopting the Consequential Amendments is to conform other related national instruments and policies to the Proposed Rule.

The Proposed Rule is based on three general principles.

1. Harmonize and consolidate prospectus requirements across Canada

The Proposed Rule will harmonize across Canada and consolidate the general prospectus requirements among Canadian jurisdictions. It is primarily based on the requirements set out in Rule 41-501.

Proposed NI 41-101 assumes the coming into force of certain securities act amendments (Act Amendments) that have been proposed or adopted in all the jurisdictions under the CSA initiative to harmonize and streamline securities law in Canada. Other than in Ontario, the Act Amendments will result in certain of the prospectus-related provisions currently in the securities acts of each applicable jurisdiction being moved to Proposed NI 41-101. In Ontario, these prospectus-related provisions will remain in the *Securities Act* (Ontario). As a result, a number of provisions of Proposed NI 41-101 will not apply in Ontario and the similar requirements of the *Securities Act* (Ontario) will continue to apply. Please refer to Appendix L in Ontario for additional information.

We anticipate that the Act Amendments will come into force in all applicable jurisdictions before final implementation of the Proposed Rule. The list of proposed or adopted Act Amendments in an applicable jurisdiction is set out in Appendix L to this Notice published in that particular jurisdiction or may be published separately in each jurisdiction.

We have also considered other general prospectus requirements or guidelines currently found in other existing local rules, policies or notices. We have incorporated certain of these requirements into the Proposed Rule as appropriate.

2. *Harmonize with other instruments*

The Proposed Rule will substantially harmonize the general prospectus requirements with the continuous disclosure and short form prospectus regimes. For example, the significant acquisition requirements under Item 35 of Proposed Form 1 have been harmonized with the business acquisition report requirements under Part 8 of NI 51-102.

Specifically, the Proposed Rule has been harmonized with the following instruments that have been adopted since Rule 41-501 first became effective:

- National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101)
- NI 51-102;
- NI 52-107;
- Multilateral Instrument 52-110 *Audit Committees* (MI 52-110);
- National Instrument 58-101 *Disclosure of Corporate Governance Practices* (NI 58-101);
- NI 81-106 (together with NI 51-102, NI 52-107, MI 52-110, and NI 58-101, CD Rules);
- NI 44-101.

As set out in the CSA Notice of Amendments to National Instrument 51-102 *Continuous Disclosure Obligations* dated **October 13, 2006**, NI 51-102, NI 52-107, and NI 44-101 are proposed to be amended. Subject to Ministerial approval in certain jurisdictions, we expect these proposed amendments to be in force on **December 29, 2006**. For the purposes of harmonizing the Proposed Rule to these instruments, we assumed that these proposed amendments will be in force. Also, the Consequential Amendments are being proposed on the assumption that these proposed amendments will be in force.

We also note that the CSA Notice and Request for Comment in respect of the proposed rescission of National Policy Statement 48 *Future-Oriented Financial Information* and related consequential amendments was published on **December 1, 2006**. The Proposed Rule does not reflect the proposals described in that notice. If those proposals come into force, however, we propose to reflect them in the final Proposed Rule.

3. *Reflect current policy*

The Proposed Rule takes into consideration changes in the principles underlying the existing general prospectus requirements that we have identified as a result of regulatory reviews, applications for exemptive relief, or public comment and consultation. For example, we are proposing to codify certain provisions in existing policies, including certain guidelines regarding certificates and undertakings in National Policy 41-201 *Income Trusts and Other Indirect Offerings*.

We are also proposing amendments to NI 44-102 with respect to the definition of “novel” as it pertains to “specified derivatives” (see discussion below). This may have implications for non-investment fund issuers. Specifically, the pre-clearance process for a new type of linked note offering that is novel to an issuer will apply if the underlying interest is substantially linked to the security of a single issuer that is not the issuer of the linked note. In these cases, the regulator will also consider qualification, liability, and disclosure issues during the pre-clearance process.

B. *Investment fund issues*

1. *Harmonizing across Canada, consolidating, and updating the long form prospectus for investment funds*

The Proposed Rule will also apply to exchange-traded investment funds, labour sponsored investment funds, commodity pools, scholarship plans and non-redeemable investment funds. The Proposed Rule will add a new prospectus form for these investment funds, which are currently subject to various different types of long form prospectus requirements. The Proposed Rule will consolidate the existing prospectus forms and tailor them to investment funds since the current long form is tailored to corporate issuers. While the form will be new for investment funds preparing a long form prospectus, the substance, for the most part, will not be new because we have created the form based upon the existing forms, industry practice and Form 81-101F1 *Contents of Simplified Prospectus* (Form 81-101F1) used by conventional mutual funds. Please note that the Proposed Rule will not apply to conventional mutual funds that are subject to NI 81-101.

2. *Market timing response*

Certain of the Consequential Amendments being proposed to the prospectus forms under NI 81-101 constitute the CSA’s policy response to market timing activity that was the subject of the mutual fund trading practices probe which concluded in March of 2005. More specifically, enhanced disclosure of a mutual fund’s practices regarding short-term trading has been added to Form 81-101F1 and Form 81-101F2 *Contents of Annual Information Form*. Details of these proposed prospectus amendments are discussed in Appendix A.

3. *Amendments to NI 44-102 re: linked notes*

We are also proposing certain amendments to NI 44-102 and 44-102CP. The focus of the amendments is on the definition of the term “novel” as it pertains to “specified derivatives”.

We have become increasingly aware of the use of the shelf prospectus system for the distribution of investment products that are substantially similar to investment funds, but are not specifically subject to the investment funds regulatory regime. These products generally take the form of notes linked to certain underlying interests, including indices and notional reference portfolios. Given the retail focus of these linked notes, we believe the scope of specified derivatives that shelf eligible issuers must pre-clear in advance of distribution needs to be revisited. We expect that once the amendments are in place, an issuer will pre-clear the initial shelf prospectus supplement for each new type of linked note offering. As a result, except in the case of a specified derivative of an issuer where the underlying interest is a security of that issuer (i.e., “plain vanilla” options and warrants), an issuer will be required to pre-clear shelf prospectus supplements for products that are novel to that issuer, even if another issuer has already distributed a similar product. During the pre-clearance process, the regulator will focus on investment fund conflict of interest and disclosure concerns. Further details about the proposed amendments are discussed in Appendix A of this Notice.

Summary of the Proposed Rule and the Consequential Amendments

We have summarized the significant provisions of the Proposed Rule and the Consequential Amendments in Appendix A. This is not a complete list of all of the provisions of the Proposed Rule and the Consequential Amendments.

Alternatives considered

The purpose of the Proposed Rule is to create a comprehensive, seamless and transparent set of national prospectus requirements based on the principles of harmonizing across Canada, consolidating, and updating the existing general prospectus requirements. The purpose of the Consequential Amendments is to conform other related national instruments and policies to the Proposed Rule. An alternative to the Proposed Rule and the Consequential Amendments would be to leave the existing requirements and address any issues on a case by case basis. We believe that the *status quo* is not an acceptable alternative because the existing local prospectus requirements are fragmented.

Anticipated costs and benefits

The Proposed Rule and the Consequential Amendments will primarily affect issuers, including investment fund issuers, offering, and investors purchasing, securities under a long form prospectus. Other persons or companies with an interest in the general prospectus requirements, including persons or companies who are required to sign certificates, credit supporters, and auditors and other experts, may also be affected.

At present, all CSA jurisdictions have similar, but not identical, general prospectus requirements. Market participants that wish to effect a multi-jurisdictional prospectus distribution must consider the requirements in the various acts, regulations, instruments, and policies of each of the relevant jurisdictions. Harmonizing across Canada and consolidating the general prospectus requirements will reduce the transaction costs for issuers offering securities in multiple jurisdictions.

The CD Rules have generally harmonized across Canada the continuous disclosure regime. Harmonizing the Proposed Rule with the CD Rules will reduce the transaction costs for reporting issuers offering securities and the continuous disclosure compliance costs for all issuers following a securities offering. For example, the significant acquisition requirements in the Proposed Rule have been harmonized with Part 8 of NI 51-102 [*Business Acquisition Report*], including taking into consideration the differences between the NI 51-102 requirements for venture and non-venture issuers. Currently, Rule 41-501 has a different set of significant acquisition requirements than NI 51-102. Harmonizing the requirements will reduce transactions costs for issuers that are required to include significant acquisition disclosure from a previously filed business acquisition report in its long form prospectus. Harmonizing the requirements will also reduce continuous disclosure compliance costs for issuers that will be required to file a business acquisition report after the completion of a probable acquisition for which disclosure is required in its long form prospectus.

Harmonizing the requirements will reduce transaction costs by eliminating the need to consider two different sets of rules.

NI 44-101 has generally harmonized across Canada the short form prospectus regime with the CD Rules. Harmonizing the general prospectus requirements with NI 44-101 eliminates any unintended differences between two alternative offering regimes. This will help issuers focus on the substantive differences between the Proposed Rule and NI 44-101 and choose the appropriate regime for that issuer. For example, the plan of distribution and description of the securities being offered requirements under Proposed Form 1 have been harmonized with the requirements in Form 44-101F1 *Short Form Prospectus* (Form 44-101F1).

We have also clarified regulatory requirements and obligations in the existing general prospectus requirements that we have identified as a result of regulatory reviews, applications for exemptive relief, or public comment and consultation. We believe these provisions will result in more efficient and effective regulation and provide direct benefits to investors. We do not believe that these provisions will impose significant costs on issuers.

For example, Part 5 of the Proposed Rule requires certificates from, other than in Ontario, a new class of person or company: substantial beneficiaries of the offering. We believe a person or company that controls the issuer or a significant business has the best information about the issuer or significant business. Such a person or company who also

receives proceeds from the distribution should be liable for any misrepresentations in the prospectus about the issuer or a significant business.

We currently focus on whether such a person or company takes promoter liability or provides a contractual indemnity to the issuer in the event of a misrepresentation. We believe the new provisions are a better alternative to the existing practice resulting in more efficient and effective regulation for investors, issuers, and these persons or companies. Specifically, we believe these new provisions will create appropriate incentives for the person or company with the best information about the issuer or a significant business to ensure that the prospectus contains full, true and plain disclosure of all material facts relating to the securities being distributed. Better disclosure will directly benefit investors and prospective investors and, by raising confidence in our disclosure regime, indirectly benefit the capital markets as a whole.

Overall, we believe the net benefits of the Proposed Rule and the Consequential Amendments will outweigh the net costs. The simplification of the general prospectus requirements across the CSA and harmonization with the short form and continuous disclosure regimes will reduce administration, professional and regulatory costs, and reduce impediments for issuers accessing our capital markets. These benefits to issuers will not negatively impact investor protection and should outweigh any additional costs associated with the Proposed Rule and the Consequential Amendments.

Related amendments

We propose to amend elements of local securities legislation, in conjunction with the implementation of the Proposed Rule and the Consequential Amendments. The provincial and territorial securities regulatory authorities may publish these proposed local changes separately in their jurisdictions. Proposed consequential amendments to rules, regulations or policies in a particular jurisdiction are in Appendix L to this Notice published in that particular jurisdiction. Some jurisdictions will need to implement the Proposed Rule using a local implementing rule. Jurisdictions that must do so will publish the local implementing rule in Appendix L or separately.

Unpublished materials

In proposing the Proposed Rule and the Consequential Amendments we have not relied on any significant unpublished study, report or other material.

Request for comments

We request your comments on the Proposed Rule and the Consequential Amendments. The comment period expires on **March 31, 2007**. In addition to any comments you wish to make, we invite comments on the following specific questions:

Certificate requirements

1. Except in Ontario, Proposed NI 41-101 includes a new certificate requirement for “substantial beneficiaries of the offering”. We believe a person or company that controls the issuer or a significant business has the best information about the issuer or significant business. Do you agree? Such a person or company who also receives proceeds from the distribution should be liable for any misrepresentations in the prospectus about the issuer or a significant business. Are the definitions of substantial beneficiary of the offering and significant business broad enough to cover this class of persons and companies?
2. The definition of “significant business” in section 5.13 of Proposed NI 41-101 is based on the significance tests for acquisitions. We consider that these tests provide a useful initial threshold in the determination of whether a prospectus certificate is necessary; however, we seek specific comment on whether these tests are the most appropriate measure of significance for the purposes of determining prospectus liability.
3. Control of a significant business and direct or indirect receipt of 20% of the proceeds of an offering are both required to bring a person or company within the definition of substantial beneficiary of the offering. Is this dual threshold too limited?
4. Is receipt of 20% of the proceeds of the offering the appropriate threshold for paragraph 5.13(2)(b) of Proposed NI 41-101?

Material contracts

5. Should each type of contract listed in subsection 9.1(1) of Proposed NI 41-101 be excluded from the exemption to file contracts entered into in the ordinary course of business? Are there other types of contracts not listed that should be excluded from the exemption to file contracts entered into in the ordinary course of business? If so, please identify the type of contract and explain why they should be excluded.
6. Is the list of provisions that are “necessary to understanding the contract” set out in subsection 9.1(2) of Proposed NI 41-101 appropriate? If not, why not?

Personal information form and authorization

7. Subparagraph 9.2(b)(ii) of Proposed NI 41-101 will require an issuer to deliver a completed personal information form and authorization for every individual described in this subparagraph with the first preliminary prospectus filed by the issuer after the Proposed Rule becomes effective. Please describe any significant practical difficulties an issuer may have in complying with this requirement.

Over-allocation

8. Section 11.3 of Proposed NI 41-101 and the definitions of over-allocation position and over-allotment option restrict the exercise of an over-allotment option to the lesser of the underwriters' over-allocation position and 15% of the base offering. This section substantially codifies and harmonizes across Canada the existing guidance in paragraph 10 of Ontario Securities Commission Policy 5.1 *Prospectuses – General Guidelines*; however, the time for the determination of the over-allocation position has been moved to the closing of the offering from the close of trading on the second trading day next following the closing of the offering. We believe that this change is consistent with current industry practice. We seek comment on this change.

Distribution of securities under a prospectus to an underwriter

9. Section 11.3 of Proposed NI 41-101 permits compensation options or warrants to be acquired by an underwriter under the prospectus where the securities underlying such compensation options or warrants are, in the aggregate, less than 5% of the number or principal amount of the securities distributed under the prospectus. Is 5% an appropriate limit?

Waiting period

10. Proposed NI 41-101 does not impose a minimum period of time between the issuance of a receipt by the regulator for a preliminary prospectus and the issuance of a receipt by the regulator for a final prospectus (though the MRRS review timelines will remain as they are set out in NP 43-201). In Ontario, the *Securities Act* (Ontario) imposes a minimum waiting period of at least 10 days but the proposed local implementing rule (see Appendix L) will vary this minimum waiting period so that it may be less than 10 days. Is a minimum waiting period necessary to ensure investors receive a preliminary prospectus and have sufficient time to reflect on the disclosure in the preliminary prospectus before making an investment decision?

Amendments to a preliminary or final prospectus

11. Part 6 of Proposed NI 41-101 requires the filing of an amendment to a preliminary prospectus upon the occurrence of a material adverse change. An amendment to a final prospectus must be filed upon the occurrence of a material change. This Part codifies the existing requirements under the securities legislation of most jurisdictions. The requirements in Québec differ. An amendment to a preliminary prospectus is triggered if a material change is likely to have an adverse influence on the value or the market price of the securities being distributed and the existing requirement to amend a final prospectus is triggered if a material change occurs in relation to the information presented in the prospectus. "Material change" is not defined in Québec.

While not specifically included as an alternative in the proposed rule, we are soliciting your comments on whether we should instead be requiring an amendment based on the continued accuracy of the information in the prospectus. What should be the appropriate triggers for an obligation to amend a preliminary prospectus or final prospectus? Should the obligation to amend a preliminary prospectus or prospectus be determined based on the continued accuracy of the disclosure in the prospectus, rather than changes in the business, operations or capital of the issuer?

Bona fide estimate of range of offering price or number of securities being distributed

12. We are proposing to require disclosure in the preliminary prospectus of a *bona fide* estimate of the range within which the offering price or the number of securities being distributed is expected to be set.

We are also considering adding a requirement to provide disclosure throughout a preliminary prospectus based on the mid-point of the disclosed offering price range or number of securities. This would require that the consolidated capitalization table, earnings coverage ratios and any *pro forma* financial information in the preliminary prospectus be calculated and disclosed using the mid-point of the offering range rather than being bulleted. Would such a requirement be appropriate ?

2 years' financial statement history

13. We are proposing to harmonize the requirements between the short form and long form prospectus systems for reporting issuers and therefore, propose that reporting issuers using the long form prospectus system be required to include only two years' financial statement history in the prospectus as opposed to three years' history on the basis that prior years' history is readily available on SEDAR. Do you agree that reporting issuers using the long form system should only have to provide the same number of years financial history they would normally provide under the short form system?

Please provide your comments by **March 31, 2007** by addressing your submission to the securities regulatory authorities listed below:

British Columbia Securities Commission
 Alberta Securities Commission
 Saskatchewan Financial Services Commission
 Manitoba Securities Commission
 Ontario Securities Commission
 Autorité des marchés financiers
 Nova Scotia Securities Commission
 New Brunswick Securities Commission

Deliver your comments **only** to the three addresses that follow. Your comments will be forwarded to the remaining CSA member jurisdictions.

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If you are not sending your comments by e-mail, please send a diskette containing your comments (in Microsoft Word format).

We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

Questions – Corporate Finance

Please refer your questions to any of:

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APPENDIX A
Summary of Significant Provisions in the Proposed Rule

Provision	Summary and Purpose
	Proposed NI 41-101
Part 2 <i>[Requirements for All Prospectus Distributions]</i>	<p>Proposed NI 41-101 generally applies to all types of prospectuses, other than a prospectus filed under NI 81-101. This includes prospectuses filed under the short form regime, though certain requirements in Proposed NI 41-101 do not apply to these prospectuses. Prospectuses filed under the short form regime are also subject to the requirements in NI 44-101. Generally, an issuer filing a prospectus under the short form regime must refer to both Proposed NI 41-101 and NI 44-101. An issuer filing a prospectus under the shelf or PREP regimes must also refer to any applicable requirements in NI 44-102 and NI 44-103.</p> <p>Proposed Form 1 does not apply to short form prospectus distributions as the disclosure requirements for short form prospectuses will remain in Form 44-101F1.</p> <p>The Proposed Rule also contains provisions specific to investment funds, including a separate form: Proposed Form 2.</p>
Part 4 <i>[Financial Statements and Related Documents in a Long Form Prospectus]</i>	<p>This Part requires issuers to include in a long form prospectus the financial statements and related documents prescribed by Proposed Form 1 and Proposed Form 2. The financial statement and management’s discussion and analysis requirements for short form prospectuses remain in the incorporation by reference requirements of Form 44-101F1 . This Part also prescribes the audit, review and approval requirements for financial statements included in a long form prospectus. These requirements have been harmonized with NI 51-102, NI 81-106 and NI 44-101.</p>
Part 5 <i>[Certificates]</i>	<p>Existing requirements to include certificates in a prospectus are set out in applicable securities legislation. The certificate requirements in this Part harmonize Proposed NI 41-101 with the Act Amendments. The significant differences between the certificate requirements in this Part and the requirements under applicable securities legislation are as follows:</p> <ol style="list-style-type: none"> 1. Sections 5.5, 5.6, 5.7, and except in Ontario section 5.4, clarify who is required to sign a certificate on behalf of an entity. We have added this clarification because of the increasing number of issuers that are not organized in corporate form. 2. Except in Ontario, section 5.8 includes a requirement that the prospectus of an issuer involved in a probable reverse takeover must contain a certificate signed by each individual who is a director, chief executive officer or chief financial officer of the reverse takeover acquirer. Unlike the issuer certificate which may be signed by certain directors on behalf of the issuer’s board of directors, each individual who is director, chief executive officer or chief financial officer must sign such a certificate. 3. Except in Ontario, section 5.13 requires a certificate from a substantial beneficiary of the offering. We believe that a person or company that controls an entity has the best information about the entity. Such a person or company who also receives proceeds from the distribution, should be liable for any misrepresentations in the prospectus. 4. Except in Ontario, section 5.14 requires a certificate from a selling security holder. A

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	<p>selling security holder is liable under provincial and territorial securities legislation, regardless of whether the selling security holder provides a certificate. The purpose of this requirement is to make this more transparent.</p> <ol style="list-style-type: none"> 5. Section 5.15 imposes a certificate requirement for entities in which the primary business of the issuer is being conducted and for which the issuer is required to, or has undertaken to, file separate financial statements. We have added this certificate requirement to ensure that the entity which is responsible for the issuer's financial disclosure is also responsible for its prospectus disclosure. 6. Except in Ontario, subsection 5.11(4), subsection 5.13(6) and section 5.14 provides the regulator with the discretion to require a certificate from a control persons of promoters or former promoters, substantial beneficiaries of the offering or selling security holders. We have added these provisions to clarify that prospectus liability may not be avoided through the interposition of a holding entity. 7. Except in Ontario, section 5.16 also includes a requirement that the regulator may require any person or company to provide a signed certificate in the form the regulator considers appropriate. Except in Ontario, this section harmonizes across Canada an existing requirement under Alberta securities legislation.
<p>Part 6 [Amendments]</p>	<p>Existing requirements regulating the filing of an amendment to a prospectus are set out in applicable securities legislation. The amendment requirements in this Part harmonize Proposed NI 41-101 with the Act Amendments. Certain provisions in this Part do not apply in Ontario. In Ontario, issuers must comply with the requirements in subsections 57(1) and (2) of the <i>Securities Act</i> (Ontario).</p>
<p>Part 8 [Best Efforts Distributions]</p>	<p>Subsection 8.1(1) harmonizes across Canada an existing regulation in Saskatchewan. This subsection also codifies an existing policy in Alberta. Subsections 8.1(2) and (3) harmonize across Canada and codify an existing policy in British Columbia.</p>
<p>Part 9 [Requirements for Filing a Prospectus] (documents affecting the rights of security holders)</p>	<p>Subparagraph 9.2(a)(ii) requires issuers to file documents including constating documents, by-laws, and other contracts that can be regarded as materially affecting the rights of security holders with the preliminary prospectus, unless previously filed. It is harmonized with section 12.1 of NI 51-102.</p>
<p>Part 9 [Requirements for Filing a Prospectus] (material contracts)</p>	<p>The filing requirements in subsections 9.1(1) and (2) and subparagraph 9.2(a)(iii) in respect of material contracts are generally harmonized with section 12.2 of NI 51-102.</p> <p>On December 9, 2005, we published for comment proposed amendments to NI 51-102. We specifically asked whether the information in Part 12 of NI 51-102 is useful to investors and whether the benefits to investors outweigh the costs to issuers of complying with that Part. On October 13, 2006 we published a Notice of Amendments to NI 51-102, including a summary of comments with CSA responses, in which we said that we have decided to retain the requirement to file material contracts, other than contracts entered into in the ordinary course of business. We also said that, to address inconsistency in filings and confusion about what is in the ordinary course of business, we will develop further guidance for the companion policy in conjunction</p>

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	<p>with a project to harmonize the long form prospectus requirements.</p> <p>We believe that the existing carve out in subsection 12.2(1) of NI 51-102 for contracts entered into in the ordinary course of business may inappropriately be interpreted as permitting non-filing of certain material contracts. To address this concern, subsection 9.1(1) describes certain contracts that cannot be considered contracts entered into in the ordinary course of business. This subsection requires issuers to file copies of the material contracts listed. We believe that this is consistent with the approach regarding the filing of these types of material contracts under U.S. securities law.</p> <p>We also believe that further guidance regarding self-redaction or omission, as permitted under subsection 12.2(2) of NI 51-102, is necessary. This provision has been misinterpreted to mean that substantially all of a contract may be redacted or omitted so long as the contract includes a boilerplate confidentiality provision. To provide clarification, clause 9.2(a)(iii)(B) states that a provision may not be redacted or omitted if it contains information that would be necessary to understanding the contract. Subsection 9.1(2) lists a number of provisions that are deemed to be “necessary to understanding the contract”. Finally, clause 9.2(a)(iii)(C) includes a requirement that the issuer must describe the provision redacted or omitted in the copy of the material contract that is filed.</p> <p>We are proposing consequential amendments to NI 51-102 that mirror these provisions.</p> <p>We also note that a requirement to file material contracts with the regulator means the document will be available to the public via SEDAR. Accordingly, we have not included a requirement that material contracts be made available for inspection.</p>
<p>Part 9 <i>[Requirements for Filing a Prospectus]</i> (personal information form)</p>	<p>Subparagraph 9.2(b)(ii) requires issuers to deliver a copy of a completed Personal Information Form, which includes an authorization to the indirect collection, use and disclosure of personal information. It harmonizes across Canada existing requirements under British Columbia and Québec securities legislation.</p> <p>An issuer will be required to deliver a completed personal information form and authorization for <u>every</u> individual described in this subparagraph with the first preliminary prospectus filed by the issuer after the Proposed Rule becomes effective (except in Ontario for certain individuals). For a subsequent prospectus, the issuer must only deliver a completed personal information form and authorization if it has not previously delivered an authorization and personal information form for that individual within three years before the date of the preliminary prospectus.</p> <p>An issuer may deliver a Personal Information Form in the form set out in Appendix A of Proposed NI 41-101 or in the form of a personal information form delivered to the Toronto Stock Exchange or the TSX Venture Exchange, if it was delivered to the applicable exchange and the information has not changed. If an Exchange Form is provided, the individual must still prepare and sign the statutory declaration. We believe that the form in Schedule 1 of Appendix A is substantially similar to an Exchange Form.</p>
<p>Part 9 <i>[Requirements for Filing a Prospectus]</i> (undertaking in respect of credit supporter)</p>	<p>Subparagraph 9.3(a)(x) requires the issuer to file an undertaking to file the periodic and timely disclosure of a credit supporter. Unlike the similar requirement in subparagraph 4.2(b)(ii) of NI 44-101, the undertaking is not limited to credit supporters for which disclosure is required to be included in the prospectus. We intend this difference to clarify that an undertaking is required even if the credit supporter is exempt from the requirement to include credit supporter disclosure under an exemption in item 34.3 or 34.4 of Form 41-101F1. We are proposing further guidance</p>

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disclosure)	in section 3.8 of the Proposed CP. We are proposing consequential amendments to NI 44-101.
Part 9 <i>[Requirements for Filing a Prospectus]</i> (undertaking in respect of continuous disclosure)	Subparagraph 9.3(a)(xi) requires issuers to file an undertaking, in a form acceptable to the regulator, to provide to its security holders separate financial statements for an operating entity that investors need to make an informed decision about investing in the issuer’s securities, subject to certain conditions. It codifies the guidance set out in section 3.1 of National Policy 41-201 <i>Income Trusts and Other Indirect Offerings</i> .
Part 9 <i>[Requirements for Filing a Prospectus]</i> (undertaking to file documents and material contracts)	Subparagraph 9.3(a)(xii) requires issuers to file an undertaking to file promptly, and in any event within 7 days after the completion of the distribution, any document affecting the rights of security holders and any material contract required to be filed under subparagraph 9.3(a)(ii) or (iii) that has not been executed or become effective before filing a final long form prospectus. This subparagraph codifies existing practice.
Part 9 <i>[Requirements for Filing a Prospectus]</i> (undertaking in respect of restricted securities)	Subparagraph 9.3(a)(xiii) requires issuers to file an undertaking to give notice to holders of non-voting securities of a meeting of security holders if a notice of such meeting is given to its registered holders of voting securities. It harmonizes across Canada an existing requirement under Québec securities legislation.
Part 11 <i>[Over-allocation and Underwriters]</i> (over-allocation)	<p>Subsection 11.2 requires that any securities that form part of the underwriters over-allocation position must be distributed under the prospectus. The intent of this provision is to clarify that all purchasers in the distribution receive the benefit of prospectus rights, regardless of whether the underwriters over-sell the offering to facilitate market stabilization following closing.</p> <p>The underwriters may be granted an over-allotment option for the purpose of covering the over-allocation position. An over-allotment option must be exercisable for the lesser of the over-allocation position determined as at the closing of the distribution and 15% of the base offering. The option must also expire within 60 days of closing. This section substantially codifies and harmonizes across Canada the existing guidance in paragraph 10 of Ontario Securities Commission Policy 5.1 <i>Prospectuses – General Guidelines</i>; however, the time for the determination of the over-allocation position has been moved to the closing of the offering from the close of trading on the second trading day next following the closing of the offering.</p>
Part 11 <i>[Over-allocation and Underwriters]</i> (underwriters)	<p>Section 11.3 prohibits the distribution of securities under a prospectus to a person acting as an underwriter for a distribution of securities under the prospectus, other than: (i) over-allotment options, or the securities issuable or transferable on the exercise of over-allotment options; and (ii) certain compensation securities.</p> <p>The purpose of this section is to protect against the practice of so-called ‘back-door</p>

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	<p>underwriting’, which refers to a circumstance where a person or company purchases securities under a prospectus, with a view to reselling the securities in the course of or incidental to the prospectus distribution, and improperly fails to furnish the subsequent purchaser in their resale with a copy of the prospectus in accordance with the prospectus requirement (and, in some cases, may also not comply with the underwriter registration requirement).</p> <p>With respect to over-allotment options and the securities issuable or transferable on the exercise of such an option, we are not concerned about a potential for back-door underwriting because the aggregate number of securities that are the subject of the over-allotment options must be less than the underwriters’ over-allocation position and the purchasers of the securities that result in the underwriters having an over-allocation position are required to receive a prospectus under section 11.2 of the Instrument.</p> <p>With respect to certain compensation securities, we understand that there is an existing market practice for dealers to be compensated, for acting as an underwriter in respect of a prospectus distribution, in part, through the issue or transfer of securities, including options. Where the amount of compensation securities satisfies the 5% limitations set out in paragraph 11.3(b), we believe that any risk that such securities are being acquired by the dealer with a view to resale in the course of or incidental to the prospectus distribution is reduced.</p>
<p>Part 12 [<i>Restricted Securities</i>]</p>	<p>This Part harmonizes across Canada Ontario Securities Commission Rule 56-501 <i>Restricted Shares</i> and Regulation Q-17 <i>Restricted Shares</i> in Québec (collectively, Restricted Share Rules)</p>
<p>Part 13 [<i>Advertising and Marketing in Connection with Prospectus Offerings</i>]</p>	<p>The legend requirements in sections 13.1 and 13.2 harmonize across Canada existing requirements in Saskatchewan and Québec. The requirements in these sections are also consistent with existing policies and administrative practices in a number of other jurisdictions.</p> <p>With respect to section 13.3, the current policies are tailored to corporate issuers and we have received a number of complaints regarding advertising during the waiting period because the policies are not clear for investment funds. Therefore to clarify the rules, we included this provision.</p>
<p>Part 14 [<i>Custodianship of Portfolio Assets of an Investment Fund</i>]</p>	<p>With respect to the custodian requirement, we included the provisions of National Instrument 81-102 <i>Mutual Funds</i> in Proposed NI 41-101 This requirement will put all investment funds on the same footing.</p>
<p>Part 15 [<i>Documents Incorporated by Reference by Investment Funds</i>]</p>	<p>With respect to the incorporation by reference of financial statements in the prospectus for investment funds in continuous distribution, we copied the requirements from NI 81-101 in NI 41-101. This would apply to labour sponsored investment funds, commodity pools and certain exchange-traded funds. The reasoning behind this is that these funds are technically mutual funds, however, NI 81-101 excludes them from using the simplified prospectus. Therefore, to level the playing field, we added this provision.</p>
<p>Part 16 [<i>Distribution of Preliminary Prospectus and</i></p>	<p>Existing requirements regarding the distribution of preliminary prospectuses and maintenance of distribution lists are set out in applicable securities legislation. The requirements in this Part harmonize Proposed NI 41-101 with the Act Amendments. No change from the existing requirements is intended. This Part does not apply in Ontario. In Ontario, issuers must comply</p>

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<i>Distribution List</i>	with the requirements in sections 66 and 67 of the <i>Securities Act</i> (Ontario).
Part 17 [<i>Lapse Date</i>]	Existing requirements regulating the refiling of prospectuses are set out in applicable securities legislation. The requirements in this Part harmonize Proposed NI 41-101 with the Act Amendments. No change from the existing requirements is intended. Certain provisions in this Part do not apply in Ontario. In Ontario, issuers must comply with the requirements in section 62 of the <i>Securities Act</i> (Ontario).
Notable exclusions	<p>Proposed NI 41-101 does not include the following requirements:</p> <ol style="list-style-type: none"> 1. Significant dispositions: We do not propose to include requirements in respect of significant dispositions because we believe there are sufficient disclosure requirements stipulated by GAAP relating to dispositions. 2. GAAP, GAAS, Auditor’s Reports and Other Financial Statement Matters: We do not propose including requirements regarding GAAP, GAAS and other financial statement matters because these requirements are now in NI 52-107. 3. Audit Committee Review of Financial Statements Included in Prospectus: We do not propose including an audit committee review requirement because a similar requirement exists under MI 52-110. 4. Multiple Individually Insignificant and Unrelated Acquisitions: We do not propose including requirements regarding multiple individually insignificant and unrelated acquisitions (that are not predecessor entities) because there are no comparable requirements in NI 51-102. 5. Auditor Comfort Letters: We do not propose including a requirement to file an auditor's comfort letter regarding unaudited financial statements with a final long form prospectus. CICA Handbook Section 7110 - <i>Auditor Involvement with Offering Documents of Public and Private Entities</i> sets out the auditor's professional responsibilities when the auditor is involved with a prospectus or other securities offering document and requires that the auditor perform various procedures prior to consenting to the use of its report or opinion, including reviewing unaudited financial statements included in the document. 6. Definitions of Convertible and Non-convertible: We do not propose defining “convertible” and “non-convertible” in Proposed NI 41-101, and those terms will have their plain meaning. We note that these terms are defined in NI 44-101. We do not believe that those definitions are appropriate because the conversion right is tied solely to equity securities of an issuer. We do not believe that a security that is convertible into a non-equity security of the issuer should be a non-convertible security for the purposes of either the Proposed Rule or NI 44-101. Our proposed consequential amendments to NI 44-101 will delete those definitions.

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	Proposed Form 1
General	We have made extensive use of cross-referencing to comparable disclosure requirements in NI 51-102. This will help ensure the general prospectus and continuous disclosure requirements continue to be harmonized. We have also identified a number of necessary changes to the continuous disclosure requirements to ensure harmonization. We are proposing to make these changes as consequential amendments as discussed in this Notice.
Item 1 [Cover Page Disclosure] (non-fixed price distributions)	Paragraph 1.6(h) requires disclosure of a <i>bona fide</i> estimate of the range in which the offering price or the number of securities being distributed is expected to be set. We believe investors value this information. We understand that information regarding the pricing range is generally disclosed in green sheets and is required to be disclosed under U.S. securities law. As discussed in section 4.3 of the Proposed CP, we believe that a difference between this <i>bona fide</i> estimate and the actual offering price or number of securities being distributed is not generally a material adverse change for which an amended preliminary long form prospectus must be filed.
Item 1 [Cover Page Disclosure] and Item 20 [Plan of Distribution] (IPO venture issuer)	If an issuer has complied with the requirements of the Proposed Rule as an IPO venture issuer, subsection 1.9(4) and item 20.11 generally requires prospectus disclosure that the issuer is not and does not intend to be a non-venture issuer.
Item 1 [Cover Page Disclosure], Item 3 [Summary of Prospectus], and Item 10 [Description of the Securities Distributed] (restricted securities)	Subsections 1.13(1) and 10.6(1), and paragraph 3.1(1)(f) require disclosure regarding any restricted securities being distributed. These subsections and this paragraph codifies and harmonizes across Canada the prospectus disclosure requirements in the Restricted Share Rules. We are proposing consequential amendments to add these disclosure requirements to Form 44-101F1.
Item 3 [Summary of Prospectus] (financial information)	Subsection 3.1(2) requires disclosure of the source of any financial information included in the summary section of a prospectus under Proposed Form 1, and whether such information has been audited. This subsection codifies existing practice.
Item 5 [Describe the Business]	Items 5.4 and 5.5 are harmonized with the disclosure requirements in items 5.4 and 5.5 of Form 51-102F2 <i>Annual Information Form</i> (Form 51-102F2).
Item 6 [Use of Proceeds]	Item 6.6 requires disclosure of any insider, associate or affiliate of the issuer who will receive more than 10% of the net proceeds of the distribution. This information will help investors identify whether an insider, associate or affiliate will benefit from the distribution. Disclosure

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	of the fact that a person or company with information about the issuer stands to benefit from the distribution, will help investors make informed investment decisions. This item is related to our proposal to require certificates from substantial beneficiaries of the offering.
Item 8 [<i>Management's Discussion and Analysis</i>]	This item sets out the management's discussion and analysis disclosure required to be included in a long form prospectus. The supplemental disclosure required is based on section 5.3 of NI 51-102. Item 8.7 requires additional disclosure for certain issuer's with negative operating cash flow. We have also added additional disclosure requirements regarding outstanding share data in item 8.4. We are proposing these new requirements to address disclosure deficiencies frequently noted in our reviews of long form prospectuses.
Item 9 [<i>Earnings Coverage Ratios</i>]	This item is harmonized with the disclosure requirements in item 6.1 of Form 44-101F1.
Item 10 [<i>Description of the Securities Distributed</i>]	Other than the requirements regarding restricted securities described above, this item is harmonized with the disclosure requirements in item 7 of Form 44-101F1.
Item 14 [<i>Escrowed Securities and Securities Subject to Contractual Restriction on Transfer</i>]	This item includes language to clarify that, in addition to disclosure regarding securities subject to regulatory escrow requirements, disclosure regarding securities subject to contract restriction on transfer is required. We are proposing a consequential amendment to add this requirement to Form 51-102F2.
Item 16 [<i>Directors and Executive Officers</i>]	Other than the requirements regarding junior issuers, this item is harmonized with disclosure requirements in item 10 of Form 51-102F2.
Item 17 [<i>Executive Compensation</i>]	This item is harmonized with the disclosure requirements in Form 51-102F6 <i>Statement of Executive Compensation</i> .
Item 18 [<i>Indebtedness of Directors and Executive Officers</i>]	This item is harmonized with the disclosure requirements in item 10 of Form 51-102F5 <i>Information Circular</i> .
Item 19 [<i>Audit Committees and Corporate Governance</i>]	Item 19.1 is harmonized with the disclosure requirements in Form 52-110F1 <i>Audit Committee Information Required in an AIF</i> and Form 52-110F2 <i>Disclosure by Venture Issuers</i> , except that subsection 19.1(3) sets out specific requirements for certain British Columbia issuers. Item 19.2 is harmonized with the disclosure requirements in Form 58-101F1 <i>Corporate Governance Disclosure</i> and 58-101F2 <i>Corporate Governance Disclosure (Venture Issuers)</i> . Sections 4.9 and 4.10 of the Proposed CP provide further guidance with respect to compliance with the requirements in these sections.
Item 20 [<i>Plan of Distribution</i>]	Item 20.4 conforms to the substantive requirements in Part 8 of Proposed NI 41-101 regulating best efforts distributions. As discussed above, those substantive requirements harmonize

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	across Canada and codify existing policies regarding best efforts distributions.
Item 21 [<i>Risk Factors</i>]	Other than the instruction, this item is harmonized with the disclosure requirements in item 5.2 of Form 51-102F2 and item 17.1 of Form 44-101F1. The instruction clarifies that issuers are required to disclose risks in the order of seriousness from most serious to the least serious.
Item 22 [<i>Promoters and Substantial Beneficiaries of the Offering</i>]	A person or company that controls an entity has the best information about the entity. If such a person also receives proceeds from the distribution, we believe a prospectus should include disclosure about that person or company comparable to the disclosure that would be required in respect of a promoter.
Item 24 [<i>Interests of Management and Others in Material Transactions</i>]	Item 24.1 is harmonized with the disclosure requirements in item 13.1 of Form 51-102F2.
Item 31 [<i>List of Exemptions from the Instrument</i>]	This item is harmonized with the disclosure requirement in item 19 of Form 44-101F1.
Item 32 [<i>Financial Statement Disclosure for Issuers</i>]	<p>The financial statement requirements have been changed or modified based on three principles:</p> <ol style="list-style-type: none"> 1. Existing reporting issuers should not be subject to a higher level of financial disclosure in a prospectus than they are subject to under NI 51-102. Therefore, we only require the financial statements that are otherwise required to be filed under NI 51-102 to be included in the prospectus. 2. Existing reporting issuers should not be subject to different disclosure requirements between a long form prospectus and a short form prospectus. As a result, reporting issuers are only required to include 2 years of financial statements in a long-form prospectus, the same as a short-form prospectus. 3. Issuers that are not reporting issuers immediately before filing a prospectus should generally not be required to provide financial disclosure in a prospectus that would not be required under the CD Rules. To establish a reporting history, however, certain historical financial statements that would not otherwise be required under the CD Rules are required. As such, non-reporting issuers will continue to be required to include 3 years of financial statements in a prospectus. To ensure this history is the most current as at the date of the prospectus, non-reporting issuers, including IPO venture issuers will be required to include annual financial statements for years ended more than 90 days before the date of the prospectus. The time period for inclusion of interim financial statements has been shortened from an interim period ended more than 60 days before the date of the prospectus to 45 days. In addition, in order to establish this history, we will require all issuers to include up to 3 years of financial statements of any acquisitions within 3 years of the date of the prospectus that are significant to the issuer at over 100% level under any of the significance tests.
Item 34	This Item is generally harmonized with the exemptions in Item 13 of Form 44-101F1, except

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<p>[<i>Exemptions for Certain Issues of Guaranteed Securities</i>]</p>	<p>for the following differences. We are proposing consequential amendments to harmonize Item 13 of Form 44-101F1 with this Item. We are also proposing consequential amendments to harmonize section 13.4 of NI 51-102 with this Item.</p> <ol style="list-style-type: none"> 1. Consolidating summary financial information: Paragraph 34.3(1)(f) requires the inclusion of consolidating summary financial information in contrast with paragraph 13.2(f) of Form 44-101F1, which permits a statement that the financial results of the issuer and all subsidiary credit supporters are included in the consolidated financial results of the parent credit supporter in lieu. We believe that consolidating summary financial information disclosure in respect of any subsidiary credit supporters required under column (C) is necessary for investors to distinguish those assets on which they have a direct claim and those assets through which they will only have a claim through a guarantee. The issuer may combine the disclosure in columns (B) or (D), as applicable, with another column as permitted under subsection 34.3(2). Please also refer to paragraph 13.3(g) of the proposed consequential amendments to Form 44-101F1. 2. Control of subsidiary credit supporters and credit supporters: Paragraph 34.3(1)(e) requires that the parent credit supporter controls each subsidiary credit supporter in contrast with the condition in 13.2(e) of Form 44-101F1, which requires each subsidiary credit supporter to be a direct or indirect wholly owned subsidiary of the parent credit supporter. Paragraph 34.4(d) requires the issuer to control each credit supporter in contrast with the condition in 13.3(d) of Form 44-101F1, which requires each credit supporter be a direct or indirect wholly owned subsidiary of the issuer. These conditions codify exemptive relief that has been granted on a case-by-case basis. Please also refer to paragraphs 13.3(f) and 13.4(d) of the proposed consequential amendments to Form 44-101F1. 3. Short form qualification: The exemptions in sections 34.2 and 34.3 do not include the condition that the credit supporter satisfy the qualification criteria in section 2.4 of NI 44-101 in contrast with the conditions in paragraphs 13.1(b) and 13.2(b) of Form 44-101F1. These conditions ensure that the disclosure in a short form prospectus reflect the disclosure of either an issuer or a credit supporter that is qualified to file a short form prospectus. 4. Wholly-owned subsidiaries: Paragraphs 34.2(c) and 34.3(1)(d) require that the parent credit supporter be the beneficial owner of all the issued and outstanding voting securities of the issuer in contrast with the conditions in 13.1(d) and 13.2(e) of Form 44-101F1, which require the issuer be a direct or indirect wholly owned subsidiary of the parent credit supporter. The language in the conditions in paragraphs 34.2(c) and 34.3(1)(d) are harmonized with the continuous disclosure exemption in section 13.4 of NI 51-102. Please also refer to paragraphs 13.2(d) and 13.3(e) of the proposed consequential amendments to Form 44-101F1. 5. Convertible debt securities or convertible preferred shares: Paragraphs 34.2(b) permit the securities being distributed to be convertible into non-convertible securities of the parent credit supporter. Similarly, paragraph 34.4(c) permits the securities being distributed to be convertible into non-convertible securities of the issuer. We believe that the exemptions in Item 34 should still apply in these cases because full, true and plain disclosure in the prospectus regarding the parent entity should be sufficient to support an informed investment decision regarding the underlying securities. Please

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	<p>also refer to paragraphs 13.2(c), 13.3d), and 13.4(c) of the proposed consequential amendments to Form 44-101F1.</p> <p>6. Drafting changes: We are also proposing a number of drafting changes from the exemptions in Item 13 of Form 44-101F1. No substantive change is intended.</p>
<p>Item 35 [<i>Significant Acquisitions</i>]</p>	<p>As a result of harmonizing with the requirements under NI 51-102, we have made some changes to the significant acquisition requirements in Item 35. We have simplified the significance tests by adopting the tests from NI 51-102. As a result, there will only be one set of significance tests. Consistent with NI 51-102, venture issuers, including IPO issuers that intend to be venture issuers post-IPO, will have a higher significance threshold for disclosure than non-venture issuers. The disclosure requirements have also been modified to harmonize with those from NI 51-102. Instead of a requirement that results in the variation of the number of years of financial statements disclosure based on the level of significance, a standard 2 years of financial statements is required for any acquisitions considered to be significant. Lastly, instead of requiring all historical financial statements of a significant acquisition included in a prospectus to be audited, we will only require the most recent year financial statements to be audited, consistent with the business acquisition report requirements in NI 51-102. The prior year, as well as the most recent interim period will only require review level of assurance.</p> <p>The significant acquisition disclosure requirements in this Item are based on the following principles:</p> <ol style="list-style-type: none"> 1. Issuers that filed a business acquisition report (BAR) under NI 51-102 should not be required to include in a prospectus more disclosure in respect of a significant acquisition than was included in the BAR. 2. Issuers that did not file a BAR in respect of a significant acquisition because they were not a reporting issuer on the date of the acquisition should be required to include in a prospectus the disclosure that would have been required to be included in a BAR as if they were required to file a BAR. 3. For recently completed acquisitions or probable acquisitions, issuers should be required to include in a prospectus the disclosure that would be required to be included in a BAR if one were required to be filed on the date of the prospectus.

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	Proposed Form 2
General Instructions	Instruction (11) provides that the items must be presented in the order specified in the form. While this is a new requirement, it is consistent with Form 81-101F1 <i>Contents of Simplified Prospectus</i> used for mutual funds and it makes it easier for advisers, investors, issuers and regulators to compare investment funds.
Item 1 [<i>Cover Page Disclosure</i>]	Part of item 1.3 is new and provides that the type of fund must be stated on the cover page, i.e. labour sponsored investment fund, commodity pool, non-redeemable investment fund, etc. This helps advisors and investors identify the type of fund immediately.
Item 4 [<i>Overview of the Investment</i>]	Item 4.1 is new and requires the investment fund to state whether it would be considered a mutual fund for securities legislation purposes. This helps advisers, investors and regulators to readily determine whether the investment fund would be subject to certain restrictions under securities legislation as a result of being a mutual fund.
Item 16 [<i>Independent Review Committee</i>]	This is new and requires disclosure of a description of the independent review committee of the investment fund required under National Instrument 81-107 <i>Independent Review Committee for Investment Funds</i> .
Item 39 [<i>Exemptions and Approvals</i>]	This is new and requires disclosure of all exemptions from or approvals under securities legislation obtained by the investment fund or the manager of the investment fund. This is helpful to advisers, investors and regulators to readily determine what provisions of securities legislation the investment fund may be exempted from.
Item 40 [<i>Documents Incorporated by Reference</i>]	This is new and provides that investment funds in continuous distribution may incorporate certain types of documents by reference into the prospectus. This puts all mutual funds on the same footing and emulates the provisions in NI 81-101.

Provision	Summary and Purpose
	Proposed CP
General	<p>The Proposed CP primarily provides information relating to the interpretation of Proposed NI 41-101, Proposed Form 1, and Proposed Form 2 by securities regulatory authorities, and their application. It is based on existing guidance in the companion policy to Rule 41-501, the companion policy to NI 44-101, and the companion policy to NI 51-102, and reflects the significant provisions of the Proposed Rule as described in this Appendix.</p> <p>The Proposed CP also consolidates guidance that currently exists in other national and local policies and notices.</p>

Provision	Summary and Purpose
	Proposed Consequential Amendments to NI 44-101
Part 1 [<i>Definitions and Interpretations</i>]	Many of the definitions in NI 44-101 are defined in proposed NI 41-101. Definitions used in proposed NI 41-101 will apply to the same terms used in NI 44 -101.
Part 4 [<i>Filing Requirements for a Short Form Prospectus</i>]	<p>Filing requirements for a short form prospectus now mirror the filing requirements in Part 9 of NI 41-101. In particular the following requirements have been added or amended:</p> <ul style="list-style-type: none"> • requirements for filing documents affecting the rights of security holders, material contracts and undertakings to file this material, • undertakings for credit supporter disclosure • undertakings to provide notice to non-voting security holders of a meeting of security holders, • requirements to deliver personal information forms and an authorization to collect, use and disclose personal information • requirement to deliver a copy of a communication in writing from the exchange stating that an application for listing has been made and accepted if the issuer has made an application to list the securities being distributed on the exchange, <p>The requirements for consents are governed by Part 10 proposed NI 41-101.</p>
Part 5 [<i>Amendments to a Short Form Prospectus</i>]	This Part is repealed. The requirements for amendments to short form prospectuses are governed by Part 6 of proposed NI 41- 101.
Part 6 [<i>Non-fixed Price Offerings and Reduction of Offering Price under Short Form Prospectus</i>]	This Part is repealed. The requirements for non-fixed price offerings are governed by Part 7 of proposed NI 41-101.
Part 7 [<i>Solicitations of Expressions of Interest</i>]	A new section 7.2 has been added for over-allotments options to clarify that the prospectus requirement does not apply to solicitations of expressions of interest before the filing of a preliminary short form prospectus for securities to be issued pursuant to an over-allotment option that are qualified for distribution under a short form prospectus.
Appendices B [<i>Authorization of Indirect Collection, Use and Disclosure of Personal Information</i>], C [<i>Issuer Form of</i>]	These appendices are now in proposed NI 41-101.

Provision	Summary and Purpose
<i>Submission to Jurisdiction and Appointment of Agent for Service of Process], and D [Non-Issuer Form of Submission to Jurisdiction and Appointment of Agent for Service of Process]</i>	

Provision	Summary and Purpose
	Proposed Consequential Amendments to Form 44-101F1
General	All the provisions in Form 44-101F1 apply only to short form prospectuses. None of the provisions in Proposed Form 1 apply to short form prospectuses.
Item 1 [<i>Cover Page Disclosure</i>]	<p>Item 1.7.1 is added to require disclosure of a <i>bona fide</i> estimate of the range in which the offering price or the number of securities being distributed is expected to be set if the offer price has not been set as of the date of the preliminary prospectus. This conforms to a new requirement set in Proposed Form 1.</p> <p>Item 1.12 requires disclosure about any restricted securities being distributed. This conforms to the disclosure requirement in Proposed Form 1.</p>
Item 7A [<i>Prior Sales</i>]	Item 7A.1 is added to ensure that the issuer discloses prior sales of its securities within the past 12 months. Item 7A.2 was added to ensure the prospectus contains trading price and volume information up to the date of the prospectus. These changes were made to conform to Proposed Form 1. The AIF only discloses prior sales for unlisted securities whereas the prior sales disclosure in the prospectus needs to be offering specific. Trading price and volume information in the AIF is only current to the issuer's most recently completed year-end. The prospectus disclosures will update the information to the date of the prospectus.
Item 10 [<i>Significant Acquisitions</i>]	10.1 and 10.2 - moves the reverse takeover disclosure requirements to a new section and conforms the disclosure to the Proposed Form 1 approach. See also the changes set out in 10A.
Item 10A [<i>Reverse Takeover and Probable Reverse Takeover</i>]	The reverse takeover disclosure conforms to the provisions in Proposed Form 1. Proposed Form 1 clarifies our position that the reverse takeover acquirer is considered to be the issuer for accounting purposes, and specifies the required disclosure in the form for completed or probable reverse takeover transactions. Under Rule 41-501, a general statement of principles was set out in the Rule for the treatment of reverse takeover transactions but the Form did not contain any detailed disclosure requirements.
Item 11 [<i>Documents Incorporated by Reference</i>]	Documents that are required to be incorporated by reference now includes the disclosure required under the Forms to NI 51-101 filed by an SEC issuer unless the issuer is exempted from that rule or its AIF is in the form of Form 51-102F2.
Item 13 [<i>Exemptions for Certain Issues of Guaranteed Securities</i>]	The exemptions for certain issues of guaranteed securities have been amended to harmonize with the exemptions in NI 41-101 and NI 51-102.
Item 16 [<i>Promoters</i>]	Current disclosure required about promoters of an issuer is extended to substantial beneficiaries of the offering.
Item 21	Certificate provisions will be governed by Proposed NI 41-101. The prescribed wording for issuer certificates and underwriter certificates for a prospectus filed under NI 44-101 has been

Provision	Summary and Purpose
[Certificates]	retained.

Provision	Summary and Purpose
	Proposed Consequential Amendments to NI 44-102
<p>Part 1 [<i>Definitions and Interpretation</i>] (definition of “novel”)</p>	<p>The CSA has noticed an increase in the use of the shelf prospectus system for the distribution of specified derivatives. In particular, an increase in the issuance of financial products where the payout is linked to an underlying interest that is not related to the operations or securities of the issuer. This includes notes linked to indices or notional reference portfolios.</p> <p>Although many of these products are similar to investment funds, they are not specifically subject to the investment funds regulatory regime. In addition, under the shelf prospectus system, the substantive details of such offerings are not typically available in the base shelf prospectus which is subject to regulatory review in advance of distribution. This results in the substantive details set out in a shelf prospectus supplement which, unless viewed by the issuer as a “novel” derivative, is generally filed after the distribution has taken place and can therefore only be reviewed on a post-filing basis. Since these linked note products are targeted at the retail market, this raises possible investor protection concerns that the CSA is proposing to address by broadening the pre-clearance requirement for issuers and selling securities holders that is set out in NI 44-102.</p> <p>One of the CSA’s goals is to ensure adequate prospectus disclosure (either in the base shelf prospectus or the shelf prospectus supplement) of the material attributes of, and the risks associated with, linked note products. Because of the similarities between linked notes and investment fund products, the CSA is also interested in having an opportunity, prior to distribution, to determine whether certain elements of the investment funds regulatory regime should apply to such offerings.</p> <p>The proposed amendments broaden the scope of specified derivatives which issuers and selling security holders are required to pre-clear. This has been done by amending the definition of the term “novel” to capture each type of an issuer’s linked note products. We consider the current definition of the term, as it pertains to specified derivatives, as too narrow since it only captures derivatives having characteristics not previously described in a prospectus in Canada.</p> <p>The proposed change to the definition of the term “novel” will capture specified derivatives of an issuer for which the underlying interests are not a security of that issuer. The fact that another issuer may have distributed a similar product will no longer preclude the issuer or selling security holder from having to pre-clear the shelf prospectus supplement. Additional linked note products that are not materially different from those that have already been pre-cleared by the issuer will not be caught. In addition, “plain vanilla” warrants will not be caught since the amended definition of novel carves out specified derivatives where the underlying interest consists of the issuer’s own securities.</p>
<p>Part 4 [<i>Distributions of Novel Derivatives or Asset-backed Securities Under Shelf</i>]</p>	<p>To address market concerns regarding the ability of issuers to take advantage of perceived market opportunities, the CSA is also proposing to significantly reduce the time period that regulators have to provide comments from 21 days to 10 working days. This shorter timeframe is consistent with the review period outlined in subsection 5.3(2) of NP 43-201 in respect of complex offerings distributed under the short-form prospectus.</p>
<p>Appendices A [<i>Method 1 for Shelf</i>]</p>	<p>Certificate provisions will be governed by Proposed NI 41-101. The prescribed wording for issuer certificates and underwriter certificates for a prospectus filed under NI 44-102 has been</p>

Provision	Summary and Purpose
<i>Prospectus Certificates</i>] and B [Method 2 for Shelf <i>Prospectus Certificates</i>]	retained.

Provision	Summary and Purpose
	Proposed Consequential Amendments to NI 44-103
Parts 3 [<i>Base PREP Prospectuses</i>] and 4 [<i>Supplemented PREP Prospectuses</i>]	Certificate provisions will be governed by Proposed NI 44-101. The prescribed wording for issuer certificates and underwriter certificates for a prospectus filed under NI 44-103 has been retained.

Provision	Summary and Purpose
	Proposed Consequential Amendments to NI 51-102
Part 12 [<i>Filing of Certain Documents</i>]	We are proposing consequential amendments to the requirements in this Part to harmonize with certain requirements in Part 9 of Proposed NI 41-101.
Part 13 [<i>Exemptions</i>]	We are proposing consequential amendments to the requirements in this Part to harmonize with certain requirements in Item 34 of Proposed Form 1.

Provision	Summary and Purpose
	Proposed Consequential Amendments to NI 81-101
Subsections 2.2(4) [Amendment to a preliminary simplified prospectus] and 2.2(5) [Amendment to a simplified prospectus]	Existing requirements regulating the filing of an amendment to a prospectus are set out in applicable securities legislation. The amendment requirements in this Part have been included in the proposed consequential amendments to harmonize with the Act Amendments.
Section 2.5 [Lapse Date]	Existing requirements regulating the refiling of prospectuses are set out in applicable securities legislation. The requirements in this Part have been included in these consequential amendments to harmonize with the Act Amendments. No change from the existing requirements is intended.
Section 2.6 [Audit of financial statements]	All financial statements, except interim financial statements, included in or incorporated by reference into the prospectus must be audited in accordance with Part 2 of National Instrument 81-106 <i>Investment Fund Continuous Disclosure</i> (NI 81-106). This harmonizes the prospectus requirements with the continuous disclosure requirements.
Section 2.7 [Review of unaudited financial statements]	Any unaudited financial statements included in or incorporated by reference into the prospectus must be reviewed in accordance with the relevant standards set out in the Handbook. This harmonizes the prospectus requirements with the continuous disclosure requirements.
Section 2.8 [Approval of financial statements and related documents]	All financial statements, included in or incorporated by reference into the prospectus, must be approved in accordance with Part 2 of NI 81-106. This harmonizes the prospectus requirements with the continuous disclosure requirements.
Section 2.9 [Consents of experts]	Consents of experts must be filed with the prospectus.
Section 6.8 [Certificates of corporate mutual funds]	This designates who should sign a certificate for a corporate mutual fund. This is consistent with existing securities legislation.

Provision	Summary and Purpose
	Proposed Consequential Amendments to Form 81-101F1
Item 6(5) of Part A [<i>Purchases, Switches and Redemptions</i>]	This item is new and requires disclosure of the restrictions that may be imposed by the mutual fund to deter short-term trades, including the circumstances, if any, under which such restrictions may not apply or may otherwise be waived.
Item 8 of Part A [<i>Fees and Expenses</i>]	This item is amended by the addition of a line item in the Fees and Expenses Table that requires disclosure of the amount of any applicable short-term trading fee.

Provision	Summary and Purpose
	Proposed Consequential Amendments to Form 81-101F2
Subsections 12(9) and 12(10) [<i>Fund Governance</i>]	These subsections are new and require a description of a mutual fund's policies and procedures relating to the monitoring, detection and deterrence of short term trades of mutual fund securities by investors. They further require disclosure of any arrangements with any person or company to permit short-term trades in securities of the mutual fund.

APPENDIX B

Schedule 1

NATIONAL INSTRUMENT 41-101 GENERAL PROSPECTUS REQUIREMENTS

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

PART 1: Definitions and Interpretations

Definitions

1.1 In this Instrument

“**acquisition**” has the same meaning as in Part 8 of National Instrument 51-102 *Continuous Disclosure Obligations* [*Business Acquisition Report*];

“**acquisition of related businesses**” has the same meaning as in Part 8 of NI 51-102 [*Business Acquisition Report*];

“**alternative credit support**” has the same meaning as in section 13.4 of NI 51-102 [*Exemption for Certain Credit Support Issuers*];

“**approved rating organization**” has the same meaning as in NI 51-102;

“**asset-backed security**” has the same meaning as in NI 51-102;

“**base offering**” has the meaning given in section 11.1 [*Definitions*];

“**board of directors**” has the same meaning as in NI 51-102;

“**business acquisition report**” has the same meaning as in NI 51-102;

“**business day**” means any day other than a Saturday, a Sunday or a statutory holiday;

“**class**” has the same meaning as in NI 51-102;

“**credit supporter**” has the same meaning as in section 13.4 of NI 51-102 [*Exemption for Certain Credit Support Issuers*];

“**custodian**” means the institution appointed by an investment fund to act as custodian of the portfolio assets of the investment fund;

“**derivative**” means an instrument, agreement or security, the market price, value or payment obligation of which is derived from, referenced to, or based on an underlying interest;

“**designated foreign jurisdiction**” has the same meaning as in National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*;

“**equity security**” means a security of an issuer that carries a residual right to participate in the earnings of the issuer and, on the liquidation or winding up of the issuer, in its assets;

“**executive officer**” means, for an issuer, an individual who is

- (a) a chair, vice-chair or president,
- (b) a vice-president in charge of a principal business unit, division or function including sales, finance or production, or
- (c) performing a policy-making function in respect of the issuer;

“**foreign disclosure requirements**” has the same meaning as in NI 52-107;

“**full and unconditional credit support**” means

- (a) alternative credit support that
 - (i) entitles the holder of the securities to receive payment from the credit supporter, or enables the holder to receive payment from the issuer, within 15 days of any failure by the issuer to make a payment, and
 - (ii) results in the securities receiving the same credit rating as, or a higher credit rating than, the credit rating they would have received if payment had been fully and unconditionally guaranteed by the credit supporter, or would result in the securities receiving such a rating if they were rated, or
- (b) a full and unconditional guarantee of the payments to be made by the issuer of securities, as stipulated in the terms of the securities or in an agreement governing rights of holders of the securities, that results in the holder of such securities being entitled to receive payment from the credit supporter within 15 days of any failure by the issuer to make a payment;

“**income from continuing operations**” has the same meaning as in NI 51-102;

“**independent review committee**” has the same meaning as in National Instrument 81-107 *Independent Review Committee for Investment Funds*;

“**information circular**” has the same meaning as in NI 51-102;

“**interim period**” has the same meaning as in

- (a) NI 51-102 for an issuer other than an investment fund, or
- (b) National Instrument 81-106 *Investment Fund Continuous Disclosure* for an investment fund;

“IPO venture issuer” means an issuer that

- (a) is not a reporting issuer immediately before the date of the final prospectus, and
- (b) at the date of the prospectus, does not have any of its securities listed or quoted, has not applied to list or quote any of its securities, and does not intend to apply to list or quote any of its securities, on
 - (i) the Toronto Stock Exchange,
 - (ii) a U.S. marketplace, or
 - (iii) a marketplace outside of Canada and the United States of America, other than the Alternative Investment Market of the London Stock Exchange or the market known as OFEX;

“junior issuer” means an issuer

- (a) that is not a reporting issuer,
- (b) whose total consolidated assets as at the date of the most recent balance sheet of the issuer included in the preliminary prospectus are less than \$10,000,000,
- (c) whose consolidated revenue as shown in the most recent annual income statement of the issuer included in the preliminary prospectus is less than \$10,000,000, and
- (d) whose shareholders’ equity as at the date of the most recent balance sheet of the issuer included in the preliminary prospectus is less than \$10,000,000,

but in determining whether the issuer complies with paragraphs (b), (c), and (d), the issuer must adjust its assets, revenue, and shareholders’ equity to reflect the effect of each probable acquisition of a business and each acquisition of a business completed

- (e) for paragraphs (b) and (d), before the date of the preliminary prospectus and after the date of the issuer’s most recent balance sheet included in the preliminary prospectus, and
- (f) for paragraph (c), after the last day of the most recent annual income statement of the issuer included in the preliminary prospectus;

“long form prospectus” means a prospectus filed in the form of Form 41-101F1 *Information Required in a Prospectus* or Form 41-101F2 *Information Required in an Investment Fund Prospectus* under this Instrument;

“marketplace” has the same meaning as in NI 51-102;

“**material contract**” means any contract that an issuer or any of its subsidiaries is a party to, that is material to the issuer;

“**mineral project**” has the same meaning as in National Instrument 43-101 *Standards of Disclosure for Mineral Projects*;

“**over-allocation position**” has the meaning given in section 11.1 [*Definitions*];

“**over-allotment option**” has the meaning given in section 11.1 [*Definitions*];

“**principal security holder**” means a person or company who beneficially owns, directly or indirectly, or controls or directs, voting securities carrying 10% or more of the voting rights attached to any class of voting securities of the issuer;

“**probable acquisition of a business**” means a proposed acquisition of a business by an issuer that has progressed to a state where a reasonable person would believe that the likelihood of the issuer completing the acquisition is high;

“**probable reverse takeover**” means a proposed reverse takeover that has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high;

“**related credit supporter**” of an issuer means a credit supporter of the issuer that is an affiliate of the issuer;

“**restructuring transaction**” has the same meaning as in NI 51-102;

“**reverse takeover**” has the same meaning as in NI 51-102;

“**reverse takeover acquirer**” has the same meaning as in NI 51-102;

“**SEC issuer**” has the same meaning as in NI 52-107;

“**short form prospectus**” means a prospectus filed in the form of Form 44-101F1 *Short Form Prospectus* of National Instrument 44-101 *Short Form Prospectus Distributions*;

“**special warrant**” means a security that, by its terms or the terms of an accompanying contractual obligation,

- (a) entitles or requires the holder to acquire another security without payment of material additional consideration and obliges the issuer of either security to undertake efforts to file a prospectus to qualify the distribution of the other security, or
- (b) entitles or requires the holder to acquire another security without payment of material additional consideration and the issuer files a prospectus to qualify the distribution of the other security;

“**substantial beneficiary of the offering**” has the meaning given in section 5.13 [*Certificate of substantial beneficiary of the offering*];

“**transition year**” means the financial year of an issuer or business in which the issuer or business changes its financial year-end;

“**U.S. GAAP**” has the same meaning as in NI 52-107;

“**U.S. GAAS**” has the same meaning as in NI 52-107;

“**U.S. marketplace**” has the same meaning as in NI 51-102;

“**venture issuer**” has the same meaning as in NI 51-102 except the “applicable time” is the date the prospectus is filed;

“**waiting period**” means the period of time between the issuance of a receipt by the regulator for a preliminary prospectus and the issuance of a receipt by the regulator for a final prospectus.

Interpretation of “prospectus”, “preliminary prospectus”, “final prospectus”, “long form prospectus”, and “short form prospectus”

- 1.2(1)** In this Instrument, except in Form 41-101F1 and Form 41-101F2, a reference to a “prospectus” includes a preliminary long form prospectus, a final long form prospectus, a preliminary short form prospectus, and a final short form prospectus.
- (2)** In this Instrument, except in Form 41-101F1 and Form 41-101F2, a reference to a “preliminary prospectus” includes a preliminary long form prospectus and a preliminary short form prospectus.
- (3)** In this Instrument, except in Form 41-101F1 and Form 41-101F2, a reference to a “final prospectus” includes a final long form prospectus and a final short form prospectus.
- (4)** In this Instrument, a reference to a “long form prospectus” includes a preliminary long form prospectus and a final long form prospectus.
- (5)** In this Instrument, a reference to a “short form prospectus” includes a preliminary short form prospectus and a final short form prospectus.

Interpretation of “business”

- 1.3** In this Instrument, unless otherwise stated, a reference to a business includes an interest in an oil and gas property to which reserves, as defined in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*, have been specifically attributed.

Interpretation of “affiliate”

1.4 In this Instrument, an issuer is an affiliate of another issuer if the issuer would be an affiliate of the other issuer under subsection 1.1(2) of NI 51-102 [*Affiliate*].

Interpretation of “payments to be made”

1.5 For the purposes of the definition of “full and unconditional credit support”, payments to be made by an issuer of securities as stipulated in the terms of the securities include any amounts to be paid as dividends in accordance with, and on the dividend payment dates stipulated in, the provisions of the securities, whether or not the dividends have been declared.

Referencing instruments

1.6 In this Instrument, a reference to

- (a) a national instrument, after its first citation, may be made by citing the number of the instrument preceded by “NI”, and
- (b) a form in a national instrument, after its first citation, may be made by citing the number of the form preceded by “Form”.

Powers and duties of the regulator in British Columbia

1.7 In British Columbia, despite sections 5.11 [*Certificate of promoter*], 5.12 [*Certificate of credit supporter*], 5.13 [*Certificate of substantial beneficiary of the offering*], 5.14 [*Certificate of selling security holders*], and 5.16 [*Certificate of other persons*], the powers and duties of the regulator with respect to the matters described in those sections are set out in the *Securities Act* (British Columbia).

PART 2: Requirements for All Prospectus Distributions

Application of the Instrument

2.1(1) Subject to subsection (2), this Instrument applies to a prospectus filed under securities legislation and a distribution of securities subject to the prospectus requirement.

(2) This Instrument does not apply to a prospectus filed under National Instrument 81-101 *Mutual Fund Prospectus Disclosure* or a distribution of securities under such a prospectus.

Language

2.2(1) An issuer must file a document required to be filed under this Instrument or NI 44-101 in French or in English.

- (2) Despite subsection (1), if an issuer files a document only in French or only in English but delivers to an investor or prospective investor a version of the document in the other language, the issuer must file that other version not later than when it is first delivered to the investor or prospective investor.
- (3) In Québec, the prospectus and any document required to be incorporated by reference must be in French or in French and English.
- (4) If an issuer files a document under this Instrument that is a translation of a document prepared in a language other than French or English, the issuer must
 - (a) attach a certificate as to the accuracy of the translation to the filed document, and
 - (b) make a copy of the document in the original language available on request.

General requirements

- 2.3(1) An issuer must not file a final prospectus more than 90 days after the date of the receipt for the preliminary prospectus.
- (2) An issuer must not file a prospectus more than 3 business days after the date of the prospectus.

PART 3: Form of Prospectus

Form of prospectus

- 3.1(1) Subject to subsection (2) and (3), an issuer filing a prospectus must file the prospectus in the form of Form 41-101F1.
- (2) An issuer that is an investment fund filing a prospectus must file the prospectus in the form of Form 41-101F2.
- (3) An issuer that is qualified to file a short form prospectus may file a short form prospectus.

PART 4: Financial Statements and Related Documents in a Long Form Prospectus

Application

- 4.1 An issuer must include in a long form prospectus financial statements and management's discussion and analysis, or in the case of an investment fund, financial statements and management report of fund performance, in accordance with this Instrument.

Audit of financial statements

- 4.2(1)** Any financial statements included in a long form prospectus filed in the form of Form 41-101F1 must be audited in accordance with NI 52-107 unless an exception in item 32.5 [*Exceptions to audit requirement*] or subsection 35.1(3) [*Application and definitions*] of Form 41-101F1 applies.
- (2) Any financial statements, other than interim financial statements, included in or incorporated by reference into a long form prospectus of an investment fund filed in the form of Form of 41-101F2 must meet the audit requirements of Part 2 of NI 81-106 [*Financial Statements*].

Review of unaudited financial statements

- 4.3(1)** Subject to subsection (2), any unaudited financial statements, other than *pro forma* financial statements, included in a long form prospectus must have been reviewed in accordance with the relevant standards set out in the Handbook for a review of financial statements by the person or company's auditor or a public accountant's review of financial statements.
- (2) If NI 52-107 permits the financial statements of the person or company in subsection (1) to be audited in accordance with
- (a) U.S. GAAS, the unaudited financial statements may be reviewed in accordance with U.S. review standards,
 - (b) International Standards on Auditing, the unaudited financial statements may be reviewed in accordance with International Standards on Review Engagement issued by the International Auditing and Assurance Standards Board, or
 - (c) auditing standards that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the person or company is subject, the unaudited financial statements
 - (i) may be reviewed in accordance with review standards that meet the foreign disclosure requirements of the designated foreign jurisdiction, or
 - (ii) do not have to be reviewed if
 - (A) the designated foreign jurisdiction does not have review standards for unaudited financial statements, and
 - (B) the long form prospectus includes disclosure that the unaudited financial statements have not been reviewed.

Approval of financial statements and related documents

- 4.4(1) An issuer must not file a long form prospectus unless each financial statement, each management’s discussion and analysis, and each management report of fund performance, as applicable, of a person or company included in the long form prospectus has been approved by the board of directors of the person or company.
- (2) An investment fund that is a trust must not file a long form prospectus unless each financial statement and each management report of fund performance of the investment fund included in the long form prospectus has been approved by the trustee or trustees of the investment fund or another person or company authorized to do so by the constating documents of the investment fund.

PART 5: Certificates

Interpretation

5.1 For the purposes of this Part,

- (a) “**issuer certificate form**” means a certificate in the form set out in
- (i) item 37.2 of Form 41-101F1 [*Issuer certificate form*],
 - (ii) item 42.1 of Form 41-101F2 [*Issuer certificate form*],
 - (iii) item 21.1 of Form 44-101F1 [*Issuer Certificate Form*],
 - (iv) National Instrument 44-102 *Shelf Distributions* in
 - (A) section 1.1 of Appendix A [*Issuer Certificate Form*],
 - (B) section 2.1 of Appendix A [*Issuer Certificate Form*],
 - (C) section 1.1 of Appendix B [*Issuer Certificate Form*], or
 - (D) section 2.1 of Appendix B [*Issuer Certificate Form*], or
 - (v) National Instrument 44-103 *Post- Receipt Pricing* in
 - (A) paragraph 7 of subsection 3.2(1) [*Required Disclosure*], or
 - (B) paragraph 3 of subsection 4.5(2) [*Required Disclosure*];
- (b) “**underwriter certificate form**” means a certificate in the form set out in
- (i) item 37.3 of Form 41-101F1 [*Underwriter certificate form*],

- (ii) item 42.3 of Form 41-101F2 [*Underwriter certificate form*],
- (iii) item 21.2 of Form 44-101F1 [*Underwriter Certificate Form*],
- (iv) NI 44-102 in
 - (A) section 1.2 of Appendix A [*Underwriter Certificate Form*],
 - (B) section 2.2 of Appendix A [*Underwriter Certificate Form*],
 - (C) section 1.2 of Appendix B [*Underwriter Certificate Form*], or
 - (D) section 2.2 of Appendix B [*Underwriter Certificate Form*], or
- (v) NI 44-103 in
 - (A) paragraph 8 of subsection 3.2(1) [*Required Disclosure*], or
 - (B) paragraph 4 of subsection 4.5(2) [*Required Disclosure*].

Date of certificates

5.2 The date of the certificates in a prospectus or an amendment to a prospectus must be within 3 business days before the filing of the prospectus or amendment to the prospectus, as applicable.

Certificate of issuer

5.3(1) Except in Ontario, a prospectus must contain a certificate signed by the issuer.

[**Note:** In Ontario, the requirement that a prospectus contain a certificate of the issuer is set out in section 58 of the *Securities Act* (Ontario).]¹

(2) A prospectus certificate that is required to be signed by the issuer under this Instrument or securities legislation must be in the applicable issuer certificate form.

Corporate issuer

5.4(1) Except in Ontario, if the issuer is a company, a prospectus certificate that is required to be signed by the issuer under this Instrument or securities legislation must be signed

- (a) by the chief executive officer and the chief financial officer of the issuer, and

¹ Notes included in this Instrument have been inserted for convenience of reference only and do not form part of this Instrument or have any force or effect as a rule or policy.

- (b) on behalf of the board of directors, by
 - (i) any 2 directors of the issuer, other than the persons referred to in paragraph (a) above, or
 - (ii) if the issuer has only 3 directors, 2 of whom are the persons referred to in paragraph (a), all of the directors of the issuer.
- (2) Except in Ontario, if the regulator is satisfied that either or both of the chief executive officer or chief financial officer cannot sign a certificate in a prospectus, the regulator may accept a certificate signed by another officer.

[Note: In Ontario, similar requirements regarding who must sign the issuer certificate are set out in section 58 of the *Securities Act* (Ontario).]

Trust issuer

- 5.5(1)** If the issuer is a trust, a prospectus certificate that is required to be signed by the issuer under this Instrument or securities legislation must be signed by
- (a) the individuals who perform functions for the issuer similar to those performed by the chief executive officer and the chief financial officer of a company, and
 - (b) on behalf of the trustees of the issuer by any 2 trustees of the issuer.
- (2) If a trustee that is signing the certificate of the issuer is
- (a) an individual, that individual must sign the certificate,
 - (b) a company, the certificate must be signed
 - (i) by the chief executive officer and the chief financial officer of the trustee, and
 - (ii) on behalf of the board of directors of the trustee, by
 - (A) any 2 directors of the trustee, other than the persons referred to in subparagraph (i), or
 - (B) if the trustee has only 3 directors, 2 of whom are the persons referred to in subparagraph (i), all of the directors of the trustee,
 - (c) a limited partnership, the certificate must be signed by the general partner of such limited partnership as described in subsection 5.6(2) [*Limited partnership issuer*] in relation to an issuer that is a limited partnership,

- (d) a trust, the certificate must be signed by the trustees of the trustee as described in this subsection in relation to an issuer that is a trust, or
 - (e) not an individual and is organized as other than a company, trust, or limited partnership, the certificate may be signed by any person or company with authority to bind the trustee.
- (3) Despite subsections (1) and (2), if the issuer is an investment fund and the declaration of trust, trust indenture or trust agreement establishing the investment fund delegates the authority to do so, or otherwise authorizes an individual or company to do so, the certificate may be signed by the individual or company to whom the authority is delegated or that is authorized to sign the certificate.
- (4) If the regulator is satisfied that either or both of the individuals who perform functions for the issuer similar to those performed by the chief executive officer and the chief financial officer of a company cannot sign a certificate in a prospectus, the regulator may accept a certificate signed by another individual.

Limited partnership issuer

- 5.6(1)** If the issuer is a limited partnership, a prospectus certificate that is required to be signed by the issuer under this Instrument or securities legislation must be signed by
- (a) the individuals who perform functions for the issuer similar to those performed by the chief executive officer and the chief financial officer of a company, and
 - (b) each general partner of the issuer.
- (2) If a general partner of the issuer is
- (a) an individual, that individual must sign the certificate,
 - (b) a company, the certificate must be signed
 - (i) by the chief executive officer and the chief financial officer of the general partner, and
 - (ii) on behalf of the board of directors of the general partner, by
 - (A) any 2 directors of the general partner, other than the persons referred to in subparagraph (i), or
 - (B) if the general partner has only 3 directors, 2 of whom are the persons referred to in subparagraph (i), all of the directors of the general partner,

- (c) a limited partnership, the certificate must be signed by each general partner of such limited partnership as described in this subsection (2) in relation to an issuer that is a limited partnership,
 - (d) a trust, the certificate must be signed by the trustees of the general partner as described in subsection 5.5(2) [*Trust issuer*] in relation to an issuer that is a trust, or
 - (e) not an individual and is organized as other than a company, trust, or limited partnership, the certificate may be signed by any person or company with authority to bind the general partner.
- (3) If the regulator is satisfied that either or both of the individuals who perform functions for the issuer similar to those performed by the chief executive officer and the chief financial officer of a company cannot sign a certificate in a prospectus, the regulator may accept a certificate signed by another individual.

Other issuer

5.7 If the issuer is organized as other than a company, trust or limited partnership, a prospectus certificate that is required to be signed by the issuer under this Instrument or securities legislation must be signed by persons or companies that serve in a comparable capacity to the signatories specified for the most similar form of organization in this Instrument or securities legislation.

Reverse takeovers

5.8 Except in Ontario, if an issuer is involved in a probable reverse takeover, a prospectus must contain a certificate, in the applicable issuer certificate form, signed by each individual who is a director, chief executive officer or chief financial officer of the reverse takeover acquirer or the persons or companies that serve in a comparable capacity.

Certificate of underwriter

5.9(1) Except in Ontario, a prospectus must contain a certificate signed by each underwriter who, with respect to the securities offered by the prospectus, is in a contractual relationship with the issuer or a security holder whose securities are being offered by the prospectus.

[Note: In Ontario, the requirement that a prospectus contain a certificate signed by each underwriter in a contractual relationship with the issuer is set out in subsection 59(1) of the *Securities Act* (Ontario).]

- (2) A prospectus certificate of an underwriter required under this Instrument or securities legislation to be signed by an underwriter must be in the applicable underwriter certificate form.
- (3) Except in Ontario, with the consent of the regulator, a certificate in a prospectus may be signed by the underwriter's agent duly authorized in writing by the underwriter.

[Note: In Ontario, subsection 59(2) of the *Securities Act* (Ontario) provides the Director with similar discretion to permit the certificate to be signed by an underwriter's agent.]

Certificate of investment fund manager

5.10(1) If the issuer has an investment fund manager, a prospectus must contain a certificate, in the applicable issuer certificate form, signed by the investment fund manager.

- (2) If the investment fund manager is a company, the certificate must be signed
 - (a) by the chief executive officer and the chief financial officer of the investment fund manager, and
 - (b) on behalf of the board of directors, by
 - (i) any 2 directors of the issuer, other than the persons referred to in paragraph (a) above, or
 - (ii) if the investment fund manager has only 3 directors, 2 of whom are the persons referred to in paragraph (a), all of the directors of the investment fund manager.
- (3) If the investment fund manager is a limited partnership, the certificate must be signed by the general partner of such limited partnership as described in subsection 5.6(2) [*Limited partnership issuer*] in relation to an issuer that is a limited partnership.

Certificate of promoter

5.11(1) Except in Ontario, a prospectus must contain a certificate signed by each promoter of the issuer.

[Note: In Ontario, the requirement that a prospectus shall contain a certificate of the signed by each promoter of the issuer is set out in subsection 58(1) of the *Securities Act* (Ontario). Subsection 58(5) of the *Securities Act* (Ontario) provides that, with the consent of the Director, a promoter need not sign the prospectus certificate.]

- (2) A prospectus certificate required under this Instrument or securities legislation to be signed by a promoter must be in the applicable issuer certificate form.

[Note: In Ontario, the form of certificate required under the *Securities Act* (Ontario) for a promoter has been varied to correspond with the issuer certificate form (as defined above) by OSC Rule 41-801 *Implementing National Instrument 41-101 General Prospectus Requirements*.]

- (3) Except in Ontario, the regulator may require any person or company who was a promoter of the issuer within the 2 preceding years to sign a certificate to the prospectus, in the applicable issuer certificate form.

[Note: In Ontario, subsection 58(6) of the *Securities Act* (Ontario) provides the Director with similar discretion to require a person or company who was a promoter of the issuer within the 2 preceding years to sign a prospectus certificate, subject to such conditions as the Director considers proper.]

- (4) Except in Ontario, the regulator may require any person or company that is a control person of either a promoter of the issuer or a person or company who was a promoter of the issuer within the 2 preceding years to sign a certificate to the prospectus, in the applicable issuer certificate form.

- (5) Except in Ontario, with the consent of the regulator, a certificate in a prospectus may be signed by an agent duly authorized in writing by the person or company required to sign the certificate.

[Note: In Ontario, subsection 58(7) provides the Director with similar discretion to permit the certificate to be signed by an agent.]

Certificate of credit supporter

5.12(1) If there is a related credit supporter of either the issuer or a subsidiary of the issuer, a prospectus must contain a certificate of the related credit supporter, in the applicable issuer certificate form, signed

- (a) by the chief executive officer and the chief financial officer of the credit supporter, and
 - (b) on behalf of the board of directors of the credit supporter, by
 - (i) any 2 directors of the credit supporter, other than the persons referred to in paragraph (a) above, or
 - (ii) if the credit supporter has only 3 directors, 2 of whom are the persons referred to in paragraph (a), all of the directors of the credit supporter.
- (2) With the consent of the regulator, a certificate in a prospectus may be signed by the credit supporter's agent duly authorized in writing by the credit supporter.

- (3) Except in Ontario, the regulator may require any other person or company that is a credit supporter of either the issuer or a subsidiary of the issuer to sign a certificate to the prospectus, in the applicable issuer certificate form.

[Note: In Ontario, subsection 58(6) of the *Securities Act* (Ontario) provides the Director with discretion to require a person or company who is a guarantor of the securities being distributed to sign a prospectus certificate, subject to such conditions as the Director considers proper.]

Certificate of substantial beneficiary of the offering

5.13(1) The term “significant business” means, with respect to an issuer, any business in which an issuer holds an interest or business in which the issuer proposes to acquire an interest that has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high, that would be a significant acquisition as defined in subsection 35.1(4) of Form 41-101F1 [*Application and definitions*], if the issuer acquired the interest as of the date of the prospectus.

- (2) The term “substantial beneficiary of the offering” means any person or company that,
- (a) whether individually or in conjunction with one or more of persons or companies acting in concert by virtue of an agreement, arrangement or commitment or understanding, directly or indirectly, holds or held, within the year preceding the date of the prospectus, or following the completion of any transaction or series of transactions disclosed in the prospectus is reasonably expected to acquire
 - (i) control of the issuer or a significant business of the issuer, or
 - (ii) voting securities carrying 20% or more of the voting rights attached to any class of voting securities of the issuer or a significant business of the issuer, and
 - (b) together with its affiliates and associates, is reasonably expected to receive, directly or indirectly, 20% or more of the proceeds of the offering of securities under the prospectus, whether as consideration for property or services, repayment of debt or otherwise, other than by virtue of its ownership of voting securities of the issuer.

- (3) For the purposes of subsection (2), when determining the percentage of voting securities of any issuer held by a person or company, at any given date, any security or right or obligation permitting or requiring the person or company or another person or company acting jointly or in concert with the person or company, whether or not on conditions, to acquire a security, including an unissued security, of a particular class within 60 days by a single transaction or a series of linked transactions is deemed to be a security of that particular class.
- (4) A security or right or obligation described in subsection (3) is deemed to be outstanding for the purpose of calculating the number of outstanding securities of that class in respect of the determination of the person or company's holding.
- (5) Except in Ontario, a prospectus must contain a certificate, in the applicable issuer certificate form, signed by each substantial beneficiary of the offering.
- (6) Except in Ontario, the regulator may require any person or company that is a control person of a substantial beneficiary of the offering to sign a certificate to the prospectus in the form that the regulator considers appropriate.

Certificate of selling security holders

- 5.14** Except in Ontario, the regulator may require any person or company that is a selling security holder or that is a control person of a selling security holder to sign a certificate to the prospectus, in the applicable issuer certificate form.

Certificate of operating entity

- 5.15(1)** For the purposes of this section, the term “operating entity” means, in relation to an issuer, any person or company through which the business of the issuer, or a material part of the business of the issuer is conducted and for which the issuer is required, or has undertaken, to provide to its security holders separate financial statements of the person or company if the issuer's financial statements do not include consolidated information concerning the person or company.
- (2) A prospectus of an issuer that is a trust must contain a certificate, in the applicable issuer certificate form, signed by each individual who is a director, chief executive officer or chief financial officer of an operating entity.

Certificate of other persons

- 5.16** Except in Ontario, the regulator may, in its discretion, require any person or company to sign a certificate to the prospectus, in the form that the regulator considers appropriate.

PART 6: Amendments

Form of amendment

6.1(1) An amendment to a prospectus must consist of an amendment that does not fully restate the text of the prospectus or an amended and restated prospectus.

(2) An amendment to a prospectus must be identified as follows:

(a) for an amendment that does not restate the text of the prospectus:

“Amendment no. [insert amendment number] dated [insert date of amendment] to [identify prospectus] dated [insert date of prospectus being amended].”; or

(b) for an amended and restated prospectus:

“Amended and restated [identify prospectus] dated [insert date of amendment], amending and restating [identify prospectus] dated [insert date of prospectus being amended].”

Required documents for filing an amendment

6.2 An issuer that files an amendment to a prospectus must

- (a)** file a signed copy of the amendment,
- (b)** deliver to the regulator a copy of the prospectus blacklined to show the changes made by the amendment, if the amendment is also a restatement of the prospectus,
- (c)** file or deliver any supporting documents required under this Instrument or other provisions of securities legislation to be filed or delivered with a prospectus, as the case may be, unless the documents originally filed or delivered with the prospectus, as the case may be, are correct as of the date the amendment is filed, and
- (d)** in case of an amendment to a final prospectus, file any consent letter required to be filed with a final prospectus, dated as of the date of the amendment.

Auditor’s comfort letter

6.3 An issuer must deliver a new auditor’s comfort letter, if an amendment to

- (a)** a preliminary long form prospectus relates to an auditor’s comfort letter delivered under subparagraph 9.2(b)(iii) [*Auditor’s Comfort Letter regarding Audited Financial Statements*],

- (b) a preliminary short form prospectus relates to an auditor's comfort letter delivered under subparagraph 4.1(b)(ii) of NI 44-101 [*Auditor's Comfort Letter regarding Audited Financial Statements*].

Delivery of amendments

- 6.4** Except in Ontario, as soon as practicable, an issuer must deliver an amendment to a preliminary prospectus to each recipient of the preliminary prospectus according to the record of recipients required to be maintained under securities legislation.

[**Note:** In Ontario, similar requirements regarding the delivery of amendments to a preliminary prospectus are set out in subsection 57(3) of the *Securities Act* (Ontario).]

Amendment to a preliminary prospectus

- 6.5(1)** Except in Ontario, if, after a receipt for a preliminary prospectus is issued but before a receipt for the final prospectus is issued, a material adverse change occurs, an issuer must file an amendment to the preliminary prospectus as soon as practicable, but in any event within 10 days after the day the change occurs.

[**Note:** In Ontario, a similar obligation to file an amendment to a preliminary prospectus is set out in subsection 57(1) of the *Securities Act* (Ontario).]

- (2) The regulator must issue a receipt for an amendment to a preliminary prospectus as soon as practicable after the amendment is filed.

Amendment to a final prospectus

- 6.6(1)** Except in Ontario, if, after a receipt for a final prospectus is issued but before the completion of the distribution under the final prospectus, a material change occurs, an issuer must file an amendment to the final prospectus as soon as practicable, but in any event within 10 days after the day the change occurs.

[**Note:** In Ontario, a similar obligation to file an amendment to a final prospectus is set out in subsection 57(1) of the *Securities Act* (Ontario).]

- (2) Except in Ontario, if, after a receipt for a final prospectus or an amendment to the final prospectus is issued but before the completion of the distribution under the final prospectus or the amendment to the final prospectus, securities in addition to the securities previously disclosed in the final prospectus or the amendment to the final prospectus are to be distributed, the issuer making the distribution must file an amendment to the final prospectus disclosing the additional securities, as soon as practicable, but in any event within 10 days after the decision to increase the number of securities offered.

[Note: In Ontario, subsection 57(2) of the *Securities Act* (Ontario), as varied by OSC Rule 41-801 *Implementing 41-101 General prospectus requirements*, provides for similar requirements in respect of amendments for the distribution of additional securities.]

- (3) The regulator must issue a receipt for an amendment to a final prospectus required to be filed under this section unless the regulator considers that there are grounds set out in securities legislation that would cause the regulator not to issue the receipt for a prospectus.
- (4) The regulator must not refuse to issue a receipt under subsection (3) without giving the issuer who filed the prospectus an opportunity to be heard.
- (5) An issuer must not proceed with a distribution or additional distribution if an amendment to a final prospectus is required to be filed.
- (6) Subsection (5) does not apply and the issuer may proceed with the distribution or additional distribution if a receipt for the amendment to the final prospectus is issued by the regulator.
- (7) Subsection (5) does not apply to labour-sponsored venture capital corporations, commodity pools, or scholarship plans.

PART 7: Non-fixed Price Offerings and Reduction of Offering Price under a Final Prospectus

Application

- 7.1** This Part does not apply to an investment fund that offers securities in continuous distribution.

Non-fixed price offerings and reduction of offering price

- 7.2(1)** A person or company distributing a security under a prospectus must do so at a fixed price.
- (2) Despite subsection (1), securities may be distributed for cash at non-fixed prices under a prospectus if the securities have received a rating, on a provisional or final basis, from at least one approved rating organization at the time of

- (a) the filing of the preliminary short form prospectus, if the issuer is filing a prospectus in the form of a short form prospectus under NI 44-101, or
 - (b) the filing of the prospectus.
- (3) Despite subsection (1), if securities are distributed for cash under a prospectus, the price of the securities may be decreased from the initial offering price disclosed in the prospectus and, after such a decrease, changed from time to time to an amount not greater than the initial offering price, without filing an amendment to the prospectus to reflect the change, if
- (a) the securities are distributed through one or more underwriters that have agreed to purchase all of the securities at a specified price,
 - (b) the proceeds to be received by the issuer or selling security holders are disclosed in the prospectus as being fixed, and
 - (c) the underwriters have made a reasonable effort to sell all of the securities distributed under the prospectus at the initial offering price disclosed in the final prospectus.
- (4) Despite subsections (2) and (3), the price at which securities may be acquired on exercise of rights must be fixed.

PART 8: Best Efforts Distributions

Distribution period

- 8.1(1)** If securities are being distributed on a best efforts basis, the distribution must cease within 90 days after the date of the receipt for the final prospectus unless an amendment to the final prospectus is filed and the regulator has issued a receipt for the amendment.
- (2) If an amendment to a final prospectus is filed and the regulator has issued a receipt for the amendment under subsection (1), the distribution must cease within 90 days after the date of the receipt for the amendment to the final prospectus unless a further amendment is filed and the regulator has issued a receipt for the further amendment.
- (3) The total period of the distribution under subsections (1) and (2) must not end more than 180 days from the date of receipt for the final prospectus.

Minimum amount of funds

- 8.2** If securities are being distributed on a best efforts basis, other than an offering of securities to be distributed continuously, and the prospectus discloses that a minimum amount of funds must be raised,

- (a) the issuer must appoint a registered dealer authorized to make the distribution, a Canadian financial institution, or a lawyer who is a practicing member in good standing with a law society of a jurisdiction in which the securities are being distributed, or in Québec a notary, to hold in trust all funds received from subscriptions until the minimum amount of funds stipulated in the final prospectus has been raised, and
- (b) if the minimum amount of funds is not raised within the appropriate period of the distribution prescribed by section 8.1 [*Distribution period*], the person or company holding the funds in trust referred to in paragraph (a) must return the funds to the subscribers without any deductions.

PART 9: Requirements for Filing a Prospectus

Application and interpretation

9.1(1) For the purposes of this Part and Form 41-101F1, a “contract entered into in the ordinary course of business” does not include the following:

- (a) any contract to which directors, officers, promoters, substantial beneficiaries of the offering, selling security holders, or underwriters are parties, unless the contracts are for the purchase or sale of current assets at fair value;
 - (b) any continuing contract to sell the major part of the issuer’s products or services or to purchase the major part of the issuer’s requirements of goods, services, or raw materials or any franchise or licence or other agreement to use a patent, formula, trade secret, process or trade name upon which the issuer’s business depends to a material extent;
 - (c) any contract calling for the acquisition or sale of any property, plant or equipment for consideration exceeding 20% of such fixed assets of the issuer on a consolidated basis;
 - (d) any credit agreements;
 - (e) any management or administration agreements;
 - (f) any contract on which the issuer’s business is substantially dependent.
- (2)** For the purposes of this Part and Form 41-101F1, provisions “necessary to understanding the contract” include the following:
- (a) the name or description of a material customer or a material supplier;
 - (b) interest rate and other similar terms in a material credit agreement;

- (c) the duration and nature of all patents, trademarks, licences, franchises and concessions held;
- (d) required disclosure in the MD&A section relating to loan arrangements and instalment payment obligations on debt;
- (e) disclosure about related party transactions;
- (f) material contingency, indemnification, anti-assignability, and take-or-pay clauses;
- (g) financial covenants in material financing or credit agreements.

Required documents for filing a preliminary long form prospectus

9.2 An issuer that files a preliminary long form prospectus must

- (a) file the following with the preliminary long form prospectus
 - (i) **Signed Copy** - a signed copy of the preliminary long form prospectus;
 - (ii) **Documents Affecting the Rights of Security Holders** – copies of the following documents, and any amendments to the following documents, that have not previously been filed
 - (A) articles of incorporation, amalgamation, continuation or any other constating or establishing documents of the issuer, unless the constating or establishing document is a statutory or regulatory instrument,
 - (B) by-laws or other corresponding instruments currently in effect,
 - (C) any security holder or voting trust agreement that the issuer has access to and that can reasonably be regarded as material to an investor in securities of the issuer,
 - (D) any security holders’ rights plans or other similar plans, and
 - (E) any other contract of the issuer or a subsidiary of the issuer that creates or can reasonably be regarded as materially affecting the rights or obligations of the issuer’s security holders generally;
 - (iii) **Material Contracts** – any material contract that has not previously been filed, other than a contract entered into in the ordinary course of business, but certain provisions of the contract may be omitted or marked so as to be unreadable if

- (A) an executive officer of the issuer has reasonable grounds to believe that disclosure of those provisions would be seriously prejudicial to the interests of the issuer or would violate confidentiality provisions,
 - (B) an executive officer of the issuer has reasonable grounds to believe that those provisions do not contain information relating to the issuer or its securities that would be necessary to understanding the contract, and
 - (C) in the copy of the material contract filed by the issuer, immediately after a provision that has been omitted or marked so as to be unreadable, the issuer includes a description of the type of information that has been omitted or marked so as to be unreadable;
- (iv) **Investment Fund Documents** – if the issuer is an investment fund, the documents referred to in subparagraphs (ii) and (iii), must include copies of
- (A) any declaration of trust or trust agreement of the investment fund, limited partnership agreement, or any other constating or establishing documents of the investment fund.
 - (B) any agreement of the investment fund or the trustee with the manager of the investment fund,
 - (C) any agreement of the investment fund, manager or trustee with the portfolio advisers of the investment fund,
 - (D) any agreement of the investment fund, the manager or trustee with the custodian of the investment fund, and
 - (E) any agreement of the investment fund, the manager or trustee with the principal distributor of the investment fund;
- (v) **Mining Reports** – if the issuer has a mineral project, the technical reports required to be filed with a preliminary long form prospectus under NI 43-101; and
- (vi) **Reports and Valuations** – a copy of each report or valuation referred to in the preliminary long form prospectus for which a consent is required to be filed under section 10.1 [*Consents of experts*] and that has not previously been filed, other than a technical report that
- (A) deals with a mineral project or oil and gas activities, and

- (B) is not otherwise required to be filed under subparagraph (v); and
- (b) deliver to the regulator, concurrently with the filing of the preliminary long form prospectus, the following:
 - (i) **Blacklined Copy** – If the issuer is an investment fund, a copy of the *pro forma* prospectus (if applicable) blacklined to show changes and the text of deletions from the latest prospectus previously filed;
 - (ii) **Personal Information Form and Authorization to Collect, Use and Disclose Personal Information** – unless delivered within 3 years before filing of the preliminary long form prospectus, a completed Appendix A for
 - (A) each director and executive officer of an issuer;
 - (B) each director and executive officer of the manager of the issuer if the issuer is an investment fund;
 - (C) each promoter of the issuer and, except in Ontario, each substantial beneficiary of the offering; or
 - (D) if the promoter or substantial beneficiary of the offering is not an individual, each director and executive officer of the promoter or, except in Ontario, substantial beneficiary of the offering;
 - (iii) **Auditor’s Comfort Letter regarding Audited Financial Statements** - if a financial statement of an issuer or a business included in a preliminary long form prospectus is accompanied by an unsigned auditor’s report, a signed letter addressed to the regulator from the auditor of the issuer or of the business, as applicable, prepared in accordance with the form suggested for this circumstance by the Handbook.

Required documents for filing a final long form prospectus

9.3 An issuer that files a final long form prospectus must

- (a) file the following with the final long form prospectus:
 - (i) **Signed Copy** - a signed copy of the final long form prospectus;
 - (ii) **Documents Affecting the Rights of Security Holders** – copies of any document described under subparagraph 9.2(a)(ii) [*Documents Affecting the Rights of Security Holders*] that has not previously been filed;

- (iii) **Material Contracts** – copies of any document described under subparagraph 9.2(a)(iii) [*Material Contracts*] that has not previously been filed;
- (iv) **Investment Fund Documents** – copies of any document described under subparagraph 9.2(a)(iv) [*Investment Fund Documents*] that has not previously been filed;
- (v) **Other Reports and Valuations** - a copy of each report or valuation referred to in the final long form prospectus, for which a consent is required to be filed under section 10.1 [*Consents of experts*] and that has not previously been filed, other than a technical report that
 - (A) deals with a mineral project or oil and gas activities of the issuer, and
 - (B) is not otherwise required to be filed under subparagraph 9.2(a)(v) [*Mining Reports*] or 9.2(a)(vi) [*Reports and Valuations*];
- (vi) **Issuer’s Submission to Jurisdiction** - a submission to jurisdiction and appointment of agent for service of process of the issuer in the form set out in Appendix B, if an issuer is incorporated or organized in a foreign jurisdiction and does not have an office in Canada;
- (vii) **Non-Issuer’s Submission to Jurisdiction** - a submission to jurisdiction and appointment of agent for service of process of
 - (A) each selling security holder, and
 - (B) each person or company required to sign a certificate under Part 5 [*Certificates*], other than an issuer,

in the form set out in Appendix C, if the person or company is incorporated or organized in a foreign jurisdiction and does not have an office in Canada or is an individual who resides outside of Canada;
- (viii) **Expert’s Consents** - the consents required to be filed under section 10.1 [*Consents of experts*];
- (ix) **Credit Supporter’s Consent** - the written consent of the credit supporter to the inclusion of its financial statements in the final long form prospectus, if financial statements of a credit supporter are required under Item 33 of Form 41-101F1 [*Credit Supporter Disclosure, Including Financial Statements*] to be included in a final long form prospectus and a certificate of the credit supporter is not required under section 5.12 [*Certificate of credit supporter*] to be included in the final long form prospectus;

- (x) **Undertaking in Respect of Credit Supporter Disclosure** – an undertaking of the issuer, in a form acceptable to the regulators, to file the periodic and timely disclosure of a credit supporter similar to the disclosure provided under item 12.1 of Form 44-101F1 [*Credit Supporter Disclosure*], so long as the securities being distributed are issued and outstanding;
 - (xi) **Undertaking in Respect of Continuous Disclosure** – An undertaking of the issuer, in a form acceptable to the regulators, to provide to its security holders separate financial statements for an operating entity that investors need to make an informed decision about investing in the issuer’s securities if
 - (a) the issuer is an income trust that is formed as a mutual fund trust as that term is used in the *Income Tax Act* (Canada), other than an “investment fund” as defined in NI 81-106,
 - (b) the underlying business or income producing assets of the operating entity generate net cash flow available for distribution to the issuer’s security holders, and
 - (c) the issuer’s performance and prospects depend primarily on the performance and operations of the operating entity;
 - (xii) **Undertaking to File Documents and Material Contracts** – if any document described in subparagraph (ii), (iii) or (iv) has not been executed or become effective before the filing of the final long form prospectus but will be executed or become effective on or before the completion of the distribution, the issuer must file with the applicable securities regulatory authority, no later than the time of filing of the final long form prospectus, an undertaking of the issuer to the applicable securities regulatory authority to file the document promptly and in any event within 7 days after the completion of the distribution; and
 - (xiii) **Undertaking in Respect of Restricted Securities** – for distributions of non-voting securities, an undertaking of the issuer to give notice to holders of non-voting securities of a meeting of security holders if a notice of such meeting is given to its registered holders of voting securities; and
- (b) deliver to the regulator, no later than the filing of the final long form prospectus
- (i) **Blackline Copy** – a copy of the final prospectus blacklined to show changes from the preliminary prospectus; and
 - (ii) **Communication with Exchange** – if the issuer has made an application to list the securities being distributed on an exchange, a copy of a communication in writing from the exchange stating that the application

for listing has been made and has been accepted subject to the issuer meeting the requirements for listing of the exchange.

PART 10: Consents and Licences, Registrations and Approvals

Consents of experts

10.1(1) An issuer must file the written consent of any notary in Québec, solicitor, auditor, accountant, engineer or appraiser, or any person or company whose profession or business gives authority to a statement made by that person or company named in a prospectus or an amendment to a prospectus, directly or, if applicable, in a document incorporated by reference,

- (a) as having prepared or certified any part of the prospectus or the amendment,
- (b) as having opined on financial statements from which selected information included in the prospectus has been derived and which audit opinion is referred to in the prospectus directly or in a document incorporated by reference, or
- (c) as having prepared or certified a report, valuation, statement or opinion referred to in the prospectus or the amendment, directly or in a document incorporated by reference.

(2) The consent referred to in subsection (1) must

- (a) be filed no later than the time the final prospectus or the amendment to the final prospectus is filed or, for the purposes of future financial statements that have been incorporated by reference in a prospectus under section 15.1(2) [*Documents incorporated by reference by investment funds*], no later than the date that those financial statements are filed,
- (b) state that the person or company being named consents
 - (i) to being named; and
 - (ii) to the use of that person or company's report, valuation, statement or opinion,
- (c) refer to the report, valuation, statement or opinion stating the date of the report, valuation, statement or opinion, and
- (d) contain a statement that the person or company referred to in subsection (1)
 - (i) has read the prospectus, and
 - (ii) has no reason to believe that there are any misrepresentations in the information contained in it that are

- (A) derived from the report, valuation, statement or opinion, or
 - (B) within the knowledge of the person or company as a result of the services performed by the person or company in connection with the report, financial statements, valuation, statement or opinion.
- (3) In addition to any other requirement of this section, the consent of an auditor or accountant must also state
 - (a) the dates of the financial statements on which the report of the person or company is made, and
 - (b) that the person or company has no reason to believe that there are any misrepresentations in the information contained in the prospectus that are
 - (i) derived from the financial statements on which the person or company has reported, or
 - (ii) within the knowledge of the person or company as a result of the audit of the financial statements.
- (4) Subsection (1) does not apply to an approved rating organization that issues a rating to the securities being distributed under the prospectus.

Licences, registrations and approvals

- 10.2** If the purpose of the distribution is to fund in whole or in part a new business of the issuer and the issuer has not obtained all material licences, registrations and approvals necessary for the operation of the business,
- (a) the issuer must appoint a registered dealer authorized to make the distribution, a Canadian financial institution, or a lawyer who is a practicing member in good standing with a law society of a jurisdiction in which the securities are being distributed, or in Québec a notary, to hold in trust all funds received from subscriptions until all material licences, registrations and approvals necessary for the operation of the business has been obtained, and
 - (b) if all material licences, registrations and approvals necessary for the operation of the business has not been obtained within 90 days from the date of receipt of the final prospectus, the trustee must return the funds to subscribers.

PART 11: Over-Allocation and Underwriters

Definitions

- 11.1(1)** The term “**base offering**” means the number or principal amount of the securities distributed under a prospectus by an issuer or selling security holder, excluding

- (a) any over-allotment option granted in connection with the distribution, or the securities issuable on the exercise of any such over-allotment option, and
 - (b) securities issued or paid as compensation to a person or company for acting as an underwriter in respect of securities that are distributed under the prospectus, together with any underlying securities issuable or transferable on the exercise of any these securities (if these securities are convertible or exchangeable securities).
- (2) The term “**over-allocation position**” means the amount, determined as at the closing of a distribution by which the aggregate number or principal amount of securities that are sold by one or more underwriters of the distribution exceeds the base offering.
- (3) The term “**over-allotment option**” means a right granted to one or more underwriters by an issuer or a selling security holder of the issuer in connection with the distribution of securities under a prospectus to acquire, for the purposes of covering the underwriter’s over-allocation position, a security of an issuer that has the same designation and attributes as a security that is distributed under such prospectus, and which
- (a) expires not later than the 60th day after the date of the closing of the distribution, and
 - (b) is exercisable for a number or principal amount of securities that is limited to the lesser of
 - (i) the over-allocation position, and
 - (ii) 15% of the base offering.

Over-allocation

11.2 Securities that are sold to create the over-allocation position in connection with a distribution under a prospectus must be distributed under the prospectus.

Distribution of securities under a prospectus to an underwriter

11.3 No person or company may distribute securities under a prospectus to any person or company acting as an underwriter in connection with the distribution of securities under the prospectus, other than

- (a) an over-allotment option granted to one or more underwriters in connection with the distribution or any security issuable or transferable on the exercise of such an over-allotment option; or
- (b) securities issued or paid as compensation to one or more persons or companies for acting as an underwriter in respect of other securities that are distributed under the prospectus, where the number or principal amount of the securities issued as compensation, together with any underlying securities issuable or transferable on

the exercise of any these securities (if these securities are convertible or exchangeable securities), does not in the aggregate exceed 5% of the base offering.

Take-up by underwriter

- 11.4** If an underwriter has agreed to purchase a specified number or principal amount of the securities at a specified price, the underwriter must take up the securities, if at all, within 42 days after the date of the receipt for the prospectus.

PART 12: Restricted Securities

Application and definitions

12.1(1) In this Part and Form 41-101F1,

“**non-voting security**” means a restricted security that does not carry the right to vote generally, except for a right to vote that is mandated, in special circumstances, by law;

“**private issuer**” has the same meaning as in section 2.4 of National Instrument 45-106 *Prospectus and Registration Exemptions* [*Private issuer*];

“**restricted security reorganization**” means any event resulting in the creation of restricted securities, directly or through the creation of subject securities or securities that are, directly or indirectly, convertible into or exercisable or exchangeable for restricted securities or subject securities or any change in the rights attaching to restricted securities, subject securities or securities that are, directly or indirectly, convertible into or exercisable or exchangeable for restricted securities or subject securities, including

- (a) any
 - (i) amendment to an issuer’s constating documents,
 - (ii) resolution of the board of directors of an issuer setting the terms of a series of securities of the issuer, or
 - (iii) restructuring, recapitalization, reclassification, arrangement, amalgamation or merger, or
- (b) if the issuer has one or more classes of restricted securities outstanding, an amendment to an issuer’s constating documents to increase
 - (i) the per security voting rights attached to any class of securities without at the same time making a proportionate increase in the per security voting rights attached to any other securities of the issuer, or
 - (ii) the number of a class of securities authorized;

“**restricted security**” means an equity security, which does not include a preferred security, of an issuer, if any of the following apply:

- (a) there is another class of securities of the issuer that carries a greater vote per security relative to the equity security,
- (b) the conditions of the class of equity securities, the conditions of another class of securities of the issuer, or the issuer’s constating documents have provisions that nullify or significantly restrict the voting rights of the equity securities,
- (c) the issuer has issued a second class of equity securities that entitle the owners of securities of that second class to participate in the earnings or assets of the issuer to a greater extent, on a per security basis, than the owners of the first class of equity securities, or
- (d) except in Ontario and British Columbia, the regulator determines that the equity security is a restricted security;

“**restricted security term**” means each of the terms “non-voting security”, “subordinate voting security”, “restricted voting security”;

“**restricted voting security**” means a restricted security that carries a right to vote subject to a restriction on the number or percentage of securities that may be voted by one or more persons or companies, unless the restriction is

- (a) permitted or prescribed by statute, and
- (b) is applicable only to persons or companies that are not citizens or residents of Canada or that are otherwise considered as a result of any law applicable to the issuer to be non-Canadians;

“**subject security**” means a security that results, or would result if and when issued, in an existing class of securities being considered restricted securities;

“**subordinate voting security**” means a restricted security that carries a right to vote, if there are securities of another class outstanding that carry a greater right to vote on a per security basis.

(2) This Part does not apply to

- (a) securities of mutual funds,
- (b) securities that carry a right to vote subject to a restriction on the number or percentage of securities that may be voted or owned by persons or companies that are not citizens or residents of Canada or that are otherwise considered as a result of any law applicable to the issuer to be non-Canadians, but only to the extent of the restriction, and

- (c) securities that are subject to a restriction, imposed by any law governing the issuer, on the level of ownership of the securities by a person, company or combination of persons or companies, but only to the extent of the restriction.

Use of restricted security term

- 12.2(1)** No security may be referred to by a term or a defined term that includes the word “common” unless the security is an equity security to which are attached voting rights exercisable in all circumstances, irrespective of the number or percentage of securities owned, that are not less, per security, than the voting rights attached to any other outstanding security of the issuer.
- (2) No security may be referred to by a term or defined term that includes the word “preference” or “preferred”, unless the security is a security, other than an equity security, to which is attached a preference or right over any class of equity security of the issuer.
 - (3) If restricted securities are referred to in the constating documents of the issuer by a term that is different from the appropriate restricted security term, the restricted securities may be described, in one place only in the prospectus, by the term used in the constating documents of the issuer; provided that, the description is not on the front page of the prospectus and is in the same type face and type size as that used generally in the body of the prospectus.
 - (4) Each class of securities that is or may become restricted securities must be referred to using a term or a defined term that includes the appropriate restricted security term.

Prospectus filing eligibility

- 12.3(1)** Subject to subsection (3), an issuer must not file a prospectus under which restricted securities, subject securities or securities that are, directly or indirectly, convertible into or exercisable or exchangeable for restricted securities or subject securities are distributed unless
- (a) the distribution has received prior majority approval of the security holders of the issuer in accordance with applicable law, including approval on a class basis if required and excluding any votes attaching at the time to securities held, directly or indirectly, by affiliates of the issuer or control persons of the issuer, or
 - (b) at the time of each restricted security reorganization related to the securities to be distributed
 - (i) the restricted security reorganization received prior majority approval of the security holders of the issuer in accordance with applicable law, including approval on a class basis if required and excluding any votes attaching at the time to securities held, directly or indirectly, by affiliates of the issuer or control persons of the issuer,

- (ii) the issuer was a reporting issuer, and
 - (iii) no purposes or business reasons for the creation of restricted securities were disclosed that are inconsistent with the purpose of the distribution.
- (2) Subject to subsection (3), for each approval referred to in subsection (1), the issuer must have provided prior written disclosure in an information circular or notice to its security holders that included
 - (a) the name of each affiliate of the issuer that was a beneficial owner of securities of the issuer and the number of securities beneficially owned, directly or indirectly, by the affiliate as of the date of the information circular or notice,
 - (b) the name of each control person and the number of securities beneficially owned, directly or indirectly, by the control person as of the date of the information circular or notice, to the extent known to the issuer after reasonable inquiry,
 - (c) a statement of the number of votes attaching to the securities that were excluded for the purpose of the approval, and
 - (d) the purpose and business reasons for the creation of restricted securities.
- (3) Subsections (1) and (2) do not apply if the securities offered by the prospectus are
 - (a) of an existing class of restricted securities that were created before December 21, 1984,
 - (b) securities of an issuer that was a private issuer immediately before filing the prospectus,
 - (c) securities of the same class as distributed under a prospectus that was filed by an issuer that was, at the time of filing the prospectus, a private issuer,
 - (d) previously unissued restricted securities distributed by way of stock dividend in the ordinary course to security holders instead of a cash dividend if at the time of distribution there is a published market for the restricted securities, or
 - (e) distributed as a stock split that takes the form of a distribution of previously unissued restricted securities by way of stock dividend to holders of the same class of restricted securities if at the time of distribution there is a published market for the restricted securities and the distribution is part of a concurrent distribution by way of stock dividend to holders of all equity securities under which all outstanding equity securities of the issuer are increased in the same proportion.

PART 13: Advertising and Marketing in Connection with Prospectus Offerings

Legend for communications during the waiting period

13.1(1) A notice, circular, advertisement, letter or other communication that is permitted or not prohibited under securities legislation to be used in connection with a prospectus offering during the waiting period must contain words to the effect of the following legend:

“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 entity.] 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.”

(2) If the notice, circular, advertisement, letter or other communication is in writing, set out the language in subsection (1) in prominent bold face type as large as that used in the body of the text.

Legend for communications following receipt for the final prospectus

13.2(1) A notice, circular, advertisement, letter or other communications that is permitted or not prohibited under securities legislation to be used in connection with a prospectus offering following the issuance of a receipt for the final prospectus must contain words to the effect of the following legend:

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

(2) If the notice, circular, advertisement, letter or other communication is in writing, set out the language in subsection (1) in prominent bold face type as large as that used in the body of the text.

Advertising for investment funds during the waiting period

13.3 If the issuer is an investment fund, an advertisement during the waiting period may state only the following information:

- (a) whether the security represents a share in a company or an interest in a non-corporate entity such as a trust unit or a partnership interest;
- (b) the name of the issuer;

- (c) the price of the security;
- (d) the investment objective(s) of the investment fund;
- (e) the name of the manager of the investment fund;
- (f) the name of the portfolio adviser 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; and
- (h) how many securities will be made available.

Part 14: Custodianship of Portfolio Assets of an Investment Fund

General

14.1(1) Except as provided in sections 14.8 [*Custodial provisions relating to derivatives and securities lending, repurchases and reverse repurchase agreements*] and 14.9 [*Separate account for paying expenses*], all portfolio assets of an investment fund that files a long form prospectus using Form 41-101F2 must be held under the custodianship of one custodian that satisfies the requirements of section 14.2 [*Who may act as custodian or sub-custodian*].

- (2) No manager of an investment fund may act as a custodian or sub-custodian of the investment fund.

Who may act as custodian or sub-custodian

14.2(1) If portfolio assets are held in Canada by a custodian or sub-custodian, the custodian or sub-custodian must be one of the following:

- (a) a bank listed in Schedule I, II or III of the *Bank Act* (Canada);
- (b) a trust company that
 - (i) is incorporated and licenced or registered under the laws of Canada or a jurisdiction, and
 - (ii) has shareholders' equity, as reported in its most recent audited financial statement, of not less than \$10,000,000;
- (c) a company that is incorporated under the laws of Canada or a jurisdiction and is an affiliate of a bank or trust company referred to in paragraph (a) or (b), if
 - (i) the company has shareholders' equity, as reported in its most recent audited financial statements that have been made public, of not less than

\$10,000,000, or

- (ii) the bank or trust company has assumed responsibility for all of the custodial obligations of the company for that investment fund.
- (2) If portfolio assets are held outside of Canada by a sub-custodian, the sub-custodian must be one of the following:
- (a) an entity referred to in subsection (1);
 - (b) an entity that
 - (i) is incorporated or organized under the law of a country, or a political subdivision of a country, other than Canada,
 - (ii) is regulated as a banking institution or trust company by the government, or an agency of the government of the country or political subdivision of the country under whose laws it is incorporated or organized, and
 - (iii) has shareholders' equity, as reported in its most recent audited financial statements of not less than the equivalent of \$100,000,000;
 - (c) an affiliate of an entity referred to in paragraph (a) or (b) if
 - (i) the affiliate has shareholders' equity, as reported in its most recent audited financial statements that have been made public, of not less than the equivalent of \$100,000,000, or
 - (ii) the entity referred to in paragraphs (a) or (b) has assumed responsibility for all of the custodial obligation of the affiliate for that investment fund.

Standard of care

14.3(1) The custodian and each sub-custodian of an investment fund, in carrying out their duties concerning the safekeeping of, and dealing with, the portfolio assets of the investment fund, must exercise

- (a) the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances, or
 - (b) at least the same degree of care as they exercise with respect to their own property of a similar kind, if this is a higher degree of care than the degree of care referred to in paragraph (a).
- (2) No investment fund may relieve the custodian or a sub-custodian of the investment fund from liability to the investment fund or to a security holder of the investment fund for

loss that arises out of the failure of the custodian or sub-custodian to exercise the standard of care imposed by subsection (1).

- (3) An investment fund may indemnify a custodian or sub-custodian against legal fees, judgments and amounts paid in settlement, actually and reasonably incurred by that entity in connection with custodial or sub-custodial services provided by that entity to the investment fund, if those fees, judgments and amounts were not incurred as a result of a breach of the standard of care described in subsection (1).
- (4) No investment fund may incur the cost of any portion of liability insurance that insures a custodian or sub-custodian for a liability, except to the extent that the custodian or sub-custodian may be indemnified for that liability under this section.

Appointment of sub-custodian

14.4(1) The custodian or a sub-custodian of an investment fund may appoint one or more sub-custodians to hold portfolio assets of the investment fund if,

- (a) in the case where the appointment is by the custodian, the investment fund gives written consent to each appointment,
 - (b) in the case where the appointment is by a sub-custodian, the investment fund and the custodian of the investment fund gives written consent to each appointment,
 - (c) the sub-custodian is an entity described in section 14.2(1) or (2) [*Who may act as custodian or sub-custodian*], as applicable,
 - (d) the arrangements under which a sub-custodian is appointed are such that the investment fund may enforce rights directly, or require the custodian or a sub-custodian to enforce rights on behalf of the investment fund, to the portfolio assets held by the appointed sub-custodian, and
 - (e) the appointment is otherwise in compliance with this Instrument.
- (2) Despite paragraphs (1)(a) and (b), a general consent to the appointment of persons or companies that are part of an international network of sub-custodians within the organization of the custodian appointed by the investment fund or the sub-custodian appointed by the custodian is sufficient if that general consent is part of an agreement governing the relationship between the investment fund and the appointed custodian or the custodian and the appointed sub-custodian.
 - (3) A custodian or sub-custodian must provide to the investment fund a list of each person or company that is appointed sub-custodian under a general consent referred to in subsection (2).

Content of agreements

14.5(1) All agreements between the investment fund and the custodian or the custodian and the sub-custodian of an investment fund must provide for

- (a) the location of portfolio assets,
 - (b) the appointment of a sub-custodian, if any,
 - (c) providing lists of sub-custodians,
 - (d) the method of holding portfolio assets,
 - (e) the standard of care and responsibility for loss, and
 - (f) review and compliance reports.
- (2) The provisions of an agreement referred to under subsection (1) must comply with the requirements of this Part.
- (3) An agreement between a custodian and a sub-custodian concerning portfolio assets must provide for the safekeeping of portfolio assets on terms consistent with the agreement between the investment fund and the custodian.
- (4) No agreement between an investment fund and a custodian or a custodian and a sub-custodian respecting the portfolio assets may
- (a) provide for the creation of any security interest on the portfolio assets except for a good faith claim for payment of the fees and expenses of the custodian or sub-custodian for acting in that capacity or to secure the obligations of the investment fund to repay borrowings by the investment fund from a custodian or sub-custodian for the purpose of settling portfolio transactions, or
 - (b) contain a provision that would require the payment of a fee to the custodian or sub-custodian for the transfer of the beneficial ownership of portfolio assets, other than for safekeeping and administrative services in connection with acting as custodian or sub-custodian.

Review and compliance reports

14.6(1) The custodian of an investment fund must, on a periodic basis and at least annually,

- (a) review the agreements referred to in section 14.5 [*Content of agreements*] to determine if those agreements are in compliance with this Part,

- (b) make reasonable enquiries to ensure that each sub-custodian is an entity referred to in subsection 14.2(1) or (2) [*Who may act as custodian or sub-custodian*], as applicable, and
 - (c) make or cause to be made any changes that may be necessary to ensure that
 - (i) the agreements are in compliance with this Part, and
 - (ii) each sub-custodian is an entity referred to in subsection 14.2(1) or (2) [*Who may act as custodian or sub-custodian*], as applicable.
- (2) The custodian of an investment fund must, within 60 days after the end of each financial year of the investment fund, advise the investment fund in writing
- (a) of the names and addresses of all sub-custodians of the investment fund,
 - (b) if the agreements are in compliance with this Part, and
 - (c) if, to the best of the knowledge and belief of the custodian, each sub-custodian is an entity that satisfies the requirements of subsection 14.2(1) or (2) [*Who may act as custodian or sub-custodian*], as applicable.
- (3) A copy of the report referred to in subsection (2) must be delivered by or on behalf of the investment fund to the securities regulatory authority within 30 days after the filing of the annual financial statements of the investment fund.

Holding of portfolio assets and payment of fees

- 14.7(1)** Except as provided in subsections (2) and (3) and sections 14.8 [*Custodial provisions relating to derivatives and securities lending, repurchases and reverse repurchase agreements*] and 14.9 [*Separate account for paying expenses*], portfolio assets not registered in the name of the investment fund must be registered in the name of the custodian or a sub-custodian of the investment fund or any of their respective nominees with an account number or other designation in the records of the custodian sufficient to show that the beneficial ownership of the portfolio assets is vested in the investment fund.
- (2) The custodian or a sub-custodian of the investment fund or the applicable nominee must segregate portfolio assets issued in bearer form to show that the beneficial ownership of the property is vested in the investment fund.
 - (3) A custodian or sub-custodian of an investment fund may deposit portfolio assets with a depository or a clearing agency that operates a book-based system.
 - (4) The custodian or sub-custodian of an investment fund arranging for the deposit of portfolio assets with, and their delivery to, a depository, or clearing agency, that operates a book-based system must ensure that the records of any of the applicable participants in

that book-based system or the custodian contain an account number or other designation sufficient to show that the beneficial ownership of the portfolio assets is vested in the investment fund.

- (5) No investment fund may pay a fee to a custodian or sub-custodian for the transfer of beneficial ownership of portfolio assets other than for safekeeping and administrative services in connection with acting as custodian or sub-custodian.

Custodial provisions relating to derivatives and securities lending, repurchases and reverse repurchase agreements

14.8(1) An investment fund may deposit portfolio assets as margin for transactions in Canada involving clearing corporation options, options on futures or standardized futures with a dealer that is a member of an SRO that is a participating member of CIPF if the amount of margin deposited does not, when aggregated with the amount of margin already held by the dealer on behalf of the investment fund, exceed 10% of the net assets of the investment fund, taken at market value as at the time of deposit.

- (2) An investment fund may deposit portfolio assets with a dealer as margin for transactions outside Canada involving clearing corporation options, options on futures or standardized futures if
 - (a) in the case of standardized futures and options on futures, the dealer is a member of a futures exchange or, in the case of clearing corporation options, is a member of a stock exchange, and, as a result in either case, is subject to a regulatory audit,
 - (b) the dealer has a net worth, determined from its most recent audited financial statements that have been made public, in excess of the equivalent of \$50 million, and
 - (c) the amount of margin deposited does not, when aggregated with the amount of margin already held by the dealer on behalf of the investment fund, exceed 10% of the net assets of the investment fund, taken at market value as at the time of deposit.
- (3) An investment fund may deposit with its counterparty portfolio assets over which it has granted a security interest in connection with a particular specified derivatives transaction.
- (4) The agreement by which portfolio assets are deposited in accordance with subsection (1), (2) or (3) must require the person or company holding the portfolio assets to ensure that its records show that the investment fund is the beneficial owner of the portfolio assets.
- (5) An investment fund may deliver portfolio assets to a person or company in satisfaction of its obligations under a securities lending, repurchase or reverse purchase agreement that complies with this instrument if the collateral, cash proceeds or purchased securities that are delivered to the investment fund in connection with the transaction are held under the

custodianship of the custodian or a sub-custodian of the investment fund in compliance with this Part.

Separate account for paying expenses

- 14.9** An investment fund may deposit cash in Canada with an entity referred to in paragraph (a) or (b) of subsection 14.2(1) [*Who may act as custodian or sub-custodian*] to facilitate the payment of regular operating expenses of the investment fund.

PART 15: Documents Incorporated by Reference by Investment Funds

Incorporation by reference

- 15.1(1)** An investment fund that is in continuous distribution, except for scholarship plans, must incorporate by reference into its long form prospectus, by means of a statement to that effect, the filed documents listed in section 40.1 of Form 41-101F2 [*Mandatory Incorporation by Reference*].
- (2) If an investment fund does not incorporate by reference into its long form prospectus a document referred to in subsection (1), the document is deemed, for the purposes of securities legislation, to be incorporated by reference in the investment fund's long form prospectus as of the date of the long form prospectus.
- (3) An investment fund that is in continuous distribution, except for scholarship plans, must incorporate by reference in its long form prospectus, by means of a statement to that effect, the subsequently filed documents referred to in section 40.2 of Form 41-101F2 [*Mandatory Incorporation by Reference*].
- (4) If an investment fund does not incorporate by reference into its long form prospectus a document referred to in subsection (3), the document is deemed, for the purposes of securities legislation, to be incorporated by reference in the investment fund's long form prospectus as of the date the investment fund filed the document.

PART 16: Distribution of Preliminary Prospectus and Distribution List

Distribution of preliminary prospectus and distribution list

- 16.1** Except in Ontario, any dealer distributing a security during the waiting period must
- (a) send a copy of the preliminary prospectus to each prospective purchaser who indicates an interest in purchasing the security and requests a copy of such preliminary prospectus, and

- (b) maintain a record of the names and addresses of all persons and companies to whom the preliminary prospectus has been forwarded.

[**Note:** In Ontario, similar obligations regarding the distribution of a preliminary prospectus and maintaining a distribution list are set out in sections 66 and 67 of the *Securities Act* (Ontario).]

PART 17: Lapse Date

Pro forma prospectus

17.1(1) In this Part, “*pro forma prospectus*” means a long form prospectus that complies with the requirements described in subsections (2) and (3).

(2) A *pro forma* prospectus must be prepared in the form of a long form prospectus in accordance with Form 41-101F1 or Form 41-101F2, as applicable, and securities legislation, except that a *pro forma* prospectus is not required to contain prospectus certificates or to comply with

- (a) section 4.2 [*Audit of financial statements*],
- (b) section 4.3 [*Review of unaudited financial statements*], or
- (c) section 4.4 [*Approval of financial statements and related documents*],

of this Instrument.

(3) An issuer that files a *pro forma* prospectus must file and deliver with the *pro forma* prospectus, the documents described in section 9.2 [*Required documents for filing a preliminary long form prospectus*].

(4) This Part does not apply to a prospectus filed in accordance with NI 44-101, NI 44-102 or NI 44-103.

Refiling of prospectus

17.2(1) This section does not apply in Ontario.

(2) In this section, “**lapse date**” means, with reference to a security that is being distributed under applicable securities legislation or this Instrument, the date that is 12 months after the date of the most recent final prospectus relating to the security.

(3) An issuer must not continue the distribution of a security to which the prospectus requirement applies after the lapse date unless the issuer files a new prospectus that complies with securities legislation and a receipt for that new prospectus is issued by the regulator.

- (4) Despite subsection (3), a distribution may be continued for a further 12 months after a lapse date if,
- (a) the issuer delivers a *pro forma* prospectus within 30 days before the lapse date of the previous prospectus;
 - (b) the issuer files a new prospectus within 10 days after the lapse date of the previous prospectus; and
 - (c) a receipt for the new prospectus is issued by the regulator within 20 days after the lapse date of the previous prospectus.
- (5) The continued distribution of securities after the lapse date does not contravene subsection (3) unless and until any of the conditions of subsection (4) are not complied with.
- (6) If a condition in subsection (4) is not complied with, a purchaser may cancel a purchase made in a distribution after the lapse date in reliance on subsection (4) within 90 days after the purchaser first became aware of the failure to comply with the condition.
- (7) The regulator may, on an application of a reporting issuer, extend, subject to such terms and conditions as it may impose, the times provided by subsection (4) where in its opinion it would not be prejudicial to the public interest to do so.

[**Note:** In Ontario, similar requirements and procedures regarding refiling of prospectuses are set out in section 62 of the *Securities Act* (Ontario).]

PART 18: Statement of Rights

Statement of rights

- 18.1** Except in Ontario, a prospectus must contain a statement of the rights given to a purchaser under securities legislation for a failure to deliver the prospectus or for a misrepresentation in a prospectus.

[**Note:** In Ontario, section 60 of the *Securities Act* (Ontario) requires the inclusion of a similar statement of rights.]

PART 19: Exemption

Exemption

- 19.1(1)** The regulator or the securities regulatory authority may grant an exemption from the provisions of this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

- (2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.
- (3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

Application for exemption

19.2 An application made to the securities regulatory authority or regulator for an exemption from the provisions of this Instrument must include a letter or memorandum describing the matters relating to the exemption, and indicating why consideration should be given to the granting of the exemption.

Evidence of exemption

19.3(1) Subject to subsection (2) and without limiting the manner in which an exemption under this Part may be evidenced, the granting under this Part of an exemption, other than an exemption from subsection 2.2(3) [*Language*], may be evidenced by the issuance of a receipt for a final prospectus or an amendment to a final prospectus.

- (2) The issuance of a receipt for a final prospectus or an amendment to a final prospectus is not evidence that the exemption has been granted unless
 - (a) the person or company that sought the exemption sent to the regulator
 - (i) the letter or memorandum referred to in subsection 19.2 [*Application for exemption*] on or before the date of the filing of the preliminary prospectus, or
 - (ii) the letter or memorandum referred to in subsection 19.2 [*Application for exemption*] after the date of the filing of the preliminary prospectus and received a written acknowledgement from the regulator that the exemption may be evidenced in the manner set out in subsection (1), and
 - (b) the regulator has not before, or concurrently with, the issuance of the receipt sent notice to the person or company that sought the exemption, that the exemption sought may not be evidenced in the manner set out in subsection (1).

PART 20: Transition, Repeal, and Effective Date

Applicable rules

20.1 A final prospectus may, at the issuer's option be prepared in accordance with securities legislation in effect at the date of issuance of a receipt for the preliminary prospectus or the date of issuance of a receipt for the final prospectus.

Repeal

20.2 National Instrument 41-101 *Prospectus Disclosure Requirements*, which came into force on December 31, 2000, is repealed.

Effective date

20.3 This Instrument comes into force on ●.

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

**PERSONAL INFORMATION FORM AND
AUTHORIZATION OF INDIRECT COLLECTION,
USE AND DISCLOSURE OF PERSONAL INFORMATION**

In connection with an issuer (the “Issuer”) filing a prospectus, the attached Schedule 1 contains information (the “Information”) concerning every individual for who the Issuer is required to provide the Information under Part 9 of this Instrument or Part 4 of NI 44-101. The Issuer is required by securities legislation to deliver the Information to the regulators listed in Schedule 3.

The Issuer confirms that each individual who has completed a Schedule 1:

- (a) has been notified by the Issuer
 - (i) of the Issuer’s delivery to the regulator of the Information in Schedule 1 pertaining to that individual,
 - (ii) that the Information is being collected indirectly by the regulator under the authority granted to it in securities legislation or provincial legislation relating to documents held by public bodies and the protection of personal information,
 - (iii) that the Information collected from each director and executive officer of the investment fund manager may be used in connection with the prospectus filing of the Issuer and the prospectus filing of any other issuer managed by the investment fund manager,
 - (iv) that the Information is being collected and used for the purpose of enabling the regulator to administer and enforce securities legislation, including those obligations that require or permit the regulator to refuse to issue a receipt for a prospectus if it appears to the regulator that the past conduct of management, an investment fund manager or promoter of the Issuer affords reasonable grounds for belief that the business of the Issuer will not be conducted with integrity and in the best interests of its security holders, and
 - (v) of the contact, business address and business telephone number of the regulator in the local jurisdiction as set out in the attached Schedule 3, who can answer questions about the regulator’s indirect collection of the Information; and
- (b) has read and understands the Personal Information Collection Policy attached hereto as Schedule 2; and

(c) has, by signing the statutory declaration in Schedule 1, authorized the indirect collection, and use and disclosure of the Information by the regulator as described in Schedule 2.

Date: _____

Name of Issuer

Per: _____

Name

Official Capacity

(Please print the name of the individual whose signature appears in the official capacity)

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

**PERSONAL INFORMATION FORM
AND AUTHORIZATION OF INDIRECT COLLECTION,
USE AND DISCLOSURE OF PERSONAL INFORMATION**

Schedule 1

**Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of
Personal Information**

This Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information (the "Form") is to be completed by every individual who, in connection with an issuer filing a prospectus (the "Issuer"), is required to do so under Part 9 of National Instrument 41-101 *General Prospectus Requirements* or Part 4 of National Instrument 44-101 *Short Form Prospectus Distributions*. Where an individual has previously delivered this Form (a "Previous Form") or has submitted a personal information form (an "Exchange Form") to the Toronto Stock Exchange, a division of TSX Inc. or the TSX Venture Exchange, a division of TSX Venture Exchange Inc., and the information has not changed, the Previous Form or the Exchange Form may be delivered in lieu of this Form; provided that the statutory declaration of this Form is completed and attached to the Previous Form or the Exchange Form.

General Instructions:

All Questions

All questions must have a response. The response of "N/A" or "Not Applicable" for any questions, except Questions 1(B), 2B(iii) and 5 will not be accepted.

Questions 6 to 9

Please check (✓) in the appropriate space provided. If your answer to any of questions 6 to 9 is "YES", you must, in an attachment, provide complete details, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. **Any attachment must be initialed by the Notary Public and the person completing this Form.** Responses must consider all time periods.

CAUTION

An individual who makes a false statement by statutory declaration commits an offence under securities legislation and an indictable offence under the *Criminal Code* (Canada). The indictable offence is punishable by **imprisonment** for a term not exceeding **fourteen years**. Steps may be taken to verify the answers you have given in this Form, including verification of information relating to any previous criminal record.

DEFINITIONS

"Offence" An offence includes:

- a summary conviction or indictable offence under the *Criminal Code* (Canada);
- a quasi-criminal offence (for example under the *Income Tax Act* (Canada), the *Immigration Act* (Canada) or the tax, immigration, drugs, firearms, money laundering or securities legislation of any jurisdiction;
- a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory therein; or
- an offence under the criminal legislation of any other jurisdiction.

NOTE: If you have received a pardon under the *Criminal Records Act* (Canada) and it has not been revoked, you must disclose the pardoned offence in this Form. In such circumstances:

- (a) the appropriate written response would be "Yes, pardon granted on (date)," and
- (b) you must provide complete details in an attachment to this Form.

“Proceedings” means:

- (a) a civil or criminal proceeding or inquiry before a court,
- (b) a proceeding before an arbitrator or umpire or a person or group of persons authorized by law to make an inquiry and take evidence under oath in the matter,
- (c) a proceeding before a tribunal in the exercise of a statutory power of decision making where the tribunal is required by law to hold or afford the parties to the proceeding an opportunity for a hearing before making a decision, or
- (d) a proceeding before a self-regulatory organization authorized by law to regulate the operations and the standards of practice and business conduct of its members and their representatives, in which the self-regulatory organization is required under its by-laws or rules to hold or afford the parties the opportunity for a hearing before making a decision, but does not apply to a proceeding in which one or more persons are required to make an investigation and to make a report, with or without recommendations, if the report is for the information or advice of the person to whom it is made and does not in any way bind or limit that person in any decision the person may have the power to make;

“securities regulatory authority” (or “SRA”) means a body created by statute in any jurisdiction to administer securities law, regulation and policy (e.g. securities commission), but does not include an exchange or other self regulatory or professional organization;

“self regulatory or professional organization” means (a) a stock, commodities, futures or options exchange; (b) an association of investment, securities, mutual fund, commodities, or future dealers; (c) an association of investment counsel or portfolio managers; (d) an association of other professionals (e.g. legal, accounting, engineering); and (e) any other group, institution or self-regulatory entity, recognized by a securities regulatory authority, that is responsible for the enforcement of rules, disciplines or codes under any applicable legislation, or considered a self regulatory or professional organization in another country.

1. A. IDENTIFICATION OF INDIVIDUAL COMPLETING FORM

LAST NAME(S)	FIRST NAME(S)			MIDDLE NAME(S) (If none, please state)	
NAME(S) MOST COMMONLY KNOWN BY:					
NAME OF ISSUER					
PRESENT or PROPOSED POSITION(S) WITH THE ISSUER – check (√) all positions below that are applicable.	(√)	IF DIRECTOR / OFFICER DISCLOSE THE DATE ELECTED / APPOINTED			IF OFFICER – PROVIDE TITLE IF OTHER – PROVIDE DETAILS
		Month	Day	Year	
Director					
Officer					
Other					

B.

Other than the name given in Question 1A above, provide any legal names, assumed names or nicknames under which you have carried on business or have otherwise been known, including information regarding any name change(s) resulting from marriage, divorce, court order or any other process. Use an attachment if necessary.	FROM		TO	
	MM	YY	MM	YY

C.

GENDER		DATE OF BIRTH			PLACE OF BIRTH		
		Month (e.g. May)	Day	Year	City	Province/State	Country
Male							
Female							

D.	MARITAL STATUS	FULL NAME OF SPOUSE - include common-law	OCCUPATION OF SPOUSE

E.	TELEPHONE AND FACSIMILE NUMBERS AND E-MAIL ADDRESS			
	RESIDENTIAL	()	FACSIMILE	()
	BUSINESS	()	E-MAIL	

F.	RESIDENTIAL HISTORY - Provide all residential addresses for the past 10 YEARS starting with your current principal residential address. If you are unable to correctly identify the complete residential address for a period, which is beyond five years from the date of completion of this Form, the municipality and province or state and country must be identified. The regulator reserves the right to require the full address.									
	STREET ADDRESS, CITY, PROVINCE/STATE, COUNTRY & POSTAL/ZIP CODE						FROM		TO	
							MM	YY	MM	YY

2. CITIZENSHIP

A.	CANADIAN CITIZENSHIP		YES	NO
	(i)	Are you a Canadian Citizen?		
	(ii)	Are you a person lawfully in Canada as an immigrant but are not yet a Canadian citizen?		
	(iii)	If "Yes" to Question 2A(ii), the number of years of continuous residence in Canada:		

B.	OTHER CITIZENSHIP		YES	NO
	(i)	Do you hold citizenship in any country other than Canada?		
	(ii)	If "Yes" to Question 2B(i), the name of the country(s):		
	(iii)	Please provide U.S. Social Security number, where you have such a number		

3. EMPLOYMENT HISTORY

Provide your employment history for the **10 YEARS** immediately prior to the date of this Form starting with your current employment. Use an attachment if necessary.

EMPLOYER NAME	EMPLOYER ADDRESS	POSITION HELD	FROM		TO	
			MM	YY	MM	YY

4. POSITIONS WITH OTHER ISSUERS

	YES	NO
A. While you were a director, officer or insider of an issuer, did any exchange or self-regulatory organization ever refuse approval for listing or quotation of that issuer (including a listing resulting from a qualifying transaction, reverse take over, backdoor listing or change of business)? If yes, attach full particulars.		
B. Has your employment in a sales, investment or advisory capacity with any firm or company engaged in the sale of real estate, insurance or mutual funds ever been terminated for cause?		
C. Has a firm or company registered under the securities laws of any jurisdiction as a securities dealer, broker, investment advisor or underwriter, suspended or terminated your employment for cause?		
D. Are you or have you during the last 10 years ever been a director, officer, promoter, insider or control person for any reporting issuer?		

E. If "YES" to 4D above, provide the names of each reporting issuer. State the position(s) held and the period(s) during which you held the position(s). Use an attachment if necessary.

NAME OF REPORTING ISSUER	POSITION(S) HELD	MARKET TRADED ON	FROM		TO	
			MM	YY	MM	YY

5. EDUCATIONAL HISTORY

A. PROFESSIONAL DESIGNATION(S) - Provide any professional designation held and professional associations to which you belong. For example, Barrister & Solicitor, C.A., C.M.A., C.G.A., P.Eng., P.Geol., and CFA, etc. and indicate which organization and the date the designations were granted.

PROFESSIONAL DESIGNATION And MEMBERSHIP NUMBER	GRANTOR OF DESIGNATION And JURISDICTION	DATE GRANTED			ACTIVE?	
		MM	DD	YY	YES	NO

B. Provide your post-secondary educational history starting with the most recent.

SCHOOL	LOCATION	DEGREE OR DIPLOMA	DATE OBTAINED		
			MM	DD	YY

6. **OFFENCES** - If you answer "YES" to any item in Question 6, you must provide complete details in an attachment.

		YES	NO
A.	Have you ever pleaded guilty to or been found guilty of an offence?		
B.	Are you the subject of any current charge, indictment or proceeding for an offence?		
C.	To the best of your knowledge, are you or have you ever been a director, officer, promoter, insider, or control person of an issuer, in any jurisdiction, at the time of events, where the issuer:		
	(i) has ever pleaded guilty to or been found guilty of an offence?		
	(ii) is the subject of any current charge, indictment or proceeding for an offence?		

7. **BANKRUPTCY** - If you answer "YES" to any item in Question 7, you must provide complete details in an attachment and attach a copy of any discharge, release or other applicable document.

		YES	NO
A.	Have you, in any jurisdiction, within the past 10 years had a petition in bankruptcy issued against you, made a voluntary assignment in bankruptcy, made a proposal under any bankruptcy or insolvency legislation, been subject to any proceeding, arrangement or compromise with creditors, or had a receiver, receiver-manager or trustee appointed to manage your assets?		
B.	Are you now an undischarged bankrupt?		
C.	To the best of your knowledge, are you or have you ever been a director, officer, promoter, insider, or control person of an issuer, in any jurisdiction, at the time of events, or for a period of 12 months preceding the time of events, where the issuer:		
	(i) has made a petition in bankruptcy, a voluntary assignment in bankruptcy, a proposal under any bankruptcy or insolvency legislation, been subject to any proceeding, arrangement or compromise with creditors or had a receiver, receiver-manager or trustee appointed to manage the issuer's assets?		
	(ii) is now an undischarged bankrupt?		

8. **PROCEEDINGS** - If you answer "YES" to any item in Question 8, you must provide complete details in an attachment.

		YES	NO
A.	CURRENT PROCEEDINGS BY SECURITIES REGULATORY AUTHORITY OR SELF REGULATORY OR PROFESSIONAL ORGANIZATION. Are you now, in any jurisdiction, the subject of:		
	(i) a notice of hearing or similar notice issued by an SRA?		
	(ii) a proceeding or to your knowledge, under investigation, by an exchange or other self regulatory or professional organization?		
	(iii) settlement discussions or negotiations for settlement of any nature or kind whatsoever with an SRA or any self regulatory or professional organization?		

		YES	NO
B.	PRIOR PROCEEDINGS BY SECURITIES REGULATORY AUTHORITY OR SELF REGULATORY OR PROFESSIONAL ORGANIZATION. Have you ever:		
	(i) been reprimanded, suspended, fined, been the subject of an administrative penalty, or otherwise been the subject of any disciplinary proceedings of any kind whatsoever, in any jurisdiction, by an SRA or self regulatory or professional organization?		
	(ii) had a registration or licence for the trading of securities, exchange or commodity futures contracts, real estate, insurance or mutual fund products cancelled, refused, restricted or suspended?		
	(iii) been prohibited or disqualified under securities, corporate or any other legislation from acting as a director or officer of a reporting issuer?		
	(iv) had a cease trading or similar order issued against your or an order issued against you that denied you the right to use any statutory prospectus or registration exemption?		
	(v) had any other proceeding of any nature or kind taken against you?		
C.	SETTLEMENT AGREEMENT(S)		
	Have you ever entered into a settlement agreement with a SRA, self regulatory or professional organization, attorney general or comparable official or body, in any jurisdiction, in a matter that involved actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading in securities or exchange or commodity futures contracts, illegal distributions, failure to disclose material facts or changes or similar conduct, or any other settlement agreement with respect to any other violation of securities legislation or the rules of any self regulatory or professional organization?		
D.	To the best of your knowledge, are you now or have you ever been a director, officer, promoter, insider, or control person of an issuer at the time of such event, in any jurisdiction, for which a securities regulatory authority or self regulatory or professional organization has:		
	(i) refused, restricted, suspended or cancelled the registration or licensing of an issuer to trade securities, exchange or commodity futures contracts, or to sell or trade real estate, insurance or mutual fund products?		
	(ii) issued a cease trade or similar order or imposed an administrative penalty of any nature or kind whatsoever against the issuer, other than an order for failure to file financial statements that was revoked within 30 days of its issuance?		
	(iii) refused a receipt for a prospectus or other offering document, denied any application for listing or quotation or any other similar application, or issued an order that denied the issuer the right to use any statutory prospectus or registration exemptions?		
	(iv) issued a notice of hearing, notice as to a proceeding or similar notice against the issuer?		
	(v) taken any other proceeding of any nature or kind against the issuer, including a trading halt, suspension or delisting of the issuer (other than in the normal course for proper dissemination of information, pursuant to a Reverse Take-Over, Backdoor Listing or similar transaction)?		
	(vi) entered into a settlement agreement with the issuer in a matter that involved actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading in securities or exchange or commodity futures contracts, illegal distributions, failure to disclose material facts or changes or similar conduct by the issuer, or involved in any other violation of securities legislation or a self regulatory or professional organization's rules?		

9. **CIVIL PROCEEDINGS** - If you answer "YES" to any item in Question 9, you must provide complete details in an attachment.

		YES	NO
A.	JUDGMENT, GARNISHMENT AND INJUNCTIONS Has a court in any jurisdiction:		
	(i) rendered a judgment, ordered garnishment or issued an injunction or similar ban (whether by consent or otherwise) against <u>you</u> in a claim based in whole or in part on fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		
	(ii) rendered a judgment, ordered garnishment or issued an injunction or similar ban (whether by consent or otherwise) against <u>an issuer</u> , for which you are currently or have ever been a director, officer, promoter, insider or control person, in a claim based in whole or in part on fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		
B.	CURRENT CLAIMS		
	(i) Are <u>you</u> now subject, in any jurisdiction, of a claim that is based in whole or in part on actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		
	(ii) To the best of your knowledge, are you currently or have you ever been a director, officer, promoter, insider or control person of <u>an issuer</u> now subject, in any jurisdiction, of a claim that is based in whole or in part on actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		
C.	SETTLEMENT AGREEMENT		
	(i) Have <u>you</u> ever entered into a settlement agreement, in any jurisdiction, in a civil action that involved actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		
	(ii) To the best of your knowledge, are you currently or have you ever been a director, officer, promoter, insider or control person of <u>an issuer</u> that has entered into a settlement agreement, in any jurisdiction, in a civil action that involved actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		

STATUTORY DECLARATION AND CONSENT

I, _____ hereby solemnly declare that:
(Please Print - Name of Individual)

(a) I have read and understood the questions, cautions, acknowledgement and consent in this Form, and the answers I have given to the questions in this Form and in any attachments to it are true and correct, except where stated to be to the best of my knowledge, in which case I believe the answers to be true;

(b) I have read and understand the Personal Information Collection Policy attached hereto as Schedule 2 (the "Personal Information Collection Policy").

(c) I consent to the collection, use and disclosure of the information in this Form and any further personal information collected, used and disclosed as set out in the Personal Information Collection Policy;

(d) I understand that I am providing this Form to a regulator listed in Schedule 3 attached hereto and I am under the jurisdiction of the regulator to which I submit this Form, and it is a breach of securities legislation to provide false or misleading information to the regulator;

(e) I make this solemn declaration conscientiously believing it to be true and knowing it is of the same legal force and effect as if made under oath and under the Canada Evidence Act.

Signature of Person Completing this Form

DECLARED before me at the City of _____ in the Province (or State) of _____

_____ this _____ day of _____ , _____
(Province or State) (Day) (Month) (Year)

Signature of Notary Public

SEAL OR STAMP OF NOTARY PUBLIC

My Appointment Expires: _____

***Note:**
THIS Form MUST BE DECLARED BEFORE A PERSON WHO IS A NOTARY PUBLIC IN AND FOR THE JURISDICTION IN WHICH IT IS DECLARED UNLESS THAT JURISDICTION DOES NOT HAVE NOTARY PUBLICS, IN WHICH CASE THIS Form MUST BE DECLARED BEFORE A LAWYER IN THAT JURISDICTION, OR OTHER PERSON THAT SATISFIES THE REQUIREMENTS SET OUT IN THE CANADA EVIDENCE ACT.

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

**PERSONAL INFORMATION FORM
AND AUTHORIZATION OF INDIRECT COLLECTION,
USE AND DISCLOSURE OF PERSONAL INFORMATION**

Schedule 2

Personal Information Collection Policy

The regulators listed in Schedule 3 *Regulators* collect the personal information in Schedule 1 *Personal Information Form* under the authority granted to them under provincial and territorial securities legislation. The regulators do not make any of the information provided in Schedule 1 public under provincial and territorial securities legislation.

The regulators collect the personal information in Schedule 1 for the purpose of enabling the regulators to administer and enforce provincial and territorial securities legislation, including those provisions that require or permit the regulators to refuse to issue a receipt for a prospectus if it appears to the regulators that the past conduct of management or promoters of the Issuer affords reasonable grounds for belief that the business of the Issuer will not be conducted with integrity and in the best interests of its security holders.

You understand that by signing the statutory declaration and consent in Schedule 1, you are consenting to the Issuer submitting your personal information in Schedule 1 (the “Information”) to the regulators and to the collection and use by the regulators of the Information, as well as any other information that may be necessary to administer and enforce provincial and territorial securities legislation. This may include the collection of information from law enforcement agencies, other government or non-governmental regulatory authorities, self-regulatory organizations, exchanges, and quotation and trade reporting systems to conduct background checks, verify the Information and perform investigations and conduct enforcement proceedings as required to ensure compliance with provincial and territorial securities legislation.

You understand that the Issuer is required to deliver the Information to the regulators because the Issuer has filed a prospectus under provincial and territorial securities legislation. You also understand that you have a right to be informed of the existence of personal information about you that is kept by regulators, that you have the right to request access to that information, and that you have the right to request that such information be corrected, subject to the applicable provisions of the freedom of information and protection of privacy legislation adopted by each province and territory.

You also understand and agree that the Information the regulators collect about you may also be disclosed, as permitted by law, where its use and disclosure is for the purposes described above. The regulators may also use a third party to process the Information, but when this happens, the third party will be carefully selected and obligated to comply with the limited use restrictions described above and with provincial and federal privacy legislation.

Warning: It is an offence to submit information that, in a material respect and at the time and in the light of the circumstances in which it is submitted, is misleading or untrue.

Questions

If you have any questions about the collection, use, and disclosure of the information you provide to the regulators, you may contact the regulator in the jurisdiction in which the required information is filed, at the address or telephone number listed in Schedule 3.

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

**PERSONAL INFORMATION FORM
AND AUTHORIZATION OF INDIRECT COLLECTION,
USE AND DISCLOSURE OF PERSONAL INFORMATION**

Schedule 3

Regulators

Local Jurisdiction

Regulator

Alberta

Securities Review Officer
Alberta Securities Commission
Suite 400
300 - 5th Avenue S.W
Calgary, Alberta T2P 3C4
Telephone: (403) 297-6454
E-mail: inquiries@seccom.ab.ca
www.albertasecurities.com

British Columbia

Review Officer
British Columbia Securities Commission
P.O. Box 10142 Pacific Centre
701 West Georgia Street
Vancouver, British Columbia V7Y 1L2
Telephone: (604) 899-6854
Toll Free within British Columbia and Alberta: (800) 373-6393
E-mail: inquiries@bcsc.bc.ca
www.bcsc.bc.ca

Manitoba

Director, Corporate Finance
The Manitoba Securities Commission
500-400 St. Mary Avenue
Winnipeg, Manitoba R3C 4K5
Telephone: (204) 945-2548
E-mail: securities@gov.mb.ca
www.msc.gov.mb.ca

New Brunswick	Director Corporate Finance and Chief Financial Officer New Brunswick Securities Commission 85 Charlotte Street, Suite 300 Saint John, New Brunswick E2L 2J2 Telephone: (506) 658-3060 Fax: (506) 658-3059 E-mail: information@nbsc-cvmnb.ca
Newfoundland and Labrador	Director of Securities Department of Government Services and Lands P.O. Box 8700 West Block, 2nd Floor, Confederation Building St. John's, Newfoundland A1B 4J6 Telephone: (709) 729-4189 www.gov.nf.ca/gsl/cca/s
Northwest Territories	Securities Registries Department of Justice Government of the Northwest Territories P.O. Box 1320, Yellowknife, Northwest Territories X1A 2L9 Telephone: (867) 873- 7490 www.justice.gov.nt.ca/SecuritiesRegistry/SecuritiesRegistry.html
Nova Scotia	Deputy Director, Compliance and Enforcement Nova Scotia Securities Commission P.O. Box 458 Halifax, Nova Scotia B3J 2P8 Telephone: (902) 424-5354 www.gov.ns.ca/nssc
Nunavut	Government of Nunavut Legal Registries Division P.O. Box 1000 – Station 570 Iqaluit, Nunavut X0A 0H0 Telephone: (867) 975-6590
Ontario	Administrative Assistant to the Director of Corporate Finance Ontario Securities Commission 19th Floor, 20 Queen Street West Toronto, Ontario M5H 2S8 Telephone: (416) 597-0681 E-mail: Inquiries@osc.gov.on.ca www.osc.gov.on.ca

Prince Edward Island

Deputy Registrar, Securities Division
Shaw Building
95 Rochford Street, P.O. Box 2000, 4th Floor
Charlottetown, Prince Edward Island C1A 7N8
Telephone: (902) 368-4550
www.gov.pe.ca/securities

Québec

Autorité des marchés financiers
Stock Exchange Tower
P.O. Box 246, 22nd Floor
800 Victoria Square
Montréal, Québec H4Z 1G3
Attention: Responsable de l'accès à l'information
Telephone: (514) 395-0337
Toll Free in Québec: (877) 525-0337
www.lautorite.qc.ca

Saskatchewan

Director
Saskatchewan Financial Services Commission
Suite 601, 1919 Saskatchewan Drive
Regina, Saskatchewan S4P 4H2
Telephone: (306) 787-5842
www.sfsc.gov.sk.ca

Yukon

Registrar of Securities
Department of Justice
Andrew A. Philipsen Law Centre
2130 - 2nd Avenue, 3rd Floor
Whitehorse, Yukon Territory Y1A 5H6
Telephone: (867) 667-5005

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

**ISSUER FORM OF SUBMISSION TO
JURISDICTION AND APPOINTMENT OF
AGENT FOR SERVICE OF PROCESS**

1. Name of issuer (the “Issuer”):

2. Jurisdiction of incorporation, or equivalent, of Issuer:

3. Address of principal place of business of Issuer:

4. Description of securities (the “Securities”):

5. Date of the prospectus (the “Prospectus”) under which the Securities are offered:

6. Name of agent for service of process (the “Agent”):

7. Address for service of process of Agent in Canada (the address may be anywhere in Canada):

8. The Issuer designates and appoints the Agent at the address of the Agent stated above as its agent upon whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the “Proceeding”) arising out of, relating to or concerning the distribution of the Securities made or purported to be made under the Prospectus or the obligations of the Issuer as a reporting issuer, and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring such Proceeding.
9. The Issuer irrevocably and unconditionally submits to the non-exclusive jurisdiction of
 - (a) the judicial, quasi-judicial and administrative tribunals of each of the provinces [and territories] of Canada in which the securities are distributed under the Prospectus; and
 - (b) any administrative proceeding in any such province [or territory], in any Proceeding arising out of or related to or concerning the distribution of the Securities made or purported to be made under the Prospectus or the obligations of the issuer as a reporting issuer.

10. Until six years after it has ceased to be a reporting issuer in any Canadian province or territory, the Issuer shall file a new submission to jurisdiction and appointment of agent for service of process in this form at least 30 days before termination of this submission to jurisdiction and appointment of agent for service of process.
11. Until six years after it has ceased to be a reporting issuer in any Canadian province or territory, the Issuer shall file an amended submission to jurisdiction and appointment of agent for service of process at least 30 days before any change in the name or above address of the Agent.
12. This submission to jurisdiction and appointment of agent for service of process shall be governed by and construed in accordance with the laws of [insert province or territory of above address of Agent].

Dated: _____

Signature of Issuer

Print name and title of signing
officer of Issuer

AGENT

The undersigned accepts the appointment as agent for service of process of [insert name of Issuer] under the terms and conditions of the appointment of agent for service of process stated above.

Dated: _____

Signature of Agent

Print name of person signing and, if Agent
is not an individual, the title of the person

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

**NON-ISSUER FORM OF SUBMISSION TO
JURISDICTION AND APPOINTMENT OF
AGENT FOR SERVICE OF PROCESS**

1. Name of issuer (the “Issuer”):

2. Jurisdiction of incorporation, or equivalent, of Issuer:

3. Address of principal place of business of Issuer:

4. Description of securities (the “Securities”):

5. Date of the prospectus (the “Prospectus”) under which the Securities are offered:

6. Name of person filing this form (the “Filing Person”):

7. Filing Person’s relationship to Issuer:

8. Jurisdiction of incorporation, or equivalent, of Filing Person, if applicable, or jurisdiction of residence of Filing Person:

9. Address of principal place of business of Filing Person:

10. Name of agent for service of process (the “Agent”):

11. Address for service of process of Agent in Canada (which address may be anywhere in Canada):

12. The Filing Person designates and appoints the Agent at the address of the Agent stated above as its agent upon whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the “Proceeding”) arising out of, relating to or concerning the distribution of the Securities made or purported to be made under the Prospectus, and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring the Proceeding.

13. The Filing Person irrevocably and unconditionally submits to the non-exclusive jurisdiction of
- (a) the judicial, quasi-judicial and administrative tribunals of each of the provinces [and territories] of Canada in which the securities are distributed under the Prospectus; and
 - (b) any administrative proceeding in any such province [or territory],
- in any Proceeding arising out of or related to or concerning the distribution of the Securities made or purported to be made under the Prospectus.
14. Until six years after completion of the distribution of the Securities made under the Prospectus, the Filing Person shall file a new submission to jurisdiction and appointment of agent for service of process in this form at least 30 days before termination of this submission to jurisdiction and appointment of agent for service of process.
15. Until six years after completion of the distribution of the Securities under the Prospectus, the Filing Person shall file an amended submission to jurisdiction and appointment of agent for service of process at least 30 days before a change in the name or above address of the Agent.
16. This submission to jurisdiction and appointment of agent for service of process shall be governed by and construed in accordance with the laws of [insert province or territory of above address of Agent].

Dated: _____

Signature of Filing Person

Print name of person signing and, if the Filing Person is not an individual, the title of the person

AGENT

The undersigned accepts the appointment as agent for service of process of [insert name of Filing Person] under the terms and conditions of the appointment of agent for service of process stated above.

Dated: _____

Signature of Agent

Print name of person signing and, if Agent is not an individual, the title of the person

APPENDIX B

Schedule 2

FORM 41-101F1

INFORMATION REQUIRED IN A PROSPECTUS

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FORM 41-101F1

INFORMATION REQUIRED IN A PROSPECTUS

GENERAL INSTRUCTIONS

- (1) *The objective of the prospectus is to provide information concerning the issuer that an investor needs in order to make an informed investment decision. Form 41-101F1 sets out specific disclosure requirements that are in addition to the general requirement under securities legislation to provide full, true and plain disclosure of all material facts relating to the securities to be distributed. Certain rules of specific application impose prospectus disclosure obligations in addition to those described in Form 41-101F1.*
- (2) *Terms used and not defined in Form 41-101F1 that are defined or interpreted in the Instrument must bear that definition or interpretation. Other definitions are set out in National Instrument 14-101 Definitions.*
- (3) *In determining the degree of detail required, a standard of materiality should be applied. Materiality is a matter of judgment in particular circumstance, and should generally be determined in relation to an item's significance to investors, analysts and other users of the information. An item of information, or an aggregate of items, is considered material if it is probable that its omission or misstatement would influence or change an investment decision with respect to the issuer's securities. In determining whether information is material, take into account both quantitative and qualitative factors. The potential significance of items should be considered individually rather than on a net basis, if the items have an offsetting effect. This concept of materiality is consistent with the financial reporting notion of materiality contained in the Handbook.*
- (4) *Unless an item specifically requires disclosure only in the preliminary prospectus, the disclosure requirements set out in Form 41-101F1 apply to both the preliminary prospectus and the prospectus. Details concerning the price and other matters dependent upon or relating to price, such as the number of securities being distributed, may be left out of the preliminary prospectus, along with specifics concerning the plan of distribution, to the extent that these matters have not been decided.*
- (5) *The disclosure must be understandable to readers and presented in an easy to read format. The presentation of information should comply with the plain language principles listed in section 4.1 of Companion Policy 41-101CP General Prospectus Requirements [Style of prospectus]. If technical terms are required, clear and concise explanations should be included.*
- (6) *No reference need be made to inapplicable items and, unless otherwise required in Form 41-101F1, negative answers to items may be omitted.*
- (7) *Where the term "issuer" is used, it may be necessary, in order to meet the requirement for full, true and plain disclosure of all material facts to also include disclosure with respect to the issuer's subsidiaries and investees. If it is more likely than not that a*

person or company will become a subsidiary or investee, it may be necessary to also include disclosure with respect to the person or company. For this purpose, subsidiaries and investees include entities that are consolidated, proportionately consolidated, or accounted for using the equity method.

- (8) *An issuer that is a special purpose vehicle may have to modify the disclosure items to reflect the special purpose nature of its business.*
- (9) *If disclosure is required as of a specific date and there has been a material change or change that is otherwise significant in the required information subsequent to that date, present the information as of the date of the change or a date subsequent to the change instead.*
- (10) *If an issuer discloses financial information in a preliminary prospectus or prospectus in a currency other than the Canadian dollar, prominently disclose the currency in which the financial information is disclosed.*
- (11) *Except as otherwise required or permitted, include information in a narrative form. The issuer may include graphs, photographs, maps, artwork or other forms of illustration, if relevant to the business of the issuer or the distribution and not misleading. Include descriptive headings. Except for information that appears in a summary, information required under more than one item need not be repeated.*
- (12) *Certain requirements in this Form 41-101F1 make reference to requirements in another instrument. Issuers must also refer to any instructions to the requirements in the other instrument unless otherwise noted. These references include references to Form 51-102F2 Annual Information Form. Venture issuers must include such disclosure in a preliminary prospectus or prospectus even if they are not otherwise required to file an annual information form under NI 51-102 .*

ITEM 1: Cover Page Disclosure

Required statement

- 1.1** State in italics at the top of the cover page the following:

“No securities regulatory authority has expressed an opinion about these securities and it is an offence to claim otherwise.”

Preliminary prospectus disclosure

- 1.2** Every preliminary prospectus must have printed in red ink and in italics at the top of the cover page immediately above the disclosure required under item 1.1 [*Required statement*] the following, with the bracketed information completed:

“A copy of this preliminary prospectus has been filed with the securities regulatory authority(ies) in [each of/certain of the provinces/provinces and territories of Canada] but has not yet become final for the purpose of the sale of

securities. Information contained in this preliminary prospectus may not be complete and may have to be amended. The securities may not be sold until a receipt for the prospectus is obtained from the securities regulatory authority(ies).”

INSTRUCTION

Issuers must complete the bracketed information by

- (a) inserting the names of each jurisdiction in which the issuer intends to offer securities under the prospectus,*
- (b) stating that the filing has been made in each of the provinces of Canada or each of the provinces and territories of Canada, or*
- (c) identifying the filing jurisdictions by exception (i.e., every province of Canada or every province and territory of Canada, except [excluded jurisdictions]).*

Basic disclosure about the distribution

- 1.3** State the following immediately below the disclosure required under items 1.1 [*Required statement*] and 1.2 [*Preliminary prospectus disclosure*] with the bracketed information completed:

“[PRELIMINARY] PROSPECTUS

[INITIAL PUBLIC OFFERING OR NEW ISSUE AND/OR SECONDARY OFFERING]

[(Date)]

[Name of Issuer]

[number and type of securities qualified for distribution under the prospectus, including any options or warrants, and the price per security]”

Distribution

1.4(1) If the securities are being distributed for cash, provide the information called for below, in substantially the following tabular form or in a note to the table:

	Price to public (a)	Underwriting discounts or commission (b)	Proceeds to issuer or selling security holders (c)
Per Security			
Total			

- (2) If there is an over-allotment option or an option to increase the size of the distribution before closing,
- (a) disclose that a purchaser who acquires securities forming part of the underwriters' over-allocation position acquires those securities under this prospectus, regardless of whether the over-allocation position is ultimately filled through the exercise of the over-allotment option or secondary market purchases, and
 - (b) describe the terms of the option.
- (3) If the distribution of the securities is to be on a best efforts basis, provide totals for both the minimum and maximum offering amount, if applicable.
- (4) If a minimum subscription amount is required from each subscriber, provide details of the minimum subscription requirements in the table required under subsection (1).
- (5) If debt securities are being distributed at a premium or a discount, state in bold type the effective yield if held to maturity.
- (6) Disclose separately those securities that are underwritten, those under option and those to be sold on a best efforts basis, and, in the case of a best efforts distribution, the latest date that the distribution is to remain open.
- (7) In column (b) of the table, disclose only commissions paid or payable in cash by the issuer or selling security holder and discounts granted. Set out in a note to the table
- (a) commissions or other consideration paid or payable by persons or companies other than the issuer or selling security holder,
 - (b) consideration other than discounts granted and cash paid or payable by the issuer or selling security holder, including warrants and options, and
 - (c) any finder's fees or similar required payment.

- (8) If a security is being distributed for the account of a selling security holder, state the name of the security holder and a cross-reference to the applicable section in the prospectus where further information about the selling security holder is provided. State the portion of the expenses of the distribution to be borne by the selling security holder and, if none of the expenses of the distribution are being borne by the selling security holder, include a statement to that effect and discuss the reason why this is the case.

INSTRUCTIONS

- (1) *Estimate amounts, if necessary. For non-fixed price distributions that are being made on a best efforts basis, disclosure of the information called for by the table may be set forth as a percentage or a range of percentages and need not be set forth in tabular form.*
- (2) *If debt securities are being distributed, also express the information in the table as a percentage.*

Offering price in currency other than Canadian dollar

- 1.5** If the offering price of the securities being distributed is disclosed in a currency other than the Canadian dollar, disclose in bold face type the reporting currency.

Non-fixed price distributions

- 1.6** If the securities are being distributed at non-fixed prices, disclose
- (a) the discount allowed or commission payable to the underwriter,
 - (b) any other compensation payable to the underwriter and, if applicable, that the underwriter's compensation will be increased or decreased by the amount by which the aggregate price paid for the securities by the purchasers exceeds or is less than the gross proceeds paid by the underwriter to the issuer or selling security holder,
 - (c) that the securities to be distributed under the prospectus will be distributed, as applicable, at
 - (i) prices determined by reference to the prevailing price of a specified security in a specified market,
 - (ii) market prices prevailing at the time of sale, or
 - (iii) prices to be negotiated with purchasers,
 - (d) that prices may vary as between purchasers and during the period of distribution,
 - (e) if the price of the securities is to be determined by reference to the prevailing price of a specified security in a specified market, the price of the specified security in the specified market at the latest practicable date,

- (f) if the price of the securities will be the market price prevailing at the time of the sale, the market price at the latest practicable date, and
- (g) the net proceeds or, if the distribution is to be made on a best efforts basis, the minimum amount of net proceeds, if any, to be received by the issuer or selling security holder.

Pricing range

- 1.7** If the offering price or the number of securities being distributed has not been determined at the date of the preliminary prospectus, disclose a *bona fide* estimate of the range in which the offering price or the number of securities being distributed is expected to be set.

Reduced price distributions

- 1.8** If an underwriter wishes to be able to decrease the price at which securities are distributed for cash from the initial offering price fixed in the prospectus, include in bold type a cross-reference to the section in the prospectus where disclosure concerning the possible price decrease is provided.

Market for securities

- 1.9(1)** Identify the exchange(s) and quotation system(s), if any, on which securities of the issuer of the same class as the securities being distributed are traded or quoted and the market price of those securities as of the latest practicable date.

- (2)** Disclose any intention to stabilize the market. Provide a cross-reference to the section in the prospectus where further information about market stabilization is provided.

- (3)** If no market for the securities being distributed under the prospectus is expected to exist upon completion of the distribution, state the following in bold type:

“There is no market through which these securities may be sold. This may affect the pricing of the securities in the secondary market, the transparency and availability of trading prices, the liquidity of the securities, and the extent of issuer regulation. A purchaser may not be able to resell securities purchased under this prospectus. See ‘Risk Factors’”.

- (4)** If the issuer has complied with the requirements of this Instrument as an IPO venture issuer, include a statement, in substantially the following form, with bracketed information completed:

“As at the date of this prospectus, [name of issuer] does not have any of its securities listed or quoted, has not applied to list or quote any of its securities, and does not intend to apply to list or quote any of its securities, on the Toronto Stock Exchange, a U.S. marketplace, or a marketplace outside of Canada and the United

States of America other than the Alternative Investment Market of the London Stock Exchange or the market known as OFEX.”

Risk factors

- 1.10** Include a cross-reference to sections in the prospectus where information about the risks of an investment in the securities being distributed is provided.

Underwriter(s)

- 1.11(1)** State the name of each underwriter.

- (2) If applicable, comply with the requirements of National Instrument 33-105 *Underwriting Conflicts* for cover page prospectus disclosure.

- (3) If an underwriter has agreed to purchase all of the securities being distributed at a specified price and the underwriter’s obligations are subject to conditions, state the following, with bracketed information completed:

“We, as principals, conditionally offer these securities, subject to prior sale, if, as and when issued by [name of issuer] and accepted by us in accordance with the conditions contained in the underwriting agreement referred to under Plan of Distribution”.

- (4) If an underwriter has agreed to purchase a specified number or principal amount of the securities at a specified price, state that the securities are to be taken up by the underwriter, if at all, on or before a date not later than 42 days after the date of the receipt for the prospectus.

- (5) If there is no underwriter involved in the distribution, provide a statement in bold type to the effect that no underwriter has been involved in the preparation of the prospectus or performed any review or independent due diligence of the contents of the prospectus.

- (6) Provide the following tabular information

Underwriter's Position	Maximum size or number of securities held	Exercise period/ Acquisition date	Exercise price or average acquisition price
Over-allotment option			
Compensation option			
Any other option granted by issuer or insider of issuer			
Total securities under option			
Other compensation securities			

International issuers

1.12 If the issuer, a selling security holder, or any person or company required to provide a certificate under Part 5 of the Instrument [*Certificates*], other than the issuer, is incorporated, continued, or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada, state the following on the cover page or under a separate heading elsewhere in the prospectus, with the bracketed information completed:

“The [issuer, selling security holder, or person or company providing a certificate under Part 5 of the Instrument [*Certificates*] or securities legislation] is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada. Although [the person or company described above] has appointed [name(s) and addresses of agent(s) for service] as its agent(s) for service of process in [list jurisdictions] it may not be possible for investors to realize on judgements obtained in Canada against [the person or company described above].”

Restricted securities

1.13(1) Describe the number and class or classes of restricted securities being distributed using the appropriate restricted security term in the same type face and type size as the rest of the description.

(2) If the securities being distributed are restricted securities and the holders of the securities do not have the right to participate in a takeover bid made for other equity securities of the issuer, disclose that fact.

Earnings coverage

- 1.14** If any of the earnings coverage ratios required to be disclosed under Item 9 [*Earnings Coverage Ratios*] is less than one-to-one, disclose this fact in bold type.

ITEM 2: Table of Contents

Table of contents

- 2.1** Include a table of contents.

ITEM 3: Summary of Prospectus

General

- 3.1(1)** Briefly summarize, near the beginning of the prospectus, information appearing elsewhere in the prospectus that, in the opinion of the issuer or selling security holder, would be most likely to influence the investor's decision to purchase the securities being distributed, including a description of
- (a) the principal business of the issuer and its subsidiaries,
 - (b) the securities to be distributed, including the offering price and expected net proceeds,
 - (c) use of proceeds,
 - (d) risk factors,
 - (e) financial information, and
 - (f) if restricted securities, subject securities or securities that are directly or indirectly convertible into or exercisable or exchangeable for restricted securities or subject securities, are to be distributed under the prospectus
 - (i) include a summary of the information required by item 10.6 [*Restricted securities*]; and
 - (ii) include, in bold-face type, a statement of the rights the holders of restricted securities do not have, if the holders do not have all of the rights referred to in item 10.6 [*Restricted securities*].
- (2)** For the financial information provided under paragraph (1)(e),
- (a) disclose the source of the financial information,
 - (b) disclose whether the source of the financial information has been audited,

- (c) disclose whether the financial information has been audited, and
 - (d) if neither the source of the financial information nor the financial information has been audited, prominently disclose that fact.
- (3) For each item summarized under subsection (1), provide a cross-reference to the information in the prospectus.

Cautionary language

- 3.2 At the beginning of the summary, include a statement in italics in substantially the following form:

“The following is a summary of the principal features of this distribution and should be read together with the more detailed information and financial data and statements contained elsewhere in this prospectus.”

ITEM 4: Corporate Structure

Name, address and incorporation

- 4.1(1) State the issuer’s full corporate name or, if the issuer is an unincorporated entity, the full name under which it exists and carries on business, and the address(es) of the issuer’s head and registered office.
- (2) State 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.
- (3) Describe the substance of any material amendments to the articles or other constating or establishing documents of the issuer.

Intercorporate relationships

- 4.2(1) Describe, by way of a diagram or otherwise, the intercorporate relationships among the issuer and its subsidiaries.
- (2) For each subsidiary described in subsection (1), state
- (a) the percentage of votes attaching to all voting securities of the subsidiary beneficially owned, controlled or directed, by the issuer,
 - (b) the percentage of each class of restricted securities of the subsidiary beneficially owned, controlled or directed, by the issuer, and
 - (c) where the subsidiary was incorporated or continued.

- (3) If the securities distributed under the prospectus are being issued in connection with a restructuring transaction, describe by way of a diagram or otherwise these intercorporate relationships both before and after the completion of the proposed transaction.
- (4) A particular subsidiary may be omitted from the disclosure required by this item if, at the most recent financial year end of the issuer
 - (a) the total assets of the subsidiary do not exceed 10% of the consolidated assets of the issuer,
 - (b) the sales and operating revenues of the subsidiary do not exceed 10% of the consolidated sales and operating revenues of the issuer, and
 - (c) the conditions in paragraphs (a) and (b) would be satisfied if
 - (i) the subsidiaries that may be omitted under paragraphs (a) and (b) were considered in the aggregate, and
 - (ii) the reference to 10% in those paragraphs was changed to 20%.

ITEM 5: Describe the Business

Describe the business

- 5.1(1)** Describe the business of the issuer and its operating segments that are reportable segments as those terms are used in the Handbook. Disclose information for each reportable segment of the issuer in accordance with subsection 5.1(1) of Form 51-102F2 [*General*].
- (2) Disclose the nature and results of any bankruptcy, receivership or similar proceedings against the issuer or any of its subsidiaries, or any voluntary bankruptcy, receivership or similar proceedings by the issuer or any of its subsidiaries, within the 3 most recently completed financial years or completed during or proposed for the current financial year.
- (3) Disclose the nature and results of any material restructuring transaction of the issuer or any of its subsidiaries within the 3 most recently completed financial years or completed during or proposed for the current financial year.
- (4) If the issuer has implemented social or environmental policies that are fundamental to the issuer's operations, such as policies regarding the issuer's relationship with the environment or with the communities in which the issuer does business, or human rights policies, describe them and the steps the issuer has taken to implement them.

Three-year history

- 5.2(1)** Describe how the issuer's business has developed over the last 3 completed financial years and any subsequent period to the date of the prospectus, including only events, such

as acquisitions or dispositions, or conditions that have influenced the general development of the business.

- (2) If the issuer produces or distributes more than one product or provides more than one kind of service, describe the products or services.
- (3) Discuss changes in the issuer's business that the issuer expects will occur during the current financial year.

Issuers with asset-backed securities outstanding

- 5.3(1)** If the issuer has asset-backed securities outstanding that were distributed under a prospectus, disclose information in accordance with item 5.3 of Form 51-102F2 [*Companies with Asset-backed Securities Outstanding*].
- (2) If any of the information disclosed in accordance with subsection 5.3(2) of Form 51-102F2 [*Companies with Asset-backed Securities Outstanding*] as required under subsection (1) has been audited, disclose the existence and results of the audit.

Issuers with mineral projects

- 5.4** If the issuer has a mineral project, disclose information for the issuer in accordance with item 5.4 of Form 51-102F2 [*Companies With Mineral Projects*].

Issuers with oil and gas operations

- 5.5(1)** If the issuer is engaged in oil and gas activities as defined in NI 51-101, disclose information in accordance with Form 51-101F1 *Statement of Reserves Data and Other Oil and Gas Information*
 - (a) as at the end of, and for, the most recent financial year for which the prospectus includes an audited balance sheet of the issuer, or
 - (b) in the absence of a completed financial year referred to in paragraph (a), as at the most recent date for which the prospectus includes an audited balance sheet of the issuer, and for the most recent financial period for which the prospectus includes an audited income statement of the issuer.
- (2) Include with the disclosure under subsection (1) a report in the form of Form 51-101F2 *Report on Reserves Data by Independent Qualified Reserves Evaluator or Auditor*, on the reserves data included in the disclosure required under subsection (1).
- (3) Include with the disclosure under subsection (1) a report in the form of Form 51-101F3 *Report of Management and Directors on Oil and Gas Disclosure* that refers to the information disclosed under subsection (1).
- (4) To the extent not reflected in the information disclosed in response to subsection (1), disclose the information contemplated by Part 6 of NI 51-101 [*Material Change*]

Disclosure] in respect of material changes that occurred after the applicable balance sheet referred to in subsection (1).

INSTRUCTION

Disclosure in a prospectus must be consistent with NI 51-101 if the issuer is engaged in oil and gas activities (as defined in NI 51-101).

ITEM 6: Use of Proceeds

Proceeds

- 6.1(1)** State the estimated net proceeds to be received by the issuer or selling security holder or, in the case of a non-fixed price distribution or a distribution to be made on a best efforts basis, the minimum amount, if any, of net proceeds to be received by the issuer or selling security holder from the sale of the securities distributed.
- (2)** State the particulars of any provisions or arrangements made for holding any part of the net proceeds of the distribution in trust or escrow subject to the fulfillment of conditions.
- (3)** If the prospectus is used for a special warrant or similar transaction, state the amount that has been received by the issuer of the special warrants or similar securities on the sale of the special warrants or similar securities.

Junior issuers

6.2 A junior issuer must disclose

- (a)** the total funds available, and
- (b)** the following breakdown of those funds:
 - (i)** the net proceeds from the sale of the securities offered under the prospectus;
 - (ii)** the estimated consolidated working capital (deficiency) as at the most recent month end before filing the prospectus;
 - (iii)** the total other funds available to be used to achieve the principal purposes identified by the junior issuer pursuant to this Item.

Principal purposes – generally

- 6.3(1)** Describe in reasonable detail and, if appropriate, using tabular form, each of the principal purposes, with approximate amounts, for which
 - (a)** the net proceeds will be used by the issuer, or

- (b) the funds available as required under section 6.2 [*Junior issuers*] will be used by a junior issuer.
- (2) If the closing of the distribution is subject to a minimum subscription, provide disclosure of the use of proceeds for the minimum and maximum subscriptions.

INSTRUCTION

For the purposes of the disclosure in this item, the phrase “for general corporate purposes” will generally not be sufficient.

Principal purposes – indebtedness

- 6.4(1) If more than 10% of the net proceeds will be used to reduce or retire indebtedness and the indebtedness was incurred within the 2 preceding years, describe the principal purposes for which the proceeds of the indebtedness were used.
- (2) If the creditor is an insider, associate or affiliate of the issuer, identify the creditor and the nature of the relationship to the issuer and the outstanding amount owed.

Principal purposes – asset acquisition

- 6.5(1) If more than 10% of the net proceeds are to be used to acquire assets, describe the assets.
- (2) If known, disclose the particulars of the purchase price being paid for or being allocated to the assets or categories of assets, including intangible assets.
- (3) If the vendor of the assets is an insider, associate or affiliate of the issuer, give the name of the vendor and the method used in determining the purchase price.
- (4) Describe the nature of the title to or interest in the assets to be acquired by the issuer.
- (5) If part of the consideration for the acquisition of the assets consists of securities of the issuer, give brief particulars of the class, number or amount, voting rights, if any, and other appropriate information relating to the securities, including particulars of the issuance of securities of the same class within the 2 preceding years.

Principal purposes – insiders, etc.

- 6.6 If an insider, associate or affiliate of the issuer will receive more than 10% of the net proceeds, identify the insider, associate or affiliate and disclose the amount of net proceeds to be received.

Principal purposes – research and development

- 6.7 If more than 10% of the net proceeds from the distribution will be used for research and development of products or services, describe

- (a) the timing and stage of research and development programs that management anticipates will be reached using such proceeds,
- (b) the major components of the proposed programs that will be funded using the proceeds from the distribution, including an estimate of anticipated costs,
- (c) if the issuer is conducting its own research and development, is subcontracting out the research and development or is using a combination of those methods, and
- (d) the additional steps required to reach commercial production and an estimate of costs and timing.

Business objectives and milestones

- 6.8(1)** State the business objectives that the issuer expects to accomplish using the net proceeds of the distribution under item 6.1 [*Proceeds*], or in the case of a junior issuer, using the funds available described under item 6.2 [*Junior issuers*].
- (2) Describe each significant event that must occur for the business objectives described under subsection (1) to be accomplished and state the specific time period in which each event is expected to occur and the costs related to each event.

Unallocated funds in trust or escrow

- 6.9(1)** Disclose that unallocated funds will be placed in a trust or escrow account, invested or added to the working capital of the issuer.
- (2) Give details of the arrangements made for, and the persons or companies responsible for,
- (a) the supervision of the trust or escrow account or the investment of unallocated funds, and
 - (b) the investment policy to be followed.

Other sources of funding

- 6.10** If any material amounts of other funds are to be used in conjunction with the proceeds, state the amounts and sources of the other funds.

Financing by special warrants, etc.

- 6.11(1)** If the prospectus is used to qualify the distribution of securities issued upon the exercise of special warrants or the exercise of other securities acquired on a prospectus-exempt basis, describe the principal purposes for which the proceeds of the prospectus-exempt financing were used or are to be used.
- (2) If all or a portion of the funds have been spent, explain how the funds were spent.

ITEM 7: Dividends or Distributions

Dividends or distributions

- 7.1(1)** Disclose the amount of cash dividends or distributions declared per security for each class of the issuer's securities for each of the 3 most recently completed financial years and its current financial year.
- (2) Describe any restrictions that could prevent the issuer from paying dividends or distributions.
- (3) Disclose the issuer's dividend or distribution policy and any intended change in dividend or distribution policy.

ITEM 8: Management's Discussion and Analysis

Interpretation

- 8.1(1)** For the purposes of this Item, MD&A means a completed Form 51-102F1 or, in the case of an SEC issuer, a completed Form 51-102F1 or management's discussion and analysis prepared in accordance with Item 303 of Regulation S-K or Item 303 of Regulation S-B under the 1934 Act.
- (2) If MD&A is prepared in the form of Form 51-102F1, the issuer
- (a) should read the references to a "venture issuer" in Form 51-102F1 to include an IPO venture issuer,
 - (b) should disregard the requirements in
 - (i) the Instruction to section 1.11 of Form 51-102F1 [*Proposed Transactions*], and
 - (ii) section 1.15 of Form 51-102F1 [*Other MD&A Requirements*], and
 - (c) may not satisfy section 1.10 of Form 51-102F1 [*Fourth Quarter*] by incorporating by reference into the prospectus separate MD&A for the issuer's fourth quarter.

MD&A

- 8.2(1)** Provide MD&A for
- (a) the most recent annual financial statements of the issuer included in the prospectus under Item 32 [*Financial Statement Disclosure for Issuers*], and
 - (b) the most recent interim financial statements of the issuer included in the prospectus under Item 32 [*Financial Statement Disclosure for Issuers*].

- (2) If the prospectus includes the issuer's annual income statements, statements of retained earnings, and cash flow statements for 3 financial years under Item 32 [*Financial Statement Disclosure for Issuers*], provide MD&A for the second most recent annual financial statements of the issuer included in the prospectus under Item 32 [*Financial Statement Disclosure for Issuers*].
- (3) Despite subsection (2), MD&A for the second most recent annual financial statements of the issuer included in the prospectus under Item 32 [*Financial Statement Disclosure for Issuers*] may omit disclosure regarding balance sheet items.

MD&A and supplement for SEC issuers

- 8.3(1)** If the issuer is an SEC issuer, for any MD&A that is included in the prospectus, include the disclosure prepared in accordance with subsection (2) if the issuer
- (a) has based the discussion in the MD&A on financial statements prepared in accordance with U.S. GAAP, and
 - (b) is required by subsection 4.1(1) of NI 52-107 [*Acceptable Accounting Principles for SEC Issuers*] to provide a reconciliation to Canadian GAAP.
- (2) In the disclosure required under subsection (1) restate, based on financial information of the issuer prepared in accordance with, or reconciled to, Canadian GAAP, those parts of the MD&A that
- (a) are based on financial statements of the issuer prepared in accordance with U.S. GAAP, and
 - (b) would contain material differences if they were based on financial statements of the issuer prepared in accordance with Canadian GAAP.

Disclosure of outstanding security data

- 8.4(1)** Disclose in the MD&A, or supplement if one is required under item 8.3 [*MD&A and supplement for SEC issuers*], the designation and number or principal amount of
- (a) each class and series of voting or equity securities of the issuer for which there are securities outstanding,
 - (b) each class and series of securities of the issuer for which there are securities outstanding if the securities are convertible into, or exercisable or exchangeable for, voting or equity securities of the issuer, and
 - (c) subject to subsection (2), each class and series of voting or equity securities of the issuer that are issuable on the conversion, exercise or exchange of outstanding securities of the issuer.

- (2) If the exact number or principal amount of voting or equity securities of the issuer that are issuable on the conversion, exercise or exchange of outstanding securities of the issuer is not determinable, the issuer must disclose the maximum number or principal amount of each class and series of voting or equity securities that are issuable on the conversion, exercise or exchange of outstanding securities of the issuer and, if that maximum number or principal amount is not determinable, the issuer must describe the exchange or conversion features and the manner in which the number or principal amount of voting or equity securities will be determined.
- (3) The disclosure under subsections (1) and (2) must be prepared as of the latest practicable date.

More recent financial information

- 8.5** If the issuer is required to include more recent financial information in the prospectus under subsection 32.6(1) [*Additional financial statements or financial information filed or released*], the issuer is not required to update the MD&A already included in the prospectus under this Item.

Additional disclosure for venture issuers or IPO venture issuers without significant revenue

- 8.6(1)** If the issuer is a venture issuer or an IPO venture issuer that has not had significant revenue from operations in either of its last 2 financial years, disclose in the MD&A, or supplement if one is required under item 8.3 [*MD&A and supplement for SEC issuers*], a breakdown of material components of
- (a) capitalized or expensed exploration and development costs,
 - (b) expensed research and development costs,
 - (c) deferred development costs,
 - (d) general and administrative expenses, and
 - (e) any material costs, whether capitalized, deferred or expensed, not referred to in paragraphs (a) through (d).
- (2) Present the analysis of capitalized or expensed exploration and development costs required by subsection (1) on a property-by-property basis, if the issuer's business primarily involves mining exploration and development.
 - (3) Provide the disclosure in subsection (1) for the following periods
 - (a) in the case of annual MD&A, for the 2 most recently completed financial years, and

- (b) in the case of interim MD&A, for the most recent year-to-date interim period and the comparative year-to-date period presented in the interim financial statements included in the prospectus, if any.
- (4) Subsection (1) does not apply if the information required under that subsection has been disclosed in the financial statements to which the MD&A, or supplement if one is required under item 8.3 [*MD&A and supplement for SEC issuers*], relates.

Additional disclosure for junior issuers

8.7 For a junior issuer that had negative operating cash flow in its most recently completed financial year for which financial statements have been included in the prospectus, disclose in the MD&A, or supplement if one is required under item 8.3 [*MD&A and supplement for SEC issuers*]

- (a) the period of time the proceeds raised under the prospectus are expected to fund operations,
- (b) the estimated total operating costs necessary for the issuer to achieve its stated business objectives during that period of time, and
- (c) the estimated amount of other material capital expenditures during that period of time.

Additional disclosure for issuers with significant equity investees

8.8(1) An issuer that has a significant equity investee must disclose in its MD&A, or supplement if one is required under section 8.3 [*MD&A and supplement for SEC issuers*], for each MD&A provided under section 8.2 [*MD&A*]

- (a) summarized information as to the assets, liabilities and results of operations of the equity investee, and
 - (b) the issuer's proportionate interest in the equity investee and any contingent issuance of securities by the equity investee that might significantly affect the issuer's share of earnings.
- (2) Subsection (1) does not apply if
- (a) the information required under that subsection has been disclosed in the financial statements to which the MD&A, or supplement if one is required under section 8.3 [*MD&A and supplement for SEC issuers*], relates, or
 - (b) the issuer files separate financial statements of the equity investee for the periods of the MD&A referred to in section 8.2 [*MD&A*].

ITEM 9: Earnings Coverage Ratios

Earnings coverage ratios

- 9.1(1)** If the securities being distributed are debt securities having a term to maturity in excess of one year or are preferred shares, disclose the following earnings coverage ratios adjusted in accordance with subsection (2):
- (a) the earnings coverage ratio based on the most recent 12 month period included in the issuer's current annual financial statements,
 - (b) if there has been a change in year end and the issuer's most recent financial year is less than nine months in length, the earnings coverage calculation for its old financial year, and
 - (c) the earnings coverage ratio based on the 12 month period ended on the last day of the most recently completed period for which interim financial statements of the issuer have been included in the prospectus.
- (2)** Adjust the ratios referred to in subsection (1) to reflect
- (a) the issuance of the securities being distributed under the prospectus, based on the price at which these securities are expected to be distributed,
 - (b) in the case of a distribution of preferred shares,
 - (i) the issuance of all preferred shares since the date of the annual or interim financial statements; and
 - (ii) the repurchase, redemption or other retirement of all preferred shares repurchased, redeemed, or otherwise retired since the date of the annual or interim financial statements and of all preferred shares to be repurchased, redeemed, or otherwise retired from the proceeds to be realized from the sale of securities under the prospectus,
 - (c) the issuance of all long-term financial liabilities, as defined in accordance with the issuer's GAAP, since the date of the annual or interim financial statements,
 - (d) the repayment, redemption or other retirement of all long-term financial liabilities, as defined in accordance with the issuer's GAAP, since the date of the annual or interim financial statements and all long-term financial liabilities to be repaid or redeemed from the proceeds to be realized from the sale of securities distributed under the prospectus, and
 - (e) the servicing costs that were incurred, or are expected to be incurred, in relation to the adjustments.

- (3) If the issuer is distributing, or has outstanding, debt securities that are accounted for, in whole or in part, as equity, disclose in notes to the ratios required under subsection (1)
 - (a) that the ratios have been calculated excluding the carrying charges for those securities that have been reflected in equity in the calculation of the issuer's interest and dividend obligations,
 - (b) that if those securities had been accounted for in their entirety as debt for the purpose of calculating the ratios required under subsection (1), the entire amount of the annual carrying charges for those securities would have been reflected in the calculation of the issuer's interest and dividend obligations, and
 - (c) the earnings coverage ratios for the periods referred to in subsection (1), calculated as though those securities had been accounted for as debt.
- (4) If the earnings coverage ratio is less than one-to-one, disclose in the prospectus the dollar amount of the earnings required to achieve a ratio of one-to-one.
- (5) If the prospectus includes a *pro forma* income statement, calculate the *pro forma* earnings coverage ratios for the periods of the *pro forma* income statement, and disclose them in the prospectus.

INSTRUCTIONS

- (1) *If the issuer's financial year is less than 12 months in length, the earnings coverage ratio in subsection (1) should be calculated on an annualized basis.*
- (2) *Cash flow coverage may be disclosed but only as a supplement to earnings coverage and only if the method of calculation is fully disclosed.*
- (3) *Earnings coverage is calculated by dividing an entity's earnings (the numerator) by its interest and dividend obligations (the denominator).*
- (4) *For the earnings coverage calculation*
 - (a) *the numerator should be calculated using consolidated net income before interest and income taxes;*
 - (b) *imputed interest income from the proceeds of a distribution should not be added to the numerator;*
 - (c) *an issuer may also present, as supplementary disclosure, a coverage calculation based on earnings before discontinued operations and extraordinary items;*
 - (d) *for distributions of debt securities, the appropriate denominator is interest expense determined in accordance with the issuer's GAAP, after giving effect to the new debt issue and any retirement of obligations, plus the amount of interest that has been capitalized during the period;*

- (e) *for distributions of preferred shares*
 - (i) *the appropriate denominator is dividends declared during the period, together with undeclared dividends on cumulative preferred shares, after giving effect to the new preferred share issue, plus the issuer's annual interest requirements, including the amount of interest that has been capitalized during the period, less any retirement of obligations, and*
 - (ii) *dividends should be grossed-up to a before-tax equivalent using the issuer's effective income tax rate; and*
 - (f) *for distributions of both debt securities and preferred shares, the appropriate denominator is the same as for a preferred share issue, except that the denominator should also reflect the effect of the debt being offered pursuant to the prospectus.*
- (5) *The denominator represents a pro forma calculation of the aggregate of an issuer's interest obligations on all long-term debt and dividend obligations (including both dividends declared and undeclared dividends on cumulative preferred shares) with respect to all outstanding preferred shares, as adjusted to reflect*
- (a) *the issuance of all long-term debt and, in addition in the case of an issuance of preferred shares, all preferred shares issued, since the date of the annual or interim financial statements;*
 - (b) *the issuance of the securities that are to be distributed under the prospectus, based on a reasonable estimate of the price at which these securities will be distributed;*
 - (c) *the repayment or redemption of all long-term debt since the date of the annual or interim financial statements, all long-term debt to be repaid or redeemed from the proceeds to be realized from the sale of securities under the prospectus and, in addition, in the case of an issuance of preferred shares, all preferred shares repaid or redeemed since the date of the annual or interim financial statements and all preferred shares to be repaid or redeemed from the proceeds to be realized from the sale of securities under the prospectus; and*
 - (d) *the servicing costs that were incurred, or will be incurred, in relation to the above adjustments.*
- (6) *In certain circumstances, debt obligations may be classified as current liabilities because such obligations, by their terms, are due on demand, are due within one year, or are callable by the creditor. If the issuer is distributing, or has outstanding, debt securities that are classified as current liabilities, disclose*
- (a) *in the notes to the ratios required under subsection 9.1(1) [Earnings coverage ratios] that the ratios have been calculated excluding the carrying charges for those debt securities reflected as current liabilities;*

- (b) *that if those debt securities had been classified in their entirety as long term debt for the purposes of calculating the ratios under subsection 9.1(1) [Earnings coverage ratios], the entire amount of the annual carrying charges for such debt securities would have been reflected in the calculation of the issuer's interest and dividend obligations; and*
- (c) *the earnings coverage ratios for the periods referred to in subsection 9.1(1) [Earnings coverage ratios], calculated as though those debt securities had been classified as long term debt.*
- (7) *For debt securities, disclosure of earnings coverage shall include language similar to the following, with the bracketed information completed:*
- “[Name of the issuer]’s interest requirements, after giving effect to the issue of [the debt securities to be distributed under the prospectus], amounted to \$• for the 12 months ended •. [Name of the issuer]’s earnings before interest and income tax for the 12 months then ended was \$•, which is • times [name of the issuer]’s interest requirements for this period.”*
- (8) *For preferred share issues, disclosure of earnings coverage shall include language similar to the following, with the bracketed information completed:*
- “[Name of the issuer]’s dividend requirements on all of its preferred shares, after giving effect to the issue of [the preferred shares to be distributed under the prospectus], and adjusted to a before-tax equivalent using an effective income tax rate of •%, amounted to \$• for the 12 months ended •. [Name of the issuer]’s interest requirements for the 12 months then ended amounted to \$•. [Name of the issuer]’s earnings before interest and income tax for the 12 months ended • was \$•, which is • times [name of the issuer]’s aggregate dividend and interest requirements for this period.”*
- (9) *Other earnings coverage calculations may be included as supplementary disclosure to the required earnings coverage calculations outlined above as long as their derivation is disclosed and they are not given greater prominence than the required earnings coverage calculations.*

ITEM 10: Description of the Securities Distributed

Equity securities

- 10.1** If equity securities are being distributed, state the description or the designation of the class of the equity securities and describe all material attributes and characteristics, including
- (a) dividend rights,
- (b) voting rights,

- (c) rights upon dissolution or winding-up,
- (d) pre-emptive rights,
- (e) conversion or exchange rights,
- (f) redemption, retraction, purchase for cancellation or surrender provisions,
- (g) sinking or purchase fund provisions,
- (h) provisions permitting or restricting the issuance of additional securities and any other material restrictions, and
- (i) provisions requiring a security holder to contribute additional capital.

Debt securities

10.2 If debt securities are being distributed, describe all material attributes and characteristics of the indebtedness and the security, if any, for the debt, including

- (a) provisions for interest rate, maturity and premium, if any,
- (b) conversion or exchange rights,
- (c) redemption, retraction, purchase for cancellation or surrender provisions,
- (d) sinking or purchase fund provisions,
- (e) the nature and priority of any security for the debt securities, briefly identifying the principal properties subject to lien or charge,
- (f) provisions permitting or restricting the issuance of additional securities, the incurring of additional indebtedness and other material negative covenants, including restrictions against payment of dividends and restrictions against giving security on the assets of the issuer or its subsidiaries, and provisions as to the release or substitution of assets securing the debt securities,
- (g) the name of the trustee under any indenture relating to the debt securities and the nature of any material relationship between the trustee or any of its affiliates and the issuer or any of its affiliates, and
- (h) any financial arrangements between the issuer and any of its affiliates or among its affiliates that could affect the security for the indebtedness.

Asset-backed securities

10.3 If asset-backed securities are being distributed, describe

- (a) the material attributes and characteristics of the asset-backed securities, including
 - (i) the rate of interest or stipulated yield and any premium,
 - (ii) the date for repayment of principal or return of capital and any circumstances in which payments of principal or capital may be made before such date, including any redemption or pre-payment obligations or privileges of the issuer and any events that may trigger early liquidation or amortization of the underlying pool of financial assets,
 - (iii) provisions for the accumulation of cash flows to provide for the repayment of principal or return of capital,
 - (iv) provisions permitting or restricting the issuance of additional securities and any other material negative covenants applicable to the issuer,
 - (v) the nature, order and priority of the entitlements of holders of asset-backed securities and any other entitled persons or companies to receive cash flows generated from the underlying pool of financial assets, and
 - (vi) any events, covenants, standards or preconditions that may reasonably be expected to affect the timing or amount of payments or distributions to be made under the asset-backed securities, including those that are dependent or based on the economic performance of the underlying pool of financial assets,
- (b) information on the underlying pool of financial assets for
 - (i) the 3 most recently completed financial years ended more than:
 - (A) 90 days before the date of the prospectus, or
 - (B) 120 days before the date of the prospectus, if the issuer is a venture issuer,
 - (ii) if the issuer has not had asset-backed securities outstanding for 3 financial years, each completed financial year ended more than
 - (A) 90 days before the date of the prospectus, or
 - (B) 120 days before the date of the prospectus, if the issuer is a venture issuer,

- (iii) a period from the date the issuer had asset-backed securities outstanding to a date not more than 90 days before the date of the prospectus if the issuer has not had asset-backed securities outstanding for at least one financial year,
- (iv) if an issuer changed its financial year end during any of the financial years referred to in this item and the transition year is less than 9 months, the transition year is deemed not to be a financial year for the purposes of the requirement to provide information on the underlying pool of financial assets for a specified number of financial years in this item,
- (v) notwithstanding paragraph (iv), all information on the underlying pool of financial assets of the issuer for a transition year must be included in the prospectus,
- (vi) the most recent interim period, if any, ended
 - (A) subsequent to the most recent financial year refer to in paragraphs (i) and (ii) in respect of which information on the underlying pool of financial assets are included in the prospectus, and
 - (B) more than
 - (I) 45 days before the date of the prospectus, or
 - (II) 60 days before the date of the prospectus if the issuer is a venture issuer,
- (vii) if the issuer files information on the underlying pool of financial assets for a more recent period than required under paragraphs (i), (ii), (iii), or (vi) before the prospectus is filed, the issuer must include those more recent information on the underlying pool of financial assets in the prospectus, and
- (viii) if information on the underlying pool of financial assets of the issuer is publicly disseminated by, or on behalf of, the issuer through news release or otherwise for a more recent period than required under paragraphs (i), (ii), (iii), or (vi), the issuer must include the content of the news release or public communication in the prospectus,

including a discussion and analysis of

- (ix) the composition of the pool as of the end of the period,
- (x) income and losses from the pool for the period presented on at least an annual basis or such shorter period as is reasonable given the nature of the underlying pool of assets,

- (xi) the payment, prepayment and collection experience of the pool for the period on at least an annual basis or such shorter period as is reasonable given the nature of the underlying pool of assets,
 - (xii) servicing and other administrative fees, and
 - (xiii) any significant variances experienced in the matters referred to in paragraphs (ix) through (xii),
- (c) the type of financial assets, the manner in which the financial assets originated or will originate and, if applicable, the mechanism and terms of the agreement governing the transfer of the financial assets comprising the underlying pool to or through the issuer, including the consideration paid for the financial assets,
- (d) any person or company who
- (i) originated, sold or deposited a material portion of the financial assets comprising the pool, or has agreed to do so,
 - (ii) acts, or has agreed to act, as a trustee, custodian, bailee or agent of the issuer or any holder of the asset-backed securities, or in a similar capacity,
 - (iii) administers or services a material portion of the financial assets comprising the pool or provides administrative or managerial services to the issuer, or has agreed to do so, on a conditional basis or otherwise, if
 - (A) finding a replacement provider of the services at a cost comparable to the cost of the current provider is not reasonably likely,
 - (B) a replacement provider of the services is likely to achieve materially worse results than the current provider,
 - (C) the current provider of the services is likely to default in its service obligations because of its current financial condition, or
 - (D) the disclosure is otherwise material,
 - (iv) provides a guarantee, alternative credit support or other credit enhancement to support the obligations of the issuer under the asset-backed securities or the performance of some or all of the financial assets in the pool, or has agreed to do so, or
 - (v) lends to the issuer in order to facilitate the timely payment or repayment of amounts payable under the asset-backed securities, or has agreed to do so,
- (e) the general business activities and material responsibilities under the asset-backed securities of a person or company referred to in paragraph (d),

- (f) the terms of any material relationships between
 - (i) any of the persons or companies referred to in paragraph (d) or any of their respective affiliates, and
 - (ii) the issuer,
- (g) any provisions relating to termination of services or responsibilities of any of the persons or companies referred to in paragraph (d) and the terms on which a replacement may be appointed, and
- (h) any risk factors associated with the asset-backed securities, including disclosure of material risks associated with changes in interest rates or prepayment levels, and any circumstances where payments on the asset-backed securities could be impaired or disrupted as a result of any reasonably foreseeable event that may delay, divert or disrupt the cash flows dedicated to service the asset-backed securities.

INSTRUCTIONS

- (1) *Present the information required under paragraph (b) in a manner that will enable a reader to easily determine whether, and the extent to which, the events, covenants, standards and preconditions referred to in clause (a)(vi) have occurred, are being satisfied or may be satisfied.*
- (2) *If the information required under paragraph (b) is not compiled specifically from the underlying pool of financial assets, but is compiled from a larger pool of the same assets from which the securitized assets are randomly selected such that the performance of the larger pool is representative of the performance of the pool of securitized assets, then an issuer may comply with paragraph (b) by providing the information required based on the larger pool and disclosing that it has done so.*
- (3) *Issuers are required to summarize contractual arrangements in plain language and may not merely restate the text of the contracts referred to. The use of diagrams to illustrate the roles of, and the relationship among, the persons and companies referred to in paragraph (d), and the contractual arrangements underlying the asset-backed securities is encouraged.*

Derivatives

10.4 If derivatives are being distributed, describe fully the material attributes and characteristics of the derivatives, including

- (a) the calculation of the value or payment obligations under the derivatives,
- (b) the exercise of the derivatives,
- (c) the settlement of exercises of the derivatives,

- (d) the underlying interest of the derivatives,
- (e) the role of a calculation expert in connection with the derivatives,
- (f) the role of any credit supporter of the derivatives, and
- (g) the risk factors associated with the derivatives.

Special warrants, etc.

10.5 If the prospectus is used to qualify the distribution of securities issued upon the exercise of special warrants or other securities acquired on a prospectus-exempt basis, disclose that holders of such securities have been provided with a contractual right of rescission and provide the following disclosure in the prospectus, with the bracketed information completed:

“In the event that a holder of a special warrant, who acquires a [identify underlying security] of the issuer upon the exercise of the special warrant as provided for in this prospectus, is or becomes entitled under applicable securities legislation to the remedy of rescission by reason of this prospectus or any amendment thereto containing a misrepresentation, such holder shall be entitled to rescission not only of the holder’s exercise of its special warrant(s) but also of the private placement transaction pursuant to which the special warrant was initially acquired, and shall be entitled in connection with such rescission to a full refund of all consideration paid to the [underwriter or issuer, as the case may be] on the acquisition of the special warrant. In the event such holder is a permitted assignee of the interest of the original special warrant subscriber, such permitted assignee shall be entitled to exercise the rights of rescission and refund granted hereunder as if such permitted assignee was such original subscriber. The foregoing is in addition to any other right or remedy available to a holder of the special warrant under applicable securities legislation or otherwise at law.”

INSTRUCTION

If the prospectus is qualifying the distribution of securities issued upon the exercise of securities other than special warrants, replace the term “special warrant” with the type of the security being distributed.

Restricted securities

10.6(1) If the issuer has outstanding, or proposes to distribute under a prospectus restricted securities, subject securities or securities that are, directly or indirectly, convertible into or exercisable or exchangeable for restricted securities or subject securities, provide a detailed description of

- (a) the voting rights attached to the restricted securities that are the subject of the distribution or that will result from the distribution, either directly or following a

conversion exchange or exercise, and the voting rights, if any, attached to the securities of any other class of securities of the issuer that are the same or greater on a per security basis than those attached to the restricted securities,

- (b) any significant provisions under applicable corporate and securities law that do not apply to the holders of the restricted securities that are the subject of the distribution or that will result from the distribution, either directly or following a conversion exchange or exercise, but do apply to the holders of another class of equity securities, and the extent of any rights provided in the constating documents or otherwise for the protection of holders of the restricted securities,
 - (c) any rights under applicable corporate law, in the constating documents or otherwise, of holders of restricted securities that are the subject of the distribution or that will result from the distribution, either directly or following a conversion exchange or exercise, to attend, in person or by proxy, meetings of holders of equity securities of the issuer and to speak at the meetings to the same extent that holders of equity securities are entitled, and
 - (d) how the issuer complied with, or basis upon which it was exempt from, the requirements of Part 12 of this Instrument [*Restricted Securities*].
- (2) If holders of restricted securities do not have all of the rights referred to in subsection (1) the detailed description referred to in that subsection must include, in bold type, a statement of the rights the holders do not have.
- (3) If the issuer is required to include the disclosure referred to in subsection (1), state the percentage of the aggregate voting rights attached to the issuer's securities that will be represented by restricted securities after giving effect to the issuance of the securities being offered.

Other securities

10.7 If securities other than equity securities, debt securities, asset-backed securities or derivatives are being distributed, describe fully the material attributes and characteristics of those securities.

Modification of terms

10.8(1) Describe provisions as to modification, amendment or variation of any rights attached to the securities being distributed.

- (2) If the rights of holders of securities may be modified otherwise than in accordance with the provisions attached to the securities or the provisions of the governing statute relating to the securities, explain briefly.

Ratings

- 10.9** If the issuer has asked for and received a stability rating, or if the issuer has received any other kind of rating, including a provisional rating, from one or more approved rating organizations for the securities being distributed and the rating or ratings continue in effect, disclose
- (a) each security rating, including a provisional rating or stability rating, received from an approved rating organization,
 - (b) the name of each approved rating organization that has assigned a rating for the securities to be distributed,
 - (c) a definition or description of the category in which each approved rating organization rated the securities to be distributed and the relative rank of each rating within the organization's classification system,
 - (d) an explanation of what the rating addresses and what attributes, if any, of the securities to be distributed are not addressed by the rating,
 - (e) any factors or considerations identified by the approved rating organization as giving rise to unusual risks associated with the securities to be distributed,
 - (f) a statement that a security rating or a stability rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time by the rating organization, and
 - (g) any announcement made by, or any proposed announcement known to the issuer to be made by, an approved rating organization that the organization is reviewing or intends to revise or withdraw a rating previously assigned and required to be disclosed under this paragraph.

INSTRUCTION

There may be factors relating to a security that are not addressed by a ratings agency when they give a rating. For example, in the case of cash settled derivatives, factors in addition to the creditworthiness of the issuer, such as the continued subsistence of the underlying interest or the volatility of the price, value or level of the underlying interest may be reflected in the rating analysis. Rather than being addressed in the rating itself, these factors may be described by an approved rating organization by way of a superscript or other notation to a rating. Any such attributes must be discussed in the disclosure under this item.

Other attributes

- 10.10(1)** If the rights attaching to the securities being distributed are materially limited or qualified by the rights of any other class of securities, or if any other class of securities ranks ahead of or equally with the securities being distributed, include information about

the other securities that will enable investors to understand the rights attaching to the securities being distributed.

- (2) If securities of the class being distributed may be partially redeemed or repurchased, state the manner of selecting the securities to be redeemed or repurchased.

INSTRUCTION

This item requires only a brief summary of the provisions that are material from an investment standpoint. The provisions attaching to the securities being distributed or any other class of securities do not need to be set out in full. They may, in the issuer's discretion, be attached as a schedule to the prospectus.

ITEM 11 Consolidated Capitalization

Consolidated capitalization

- 11.1** Describe any material change in, and the effect of the material change on, the share and loan capital of the issuer, on a consolidated basis, since the date of the issuer's financial statements for its most recently completed financial period included in the prospectus, including any material change that will result from the issuance of the securities being distributed under the prospectus.

ITEM 12 Options to Purchase Securities

Options to purchase securities

- 12.1(1)** For an issuer that is not a reporting issuer immediately before filing the prospectus, state, in tabular form, as at a specified date within 30 days before the date of the prospectus, information as to options to purchase securities of the issuer or a subsidiary of the issuer that are held or will be held upon completion of the distribution by
- (a) all executive officers and past executive officers of the issuer as a group and all directors and past directors of the issuer who are not also executive officers as a group, indicating the aggregate number of executive officers and the aggregate number of directors to whom the information applies,
 - (b) all executive officers and past executive officers of all subsidiaries of the issuer as a group and all directors and past directors of those subsidiaries who are not also executive officers of the subsidiary as a group, in each case, and excluding individuals referred to in paragraph (a), indicating the aggregate number of executive officers and the aggregate number of directors to whom the information applies,
 - (c) all other employees and past employees of the issuer as a group,
 - (d) all other employees and past employees of subsidiaries of the issuer as a group,

- (e) all consultants of the issuer as a group, and
 - (f) any other person or company, other than the underwriter(s), naming each person or company.
- (2) Describe any material change to the information required to be included in the prospectus under subsection (1) to the date of the prospectus.

INSTRUCTIONS

- (1) *Describe the options, warrants, or other similar securities stating the material provisions of each class or type of option, including:*
- (a) *the designation and number of the securities under option;*
 - (b) *the purchase price of the securities under option or the formula by which the purchase price will be determined, and the expiration dates of the options;*
 - (c) *if reasonably ascertainable, the market value of the securities under option on the date of grant;*
 - (d) *if reasonably ascertainable, the market value of the securities under option on the specified date; and*
 - (e) *with respect to options referred to in paragraph (f) of item 12.1 [Options to purchase securities], the particulars of the grant including the consideration for the grant.*
- (2) *For the purposes of paragraph 12.1(1)(f) [Options to purchase securities], provide the information required for all options except warrants and special warrants.*

ITEM 13: Prior Sales

Prior sales

- 13.1** For each class of securities of the issuer distributed under the prospectus and securities that are convertible into those classes of securities, state, for the 12-month period before the date of the prospectus,
- (a) the price at which the securities have been sold, and
 - (b) the number of securities sold.

Trading price and volume

- 13.2(1)** For each class of securities of the issuer that is traded or quoted on a Canadian marketplace, identify the marketplace and the price ranges and volume traded or quoted

on the Canadian marketplace on which the greatest volume of trading or quotation generally occurs.

- (2) If a class of securities of the issuer is not traded or quoted on a Canadian marketplace but is traded or quoted on a foreign marketplace, identify the foreign marketplace and the price ranges and volume traded or quoted on the foreign marketplace on which the greatest volume or quotation generally occurs.
- (3) Provide the information required under subsections (1) and (2) on a monthly basis for each month or, if applicable, partial months of the 12-month period before the date of the prospectus.

ITEM 14: Escrowed Securities and Securities Subject to Contractual Restriction on Transfer

Escrowed securities and securities subject to contractual restriction on transfer

14.1(1) State as of a specified date within 30 days before the date of the prospectus, in substantially the following tabular form, the number of securities of each class of securities of the issuer held, to the knowledge of the issuer, in escrow or that are subject to a contractual restriction on transfer and the percentage that number represents of the outstanding securities of that class.

ESCROWED SECURITIES AND SECURITIES SUBJECT TO CONTRACTUAL RESTRICTION ON TRANSFER

Designation of class	Number of securities held in escrow or that are subject to a contractual restriction on transfer	Percentage of class

- (2) In a note to the table disclose the name of the depository, if any, and the date of and conditions governing the release of the securities from escrow or the date the contractual restriction on transfer ends, as applicable.
- (3) Describe any material change to the information required to be included in the prospectus under subsection (1) to the date of the prospectus.

INSTRUCTION

For purposes of this item, escrow includes securities subject to a pooling agreement.

ITEM 15: Principal Security Holders and Selling Security Holders

Principal security holders and selling security holders

- 15.1(1)** Provide the following information for each principal security holder of the issuer and, if any securities are being distributed for the account of a security holder, for each selling security holder:
- (a) the name;
 - (b) the number or amount of securities owned of the class being distributed;
 - (c) the number or amount of securities of the class being distributed for the account of the security holder;
 - (d) the number or amount of securities of the issuer of any class to be owned after the distribution, and the percentage that number or amount represents of the total outstanding;
 - (e) whether the securities referred to in paragraph (b), (c) or (d) are owned both of record and beneficially, of record only, or beneficially only.
- (2)** If securities are being distributed in connection with a restructuring transaction, indicate, to the extent known, the holdings of each person or company described in subsection (1) that will exist after giving effect to the transaction.
- (3)** If any of the securities being distributed are being distributed for the account of a security holder and those securities were purchased by the selling security holder within the 2 years preceding the date of the prospectus, state the date the selling security holder acquired the securities and, if the securities were acquired in the 12 months preceding the date of the prospectus, the cost to the security holder in the aggregate and on an average cost per security basis.
- (4)** If, to the knowledge of the issuer or the underwriter of the securities being distributed, more than 10% of any class of voting securities of the issuer is held, or is to be held, subject to any voting trust or other similar agreement, disclose, to the extent known, the designation of the securities, the number or amount of the securities held or to be held subject to the agreement and the duration of the agreement. State the names and addresses of the voting trustees and outline briefly their voting rights and other powers under the agreement.
- (5)** If, to the knowledge of the issuer or the underwriter of the securities being distributed, any principal security holder or selling security holder is an associate or affiliate of another person or company named as a principal security holder, disclose, to the extent known, the material facts of the relationship, including any basis for influence over the issuer held by the person or company other than the holding of voting securities of the issuer.

- (6) In addition to the above, include in a footnote to the table, the required calculation(s) on a fully-diluted basis.
- (7) Describe any material change to the information required to be included in the prospectus under subsection (1) to the date of the prospectus.

INSTRUCTION

If a company, partnership, trust or other unincorporated entity is a principal security holder of an issuer, disclose, to the extent known, the name of each individual who, through ownership of or control or direction over the securities of that company, trust or other unincorporated entity, or membership in the partnership, as the case may be, is a principal security holder of that entity.

ITEM 16: Directors and Executive Officers

Name, occupation and security holding

- 16.1(1)** Provide information for directors and executive officers of the issuer in accordance with item 10.1 of Form 51-102F2 [*Name, Occupation and Security Holding*] as at the date of the prospectus.
- (2) If information similar to the information required under subsection (1) is provided for any director or executive officer, who is not serving in such capacity as at the date of the prospectus, clearly indicate this fact and explain whether the issuer believes that this director or executive officer is liable under the prospectus.

Cease trade orders, bankruptcies, penalties or sanctions

- 16.2** Provide information for directors and executive officers of the issuer, and shareholders holding a sufficient number of securities of the issuer to affect materially the control of the issuer, in accordance with item 10.2 of Form 51-102F2 [*Cease Trade Orders, Bankruptcies, Penalties or Sanctions*] as if the references in that item to “date of the AIF” read “date of the prospectus”.

Conflicts of interest

- 16.3** Disclose particulars of existing or potential material conflicts of interest between the issuer or a subsidiary of the issuer and a director or officer of the issuer or a subsidiary of the issuer.

Management of junior issuers

- 16.4** A junior issuer must provide the following information for each member of management:
- (a) state the individual’s name, age, position and responsibilities with the issuer and relevant educational background;

- (b) state whether the individual works full time for the issuer or what proportion of the individual's time will be devoted to the issuer;
- (c) state whether the individual is an employee or independent contractor of the issuer;
- (d) state the individual's principal occupations or employment during the five years before the date of the prospectus, disclosing with respect to each organization as of the time such occupation or employment was carried on:
 - (i) its name and principal business;
 - (ii) if applicable, that the organization was an affiliate of the issuer;
 - (iii) positions held by the individual; and
 - (iv) whether it is still carrying on business, if known to the individual;
- (e) describe the individual's experience in the issuer's industry;
- (f) state whether the individual has entered into a non-competition or non-disclosure agreement with the issuer.

INSTRUCTIONS

- (1) *For purposes of this item, "management" means all directors, officers, employees and contractors whose expertise is critical to the issuer, its subsidiaries and proposed subsidiaries in providing the issuer with a reasonable opportunity to achieve its stated business objectives.*
- (2) *The description of the principal occupation of a member of management must be specific. The terms "businessman" or "entrepreneur" are not sufficiently specific.*

ITEM 17: Executive Compensation

Disclosure

- 17.1** Include in the prospectus a Statement of Executive Compensation prepared in accordance with Form 51-102F6 *Statement of Executive Compensation* and describe any intention to make any material changes to that compensation.

ITEM 18: Indebtedness of Directors and Executive Officers

Aggregate indebtedness

- 18.1** Provide information for the issuer in accordance with item 10.1 of Form 51-102F5 *Information Circular [Aggregate Indebtedness]* as if the reference in that item to "date of the information circular" reads "date of the prospectus".

Indebtedness of directors and executive officers under securities purchase and other programs

- 18.2** Provide information for the issuer in accordance with items 10.2 and 10.3 of Form 51-102F5 [*Indebtedness of Directors and Executive Officers*] as if the reference in these items to “date of the information circular” reads “date of the prospectus”.

ITEM 19: Audit Committees and Corporate Governance

Audit committees

- 19.1(1)** Include in the prospectus the disclosure for the issuer in accordance with Form 52-110F1 *Audit Committee Information Required in an AIF*, as applicable, if the issuer is neither a venture issuer nor an IPO venture issuer.
- (2) Include in the prospectus the disclosure for the issuer in accordance with Form 52-110F2 *Disclosure by Venture Issuers*, as applicable, if the issuer is a venture issuer or an IPO venture issuer.
- (3) An issuer is not required to include the disclosure required by subsections (1) or (2) if the issuer will not be required to comply with Multilateral Instrument 52-110 *Audit Committees* upon obtaining a receipt for the final prospectus because it will be eligible to rely on the exemption in Part 3.2 of MI 11-101 [*Continuous Disclosure Exemption*] to provide the disclosure in BCI 52-509 *Audit Committees*.
- (4) An issuer relying on an exemption in subsection (3) must include in the prospectus
- (a) the disclosure required under BCI 52-509,
 - (b) a statement that the issuer is providing the disclosure required by BCI 52-509, and
 - (c) a statement that BCI 52-509 differs from MI 52-110, which applies in jurisdictions other than British Columbia.

Corporate governance

- 19.2(1)** Include in the prospectus the disclosure in accordance with Form 58-101F1 *Corporate Governance Disclosure*, as applicable, if the issuer is neither a venture issuer nor an IPO venture issuer.
- (2) Include in the prospectus the disclosure in accordance with Form 58-101F2 *Corporate Governance Disclosure (Venture Issuers)*, as applicable, if the issuer is a venture issuer or an IPO venture issuer.
- (3) For the purposes of the disclosure required under subsection (1) or (2), an issuer may not apply the British Columbia test for independence under subsection 1.2(2) of National

Instrument 58-101 *Disclosure of Corporate Governance Practices [Meaning of Independence]* if the issuer will be a reporting issuer in a jurisdiction other than British Columbia upon obtaining a receipt for the final prospectus.

ITEM 20: Plan of Distribution

Name of underwriters

20.1(1) If the securities are being distributed by an underwriter, state the name of the underwriter and describe briefly the nature of the underwriter's obligation to take up and pay for the securities.

(2) Disclose the date by which the underwriter is obligated to purchase the securities.

Disclosure of conditions to underwriters' obligations

20.2 If securities are distributed by an underwriter that has agreed to purchase all of the securities at a specified price and the underwriter's obligations are subject to conditions,

(a) include a statement in substantially the following form, with the bracketed information completed and with modifications necessary to reflect the terms of the distribution:

“Under an agreement dated [insert date of agreement] between [insert name of issuer or selling security holder] and [insert name(s) of underwriter(s)], as underwriter[s], [insert name of issuer or selling security shareholder] has agreed to sell and the underwriter[s] [has/have] agreed to purchase on [insert closing date] the securities at a price of [insert offering price], payable in cash to [insert name of issuer or selling security holder] against delivery. The obligations of the underwriter[s] under the agreement may be terminated at [its/their] discretion on the basis of [its/their] assessment of the state of the financial markets and may also be terminated upon the occurrence of certain stated events. The underwriter[s] [is/are], however, obligated to take up and pay for all of the securities if any of the securities are purchased under the agreement.”, and

(b) describe any other conditions and indicate any information known that is relevant to whether such conditions will be satisfied.

Best efforts offering

20.3 Outline briefly the plan of distribution of any securities being distributed other than on the basis described in item 20.2 [*Disclosure of conditions to underwriters' obligations*].

Minimum distribution

- 20.4** If securities are being distributed on a best efforts basis and minimum funds are to be raised, state
- (a) the minimum funds to be raised,
 - (b) that the issuer must appoint a registered dealer authorized to make the distribution, a Canadian financial institution, or a lawyer, or in Québec a notary, who is a practicing member in good standing with a law society of a jurisdiction in which the securities are being distributed, to hold in trust all funds received from subscriptions until the minimum amount of funds stipulated in paragraph (a) has been raised, and
 - (c) that if the minimum amount of funds is not raised within the distribution period, the trustee must return the funds to the subscribers without any deductions.

Determination of price

- 20.5** Disclose the method by which the distribution price has been or will be determined and, if estimates have been provided, explain the process of determining the estimates.

Stabilization

- 20.6** If the issuer, a selling security holder or an underwriter knows or has reason to believe that there is an intention to over-allot or that the price of any security may be stabilized to facilitate the distribution of the securities, describe the nature of these transactions, including the anticipated size of any over-allocation position, and explain how the transactions are expected to affect the price of the securities.

Approvals

- 20.7** If the purpose of the distribution is to fund in whole or in part a new business of the issuer and the issuer has not obtained all material licences, registrations and approvals necessary for the operation of the business, include a statement that
- (a) the issuer must appoint a registered dealer authorized to make the distribution, a Canadian financial institution, or a lawyer who is a practicing member in good standing with a law society of a jurisdiction in which the securities are being distributed, or in Québec a notary, to hold in trust all funds received from subscriptions until all material licences, registrations and approvals necessary for the operation of the business have been obtained, and
 - (b) if all material licences, registrations and approvals necessary for the operation of the business have not been obtained within 90 days from the date of receipt of the final prospectus, the trustee must return the funds to subscribers.

Reduced price distributions

- 20.8** If the underwriter may decrease the offering price after the underwriter has made a reasonable effort to sell all of the securities at the initial offering price disclosed in the prospectus in accordance with the procedures permitted by this Instrument, disclose this fact and that the compensation realised by the underwriter will be decreased by the amount that the aggregate price paid by purchasers for the securities is less than the gross proceeds paid by the underwriter to the issuer or selling security holder.

Listing application

- 20.9** If application has been made to list or quote the securities being distributed, include a statement, in substantially the following form, with bracketed information completed:

“The issuer has applied to [list/quote] the securities distributed under this prospectus on [name of exchange or other market]. [Listing/Quotation] will be subject to the issuer fulfilling all the listing requirements of [name of exchange or other market].”

Conditional listing approval

- 20.10** If application has been made to list or quote the securities being distributed on an exchange or marketplace and conditional listing approval has been received, include a statement, in substantially the following form, with the bracketed information completed:

“[name of exchange or marketplace] has conditionally approved the [listing/quotation] of these securities. [Listing/Quotation] is subject to the [name of issuer] fulfilling all of the requirements of the [name of exchange or marketplace] on or before [date], [including distribution of these securities to a minimum number of public security holders].”

IPO venture issuers

- 20.11** If the issuer has complied with the requirements of this Instrument as an IPO venture issuer, include a statement, in substantially the following form, with bracketed information completed:

“As at the date of the prospectus, [name of issuer] does not have any of its securities listed or quoted, has not applied to list or quote any of its securities, and does not intend to apply to list or quote any of its securities, on the Toronto Stock Exchange, a U.S. marketplace, or a marketplace outside of Canada and the United States of America other than the Alternative Investment Market of the London Stock Exchange or the market known as OFEX.”

Constraints

20.12 If there are constraints imposed on the ownership of securities of the issuer to ensure that the issuer has a required level of Canadian ownership, describe the mechanism, if any, by which the level of Canadian ownership of the securities of the issuer will be monitored and maintained.

Special warrants acquired by underwriters or agents

20.13 Disclose the number and dollar value of any special warrants acquired by any underwriter or agent and the percentage of the distribution represented by those special warrants.

ITEM 21: Risk Factors

Risk factors

21.1(1) Disclose risk factors relating to the issuer and its business, such as cash flow and liquidity problems, if any, experience of management, the general risks inherent in the business carried on by the issuer, environmental and health risks, reliance on key personnel, regulatory constraints, economic or political conditions and financial history and any other matter that would be likely to influence an investor's decision to purchase securities of the issuer.

(2) If there is a risk that security holders of the issuer may become liable to make an additional contribution beyond the price of the security, disclose that risk.

(3) Describe any risk factors material to the issuer that a reasonable investor would consider relevant to an investment in the securities being distributed not otherwise described under subsection (1) or (2).

INSTRUCTION

Disclose risks in the order of seriousness from the most serious to the least serious.

ITEM 22: Promoters and Substantial Beneficiaries of the Offering

Promoters and substantial beneficiaries of the offering

22.1(1) For a person or company, that is, or has been within the 3 years immediately preceding the date of the prospectus, a promoter of the issuer or subsidiary of the issuer, or that is a substantial beneficiary of the offering, as defined in section 5.13 [*Certificate of substantial beneficiary of the offering*] of this Instrument, state

(a) the person or company's name,

- (b) the number and percentage of each class of voting securities and equity securities of the issuer or any of its subsidiaries beneficially owned, directly or indirectly, or over which control is exercised by the person or company,
 - (c) the nature and amount of anything of value, including money, property, contracts, options or rights of any kind received or to be received by the promoter or substantial beneficiary of the offering directly or indirectly from the issuer or from a subsidiary of the issuer, and the nature and amount of any assets, services or other consideration received or to be received by the issuer or a subsidiary of the issuer in return, and
 - (d) for an asset acquired within the 3 years before the date of the preliminary prospectus, or to be acquired, by the issuer or by a subsidiary of the issuer from a promoter or substantial beneficiary of the offering
 - (i) the consideration paid or to be paid for the asset and the method by which the consideration has been or will be determined,
 - (ii) the person or company making the determination referred to in subparagraph (i) and the person or company's relationship with the issuer, the promoter or substantial beneficiary of the offering, or an affiliate of the issuer, promoter or substantial beneficiary of the offering, and
 - (iii) the date that the asset was acquired by the promoter or substantial beneficiary of the offering and the cost of the asset to the promoter or substantial beneficiary of the offering.
- (2) If a promoter or a substantial beneficiary of the offering referred to in subsection (1) has been a director, executive officer, or promoter of any person or company during the 10 years ending on the date of the preliminary prospectus, that while that person was acting in that capacity,
- (a) was the subject of an order that denied the person or company access to any exemptions under provincial or territorial securities legislation, for a period of more than 30 consecutive days, state the fact and describe the basis on which the order was made and whether the order is still in effect,
 - (b) was subject to an event that resulted, after the director, executive officer or promoter ceased to be a director, executive officer or promoter, in the person or company being subject to an order that denied the relevant person or company access to any exemption under securities legislation, for a period of more than 30 consecutive days, state the fact and describe the basis on which the order was made and whether the order is still in effect, or
 - (c) within a year of that person ceasing to act in that capacity, became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or been subject to or instituted any proceedings, arrangement or compromise with

creditors or had a receiver, receiver manager or trustee appointed to hold its assets, state the fact.

- (3) If a promoter or a substantial beneficiary of the offering referred to in subsection (1) has, within the 10 years before the date of the prospectus, become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency, or was subject to or instituted any proceedings, arrangement or compromise with creditors, or had a receiver, receiver manager or trustee appointed to hold the assets of the promoter or substantial beneficiary of the offering, state the fact.
- (4) Describe the penalties or sanctions imposed and the grounds on which they were imposed or the terms of the settlement agreement and the circumstances that gave rise to the settlement agreement, if a promoter or substantial beneficiary of the offering referred to in subsection (1) has been subject to
 - (a) any penalties or sanctions imposed by a court relating to provincial or territorial securities legislation or by a provincial or territorial securities regulatory authority or has entered into a settlement agreement with a provincial or territorial securities regulatory authority, or
 - (b) any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor in making an investment decision.
- (5) Despite subsection (4), no disclosure is required of a settlement agreement entered into before December 31, 2000 unless the disclosure would likely be considered important to a reasonable investor in making an investment decision.

ITEM 23: Legal Proceedings and Regulatory Actions

Legal proceedings

- 23.1(1)** Describe any legal proceedings the issuer, or that any of its property, is, or was since the beginning of the most recently completed financial year for which financial statements of the issuer are included in the prospectus, the subject of.
- (2) Describe any such legal proceedings the issuer knows are contemplated.
- (3) For each proceeding described in subsections (1) and (2), include the name of the court or agency, the date instituted, the principal parties to the proceedings, the nature of the claim, the amount claimed, if any, whether the proceedings are being contested, and the present status of the proceedings.

INSTRUCTION

Information with respect to any proceeding that involves a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10% of the current assets of the issuer may be omitted. However, if any proceeding presents in large degree the same legal and factual

issues as other proceedings pending or known to be contemplated, include the amount involved in the other proceedings in computing the percentage.

Regulatory actions

23.2 Describe any

- (a) penalties or sanctions imposed against the issuer by a court relating to securities legislation or by a securities regulatory authority within the 3 years immediately preceding the date of the prospectus,
- (b) any other penalties or sanctions imposed by a court or regulatory body against the issuer for the prospectus to contain full, true and plain disclosure of all material facts relating to the securities being distributed, and
- (c) settlement agreements the issuer entered into with a court relating to securities legislation or with a securities regulatory authority within the 3 years immediately preceding the date of the prospectus.

ITEM 24: Interests of Management and Others in Material Transactions

Interests of management and others in material transactions

24.1 Provide information for the issuer for this item in accordance with item 13.1 of Form 51-102F2 [*Interest of Management and Others in Material Transactions*] as if the reference in this item to “within the three most recently completed financial years or during the current financial year that has materially affected or will materially affect your company” reads “within the three years before the date of the prospectus that has materially affected or will materially affect the issuer or a subsidiary of the issuer”.

Underwriting discounts

24.2 Disclose any material underwriting discounts or commissions upon the sale of securities by the issuer if any of the persons or companies listed under item 24.1 [*Interests of management and others in material transactions*] were or are to be an underwriter or are associates, affiliates or partners of a person or company that was or is to be an underwriter.

ITEM 25: Relationship Between Issuer or Selling Security Holder and Underwriter

Relationship between issuer or selling security holder and underwriter

- 25.1(1)** If the issuer or selling security holder is a connected issuer or related issuer of an underwriter of the distribution, or if the issuer or selling security holder is also an underwriter of the distribution, comply with the requirements of NI 33-105.
- (2)** For the purposes of subsection (1), “connected issuer” and “related issuer” have the same meanings as in NI 33-105.

ITEM 26: Auditors, Transfer Agents and Registrars

Auditors

26.1 State the name and address of the auditor of the issuer.

Transfer agents, registrars, trustees or other agents

26.2 For each class of securities, state the name of any transfer agent, registrar, trustee, or other agent appointed by the issuer to maintain the securities register and the register of transfers for such securities and indicate the location (by municipality) of each of the offices of the issuer or transfer agent, registrar, trustee or other agent where the securities register and register of transfers are maintained or transfers of securities are recorded.

ITEM 27: Material Contracts

Material contracts

27.1 Give particulars of every material contract other than a material contract entered into in the ordinary course of business.

INSTRUCTIONS

- (1) *Set out a complete list of all contracts for which particulars must be given under this item, indicating those that are disclosed elsewhere in the prospectus. Particulars need only be provided for those contracts that do not have the particulars given elsewhere in the prospectus.*
- (2) *Particulars of contracts should include the dates of, parties to, consideration provided for in, and general nature of, the contracts.*

ITEM 28: Experts

Names of experts

28.1 Name each person or company

- (a) who is named as having prepared or certified a report, valuation, statement or opinion in the prospectus or an amendment to the prospectus, and
- (b) whose profession or business gives authority to the report, valuation, statement or opinion made by the person or company.

Interest of experts

28.2 For each person or company referred to in item 28.1 [*Names of experts*], provide the disclosure in accordance with item 16.2 of Form 51-102F2 [*Interests of Experts*], as of

the date of the prospectus, as if that person or company were a person or company referred to in item 16.1 of Form 51-102F2 [*Names of Experts*].

ITEM 29: Other Material Facts

Other material facts

- 29.1** Give particulars of any material facts about the securities being distributed that are not disclosed under the preceding items and are necessary in order for the prospectus to contain full, true and plain disclosure of all material facts relating to the securities to be distributed.

ITEM 30: Rights of Withdrawal and Rescission

General

- 30.1** Include a statement in substantially the following form, with the bracketed information completed:

“Securities legislation in [certain of the provinces [and territories] of Canada/the Province of [insert name of local jurisdiction, if applicable]] provides purchasers with the right to withdraw from an agreement to purchase securities. This right may be exercised within 2 business days after receipt or deemed receipt of a prospectus and any amendment. [In several of the provinces/provinces and territories,] [T/t]he securities legislation further provides a purchaser with remedies for rescission [or [, in some jurisdictions,] damages] if the prospectus and any amendment contains a misrepresentation or is not delivered to the purchaser, provided that the remedies for rescission [or damages] are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser’s province [or territory]. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser’s province [or territory] for the particulars of these rights or consult with a legal adviser.”

Non-fixed price offerings

- 30.2** In the case of a non-fixed price offering, replace, if applicable in the jurisdiction in which the prospectus is filed, the second sentence in the legend in item 30.1 [*General*] with a statement in substantially the following form:

“This right may only be exercised within 2 business days after receipt or deemed receipt of a prospectus and any amendment, irrespective of the determination at a later date of the purchase price of the securities distributed.”

ITEM 31: List of Exemptions from Instrument

List of exemptions from Instrument

- 31.1** List all exemptions from the provisions of this Instrument, including Form 41-101F1, granted to the issuer applicable to the distribution or the prospectus, including all exemptions to be evidenced by the issuance of a receipt for the prospectus pursuant to section 19.3 of this Instrument [*Evidence of exemption*].

ITEM 32: Financial Statement Disclosure for Issuers

Interpretation of “issuer”

- 32.1** The financial statements of an issuer required under this Item to be included in a prospectus must include
- (a) the financial statements of any predecessor entity that formed the basis of the business of the issuer, even though the predecessor entity may have been a different legal entity, if the issuer has not existed for 3 years,
 - (b) the financial statements of a business or businesses acquired by the issuer within 3 years before the date of the prospectus, if a reasonable investor reading the prospectus would regard the primary business of the issuer to be the business or businesses acquired by the issuer, and
 - (c) the restated combined financial statements of the issuer and any other entity with which the issuer completed a transaction within 3 years before the date of the prospectus, if the issuer accounted for the transaction as a continuity of interests.

Annual financial statements

- 32.2(1)** Subject to item 32.4 [*Exemptions to financial statement requirements*], include annual financial statements of the issuer consisting of
- (a) an income statement, a statement of retained earnings, and a cash flow statement for each of the 3 most recently completed financial years ended more than
 - (i) 90 days before the date of the prospectus, or
 - (ii) 120 days before the date of the prospectus, if the issuer is a venture issuer,
 - (b) a balance sheet as at the end of the 2 most recently completed financial years described in paragraph (a), and
 - (c) notes to the financial statements.
- (2)** If the issuer has not completed 3 financial years, include the financial statements described under subsection (1) for each completed financial year ended more than
- (a) 90 days before the date of the prospectus, or

- (b) 120 days before the date of the prospectus, if the issuer is a venture issuer.
- (3) If the issuer has not included in the prospectus financial statements for a completed financial year, include the financial statements described under subsection (1) or (2) for a period from the date the issuer was formed to a date not more than 90 days before the date of the prospectus.
- (4) If an issuer changed its financial year end during any of the financial years referred to in this item and the transition year is less than 9 months, the transition year is deemed not to be a financial year for the purposes of the requirement to provide financial statements for a specified number of financial years in this item.
- (5) Notwithstanding subsection (4), all financial statements of the issuer for a transition year must be included in the prospectus.
- (6) Subject to item 32.4 [*Exceptions to financial statement requirements*], if financial statements of any business or businesses acquired are required under this item, then include
 - (i) income statements, statements of retained earnings, and cash flow statements for the business or businesses acquired for as many periods before the acquisition as may be necessary so that when these periods are added to the periods for which the issuer's income statements, statements of retained earnings, and cash flow statements in the prospectus include the results of the business or businesses acquired, either separately or on a consolidated basis, total 3 years,
 - (ii) balance sheets for the business or businesses acquired for as many periods before the acquisition as may be necessary so that when these periods are added to the periods for which the issuer's balance sheets in the prospectus include the financial position of the business or businesses acquired, either separately or on a consolidated basis, total 2 years,
 - (iii) if the business or businesses acquired has not completed 3 financial years, the financial statements described under subsection (1) for each completed financial year of the business or businesses acquired for which the issuer's financial statements in the prospectus do not include the financial statements of the business or businesses acquired, either separately or on a consolidated basis, and ended more than
 - (a) 90 days before the date of the prospectus, or
 - (b) 120 days before the date of the prospectus, if the issuer is a venture issuer.

Interim financial statements

32.3(1) Include comparative interim financial statements of the issuer for the most recent interim period, if any, ended

- (a) subsequent to the most recent financial year in respect of which annual financial statements of the issuer are included in the prospectus, and
 - (b) more than
 - (i) 45 days before the date of the prospectus, or
 - (ii) 60 days before the date of the prospectus if the issuer is a venture issuer.
- (2) The interim financial statements referred to in subsection (1) must include
- (a) a balance sheet as at the end of the interim period and a balance sheet as at the end of the immediately preceding financial year, if any,
 - (b) an income statement, a statement of retained earnings, and a cash flow statement all for the year-to-date interim period, and comparative financial information for the corresponding interim period in the immediately preceding financial year, if any,
 - (c) for interim periods other than the first interim period in a current financial year, an income statement and a cash flow statement, for the three month period ending on the last day of the interim period and comparative financial information for the corresponding period in the preceding financial year, if any, and
 - (d) notes to the financial statements.

Exceptions to financial statement requirements

32.4 Despite item 32.2 [*Annual financial statements*], an issuer is not required to include the following financial statements in a prospectus:

- (a) the income statement, the statement of retained earnings, and the cash flow statement for the third most recently completed financial year, if the issuer is a reporting issuer immediately before filing the prospectus;
- (b) the income statement, the statement of retained earnings, and the cash flow statement for the third most recently completed financial year, and the financial statements for the second most recently completed financial year, if
 - (i) the issuer is a reporting issuer immediately before filing the prospectus, and
 - (ii) the issuer includes financial statements for a financial year ended less than
 - (A) 90 days before the date of the prospectus, or
 - (B) 120 days before the date of the prospectus, if the issuer is a venture issuer;

- (c) the income statement, the statement of retained earnings, and the cash flow statement for the third most recently completed financial year, and the balance sheet for the second most recently completed financial year, if the issuer includes financial statements for a financial year ended less than
 - (i) 90 days before the date of the prospectus, or
 - (ii) 120 days before the date of the prospectus, if the issuer is a venture issuer;
- (d) the income statement, the statement of retained earnings, and the cash flow statement for the third most recently completed financial year, and the financial statements for the second most recently completed financial year, if
 - (i) the issuer is a reporting issuer immediately before filing the prospectus,
 - (ii) the issuer includes audited financial statements for a period of at least 9 months commencing the day after the most recently completed financial year for which financial statements are required under item 32.2 [*Annual financial statements*],
 - (iii) the business of the issuer is not seasonal, and
 - (iv) none of the financial statements required under item 32.2 [*Annual financial statements*] are for a financial year that is less than 9 months;
- (e) the income statement, the statement of retained earnings, and the cash flow statement for the third most recently completed financial year, and the balance sheet for the second most recently completed financial year, if
 - (i) the issuer includes audited financial statements for a period of at least 9 months commencing the day after the most recently completed financial year for which financial statements are required under item 32.2 [*Annual financial statements*],
 - (ii) the business of the issuer is not seasonal, and
 - (iii) none of the financial statements required under item 32.2 [*Annual financial statements*] are for a financial year that is less than 9 months;
- (f) the separate financial statements of the issuer and the other entity for periods prior to the date of the continuity of interest transaction, if the restated combined financial statements of the issuer and the other entity are included in the prospectus under paragraph 32.1(c) [*Interpretation of “issuer”*].

Exceptions to audit requirement

32.5 The audit requirement in section 4.2 of this Instrument [*Audit of financial statements*] does not apply to the following financial statements

- (a) any financial statements for the second and third most recently completed financial years required under item 32.2 [*Annual financial statements*], if
 - (i) those financial statements were previously included in a final prospectus without an auditor's report pursuant to an exemption under applicable securities legislation, and
 - (ii) an auditor has not issued an auditor's report on those financial statements,
- (b) any financial statements for the second and third most recently completed financial years required under item 32.2 [*Annual financial statements*], if
 - (i) the issuer is a junior issuer, and
 - (ii) the financial statements for the most recently completed financial year required under item 32.2 [*Annual financial statements*] is not less than 12 months in length, or
- (c) any interim financial statements required under item 32.3 [*Interim financial statements*].

Additional financial statements or financial information filed or released

- 32.6(1)** If the issuer files financial statements for a more recent period than required under item 32.2 [*Annual financial statements*] or 32.3 [*Interim financial statements*] before the prospectus is filed, the issuer must include those more recent financial statements in the prospectus.
- (2) If financial information about the issuer is publicly disseminated by, or on behalf of, the issuer through news release or otherwise for a more recent period than required under item 32.2 [*Annual financial statements*] or 32.3 [*Interim financial statements*], the issuer must include the content of the news release or public communication in the prospectus.

ITEM 33: Credit Supporter Disclosure, Including Financial Statements

Credit supporter disclosure, including financial statements

- 33.1** If a credit supporter has provided a guarantee or alternative credit support for all or substantially all of the payments to be made under the securities being distributed, include statements by the credit supporter providing disclosure about the credit supporter that would be required under Items 4 [*Corporate Structure*], 5 [*Describe the Business*], 8 [*Management's Discussion and Analysis*], 9 [*Earnings Coverage Ratios*], 21 [*Risk Factors*], 23 [*Legal Proceedings and Regulatory Actions*], 25 [*Relationship Between Issuer or Selling Security Holder and Underwriter*], 26 [*Auditor, Transfer Agent and Registrar*], and 32 [*Financial Statement Disclosure for the Issuer*] if the credit supporter were the issuer of the securities to be distributed and such other information about the credit supporter as is necessary to provide full, true and plain disclosure of all material facts relating to the securities to be distributed.

ITEM 34: Exemptions for Certain Issues of Guaranteed Securities

Definitions and interpretation

34.1(1) In this item

- (a) the impact of subsidiaries, on a combined basis, on the financial statements of the parent entity is “minor” if each item of the summary financial information of the subsidiaries, on a combined basis, represents less than 3% of the total consolidated amounts,
- (b) a parent entity has “limited independent operations” if each item of its summary financial information represents less than 3% of the total consolidated amounts,
- (c) a subsidiary is a “finance subsidiary” if it has minimal assets, operations, revenues or cash flows other than those related to the issuance, administration and repayment of the security being distributed and any other securities guaranteed by its parent entity,
- (d) “parent credit supporter” means a credit supporter of which the issuer is a subsidiary,
- (e) “parent entity” means a parent credit supporter for the purposes of sections 34.2 [*Issuer is wholly-owned subsidiary of parent credit supporter*] and 34.3 [*Issuer is wholly-owned subsidiary of, and one or more subsidiary credit supporters controlled by, parent credit supporter*] and an issuer for the purpose of section 34.4 [*One or more credit supporters controlled by issuer*],
- (f) “subsidiary credit supporter” means a credit supporter that is a subsidiary of the parent credit supporter, and
- (g) “summary financial information” includes the following line items:
 - (i) sales or revenues;
 - (ii) income from continuing operations;
 - (iii) net earnings or loss; and
 - (iv) unless the accounting principles used to prepare the financial statements of the entity permits the preparation of the entity’s balance sheet without classifying assets and liabilities between current and non-current and the entity provides alternative meaningful financial information which is more appropriate to the industry,
 - (A) current assets;
 - (B) non-current assets;

- (C) current liabilities; and
 - (D) non-current liabilities.
- (2) For the purposes of this Item, consolidating summary financial information must be prepared on the following basis
 - (a) an entity's annual or interim summary financial information must be derived from the entity's financial information underlying the corresponding consolidated financial statements of the parent entity included in the prospectus,
 - (b) the parent entity column must account for investments in all subsidiaries under the equity method, and
 - (c) all subsidiary entity columns must account for investments in non-credit supporter subsidiaries under the equity method.

Issuer is wholly-owned subsidiary of parent credit supporter

34.2 An issuer is not required to include the issuer disclosure required by Items 4 [*Corporate Structure*], 5 [*Describe the Business*], 8 [*Management's Discussion and Analysis*], 9 [*Earnings Coverage Ratios*], 21 [*Risk Factors*], 23 [*Legal Proceedings and Regulatory Actions*], 25 [*Relationship Between Issuer or Selling Security Holder and Underwriter*], 26 [*Auditor, Transfer Agent and Registrar*], and 32 [*Financial Statement Disclosure for the Issuer*], if

- (a) a parent credit supporter has provided full and unconditional credit support for the securities being distributed,
- (b) the securities being distributed are non-convertible debt securities, non-convertible preferred shares, or convertible debt securities or convertible preferred shares that are convertible, in each case, into non-convertible securities of the parent credit supporter,
- (c) the parent credit supporter is the beneficial owner of all the issued and outstanding voting securities of the issuer,
- (d) no other subsidiary of the parent credit supporter has provided a guarantee or alternative credit support for all or substantially all of the payments to be made under the securities being distributed, and
- (e) the issuer includes in the prospectus
 - (i) a statement that the financial results of the issuer are included in the consolidated financial results of the parent credit supporter, if

- (A) the issuer is a finance subsidiary, and
 - (B) the impact of any subsidiaries of the parent credit supporter on a combined basis, excluding the issuer, on the consolidated financial statements of the parent credit supporter is minor, or
- (ii) for the periods covered by the parent credit supporter's interim and annual consolidated financial statements included in the prospectus under Item 33 [*Credit Supporter Disclosure, Including Financial Statements*], consolidating summary financial information for the parent credit supporter presented with a separate column for each of the following:
- (A) the parent credit supporter;
 - (B) the issuer;
 - (C) any other subsidiaries of the parent credit supporter on a combined basis;
 - (D) consolidating adjustments;
 - (E) the total consolidated amounts.

Issuer is wholly-owned subsidiary of, and one or more subsidiary credit supporters controlled by, parent credit supporter

34.3(1) An issuer is not required to include the issuer disclosure required by Items 4 [*Corporate Structure*], 5 [*Describe the Business*], 8 [*Management's Discussion and Analysis*], 9 [*Earnings Coverage Ratios*], 21 [*Risk Factors*], 23 [*Legal Proceedings and Regulatory Actions*], 25 [*Relationship Between Issuer or Selling Security Holder and Underwriter*], 26 [*Auditor, Transfer Agent and Registrar*], and 32 [*Financial Statement Disclosure for the Issuer*], or the credit supporter disclosure of one or more subsidiary credit supporters required by Item 33 [*Credit Supporter Disclosure, Including Financial Statements*], if

- (a) a parent credit supporter and one or more subsidiary credit supporters have each provided full and unconditional credit support for the securities being distributed,
- (b) the guarantees or alternative credit supports are joint and several,
- (c) the securities being distributed are non-convertible debt securities, non-convertible preferred shares, or convertible debt securities or convertible preferred shares that are convertible, in each case, into non-convertible securities of the parent credit supporter,
- (d) the parent credit supporter is the beneficial owner of all the issued and outstanding voting securities of the issuer,

- (e) the parent credit supporter controls each subsidiary credit supporter and the parent credit support has consolidated the financial statements of each subsidiary credit supporter into the parent credit supporter's financial statements that are included in the prospectus, and
 - (f) the issuer includes in the prospectus, for the periods covered by the parent credit supporter's financial statements included in the prospectus under Item 33 [*Credit Supporter Disclosure, Including Financial Statements*], consolidating summary financial information for the parent credit supporter presented with a separate column for each of the following:
 - (i) the parent credit supporter;
 - (ii) the issuer;
 - (iii) each subsidiary credit supporter on a combined basis;
 - (iv) any other subsidiaries of the parent credit supporter on a combined basis;
 - (v) consolidating adjustments;
 - (vi) the total consolidated amounts.
- (2) Despite paragraph (1)(f), the information set out in a column in accordance with
- (a) subparagraph (1)(f)(iv), may be combined with the information set out in accordance with any of the other columns in paragraph (1)(f); if the impact of any subsidiaries of the parent credit supporter on a combined basis, excluding the issuer and all subsidiary credit supporters, on the consolidated financial statements of the parent credit supporter is minor, and
 - (b) subparagraph (1)(f)(ii), may be combined with the information set out in accordance with any of the other columns in paragraph (1)(f); if the issuer is a finance subsidiary.

One or more credit supporters controlled by issuer

34.4 An issuer is not required to include the credit supporter disclosure for one or more credit supporters required by Item 33 [*Credit Supporter Disclosure, Including Financial Statements*], if

- (a) one or more credit supporters have each provided full and unconditional credit support for the securities being distributed,
- (b) if there is more than one credit supporter, the guarantee or alternative credit supports are joint and several,

- (c) the securities being distributed are non-convertible debt securities, non-convertible preferred shares, or convertible debt securities or convertible preferred shares that are convertible, in each case, into non-convertible securities of the issuer,
- (d) the issuer controls each credit supporter and the issuer has consolidated the financial statements of each credit supporter into the issuer's financial statements that are included in the prospectus, and
- (e) the issuer includes in the prospectus
 - (i) a statement that the financial results of the credit supporter(s) are included in the consolidated financial results of the issuer, if
 - (A) the issuer has limited independent operations, and
 - (B) the impact of any subsidiaries of the issuer on a combined basis, excluding the credit supporter(s) but including any subsidiaries of the credit supporter(s) that are not themselves credit supporters, on the consolidated financial statements of the issuer is minor, or
 - (ii) for the periods covered by the issuer's financial statements included in the prospectus under Item 32 [*Financial Statement Disclosure for the Issuer*], consolidating summary financial information for the issuer, presented with a separate column for each of the following:
 - (A) the issuer;
 - (B) the credit supporters on a combined basis;
 - (C) any other subsidiaries of the issuer on a combined basis;
 - (D) consolidating adjustments;
 - (E) the total consolidated amounts.

ITEM 35: Significant Acquisitions

Application and definitions

- 35.1(1)** This Item does not apply to a completed or proposed acquisition by the issuer that was or will be accounted for as a reverse takeover or a transaction that is a probable reverse takeover.
- (2)** The requirements in items 35.5 [*Recently completed acquisitions*] and 35.6 [*Probable acquisitions*] are not applicable to an initial distribution by prospectus by a Capital Pool Company, as that term is defined in TSX Venture Exchange Policy 2.4 entitled *Capital Pool Companies*, as amended from time to time.

- (3) The audit requirement in section 4.2 of this Instrument [*Audit of financial statements*] does not apply to any financial statements or other information included in the prospectus under this Item, other than the financial statements or other information for the most recently completed financial year of a business or related businesses acquired, or proposed to be acquired, by the issuer.
- (4) In this Item, “**significant acquisition**” means an acquisition of a business or related businesses that,
- (a) if the issuer was a reporting issuer on the date of the acquisition, is determined to be a significant acquisition under section 8.3 of NI 51-102 [*Determination of Significance*], or
 - (b) if the issuer was not a reporting issuer on the date of the acquisition, would be determined to be a significant acquisition under section 8.3 of NI 51-102 [*Determination of Significance*], as if
 - (i) the issuer was a reporting issuer on the date of the acquisition,
 - (ii) the references to a “venture issuer” are read as an “IPO venture issuer” if the issuer is an IPO venture issuer,
 - (iii) for the purposes of the optional tests, the issuer uses its financial statements for the most recently completed interim period or financial year that is included in the prospectus,
 - (iv) for the purposes of the optional income tests, the most recently completed financial year of the business or related businesses should be the financial year of the business ended before the date of the prospectus, and the 12 months ended on the last day of the most recently completed interim period of the business or related businesses should be the 12 months ended on the last day of the most recently completed interim period before the date of the prospectus,
 - (v) subsection 8.3(11.1) of NI 51-102 [*Application of the Optional Income Test based on Pro Forma Financial Information*] does not apply, and
 - (vi) references to annual audited statements filed or required to be filed means audited annual financial statements included in the prospectus.

Completed acquisitions for which issuer has filed business acquisition report

- 35.2** If an issuer completed an acquisition of a business or related businesses since the beginning of its most recently completed financial year for which financial statements are included in the prospectus, and it has filed a business acquisition report under Part 8 of NI 51-102 [*Business Acquisition Report*] for the acquisition, include all of the disclosure included in, or incorporated by reference into, that business acquisition report.

Completed acquisitions for which issuer has not filed business acquisition report because issuer was not reporting issuer on date of acquisition

35.3(1) Subject to subsection (3), an issuer must include the disclosure required under subsection (2), if

- (a) the issuer completed an acquisition of a business or related businesses since the beginning of the issuer's most recently completed financial year for which financial statements of the issuer are included in the prospectus,
 - (b) the issuer was not a reporting issuer on the date of the acquisition,
 - (c) the acquisition is a significant acquisition, and
 - (d) the acquisition was completed more than
 - (i) 90 days before the date of the prospectus, if the financial year of the acquired business ended 45 days or less before the acquisition, or
 - (ii) 75 days before the date of the prospectus.
- (2)** For an acquisition to which subsection (1) applies, include all the disclosure that would be required to be included in, or incorporated by reference into, a business acquisition report filed under Part 8 of NI 51-102 [*Business Acquisition Report*], as if
- (a) the issuer was a reporting issuer on the date of the acquisition,
 - (b) the business acquisition report was filed as at the date of the prospectus,
 - (c) the issuer was a venture issuer at the date of the acquisition, if the issuer is an IPO venture issuer,
 - (d) subsections 8.4(4) [*Earlier Interim Financial Statements Permitted*] and 8.4(6) [*Pro Forma Financial Statements based on Earlier Interim Financial Statements Permitted*] of NI 51-102 do not apply, and
 - (e) references to financial statements filed or required to be filed means audited annual financial statements included in the prospectus.

Results consolidated in financial statements of issuer

35.4 Despite item 35.2 [*Completed acquisitions for which the issuer has filed a business acquisition report*] and subsection 35.3(1) [*Completed acquisitions for which the issuer has not filed a business acquisition report because the issuer was not a reporting issuer on the date of acquisition*], an issuer may omit the financial statements or other information of a business required to be included in the prospectus, if at least 9 months of the acquired business or related businesses operations have been reflected in the issuer's most recent audited financial statements included in the prospectus.

Recently completed acquisitions

35.5(1) Include the information required under subsection (2) for any significant acquisition completed by the issuer

- (a) since the beginning of the issuer's most recently completed financial year for which financial statements of the issuer are included in the prospectus, and
- (b) for which the issuer has not included any disclosure under item 35.2 [*Completed acquisitions for which the issuer has filed a business acquisition report*] or subsection 35.3(2) [*Completed acquisitions for which the issuer has not filed a business acquisition report because the issuer was not a reporting issuer on the date of acquisition*].

(2) For a significant acquisition to which subsection (1) applies, include the following

- (a) the information required by items 2.1 through 2.6 of Form 51-102F4 [*Content of Business Acquisition Report*], and
- (b) the financial statements or other information of the acquisition under subsection (3) for the acquired business or related businesses, if
 - (i) the issuer was not a reporting issuer immediately before filing the prospectus, or
 - (ii) the issuer was a reporting issuer immediately before filing the prospectus, and the inclusion of the financial statements or other information is necessary for the prospectus to contain full, true and plain disclosure of all material facts relating to the securities to be distributed.

(3) The requirement to include financial statements or other information under subsection (2)(b) must be satisfied by including

- (a) if the issuer was a reporting issuer on the date of acquisition, the financial statements or other information that will be required to be included in, or incorporated by reference into, a business acquisition report filed under Part 8 of NI 51-102 [*Business Acquisition Report*],
- (b) if the issuer was not a reporting issuer on the date of acquisition, the financial statements or other information that would be required by subsection 35.3(2) [*Completed acquisitions for which the issuer has not filed a business acquisition report because the issuer was not a reporting issuer on date of acquisition*], or
- (c) satisfactory alternative financial statements or other information.

Probable acquisitions

- 35.6(1)** Include the information required under subsection (2) for any probable acquisition of a business or related businesses that, if completed by the issuer at the date of the prospectus, would be a significant acquisition.
- (2) For a probable acquisition of a business or related businesses to which subsection (1) applies, include
- (a) the information required by sections 2.1 through 2.6 of Form 51-102F4 [*Content of Business Acquisition Report*], modified as necessary to convey that the acquisition has not been completed, and
 - (b) the financial statements or other information of the probable acquisition under subsection (3) for the acquired business or related businesses, if
 - (i) the issuer was not a reporting issuer immediately before filing the prospectus, or
 - (ii) the issuer was a reporting issuer immediately before filing the prospectus, and the inclusion of the financial statements or other information is necessary for the prospectus to contain full, true and plain disclosure of all material facts relating to the securities to be distributed.
- (3) For a probable acquisition of a business or related businesses to which subsection (2) applies, the requirement to include financial statements or other information under subsection (2)(b) must be satisfied by including
- (a) if the issuer was a reporting issuer immediately before filing the prospectus, the financial statements or other information that would be required to be included in, or incorporated by reference into, a business acquisition report filed under Part 8 of NI 51-102 [*Business Acquisition Report*],
 - (b) if the issuer was not a reporting issuer immediately before filing the prospectus, the financial statements or other information that would be required to be included by subsection 35.3(2) [*Completed acquisitions for which the issuer has not filed a business acquisition report because the issuer was not a reporting issuer on date of acquisition*], as if the acquisition had been completed before the filing of the prospectus, or
 - (c) satisfactory alternative financial statements or other information.

***Pro Forma* financial statements for multiple acquisitions**

- 35.7** Despite items 35.2 [*Completed acquisitions for which issuer has filed business acquisition report*], 35.3 [*Completed acquisitions for which issuer has not filed business acquisition report because issuer was not reporting issuer on date of acquisition*], 35.5

[*Recently completed acquisitions*] and 35.6 [*Probable acquisitions*], an issuer is not required to include in its prospectus the *pro forma* financial statements otherwise required for each acquisition, if the issuer includes in its prospectus one set of *pro forma* financial statements that

- (a) reflect the results of each acquisition since the beginning of the issuer's most recently completed financial year for which financial statements of the issuer are included in the prospectus,
- (b) are prepared as if each acquisition occurred at the beginning of the most recently completed financial year of the issuer for which financial statements of the issuer are included in the prospectus, and
- (c) are prepared in accordance with
 - (i) if no disclosure is otherwise required for a probable acquisition under item 35.6 [*Probable acquisitions*], the item in this Item that applies to the most recently completed acquisition, or
 - (ii) item 35.6 [*Probable acquisitions*].

Additional financial statements or financial information of business filed or released

- 35.8(1)** An issuer must include in its prospectus annual and interim financial statements of a business or related businesses for a financial period that ended before the date of the acquisition and is more recent than the periods for which financial statements are required under item 35.5 [*Recently completed acquisitions*] or 35.6 [*Probable acquisitions*] if, before the prospectus is filed, the financial statements of the business for the more recent period have been filed.
- (2) If, before the prospectus is filed, financial information of a business or related businesses for a period more recent than the period for which financial statements are required under item 35.5 [*Recently completed acquisitions*] or 35.6 [*Probable acquisitions*], is publicly disseminated by news release or otherwise by or on behalf of the issuer, the issuer shall include in the prospectus the content of the news release or public communication.

ITEM 36: Probable Reverse Takeovers

Probable reverse takeovers

- 36.1** If the issuer is involved in a probable reverse takeover, include statements by the reverse takeover acquirer providing disclosure about the reverse takeover acquirer that would be required under Form 41-101F1, as applicable, if the reverse takeover acquirer were the issuer of the securities to be distributed and such other information about the reverse takeover acquirer as is necessary to provide full, true and plain disclosure of all material facts relating to the securities to be distributed, including the disclosure required by Items

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ITEM 37: Certificates

Certificates

37.1 Include the certificates required by Part 5 of this Instrument [*Certificates*] or securities legislation.

Issuer certificate form

37.2 An issuer certificate form must state

“This prospectus constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by the securities legislation of [insert the jurisdictions in which qualified].”

Underwriter certificate form

37.3 An underwriter certificate form must state

“To the best of our knowledge, information and belief, this prospectus constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by the securities legislation of [insert the jurisdictions in which qualified].”

Amendments

37.4(1) For an amendment to a prospectus that does not restate the prospectus, omit the references in the language in sections 37.2 [*Issuer certificate form*] and 37.3 [*Underwriter certificate form*] to “prospectus” and replace it with “prospectus dated [insert date] as amended by this amendment”.

(2) For an amended and restated prospectus, omit the references in the language in sections 37.2 [*Issuer certificate form*] and 37.3 [*Underwriter certificate form*] to “prospectus” and replace it with “amended and restated prospectus”.

Non-offering prospectuses

37.5 For a non-offering prospectus, omit the references in the language in sections 37.2 [*Issuer certificate form*] and 37.3 [*Underwriter certificate form*] to “securities offered by this prospectus” and replace it with “securities previously issued by the issuer”.

APPENDIX B

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FORM 41-101F2
INFORMATION REQUIRED IN AN INVESTMENT FUND PROSPECTUS

GENERAL INSTRUCTIONS

- (1) *The objective of the prospectus is to provide information concerning the investment fund that an investor needs in order to make an informed investment decision. Form 41-101F2 sets out specific disclosure requirements that are in addition to the general requirement under securities legislation to provide full, true and plain disclosure of all material facts relating to the securities to be distributed. Certain rules of specific application impose prospectus disclosure obligations in addition to those described in this Form 41-101F2.*
- (2) *Terms used and not defined in Form 41-101F2 that are defined or interpreted in the Instrument must bear that definition or interpretation. Other definitions are set out in National Instrument 14-101 Definitions.*
- (3) *In determining the degree of detail required a standard of materiality should be applied. Materiality is a matter of judgment in the particular circumstance, and should generally be determined in relation to an item's significance to investors, analysts and other users of the information. An item of information, or an aggregate of items, is considered material if it is probable that its omission or misstatement would influence or change an investment decision with respect to the investment fund's securities. In determining whether information is material, take into account both quantitative and qualitative factors. The potential significance of items should be considered individually rather than on a net basis, if the items have an offsetting effect. This concept of materiality is consistent with the financial reporting notion of materiality contained in the Handbook.*
- (4) *Unless an item specifically requires disclosure only in the preliminary prospectus, the disclosure requirements set out in this Form apply to both the preliminary prospectus and the prospectus. Details concerning the price and other matters dependent upon or relating to price, such as the number of securities being distributed, may be left out of the preliminary prospectus, along with specifics concerning the plan of distribution, to the extent that these matters have not been decided.*
- (5) *The disclosure must be understandable to readers and presented in an easy to read format. The presentation of information should comply with the plain language principles listed in section 4.1 of Companion Policy 41-101CP General Prospectus Requirements. If technical terms are required, clear and concise explanations should be included.*
- (6) *No reference need be made to inapplicable items and, unless otherwise required in this Form, negative answers to items may be omitted.*

- (7) *Where the term “investment fund” is used, it may be necessary, in order to meet the requirement for full, true and plain disclosure of all material facts, to also include disclosure with respect to the investment fund’s subsidiaries and investees. If it is more likely than not that a person or company will become a subsidiary or investee, it may be necessary to also include disclosure with respect to the person or company. For this purpose, “investees” is defined to mean any entity that the Handbook recommends that the investment fund account for by the equity method or the proportionate consolidation method.*
- (8) *An investment fund that is a special purpose vehicle may have to modify the disclosure items to reflect the special purpose nature of its business.*
- (9) *If disclosure is required as of a specific date and there has been a material change or change that is otherwise significant in the required information subsequent to that date, present the information as of the date of the change or a date subsequent to the change instead.*
- (10) *If the term “class” is used in any item to describe securities, the term includes a series of a class.*
- (11) *The prospectus must be presented in the order specified in this form.*
- (12) *Where performance data is used in the prospectus, such performance data must be annualized and must be stated for standard applicable performance periods of 1, 3, 5, 10 year periods and since inception unless otherwise specified by the requirements of this form. Performance data must not be used for periods of less than one year. Also, hypothetical or back-tested performance data must not be used.*
- (13) *An investment fund that has more than one class or series that are referable to the same portfolio may treat each class or series as a separate investment fund for the purposes of this Form, or may combine disclosure of one or more of the classes or series in one prospectus. If disclosure pertaining to more than one class or series is combined in one prospectus, separate disclosure in response to each item in this Form must be provided for each class or series unless the responses would be identical for each class or series.*
- (14) *A section, part, class or series of a class of securities of an investment fund that is referable to a separate portfolio is considered to be a separate investment fund for the purposes of this Form.*

PROSPECTUS FORM

Item 1: Cover Page Disclosure

Required Statement

1.1 State in *italics* at the top of the cover page the following:

“No securities regulatory authority has expressed an opinion about these securities and it is an offence to claim otherwise.”

Preliminary Prospectus Disclosure

1.2 Every preliminary prospectus shall have printed in red ink and in italics at the top of the cover page immediately above the disclosure required under item 1.1 the following, with the bracketed information completed:

“A copy of this preliminary prospectus has been filed with the securities regulatory authority(ies) in [each of/certain of the provinces/provinces and territories of Canada] but has not yet become final for the purpose of the sale of securities. Information contained in this preliminary prospectus may not be complete and may have to be amended. The securities may not be sold until a receipt for the prospectus is obtained from the securities regulatory authority(ies).”

INSTRUCTION

Investment funds shall complete the bracketed information by

- (a) inserting the names of each jurisdiction in which the investment fund intends to offer securities under the prospectus;*
- (b) stating that the filing has been made in each of the provinces of Canada or each of the provinces and territories of Canada; or*
- (c) identifying the filing jurisdictions by exception (i.e., every province of Canada or every province and territory of Canada, except [excluded jurisdictions]).*

Basic Disclosure about the Distribution

- 1.3** State the following immediately below the disclosure required under Items 1.1 and 1.2 with the bracketed information completed:

[PRELIMINARY OR PRO FORMA] PROSPECTUS

[INITIAL PUBLIC OFFERING OR NEW ISSUE AND/OR SECONDARY OFFERING OR CONTINUOUS OFFERING]

Date

Name of Investment fund

[number and type of securities qualified for distribution under the prospectus, including any options or warrants, and the price per security]
[type of fund – state the following: “This investment fund is a (labour sponsored investment fund or commodity pool or non-redeemable investment fund or scholarship plan).” If the investment fund is intended to be an exchange-traded investment fund and has received conditional listing approval, state the following: “This investment fund is intended to be an exchange-traded investment fund and has received conditional listing approval.”]

Distribution

- 1.4 (1)** If the securities are being distributed for cash, provide the information called for below, in substantially the following tabular form or in a note to the table:

	Price to public (a)	Underwriting discounts or commission (b)	Proceeds to issuer or selling security holders (c)
Per Security			
Total			

- (2)** If there is an over-allotment option or an option to increase the size of the distribution before closing,
- (a) disclose that a purchaser who acquires securities forming part of the underwriters’ over-allocation position acquires those securities under this prospectus, regardless of whether the over-allocation position is ultimately filled through the exercise of the over-allotment option or secondary market purchases, and
 - (b) describe the terms of the option.

- (3) If the distribution of the securities is to be on a best efforts basis, provide totals for both the minimum and maximum offering amount, if applicable.
- (4) If a minimum subscription amount is required from each subscriber, provide details of the minimum subscription requirements in the table required under subsection (1).
- (5) If debt securities are being distributed at a premium or a discount, state in bold type the effective yield if held to maturity.
- (6) Disclose separately those securities that are underwritten, those under option and those to be sold on a best efforts basis, and, in the case of a best efforts distribution, the latest date that the distribution is to remain open.
- (7) In column (b) of the table, disclose only commissions paid or payable in cash by the issuer or selling security holder and discounts granted. Set out in a note to the table
 - (a) commissions or other consideration paid or payable by persons or companies other than the issuer or selling security holder,
 - (b) consideration other than discounts granted and cash paid or payable by the issuer or selling security holder, including warrants and options, and
 - (c) any finder's fees or similar required payment.
- (8) If a security is being distributed for the account of a selling security holder, state the name of the security holder and a cross-reference to the applicable section in the prospectus where further information about the selling security holder is provided. State the portion of the expenses of the distribution to be borne by the selling security holder and, if none of the expenses of the distribution are being borne by the selling security holder, include a statement to that effect and discuss the reason why this is the case.

INSTRUCTIONS

- (1) *Estimate amounts, if necessary. For non-fixed price distributions that are being made on a best efforts basis, disclosure of the information called for by the table may be set forth as a percentage or a range of percentages and need not be set forth in tabular form.*
- (2) *If debt securities are being distributed, also express the information in the table as a percentage.*

Offering price in currency other than Canadian dollar

- 1.5** If the offering price of the securities being distributed is disclosed in a currency other than the Canadian dollar, disclose in bold face type the reporting currency.

Non-Fixed Price Distributions

- 1.6** If the securities are being distributed at non-fixed prices, disclose
- (a) the discount allowed or commission payable to the underwriter;
 - (b) any other compensation payable to the underwriter and, if applicable, that the underwriter's compensation will be increased or decreased by the amount by which the aggregate price paid for the securities by the purchasers exceeds or is less than the gross proceeds paid by the underwriter to the investment fund or selling security holder;
 - (c) that the securities to be distributed under the prospectus will be distributed, as applicable, at
 - (i) prices determined by reference to the prevailing price of a specified security in a specified market,
 - (ii) market prices prevailing at the time of sale, or
 - (iii) prices to be negotiated with purchasers;
 - (d) that prices may vary as between purchasers and during the period of distribution;
 - (e) if the price of the securities is to be determined by reference to the prevailing price of a specified security in a specified market, the price of the specified security in the specified market at the latest practicable date;
 - (f) if the price of the securities will be the market price prevailing at the time of the sale, the market price at the latest practicable date,
 - (g) the net proceeds or, if the distribution is to be made on a best efforts basis, the minimum amount of net proceeds, if any, to be received by the investment fund or selling security holder and

Pricing Range

- 1.7** If the offering price or the number of securities being distributed has not been determined at the date of the preliminary prospectus, disclose a bona fide estimate of the range in

which the offering price or the number of securities being distributed is expected to be set.

Reduced Price Distributions

- 1.8** If an underwriter wishes to be able to decrease the price at which securities are distributed for cash from the initial offering price fixed in the prospectus, include in **bold type** a cross-reference to the section in the prospectus where disclosure concerning the possible price decrease is provided.

Market for Securities

- 1.9** (1) Identify the exchange(s) and quotation system(s), if any, on which securities of the investment fund of the same class as the securities being distributed are traded or quoted and the market price of those securities as of the latest practicable date.
- (2) Disclose any intention to stabilize the market. Provide a cross-reference to the section in the prospectus where further information about market stabilization is provided.
- (3) If no market for the securities being distributed under the prospectus is expected to exist upon completion of the distribution, state the following in **bold type**:

“There is no market through which these securities may be sold. This may affect the pricing of the securities in the secondary market, the transparency and availability of trading prices, the liquidity of the securities, and the extent of investment fund regulation. A purchaser may not be able to resell securities purchased under this prospectus. See ‘Risk Factors’”.

Risk Factors

- 1.10** Include a cross-reference to sections in the prospectus where information about the risks of an investment in the securities being distributed is provided. State any significant risks including leverage.

No Underwriter

- 1.11** If there is no underwriter involved in the distribution, provide a statement in **bold type** to the effect that no underwriter has been involved in the preparation of the prospectus or performed any review of the contents of the prospectus or independent due diligence of the contents of the prospectus.

Commodity Pool

1.12 (1) For a commodity pool, state in substantially the following words:

“You should carefully consider whether your financial condition permits you to participate in this investment. The securities of this investment fund are highly speculative and involve a high degree of risk. You may lose a substantial portion or even all of the money you place in the investment fund.

The risk of loss in trading [nature of instruments to be traded by the commodity pool] can be substantial. In considering whether to participate in the [commodity pool], you should be aware that trading [nature of instruments] can quickly lead to large losses as well as gains. Such trading losses can sharply reduce the net asset value of the [commodity pool] and consequently the value of your interest in the [commodity pool]. Also, market conditions may make it difficult or impossible for the [commodity pool] to liquidate a position.

The [commodity pool] is subject to certain conflicts of interest. The [commodity pool] will be subject to the charges payable by it as described in this prospectus that must be offset by revenues and trading gains before an investor is entitled to a return on his or her investment. It may be necessary for the [commodity pool] to make substantial trading profits to avoid depletion or exhaustion of its assets before an investor is entitled to a return on his or her investment.”

(2) For the initial prospectus, state in substantially the following words:

“The [commodity pool] is newly organized. The success of the [commodity pool] will depend upon a number of conditions that are beyond the control of the [commodity pool]. There is substantial risk that the goals of the [commodity pool] will not be met.”

(3) If the promoter, manager, or a portfolio adviser of the commodity pool has not had a similar involvement with any other publicly offered commodity pool, state in substantially the following words:

“The [promoter], [manager] [and/or] [portfolio adviser] of the [commodity pool] has not previously operated any other publicly offered commodity pools [or traded other accounts].”

(4) If the commodity pool will execute trades outside of Canada, state in substantially the following words:

“Participation in transactions in [nature of instrument to be traded by the commodity pool] involves the execution and clearing of trades on or subject to the rules of a foreign market.

None of the Canadian securities regulatory authorities or Canadian exchanges regulates activities of any foreign markets, including the execution, delivery and clearing transactions, or has the power to compel enforcement of the rule of a foreign market or any applicable foreign law. This is true even if the foreign market is formally linked to a Canadian market so that a position taken on the market may be liquidated by a transaction on another market. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs.

For these reasons, entities such as the commodity pool that trade [nature of instrument to be traded by the commodity pool] may not be afforded certain of the protective measures provided by Canadian legislation and the rules of Canadian exchanges. In particular, funds received from customers for transactions may not be provided the same protection as funds received in respect of transactions on Canadian exchanges.”

(5) Immediately after the statements required by subsections (1), (2), (3) and (4), state in substantially the following words:

“These brief statements do not disclose all the risks and other significant aspects of investing in the [commodity pool]. You should therefore carefully study this prospectus, including a description of the principal risk factors at page [page number], before you decide to invest in the [commodity pool].”

(6) State that the commodity pool is a mutual fund but that certain provisions of securities legislation designed to protect investors who purchase securities of mutual funds do not apply.

Restricted securities

1.13(1) Describe the number and class or classes of restricted securities being distributed using the appropriate restricted security term in the same type face and type size as the rest of the description.

(2) If the securities being distributed are restricted securities and the holders of the securities do not have the right to participate in a takeover bid made for other equity securities of the issuer, disclose that fact.

Non-Canadian Manager

1.14 If the investment fund manager is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada, state with bracketed information completed:

“The manager is incorporated, continued or otherwise governed under the laws of a foreign jurisdiction or resides outside Canada. Although the manager has appointed [name and address of agent for service] as its agent for service of process in Canada it may not be possible for investors to collect from the manager judgments obtained in courts in Canada.”

Documents Incorporated by Reference

1.15 For investment funds in continuous distribution, except for scholarship plans, state in substantially the following words:

“Additional information about the Fund is available in the following documents:

- the Annual Information Form [if applicable]
- the most recently filed annual financial statements
- any interim financial statements filed after those annual financial statements;
- the most recently filed annual management report of fund performance;
- any interim management report of fund performance filed after that annual management report of fund performance.

These documents are incorporated by reference into this prospectus which means that they legally form part of this prospectus. Please see the “Documents Incorporated by Reference” section for further details.”

Item 2: Table of Contents

Table of Contents

2.1 Include a table of contents.

Item 3: Summary of Prospectus

Prospectus Summary

3.1 Under the heading “Prospectus Summary” include the information listed in items 3.2 to 3.5 after the cover page.

Cautionary Language

3.2 At the beginning of the summary, include a statement in *italics* in substantially the following form:

“The following is a summary of the principal features of this distribution and should be read together with the more detailed information and financial data and statements contained elsewhere in this prospectus.”

General

3.3 (1) Briefly summarize, near the beginning of the prospectus, information appearing elsewhere in the prospectus that, in the opinion of the investment fund or selling

security holder, would be most likely to influence the investor's decision to purchase the securities being distributed. Include a description of

- (a) how the investment fund has been organized (corporation, trust, etc.);
- (b) the securities to be distributed, including the offering price and expected net proceeds;
- (c) use of proceeds;
- (d) the investment objective;
- (e) the investment strategy;
- (f) the use of leverage including any restrictions and the maximum amount of leverage the fund could use expressed as a ratio as follows: (total long positions including leveraged positions plus total short positions) divided by the net assets of the investment fund;
- (g) risk factors including a cross-reference to sections in the prospectus where information about the risks of an investment in the securities being distributed is provided;
- (h) income tax considerations;
- (i) describe all available purchase options and state, if applicable, that the choice of different purchase options requires the investor to pay different fees and expenses and if applicable, that the choice of different purchase options affects the amount of compensation paid by a member of the organization of the investment fund to a dealer.
- (j) the redemption policy;
- (k) distribution policy,
- (l) the termination policy;
- (m) if restricted securities, subject securities or securities that directly or indirectly convertible into or exercisable or exchangeable for restricted securities or subject securities, are to be distributed under the prospectus
 - (i) include as summary of the information required by section 21.6;
and

- (ii) include, in bold-face type, a statement of the rights the holders do not have if the holders of restricted securities do not have all of the rights referred to in subsection 21.6.
 - (n) disclose whether the investment fund is eligible as an investment for registered retirement savings plans, registered retirement income plans, registered education savings plans or deferred profit sharing plans.
- (2) For each item summarized under subsection (1), provide a cross-references to the information in the prospectus.

Organization and Management Details for the Investment Fund

- 3.4** (1) Provide, under the heading "Organization and Management of the [name of investment fund]", information about the manager, trustee, portfolio adviser, promoter, custodian, and auditor of the investment fund to which the document relates in the form of a diagram or table.
- (2) For each entity listed in the diagram or table, briefly describe the services provided by that entity and the relationship of that entity to the manager.
- (3) For each entity listed in the diagram or table, other than the manager of the investment fund, provide the municipality and the province or country where it principally provides its services to the investment fund. Provide the complete municipal address for the manager of the investment fund.

INSTRUCTIONS:

(1) The information required to be disclosed in this Item shall be presented prominently, using enough space so that it is easy to read.

(2) The descriptions of the services provided by the listed entities should be brief. For instance, the manager may be described as "manages the overall business and operations of the fund", and a portfolio adviser may be described as "provides investment advice to the manager about the investment portfolio of the fund" or "manages the investment portfolio of the fund."

Underwriter(s)

- 3.5** (1) Under the heading "Underwriters or Agents", state the name of each underwriter or agent.
- (2) If applicable, comply with the requirements of National Instrument 33-105 *Underwriting Conflicts* for cover page prospectus disclosure.

- (3) If an underwriter has agreed to purchase all of the securities being distributed at a specified price and the underwriter’s obligations are subject to conditions, state the following, with bracketed information completed:

“We, as principals, conditionally offer these securities, subject to prior sale, if, as and when issued by [name of investment fund] and accepted by us in accordance with the conditions contained in the underwriting agreement referred to under Plan of Distribution”.

- (4) If an underwriter has agreed to purchase a specified number or principal amount of the securities at a specified price, state that the securities are to be taken up by the underwriter, if at all, on or before a date not later than 42 days after the date of the receipt for the prospectus.
- (5) Provide the following tabular information

Underwriters’ Position	Maximum size or number of securities held	Exercise period/ Acquisition date	Exercise price or average acquisition price
Over-allotment option			
Compensation option			
Any other option granted by investment fund or insider of investment fund			
Total securities under option			
Other compensation securities			

Fees and Expenses

- 3.6** (1) Set out information about the fees and expenses payable by the investment fund and by investors in the investment fund under the heading "Fees and Expenses".
- (2) The information required by this Item shall be a summary of the fees, charges and expenses of the investment fund and investors presented in the form of the following table, appropriately completed, and introduced using substantially the following words:

"This table lists the fees and expenses that you may have to pay if you invest in the [insert the name of the investment fund]. You may have to pay some of these fees and expenses directly. The Fund may have to pay some of these fees and expenses, which will therefore reduce the value of your investment in the Fund."

Type of Fee and Amount	Description

- (3) The information set out in the table should have two subheadings "Fees and Expenses Payable by the Fund" and "Fees and Expenses Payable by You".
- (4) The fees and expenses listed in the table should include, where applicable, but is not limited to the following:

Fees and Expenses Payable by the Fund or by Subscribers' deposits (for scholarship plans)

- (a) Fees payable to the Agents for selling the securities
- (b) Expenses of issue
- (c) Management Fees *[See Instruction (1)]*
- (d) Incentive or Performance Fees
- (e) Portfolio Adviser Fees
- (f) Counterparty Fees (if any)
- (g) Operating Expenses *[See Instructions (2) and (3)]*
Fund pay[s] all operating expenses, including _____
- (h) Other Fees and Expenses *[specify type] [specify amount]*

Fees and Expenses Payable Directly by You

- (i) Sales Charges *[specify percentage, as a percentage of _____]*
- (j) Service Fees *[specify percentage, as a percentage of _____]*
- (k) Redemption Fees *[specify percentage, as a percentage of _____, or specify amount]*
- (l) Registered Tax Plan Fees *[include this disclosure and specify the type of fees if the registered tax plan is sponsored by the investment fund and is described in the prospectus][specify amount]*
- (m) Other Fees and Expenses *[specify type] [specify amount]*

- (5) if applicable, after the above fees and expenses table, include summary financial information in the following table including annual returns for each of the past five years and the management expense ratio for each of the past five years :

Item	[specify year]	[specify year]	[specify year]	[specify year]	[specify year]
Annual Returns					
MER					

MER means management expense ratio

INSTRUCTIONS:

- (1) *list the amount of the management fee, including any performance or incentive fee, for each investment fund separately.*
- (2) *Under "Operating Expenses", state whether the investment fund pays all of its operating expenses and list the main components of those expenses. If the investment fund pays only certain operating expenses and is not responsible for payment of all such expenses, adjust the statement in the table to reflect the proper contractual responsibility of the investment fund and indicate who is responsible for the payment of these expenses.*
- (3) *Show all fees or expenses payable by the investment fund.*

Investment Details

Item 4: Overview of the Investment

Overview of the Corporate/Trust Structure

- 4.1**
- (1) Under the heading “Investment Details” and under the sub-heading “Overview of the [Corporate/Trust] Structure”, state the full corporate name of the investment fund or, if the investment fund is an unincorporated entity, the full name under which the entity exists and carries on business and the address(es) of the investment fund’s head and registered office.
 - (2) State the statute under which the investment fund is incorporated or continued or organized or, if the investment fund is an unincorporated entity, the laws of the jurisdiction or foreign jurisdiction under which the investment fund is established and exists. If material, state whether the articles or other constituting or establishing documents of the investment fund have been amended and describe the substance of the material amendments.
 - (3) State whether the investment fund would be considered a mutual fund under securities legislation.

Overview of the Investment Structure

- 4.2**
- (1) Under the sub-heading, “Overview of the Investment Structure”, describe, including a diagram for complex structures, the overall structure of the underlying investment or investments made or to be made by the investment fund including any direct or indirect investment exposure. Include in the description and the diagram any counterparties under a forward or swap agreement entered into with the investment fund or its manager, the nature of the portfolio of securities being purchased by the investment fund, any indirect investment exposure that is related

to the return of the investment fund and any collateral or guarantees given as part of the overall structure of the underlying investment or investments made by the investment fund.

- (2) If the securities distributed under the prospectus are being issued in connection with an acquisition, amalgamation, merger, reorganization or arrangement, describe by way of a diagram or otherwise the intercorporate relationships both before and after the completion of the proposed transaction.

Overview of the Industry/Industries that the Fund Invests In

- 4.3**
- (1) Under the sub-heading “Overview of the Industry/Industries that the Fund Invests In”, if the investment fund invests or intends to invest in a specific industry or specific industries, briefly describe the industry or industries that the investment fund has been or will be investing in.
 - (2) Include in the description known material trends, events or uncertainties that might reasonably be expected to affect the investment fund.

Item 5: Investment Objective and Strategy

Investment Objective

- 5.1**
- (1) Set out under the sub-heading "Investment Objectives" the fundamental investment objectives of the investment fund, including information that describes the fundamental nature of the investment fund, or the fundamental features of the investment fund, that distinguish it from other investment funds.
 - (2) Describe any restrictions on investments adopted by the investment fund, beyond what is required under securities legislation, that pertain to the fundamental nature of the investment fund.
 - (3) If the investment fund purports to arrange a guarantee or insurance in order to protect all or some of the principal amount of an investment in the investment fund, include this fact as a fundamental investment objective of the investment fund and
 - (a) identify the person or company providing the guarantee or insurance;
 - (b) provide the material terms of the guarantee or insurance, including the maturity date of the guarantee or insurance;
 - (c) if applicable, state that the guarantee or insurance does not apply to the amount of any redemptions before the maturity date of the guarantee or before the death of the securityholder and that redemptions before that date would be based

on the net asset value of the investment fund at the time; and

(d) modify any other disclosure required by this section appropriately.

INSTRUCTIONS:

- (1) *State the type or types of securities, such as money market instruments, bonds or equity securities, in which the investment fund will primarily invest under normal market conditions.*
- (2) *If the investment fund primarily invests, or intends to primarily invest, or if its name implies that it will primarily invest*
 - (a) *in a particular type of investment fund, such as foreign investment funds, small capitalization investment funds or investment funds located in emerging market countries;*
 - (b) *in a particular geographic location or industry segment; or*
 - (c) *in portfolio assets other than securities, the investment fund's fundamental investment objectives should so indicate.*
- (3) *If a particular investment strategy is an essential aspect of the investment fund, as evidenced by the name of the investment fund or the manner in which the investment fund is marketed, disclose this strategy as an investment objective. This instruction would be applicable, for example, to a investment fund that described itself as an "asset allocation fund" or a "investment fund that invests primarily through the use of derivatives".*

Investment Strategies

- 5.2**
- (1) Describe under the sub-heading "Investment Strategies"
 - (a) the principal investment strategies that the investment fund intends to use in achieving its investment objectives; and
 - (b) the process by which the investment fund's portfolio adviser selects securities for the fund's portfolio, including any investment approach, philosophy, practices or techniques used by the portfolio adviser or any particular style of portfolio management that the portfolio adviser intends to follow.
 - (2) Indicate what types of securities, other than those held by the investment fund in accordance with its fundamental investment objectives, may form part of the investment fund's portfolio assets under normal market conditions.
 - (3) If the investment fund intends to use derivatives,

- (a) for hedging purposes only, state that the investment fund may use derivatives for hedging purposes only;
- (b) for non-hedging purposes, or for hedging and non-hedging purposes, briefly describe
 - (i) how derivatives are or will be used in conjunction with other securities to achieve the investment fund's investment objectives;
 - (ii) the types of derivatives expected to be used and give a brief description of the nature of each type; and
 - (iii) the limits of the investment fund's use of derivatives.
- (4) If the investment fund may depart temporarily from its fundamental investment objectives as a result of adverse market, economic, political or other considerations, disclose any temporary defensive tactics the investment fund's portfolio adviser may use or intends to use in response to such conditions.
- (5) If the investment fund intends to enter into securities lending, repurchase or reverse repurchase transactions, briefly describe
 - (i) how those transactions are or will be entered into in conjunction with other strategies an investments of the investment fund to achieve the investment fund's objectives;
 - (ii) the types of those transactions to be entered into and give a brief description of the nature of each type; and
 - (iii) the limits of the investment fund's entering into those transactions.

Restrictions on Investments

- 5.3**
- (1) Describe any restrictions on investments adopted by the investment fund, beyond what is required under securities legislation.
 - (2) If the investment fund has received the approval of the securities regulatory authorities to vary any of the investment restrictions and practices contained in securities legislation, provide details of the permitted variations.
 - (3) Describe the nature of any securityholder or other approval that may be required in order to change the fundamental investment objectives and any of the material investment strategies to be used to achieve the investment objectives.

Significant Holdings in Other Entities

- 5.4** For labour sponsored investment funds, include in substantially the tabular form below, the following information as at a date within thirty days of the date of the prospectus with respect to each entity, 5 percent or more of whose securities of any class are beneficially owned directly or indirectly by the fund.

Name and Address of Entity	Nature of Entities' Principal Business	Percentage of Securities of each Class Owned by Fund	Percentage of Value of Fund's Assets Invested
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Item 6: Management Discussion of Fund Performance

Management Discussion of Fund Performance

- 6.1** Unless the investment fund's most recently filed management report of fund performance is incorporated by reference under Item 40 or attached to the prospectus under Item 41, provide, under the sub-heading "Management Discussion of Fund Performance", management's discussion of fund performance in accordance with Items 2.3, 2.4, 2.5, 3, 4, 5 and 6 of Part B of Form 81-106F1 for the period covered by the financial statements required under Item 41.

Item 7: Fees, Expenses and Returns

Fees and Expenses

- 7.1** Set out information about all of the fees and expenses payable by the investment fund and by investors in the investment fund under the sub-heading "Fees, Expenses and Returns". Each fee paid by the investment fund and by the investor should be separately described. This information shall also include information about sales and trailing commissions whether paid by the investment fund or the investor.

Returns and Management Expense Ratio

- 7.2** In the following table include the annual returns of the investment fund for each of the past five years and the management expense ratio for each of the past five years:

Item	[specify year]	[specify year]	[specify year]	[specify year]	[specify year]
Annual Returns					
MER					

MER means management expense ratio

Item 8: Risk Factors

Risk Factors

- 8.1**
- (1) Under the sub-heading “Risk Factors”, describe the risk factors material to the investment fund that a reasonable investor would consider relevant to an investment in the securities being distributed, such as the risks associated with any particular aspect of those fundamental investment objectives and investment strategies.
 - (2) Include a discussion of general market, political, market sector, liquidity, interest rate, foreign currency, diversification, credit, legal and operational risks, as appropriate.
 - (3) Include a brief discussion of general investment risks, such as specific company developments, stock market conditions, general economic and financial conditions in those countries where the investments of the investment fund are listed for trading, applicable to the particular investment fund.
 - (4) If derivatives are to be used by the investment fund for non-hedging purposes, describe the risks associated with any use or intended use by the mutual fund of derivatives.
 - (5) Risks should be disclosed in the order of their seriousness in the opinion of the investment fund or selling security holder.
 - (6) If there is a risk that purchasers of the securities distributed may become liable to make an additional contribution beyond the price of the security, disclose the risk.

Item 9: Distribution Policy

Distribution Policy

- 9.1**
- Under the sub-heading “Distribution Policy” describe the distribution policy including,
- (a) whether distributions are made by the investment fund in cash or reinvested in securities of the investment fund;
 - (b) the targeted amount of any distributions;
 - (c) whether the distributions are guaranteed or not; and
 - (d) when the distributions are made.

Item 10: Purchases of Securities

Purchase Price

- 10.1** (1) Under the sub-heading “Purchases of Securities”, describe the procedure followed or to be followed by investors who desire to purchase securities of the investment fund or switch them for securities of other investment funds.
- (2) If applicable, state that the issue price of securities is based on the net asset value of a security of that class, or series of a class next determined after the receipt by the investment fund of the purchase order.
- (3) Describe how the securities of the investment fund are distributed. If sales are effected through a principal distributor, give brief details of any arrangements with the principal distributor.
- (4) Describe all available purchase options and state, if applicable, that the choice of different purchase options requires the investor to pay different fees and expenses and if applicable, that the choice of different purchase options affects the amount of compensation paid by a member of the organization of the investment fund to a dealer.
- (5) If applicable, disclose that a dealer may make provision in arrangements that it has with an investor that will require the investor to compensate the dealer for any losses suffered by the dealer in connection with a failed settlement of a purchase of securities of the investment fund caused by the investor.
- (6) If applicable, for an investment fund that is being sold on a best efforts basis, state whether the issue price will be fixed during the initial distribution period, and state when the investment fund will begin issuing securities at the net asset value per security of the investment fund.

Item 11: Redemption of Securities

Redemption of Securities

- 11.1** Under the sub-heading “Redemption of Securities” describe how investors may redeem securities of the investment fund including,
- (a) the procedures followed, or to be followed, by an investor who desires to redeem securities of the investment fund, specifying the procedures to be followed and documents to be delivered before a redemption order pertaining to securities of the investment fund is accepted by the investment fund for processing and before payment of the proceeds of

redemption is made by the investment fund;

- (b) how the redemption price of the securities is determined and if applicable, state that the redemption price of the securities is based on the net asset value of a security of that class, or series of a class, next determined after the receipt by the investment fund of the redemption order;
- (c) the circumstances under which the investment fund may suspend redemptions of the securities of the investment fund.

Short-term Trading

11.2 For investment funds in continuous distribution, under the sub-heading “Short-term Trading”

- (a) describe the adverse effects, if any, that short-term trades in securities of the investment fund by an investor may have on other investors in the investment fund;
- (b) describe the restrictions, if any, that may be imposed by the investment fund to deter short-term trades, including the circumstances, if any, under which such restrictions may not apply or may otherwise be waived;
- (c) where the investment fund does not impose restrictions on short-term trades, state the specific basis for the view of the manager that it is appropriate for the investment fund not to do so; and
- (d) describe any arrangements, whether formal or informal, with any person or company, to permit short-term trades in securities of the investment fund, including the name of such person or company and the terms of such arrangements, including any restrictions imposed on the short-term trades and any compensation or other consideration received by the manager, the investment fund or any other party pursuant to such arrangements.

INSTRUCTION

In responding to the disclosure required by section 11.2 above, include a brief description of the short-term trading activities in the investment fund that are considered by the manager to be inappropriate or excessive. And, where the manager imposes a short-term trading fee, include a cross-reference to the disclosure provided under Item 7 of this Form.

Item 12: Consolidated Capitalization

Consolidated Capitalization

12.1 Describe any material change in, and the effect of the material change on, the share and loan capital of the investment fund, on a consolidated basis, since the date of the investment fund's financial statements for its most recently completed financial period included in the prospectus, including any material change that will result from the issuance of the securities being distributed under the prospectus.

Item 13: Prior Sales

Prior Sales

13.1 For an investment fund other than a labour sponsored investment fund or a commodity pool, under the heading "Prior Sales", for each class of securities of the investment fund distributed under the prospectus and securities that are convertible into those classes of securities, state, for the 12-month period before the date of the prospectus,

- (a) the price at which the securities have been sold, and
- (b) the number of securities sold.

Trading Price and Volume

- 13.2**
- (1) For each class of securities of the investment fund that is traded or quoted on a Canadian marketplace, identify the marketplace and the price ranges and volume traded or quoted on the Canadian marketplace on which the greatest volume of trading or quotation generally occurs.
 - (2) If a class of securities of the investment fund is not traded or quoted on a Canadian marketplace but is traded or quoted on a foreign marketplace, identify the foreign marketplace and the price ranges and volume traded or quoted on the foreign marketplace on which the greatest volume or quotation generally occurs.
 - (3) Provide the information required under subsections (1) and (2) on a monthly basis for each month or, if applicable, partial months of the 12-month period before the date of the prospectus.

Item 14: Income Tax Considerations

Status of the Investment Fund

- 14.1** Under the heading “Income Tax Considerations” and under the sub-heading “Status of the Investment Fund”, briefly describe the status of the investment fund for income tax purposes. Also disclose whether the investment fund is eligible as an investment for registered retirement savings plans, registered retirement income plans, registered education savings plans or deferred profit sharing plans.

Taxation of the Investment Fund

- 14.2** Under the sub-heading “Taxation of the Investment Fund”, state in general terms the bases upon which the income and capital receipts of the investment fund are taxed.

Taxation of Securityholders

- 14.3** Under the sub-heading “Taxation of Securityholders”, state in general terms the income tax consequences to the holders of the securities offered of
- (a) any distribution to the securityholders in the form of income, capital, dividends or otherwise, including amounts reinvested in securities of the investment fund;
 - (b) the redemption of securities; and
 - (c) the issue of securities.

Taxation of Registered Plans

- 14.4** Under the sub-heading “Taxation of Registered Plans”, explain the tax treatment applicable to investment fund securities held in a registered tax plan.

Tax Implications of the Investment Fund’s Distribution Policy

- 14.5** Under the sub-heading “Tax Implications of the Investment Fund’s Distribution Policy”, describe the impact of the investment fund’s distribution policy on a taxable investor who acquires securities of the investment fund late in a calendar year.

Organization and Management Details of the Investment Fund

Item 15: Manager and Portfolio Adviser

Manager of the Investment Fund

- 15.1** (1) Under a heading, “Organization and Management Details of the Investment Fund” and under a separate sub-heading, “Manager of the Investment Fund”, provide details of the manager of the investment fund, including the history and background of the manager and any overall investment strategy or approach used by the manager in connection with the investment fund.

Duties and Services to be Provided by the Manager

- (2) Under a separate sub-heading “Duties and Services to be Provided by the Manager”, provide a description of the duties and services that the manager will be providing to the investment fund.

Details of the Management Agreement

- (3) Under a separate sub-heading “Details of the Management Agreement”, provide a brief description of the essential details of any management agreement that the manager has entered or will be entering into with the investment fund including any termination rights.

Officers and Directors of the Investment Fund

- (4) Under a separate sub-heading “Officers and Directors of the Investment Fund”, provide the following:
- (a) List the name and municipality of residence of each director and executive officer of the investment fund and indicate their respective positions and offices held with the investment fund and their respective principal occupations within the five preceding years.
 - (b) State the period or periods during which each director has served as a director and when his or her term of office will expire.
 - (c) State the number and percentage of securities of each class of voting securities of the investment fund or any of its subsidiaries beneficially owned, directly or indirectly, or over which control or direction is exercised by all directors and executive officers of the investment fund as a group.

- (d) Disclose the board committees of the investment fund and identify the members of each committee.
- (e) If the principal occupation of a director or executive officer of the investment fund is acting as an executive officer of a person or company other than the investment fund, disclose the fact and state the principal business of the person or company.
- (f) For an investment fund that is a limited partnership, provide the information required by this Item for the general partner of the investment fund, modified as appropriate.

Cease Trade Orders and Bankruptcies of the Investment Fund

- (5) Under the sub-heading “Cease Trade Orders and Bankruptcies of the Investment Fund”, if a director or executive officer of the investment fund or a shareholder holding a sufficient number of securities of the investment fund to affect materially the control of the investment fund
 - (a) is, or within ten years before the date of the prospectus or *pro forma* prospectus, as applicable, has been, a director or executive officer of any other investment fund that, while that person was acting in that capacity,
 - (i) was the subject of a cease trade or similar order, or an order that denied the other investment fund access to any exemptions under securities legislation, for a period of more than 30 consecutive days, state the fact and describe the basis on which the order was made and whether the order is still in effect; or
 - (ii) was subject to an event that resulted, after the director or executive officer ceased to be a director or executive officer, in the investment fund being the subject of a cease trade or similar order or an order that denied the relevant investment fund access to any exemption under securities legislation, for a period of more than 30 consecutive days, state the fact and describe the basis on which the order was made and whether the order is still in effect; or
 - (iii) within a year of that person ceasing to act in that capacity, became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets, state the fact; or

- (b) has, within the 10 years before the date of the prospectus or *pro forma* prospectus, as applicable, become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold the assets of the director, executive officer or shareholder, state the fact.

Conflicts of Interest of the Investment Fund

- (6) Under the sub-heading “Conflicts of Interest of the Investment Fund”, disclose particulars of existing or potential material conflicts of interest between the investment fund and a director or executive officer of the investment fund.

Officers and Directors of the Manager of the Investment Fund

- (7) provide, under a separate sub-heading “Officers and Directors of the Manager of the Investment Fund”, the following:
 - (a) List the name and municipality of residence of each partner, director and executive officer of the manager of the investment fund and indicate their respective positions and offices held with the manager and their respective principal occupations within the five preceding years.
 - (b) If a partner, director or executive officer of the manager has held more than one office with the manager within the past five years, state only the current office held.
 - (c) If the principal occupation of a partner, director or executive officer of the manager is with an organization other than the manager of the investment fund, state the principal business in which the organization is engaged.

Cease Trade Orders and Bankruptcies of the Manager

- (8) provide under a separate sub-heading “Cease Trade Orders and Bankruptcies of the Manager” the information required under subsection (5) for the directors and executive officers of the manager of the investment fund, as modified where appropriate.

Conflicts of Interest of the Manager

- (9) Under the sub-heading “Conflicts of Interest”, disclose particulars of existing or potential material conflicts of interest between the investment fund and the manager or any director or executive officer of the manager of the investment fund.

15.2 Portfolio Adviser

- (1) Under a separate sub-heading, “Portfolio Adviser”, provide details of the portfolio adviser of the investment fund, including the history and background of the portfolio adviser.

Decision-making

- (2) State the extent to which investment decisions are made by certain individuals employed by the portfolio adviser and whether those decisions are subject to the oversight, approval or ratification of a committee.

Experience

- (3) State the name, title, and length of time of service of the person or persons employed by or associated with a portfolio adviser of the investment fund who is or are principally responsible for the day-to-day management of a material portion of the portfolio of the investment fund, implementing a particular material strategy or managing a particular segment of the portfolio of the investment fund, and each person’s business experience in the last five years.

Details of the Portfolio Advisory Agreement

- (4) Under a separate sub-heading “Details of the Portfolio Advisory Agreement”, provide a brief description of the essential details of any portfolio advisory agreement that the portfolio adviser has entered or will be entering into with the investment fund or the manager of the investment fund including any termination rights.

Conflicts of Interest of the Portfolio Adviser

- (5) Under the sub-heading “Conflicts of Interest of the Portfolio Adviser”, disclose particulars of existing or potential material conflicts of interest between the investment fund and the portfolio adviser or any director or executive officer of the portfolio advisor.

Item 16 : Independent Review Committee

Independent Review Committee

16.1 Under the sub-heading “Independent Review Committee”, disclose a description of the independent review committee of the investment fund required by NI 81-107, including

- (a) an appropriate summary of its mandate and responsibilities;

- (b) its composition;
- (c) that it prepares a report at least annually of its activities for securityholders which is available on the [investment fund's/investment fund family's] website, or at your request, and at no cost, by contacting the [investment fund/investment fund family] at [investment fund's/investment fund family's email address] and if applicable, that additional information about the independent review committee, including the names of the members, is available in the investment fund's annual information form;
- (d) that additional information about the independent review committee, including the names of the members, is available in the investment fund's annual information form (if applicable); and
- (e) the fees payable to the independent review committee, including whether the investment fund pays all of the fees payable to the independent review committee and listing the main components of the fees.

Item 17: Custodian

Custodian

17.1 Under the sub-heading “Custodian”, state the name, municipality of the principal or head office, and nature of business of the custodian and any principal sub-custodian of the investment fund.

Sub-custodian

17.2 Describe generally the sub-custodian arrangements of the investment fund.

INSTRUCTION:

A "principal sub-custodian" is a sub-custodian to whom custodial authority has been delegated in respect of a material portion or segment of the portfolio assets of the investment fund.

Item 18: Auditor, Transfer Agent and Registrar

Auditors

18.1 Under the sub-heading “Auditor”, state the name and address of the auditor of the investment fund.

Transfer Agent and Registrar

18.2 Under the sub-heading, “Transfer Agent and Registrar”, for each class of securities, state the name of the investment fund's transfer agent(s), registrar(s), trustee, or other agent appointed by the investment fund to maintain the securities

register and the register of transfers for such securities and indicate the location (by municipalities) of each of the offices of the investment fund or transfer agent, registrar, trustee or other agent where the securities, register and register of transfers are maintained or transfers of securities are recorded.

Item 19: Promoters

Promoters

- 19.1** (1) For a person or company that is, or has been within the 3 years immediately preceding the date of the prospectus or *pro forma* prospectus, a promoter of the investment fund or of a subsidiary of the investment fund, state under the sub-heading “Promoter”
- (a) the person or company’s name;
 - (b) the number and percentage of each class of voting securities and equity securities of the investment fund or any of its subsidiaries beneficially owned, directly or indirectly, or over which control is exercised by the person or company;
 - (c) the nature and amount of anything of value, including money, property, contracts, options or rights of any kind received or to be received by the promoter directly or indirectly from the investment fund or from a subsidiary of the investment fund, and the nature and amount of any assets, services or other consideration received or to be received by the investment fund or a subsidiary of the investment fund in return; and
 - (d) for an asset acquired within the 3 years before the date of the preliminary prospectus or *pro forma* prospectus, or to be acquired, by the investment fund or by a subsidiary of the investment fund from a promoter
 - (i) the consideration paid or to be paid for the asset and the method by which the consideration has been or will be determined,
 - (ii) the person or company making the determination referred to in subparagraph (i) and the person or company’s relationship with the investment fund, the promoter, or affiliate of the investment fund or of the promoter, and
 - (iii) the date that the asset was acquired by the promoter and the cost of the asset to the promoter.
- (2) If a promoter of the investment fund has been a director, executive officer or promoter of any person or company during the 10 years ending on the date of the

preliminary prospectus or *pro forma* prospectus, as applicable, that while that person was acting in that capacity,

- (a) was the subject of a cease trade or similar order, or an order that denied the person or company access to any exemptions under provincial or territorial securities legislation, for a period of more than 30 consecutive days, state the fact and describe the basis on which the order was made and whether the order is still in effect;
 - (b) was subject to an event that resulted, after the director, executive officer or promoter ceased to be a director, executive officer or promoter, in the company or person being subject to a cease trade or similar order or an order that denied the relevant company or person access to any exemption under securities legislation, for a period of more than 30 consecutive days, state the fact and describe the basis on which the order was made and whether the order is still in effect, or
 - (c) within a year of that person ceasing to act in that capacity, became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or been subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets, state the fact.
- (3) Describe the penalties or sanctions imposed and the grounds on which they were imposed or the terms of the settlement agreement and the circumstances that gave rise to the settlement agreement, if a promoter has been subject to
- (a) any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a provincial or territorial securities regulatory authority or has entered into a settlement agreement with a provincial or territorial securities regulatory authority; or
 - (b) any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor in making an investment decision.
- (4) Despite paragraph (3), no disclosure is required of a settlement agreement entered into before December 31, 2000 unless the disclosure would likely be considered to be important to a reasonable investor in making an investment decision.
- (5) If a promoter of the investment fund has within the ten years before the date of the prospectus or *pro forma* prospectus, as applicable, become bankrupt or made a proposal under any legislation relating to bankruptcy or insolvency, or was

subject to or instituted any proceedings, arrangement or compromise with creditors, or had a receiver, receiver manager or trustee appointed to hold the assets of the promoter, state the fact.

Item 20: Trustee and Declaration of Trust

Trustee

20.1 Under the sub-heading “Trustee”, provide details of the trustee of the investment fund.

Declaration of Trust

20.2 Under the sub-heading “Declaration of Trust”, provide details of the declaration of trust including any termination rights and matters requiring securityholder approval.

Amendments to the Declaration of Trust

20.3 Under the sub-heading “Amendments to the Declaration of Trust”, describe the circumstances, processes and procedures required to amend the declaration of trust.

Attributes of the Securities

Item 21: Description of the Securities Distributed

Equity Securities or Investment Fund Units

21.1 If equity securities or units of the investment fund are being distributed, under the heading “Attributes of the Securities” and under the sub-heading “Description of the Securities Distributed” state the description or the designation of the class of equity securities or units distributed and describe all material attributes and characteristics, including

- (a) dividend or distribution rights;
- (b) voting rights;
- (c) rights upon dissolution, termination or winding-up;
- (d) pre-emptive rights;
- (e) conversion or exchange rights;

- (f) redemption, retraction, purchase for cancellation or surrender provisions;
- (g) sinking or purchase fund provisions;
- (h) provisions permitting or restricting the issuance of additional securities and any other material restrictions;
- (i) provisions as to amendment of any of these rights or provisions; and
- (j) provisions requiring a shareholder to contribute additional capital.

Debt Securities

21.2 If debt securities are being distributed, under the heading “Attributes of the Securities” and under the sub-heading “Description of the Securities Distributed”, describe all material attributes and characteristics of the indebtedness and the security, if any, for the debt, including

- (a) provisions for interest rate, maturity and premium, if any;
- (b) conversion or exchange rights;
- (c) redemption, retraction, purchase for cancellation or surrender provisions;
- (d) sinking or purchase fund provisions;
- (e) the nature and priority of any security for the debt securities, briefly identifying the principal properties subject to lien or charge;
- (f) provisions permitting or restricting the issuance of additional securities, the incurring of additional indebtedness and other material negative covenants, including restrictions against payment of dividends and restrictions against giving security on the assets of the investment fund or its subsidiaries, and provisions as to the release or substitution of assets securing the debt securities;
- (g) the name of the trustee under any indenture relating to the debt securities and the nature of any material relationship between the trustee or any of its affiliates and the investment fund or any of its affiliates; and
- (h) any financial arrangements between the investment fund and any of its affiliates or among its affiliates that could affect the security for the indebtedness.

Derivatives

- 21.3** If derivatives are being distributed, under the heading “Attributes of the Securities” and under the sub-heading “Description of the Securities Distributed”, describe fully the material attributes and characteristics of the derivatives, including
- (a) the calculation of the value or payment obligations under the derivatives;
 - (b) the exercise of the derivatives;
 - (c) the settlement of exercises of the derivatives;
 - (d) the underlying interest of the derivatives;
 - (e) the role of a calculation expert in connection with the derivatives;
 - (f) the role of any credit supporter of the derivatives; and
 - (g) the risk factors associated with the derivatives.

Other securities

- 21.4** If securities other the securities mentioned above are being distributed, under the heading “Attributes of the Securities” and under the sub-heading “Description of the Securities Distributed”, describe fully the material attributes and characteristics of those securities.

Special Warrants, etc.

- 21.5** If the prospectus is used to qualify the distribution of securities issued upon the exercise of special warrants or other securities acquired on a prospectus-exempt basis, disclose that holders of such securities have been provided with a contractual right of rescission and provide the following disclosure in the prospectus:

“In the event that a holder of a special warrant, who acquires a [identify underlying security] of the investment fund upon the exercise of the special warrant as provided for in this prospectus, is or becomes entitled under applicable securities legislation to the remedy of rescission by reason of this prospectus or any amendment thereto containing a misrepresentation, such holder shall be entitled to rescission not only of the holder’s exercise of its special warrant(s) but also of the private placement transaction pursuant to which the special warrant was initially acquired, and shall be entitled in connection with such rescission to a full refund of all consideration paid to the [underwriter or investment fund, as the case may be] on the acquisition of the special warrant. In the event such holder is

a permitted assignee of the interest of the original special warrant subscriber, such permitted assignee shall be entitled to exercise the rights of rescission and refund granted hereunder as if such permitted assignee was such original subscriber. The foregoing is in addition to any other right or remedy available to a holder of the special warrant under applicable securities legislation or otherwise at law.”

INSTRUCTION

If the prospectus is qualifying the distribution of securities issued upon the exercise of securities other than special warrants, replace the term “special warrant” with the type of the security being distributed.

Restricted Securities

- 21.6** (1) If the investment fund has outstanding, or proposes to distribute under the prospectus, restricted securities, subject securities or securities that are, directly or indirectly, convertible into or exercisable or exchangeable for restricted securities or subject securities, provide a detailed description of:
- (a) the voting rights attached to the restricted securities that are the subject of the distribution or that will result from the distribution, either directly or following a conversion exchange or exercise, and the voting rights, if any, attached to the securities of any other class of securities of the investment fund that are the same or greater on a per security basis than those attached to the restricted securities,
 - (b) any significant provisions under applicable corporate and securities law that do not apply to the holders of the restricted securities that are the subject of the distribution or that will result from the distribution, either directly or following a conversion exchange or exercise, but do apply to the holders of another class of equity securities, and the extent of any rights provided in the constating documents or otherwise for the protection of holders of the restricted securities,
 - (c) any rights under applicable corporate law, in the constating documents or otherwise, of holders of restricted securities that are the subject of the distribution or that will result from the distribution, either directly or following a conversion exchange or exercise, to attend, in person or by proxy, meetings of holders of equity securities of the investment fund and to speak at the meetings to the same extent that holders of equity securities are entitled, and
 - (d) how the investment fund complied with, or basis upon which it was exempt from, the requirements of Part 7 of this Instrument.

- (2) If holders of restricted securities do not have all of the rights referred to in subsection (1) the detailed description referred to in that subsection must include, in bold type, a statement of the rights the holders do not have.
- (3) If the investment fund is required to include the disclosure referred to in subsection (1), state the percentage of the aggregate voting rights attached to the investment fund's securities that will be represented by restricted securities after giving effect to the issuance of the securities being offered.

Modification of Terms

- 21.7** (1) Describe provisions as to modification, amendment or variation of any rights attached to the securities being distributed.
- (2) If the rights of holders of securities may be modified otherwise than in accordance with the provisions attached to the securities or the provisions of the governing statute relating to the securities, explain briefly.

Ratings

- 21.8** If one or more ratings, including provisional ratings or stability ratings, have been received from one or more approved rating organizations for the securities being distributed and the rating or ratings continue in effect, disclose
- (a) each security rating, including a provisional rating or stability rating, received from an approved rating organization,
 - (b) the name of each approved rating organization that has assigned a rating for the securities to be distributed,
 - (c) a definition or description of the category in which each approved rating organization rated the securities to be distributed and the relative rank of each rating within the organization's classification system,
 - (d) an explanation of what the rating addresses and what attributes, if any, of the securities to be distributed are not addressed by the rating,
 - (e) any factors or considerations identified by the approved rating organization as giving rise to unusual risks associated with the securities to be distributed,
 - (f) a statement that a security rating or a stability rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time by the rating organization, and

- (g) any announcement made by, or any proposed announcement known to the investment fund to be made by, an approved rating organization that the organization is reviewing or intends to revise or withdraw a rating previously assigned and required to be disclosed under this paragraph.

Other attributes

- 21.9 (1)** If the rights attaching to the securities being distributed are materially limited or qualified by the rights of any other class of securities, or if any other class of securities ranks ahead of or equally with the securities being distributed, include information about the other securities that will enable investors to understand the rights attaching to the securities being distributed.
- (2)** If securities of the class being distributed may be partially redeemed or repurchased, state the manner of selecting the securities to be redeemed or repurchased.

INSTRUCTION

This Item requires only a brief summary of the provisions that are material from an investment standpoint. The provisions attaching to the securities being distributed or any other class of securities do not need to be set out in full. They may, in the investment fund's discretion, be attached as a schedule to the prospectus.

Item 22 Securityholder Matters

Meetings of Securityholders

- 22.1** Under the sub-heading "Meetings of Securityholders", describe the circumstances, processes and procedures for holding any securityholder meeting and for any extraordinary resolution.

Reporting to Securityholders

- 22.2** Under the sub-heading "Reporting to Securityholders" describe the information or reports that will be delivered or made available to securityholders and the frequency in which such information or reports will be delivered or made available to securityholders including any requirements from securities legislation.

Item 23: Valuation of Investment Fund Assets

Valuation Procedures

- 23.1** Under the sub-heading "Valuation Procedures for the Investment Fund Assets", describe the valuation policy for determining the value of the investment fund assets including,

- (a) the methods used to value the various types or classes of investment fund assets and its liabilities for the purpose of calculating net asset value; and
- (b) if the manager has discretion to deviate from the investment fund's valuation practices described in subsection (a), disclose when and to what extent that discretion may be exercised and, if it has been exercised in the past three years, provide an example of how it has been exercised or, if it has not been exercised in the past three years, so state.

Calculation of Net Asset Value

23.2 Except for scholarship plans, Under the sub-heading “Calculation of Net Asset Value”, describe,

- (a) how the net asset value of the investment fund is determined; and
- (b) the frequency at which the net asset value is determined and the date and time of day at which it is determined.

Reporting of Net Asset Value

23.3 Under the sub-heading “Reporting of Net Asset Value”, describe,

- (a) how the net asset value of the investment fund will be reported to securityholders at no cost, for example, website, toll-free telephone line, etc. and
- (b) the frequency at which the net asset value is reported to securityholders.

Item 24 Termination of the Fund

Termination of the Fund

24.1 Under the sub-heading “Termination of the Fund”, describe the circumstances in which the investment fund will be terminated including:

- (a) the date of termination;
- (b) how the value of the securities of the investment fund at termination will be determined;
- (c) whether securityholders will receive cash or some other type of payment upon termination;

- (d) the details of any rollover transaction, if securityholders will receive units of another investment fund as part of a rollover transaction upon termination;
- (e) how the assets of the investment fund will be distributed upon termination; and
- (f) disclose if the commodity pool will be wound up without the approval of securityholders if the net asset value per security falls below a certain predetermined level, and, if so, the net asset value per security at which this will occur.

Item 25: Escrowed Securities

Escrowed securities and securities subject to contractual restriction on transfer

25.1 (1) Under the sub-heading “Escrowed Securities”, state as of a specified date within 30 days before the date of the prospectus, in substantially the following tabular form, the number of securities of each class of securities of the investment fund held, to the knowledge of the investment fund, in escrow or that are subject to a contractual restriction on transfer and the percentage that number represents of the outstanding securities of that class.

ESCROWED SECURITIES AND SECURITIES SUBJECT TO CONTRACTUAL RESTRICTION ON TRANSFER

Designation of class	Number of securities held in escrow or that are subject to a contractual restriction on transfer	Percentage of class

- (2) In a note to the table disclose the name of the depository, if any, and the date of and conditions governing the release of the securities from escrow or the date the contractual restriction on transfer ends, as applicable.
- (3) Describe any material change to the information required to be included in the prospectus under subsection (1) to the date of the prospectus.

INSTRUCTION

For purposes of this item, escrow includes securities subject to a pooling agreement.

Use of Proceeds and Distribution Plan

Item 26: Use of Proceeds

Proceeds

- 26.1** (1) Under the heading “Use of Proceeds and Distribution Plan” and under the sub-heading “Use of Proceeds”, state the estimated net proceeds to be received by the investment fund or selling security holder or, in the case of a non-fixed price distribution or a distribution to be made on a best efforts basis, the minimum amount, if any, of net proceeds to be received by the investment fund or selling security holder from the sale of the securities distributed.
- (2) State the particulars of any provisions or arrangements made for holding any part of the net proceeds of the distribution in trust or escrow subject to the fulfillment of conditions.
- (3) If the prospectus is used for a special warrant or similar transaction, state the amount that has been received by the issuer of the special warrants or similar securities on the sale of the special warrants or similar securities.

Principal Purposes – General

- 26.2** (1) Describe in reasonable detail and, if appropriate, using tabular form, each of the principal purposes, with approximate amounts, for which the net proceeds will be used by the investment fund.
- (2) If the closing of the distribution is subject to a minimum subscription, provide disclosure of the use of proceeds for the minimum and maximum subscriptions.

Principal purposes – indebtedness

- 26.3** (1) If more than 10% of the net proceeds will be used to reduce or retire indebtedness and the indebtedness was incurred within the 2 preceding years, describe the principal purposes for which the proceeds of the indebtedness were used.
- (2) If the creditor is an insider, associate or affiliate of the investment fund or manager, identify the creditor and the nature of the relationship to the investment fund and the outstanding amount owed.

Principal purposes – asset acquisition

- 26.4** (1) If more than 10% of the net proceeds are to be used to acquire assets, describe the assets.

- (2) If known, disclose the particulars of the purchase price being paid for or being allocated to the assets or categories of assets, including intangible assets.
- (3) If the vendor of the assets is an insider, associate or affiliate of the investment fund or manager, give the name of the vendor and the method used in determining the purchase price.
- (4) Describe the nature of the title to or interest in the assets to be acquired by the investment fund.
- (5) If part of the consideration for the acquisition of the assets consists of securities of the investment fund, give brief particulars of the class, number or amount, voting rights, if any, and other appropriate information relating to the securities, including particulars of the issuance of securities of the same class within the 2 preceding years.

Principal purposes – insiders, etc.

- 26.5** If an insider, associate or affiliate of the investment fund or manager will receive more than 10% of the net proceeds, identify the insider, associate or affiliate and disclose the amount of net proceeds to be received.

Unallocated Funds

- 26.6** (1) Disclose that unallocated funds will be placed in a trust or escrow account, invested or added to the working capital of the investment fund.
- (2) Give details of the arrangements made for, and the persons or companies responsible for,
- (a) the supervision of the trust or escrow account or the investment of unallocated funds, and
 - (b) the investment policy to be followed.

Other Sources of Funding

- 26.7** If any material amounts of other funds are to be used in conjunction with the proceeds, state the amounts and sources of the other funds.

Financing by special warrants, etc.

- 26.8** (1) If the prospectus is used to qualify the distribution of securities issued upon the exercise of special warrants or the exercise of other securities acquired on a

prospectus-exempt basis, describe the principal purposes for which the proceeds of the prospectus-exempt financing were used or are to be used.

- (2) If all or a portion of the funds have been spent, explain how the funds were spent.

INSTRUCTION

For the purposes of the disclosure in section 26.7, the phrase “for general corporate purposes” will generally not be sufficient.

Item 27: Plan of Distribution

Plan of Distribution

- 27.1** Under the sub-heading “Plan of Distribution” briefly describe the plan of distribution including the following information.

Name of underwriters

- 27.2 (1)** If the securities are being distributed by an underwriter, state the name of the underwriter and describe briefly the nature of the underwriter’s obligation to take up and pay for the securities.
- (2) Disclose the date by which the underwriter is obligated to purchase the securities.

Disclosure of conditions to underwriters’ obligations

- 27.3** If securities are distributed by an underwriter that has agreed to purchase all of the securities at a specified price and the underwriter’s obligations are subject to conditions,
- (a) include a statement in substantially the following form, with the bracketed information completed and with modifications necessary to reflect the terms of the distribution:
“Under an agreement dated [insert date of agreement] between [insert name of investment fund or selling security holder] and [insert name(s) of underwriter(s)], as underwriter[s], [insert name of investment fund or selling security shareholder] has agreed to sell and the underwriter[s] [has/have] agreed to purchase on [insert closing date] the securities at a price of [insert offering price], payable in cash to [insert name of investment fund or selling security holder] against delivery. The obligations of the underwriter[s] under the agreement may be terminated at [its/their] discretion on the basis of [its/their] assessment of the state of the financial markets and may also be terminated upon the occurrence of certain stated events. The underwriter[s] [is/are], however, obligated to take up and pay for all of the securities if any of the securities are purchased under the agreement.”, and

- (b) describe any other conditions and indicate any information known that is relevant to whether such conditions will be satisfied.

Best efforts offering

27.4 Outline briefly the plan of distribution of any securities being distributed other than on the basis described in item 27.3.

Minimum distribution

27.5 If securities are being distributed on a best efforts basis and minimum funds are to be raised, state

- (a) the minimum funds to be raised,
- (b) that the investment fund must appoint a registered dealer authorized to make the distribution, a Canadian financial institution, or a lawyer, or in Québec a notary, who is a practicing member in good standing with a law society of a jurisdiction in which the securities are being distributed, to hold in trust all funds received from subscriptions until the minimum amount of funds stipulated in paragraph (a) has been raised, and
- (c) that if the minimum amount of funds is not raised within the distribution period, the trustee must return the funds to the subscribers without any deductions.

Determination of price

27.6 Disclose the method by which the distribution price has been or will be determined and, if estimates have been provided, explain the process of determining the estimates.

Stabilization

27.7 If the investment fund, a selling security holder or an underwriter knows or has reason to believe that there is an intention to over-allot or that the price of any security may be stabilized to facilitate the distribution of the securities, describe the nature of these transactions, including the anticipated size of any over-allocation position, and explain how the transactions are expected to affect the price of the securities.

Approvals

- 27.8** If the purpose of the distribution is to fund in whole or in part a new business of the investment fund and the investment fund has not obtained all material licences, registrations and approvals necessary for the operation of the business, include a statement that
- (a) the investment fund must appoint a registered dealer authorized to make the distribution, a Canadian financial institution, a lawyer, or in Québec a notary, who is a practicing member in good standing with a law society of a jurisdiction in which the securities are being distributed, to hold in trust all funds received from subscriptions until all material licences, registrations and approvals necessary for the operation of the business have been obtained, and
 - (b) if all material licences, registrations and approvals necessary for the operation of the business have not been obtained within 90 days from the date of receipt of the final prospectus, the trustee must return the funds to subscribers.

Reduced price distributions

- 27.9** If an underwriter may decrease the price at which securities are distributed for cash from the initial public offering price disclosed in the prospectus and thereafter change, from time to time, the price at which securities are distributed under the prospectus in accordance with the procedures permitted by the Instrument, disclose that, after the underwriter has made a reasonable effort to sell all of the securities at the initial offering price disclosed in the prospectus, the offering price may be decreased, and further changed from time to time, to an amount not greater than the initial offering price disclosed in the prospectus and that the compensation realized by the underwriter will be decreased by the amount that the aggregate price paid by purchasers for the securities is less than the gross proceeds paid by the underwriter to the investment fund or selling security holder.

Listing application

- 27.10** If application has been made to list or quote the securities being distributed, include a statement, in substantially the following form, with bracketed information completed:

“The investment fund has applied to [list/quote] the securities distributed under this prospectus on [name of exchange or other market]. [Listing/Quotation] will be subject to the investment fund fulfilling all the listing requirements of [name of exchange or other market].”

Conditional listing approval

27.11 If application has been made to list or quote the securities being distributed on an exchange or marketplace and conditional listing approval has been received, include a statement, in substantially the following form, with the bracketed information completed:

“[name of exchange or marketplace] has conditionally approved the [listing/quotation] of these securities. [Listing/Quotation] is subject to the [name of investment fund] fulfilling all of the requirements of the [name of exchange or marketplace] on or before [date], [including distribution of these securities to a minimum number of public security holders].”

Constraints

27.12 If there are constraints imposed on the ownership of securities of the investment fund to ensure that the investment fund has a required level of Canadian ownership, describe the mechanism, if any, by which the level of Canadian ownership of the securities of the investment fund will be monitored and maintained.

Special warrants acquired by underwriters or agents

27.13 Disclose the number and dollar value of any special warrants acquired by any underwriter or agent and the percentage of the distribution represented by those special warrants.

Conflicts of Interest and Proxy Voting Disclosure

Item 28: Relationship Between Investment Fund or Selling Security Holder and Underwriter

28.1 (1) Under the heading “Conflicts of Interest” and under the sub-heading “Relationship between Investment Fund or Selling Security Holder and Underwriter”, if the investment fund or selling security holder is a connected issuer or related issuer of an underwriter of the distribution, or if the investment fund or selling security holder is also an underwriter, comply with the requirements of National Instrument 33-105.

- (2) For the purposes of subsection (1), “connected issuer” and “related issuer” have the same meanings as in NI 33-105.

Item 29: Options to Purchase Securities

Options to Purchase Securities

- 29.1 (1)** Under the sub-heading “Options to Purchase Securities”, state, in tabular form, as at a specified date within 30 days before the date of the prospectus, information as to options to purchase securities of the investment fund that are held or will be held upon completion of the distribution by
- (a) all executive officers and past executives officers of the investment fund as a group and all directors and past directors of the investment fund who are not also executive officers as a group, indicating the aggregate number of executive officers and the aggregate number of directors to whom the information applies,
 - (b) all executive officers and past executive officers of all subsidiaries of the investment fund as a group and all directors and past directors of those subsidiaries who are not also executive officers of the subsidiary as a group, in each case, and excluding individuals referred to in paragraph (a), indicating the aggregate number of executive officers and the aggregate number of directors to whom the information applies,
 - (c) all other employees and past employees of the investment fund as a group,
 - (d) all other employees and past employees of subsidiaries of the investment fund as a group,
 - (e) all consultants of the investment fund as a group, and
 - (f) any other person or company, other than the underwriter(s), naming each person or company.
- (2) Describe any material change to the information required to be included in the prospectus under subsection (1) to the date of the prospectus.

INSTRUCTIONS

- (1) *Describe the options, stating the material provisions of each class or type of option, including:*
- (a) *the designation and number of the securities under option;*

- (b) *the purchase price of the securities under option or the formula by which the purchase price will be determined, and the expiration dates of the options;*
 - (c) *if reasonably ascertainable, the market value of the securities under option on the date of grant;*
 - (d) *if reasonably ascertainable, the market value of the securities under option on the specified date; and*
 - (e) *with respect to options referred to in paragraph (f) of Item 29.1, the particulars of the grant including the consideration for the grant.*
- (2) *For the purposes of item (f) of Item 29.1(1), provide the information required for all options except warrants and special warrants.*

Item 30 : Interest of Management and Others in Material Transactions

Interest of Management and Others in Material Transactions

30.1 Under the sub-heading “Interest of Management and Others in Material Transactions”, describe, and state the approximate amount of, any material interest, direct or indirect, of any of the following persons or companies in any transaction within the three years before the date of the prospectus or *pro forma* prospectus, or in any proposed transaction, that has materially affected or will materially affect the investment fund:

- (a) a director or executive officer of the investment fund or the investment fund manager;
- (b) a person or company that is the direct or indirect beneficial owner of, or who exercises control or direction over, more than 10 percent of any class or series of the outstanding voting securities;
- (c) an associate or affiliate of any of the persons or companies referred to in paragraphs (a) or (b).

Underwriting Discounts

30.2 Disclose any material underwriting discounts or commissions upon the sale of securities by the investment fund if any of the persons or companies listed under item 30.1 were or are to be an underwriter or are associates, affiliates or partners of a person or company that was or is to be an underwriter.

INSTRUCTIONS

- (1) *The materiality of an interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other and the amount involved are among the factors to be considered in determining the significance of the information to investors.*
- (2) *Give a brief description of the material transaction. Include the name of each person or company whose interest in any transaction is described and the nature of the relationship to the investment fund.*
- (3) *For any transaction involving the purchase of assets by or sale of assets to the investment fund or a subsidiary of the investment fund, state the cost of the assets to the purchaser, and the cost of the assets to the seller if acquired by the seller within three years before the transaction.*
- (4) *This item does not apply to any interest arising from the ownership of securities of the investment fund if the security holder receives no extra or special benefit or advantage not shared on an equal basis by all other holders of the same class of securities or all other holders of the same class of securities who are resident in Canada.*
- (5) *Information must be included as to any material underwriting discounts or commissions upon the sale of securities by the investment fund if any of the specified persons or companies were or are to be an underwriter or are associates, affiliates or partners of a person or company that was or is to be an underwriter.*
- (6) *No information need be given in answer to this item as to a transaction, or an interest in a transaction, if*
 - (a) *the rates or charges involved in the transaction are fixed by law or determined by competitive bids;*
 - (b) *the interest of a specified person or company in the transaction is solely that of a director of another company that is a party to the transaction;*
 - (c) *the transaction involves services as a bank or other depository of funds, a transfer agent, registrar, trustee under a trust indenture or other similar services; or*
 - (d) *the transaction does not involve remuneration for services and the interest of the specified person or company arose from the beneficial ownership, direct or indirect, of less than ten per cent of any class of equity securities*

of another company that is party to the transaction and the transaction is in the ordinary course of business of the investment fund or its subsidiaries.

- (7) *Describe all transactions not excluded above that involve remuneration (including an issuance of securities), directly or indirectly, to any of the specified persons or companies for services in any capacity unless the interest of the person or company arises solely from the beneficial ownership, direct or indirect, of less than ten per cent of any class of equity securities of another company furnishing the services to the investment fund or its subsidiaries.*

Item 31: Principal Holders of Securities of the Investment Fund and Selling Security Holders

Principal Holders of Securities of the Investment Fund and Selling Security Holders

- 31.1 (1)** Under the sub-heading “Principal Holders of Securities of the Investment Fund and Selling Security Holders”, provide the following information for each principal holder of securities of the investment fund and, if any securities are being distributed for the account of a security holder, for each selling security holder, as of a specified date not more than 30 days before the date of the prospectus or *pro forma* prospectus, as applicable:
- (a) The name.
 - (b) The number or amount of securities owned of the class being distributed.
 - (c) The number or amount of securities of the class being distributed for the account of the security holder.
 - (d) The number or amount of securities of the investment fund of any class to be owned after the distribution.
 - (e) Whether the securities referred to in paragraphs (c) or (d) are owned both of record and beneficially, of record only, or beneficially only.
 - (f) The percentages of each class of securities known by the investment fund to be owned before and after the distribution.
- (2)** If securities are being distributed in connection with an acquisition, amalgamation, merger, reorganization or arrangement, indicate, to the extent known, the holdings of each person or company described in subsection (1) that will exist after giving effect to the transaction.

- (3) If any of the securities being distributed are being distributed for the account of a security holder and those securities were purchased by the selling security holder within the 2 years preceding the date of the prospectus or *pro forma* prospectus, as applicable, state the date the selling security holder acquired the securities and, if the securities were acquired in the 12 months preceding the date of the prospectus or *pro forma* prospectus, as applicable, the cost to the security holder in the aggregate and on an average cost per security basis.
- (4) If, to the knowledge of the investment fund or the underwriter of the securities being distributed, more than 10% of any class of voting securities of the investment fund is held, or is to be held, subject to any voting trust or other similar agreement, disclose, to the extent known, the designation of the securities, the number or amount of the securities held or to be held subject to the agreement and the duration of the agreement. State the names and addresses of the voting trustees and outline briefly their voting rights and other powers under the agreement.
- (5) If, to the knowledge of the investment fund or the underwriter of the securities being distributed, any principal holder of securities or selling security holder is an associate or affiliate of another person or company named as a principal holder, disclose, to the extent known, the material facts of the relationship, including any basis for influence over the investment fund held by the person or company other than the holding of voting securities of the investment fund.
- (6) In addition to the above, include in a footnote to the table, the required calculation(s) on a fully-diluted basis.

INSTRUCTION

If a company, partnership, trust or other unincorporated entity is a principal holder of securities of an investment fund, disclose, to the extent known, the name of each individual who, through ownership of or control or direction over the securities of the company or membership in the partnership, as the case may be, is a principal shareholder of the company or partnership.

Item 32 : Proxy Voting Disclosure For Portfolio Securities Held

Proxy Voting Disclosure

- 32.1** Under the sub-heading “Proxy Voting Disclosure For Portfolio Securities Held”, include the disclosure required by subsection 10.2(3) of NI 81-106.

Other Legal Matters

Item 33: Material Contracts

Material Contracts

- 33.1 (1)** Under the heading “Other Legal Matters” and under the sub-heading “Material Contracts”, list and provide particulars of
- (a) the articles of incorporation, the declaration of trust or trust agreement of the investment fund or any other constating document, if any;
 - (b) any agreement of the investment fund or trustee with the manager of the investment fund;
 - (c) any agreement of the investment fund, the manager or trustee with the portfolio adviser of the investment fund;
 - (d) any agreement of the investment fund, the manager or trustee with the custodian of the investment fund;
 - (e) any agreement of the investment fund or trustee or manager with the underwriters or agents of the investment fund;
 - (f) any swap or forward agreement of the investment fund or trustee or manager with a counterparty that is material to the investment fund fulfilling its investment objective;
 - (g) any agreement of the investment fund, the manager or trustee with the principal distributor of the investment fund; and
 - (h) any other contract or agreement that can reasonably be regarded as material to an investor in the securities of the investment fund.
- (2)** State a reasonable time and place in [the local jurisdiction] at which the executed contracts, or copies of them, may be inspected during distribution of the securities being distributed.

INSTRUCTIONS

- (1) *Set out a complete list of all material contracts, indicating those that are disclosed elsewhere in the prospectus and provide particulars about those material contracts for which particulars are not given elsewhere in the prospectus.*
- (2) *Particulars of contracts should include the dates of, parties to, consideration provided for in, termination provisions and general nature of, the contracts.*
- (3) *This Item does not require disclosure of contracts entered into in the ordinary course of business of the investment fund.*

Item 34: Legal and Administrative Proceedings

Legal and Administrative Proceedings

34.1 Under the sub-heading “Legal and Administrative Proceedings”, describe briefly any ongoing legal and administrative proceedings material to the investment fund, to which the investment fund, its manager or principal distributor is a party.

Particulars of the Proceedings

34.2 For all matters disclosed under subsection 34.1, disclose

- (a) the name of the court or agency having jurisdiction;
- (b) the date on which the proceeding was instituted;
- (c) the principal parties to the proceeding;
- (d) the nature of the proceeding and, if applicable, the amount claimed; and
- (e) whether the proceedings are being contested and the present status of the proceedings.

Provide similar disclosure about any proceedings known to be contemplated.

Penalties and Sanctions

34.3 Describe the penalties or sanctions imposed and the grounds on which they were imposed or the terms of any settlement agreement and the circumstances that gave rise to the settlement agreement, if within the 10 years before the date of the prospectus, the manager of the investment fund, or a director or officer of the investment fund or a partner, director or officer of the manager of the investment fund has,

- (a) been subject to any penalties or sanctions imposed by a court or securities regulator relating to Canadian securities legislation, promotion or management of an investment fund, theft or fraud or has entered into a settlement agreement with a court or regulatory body in relation to the aforementioned matters; or
- (b) been subject to any other penalties or sanctions imposed by a court or regulatory body or has entered into any other settlement agreement with a court or regulatory body that would likely be considered important to a reasonable investor in determining whether to purchase securities of the investment fund.

Item 35: Credit Supporter Disclosure

35.1 **Credit Supporter Disclosure** – Under the sub-heading “Credit Supporter Disclosure”, if a credit supporter has provided a guarantee or alternative credit

support for all or substantially all of the payments to be made under the securities being distributed, include statements by the credit supporter providing disclosure about the credit supporter that would be required under Items 4, 6, 7, 28, 34 and 41 of this Form if the credit supporter were the investment fund of the securities and such other information about the credit supporter as is necessary to provide full, true and plain disclosure of all material facts concerning the securities to be distributed.

Item 36 Experts

Names of experts

36.1 Name each person or company

- (a) who is named as having prepared or certified a report, valuation, statement or opinion in the prospectus or an amendment to the prospectus, and
- (b) whose profession or business gives authority to the report, valuation, statement or opinion made by the person or company.

Interest of Experts

- 36.2** (1) Disclose all direct, indirect or beneficial interests in any securities or other property of the investment fund or of an associate or affiliate of the investment fund received or to be received by a person or company whose profession or business gives authority to a statement made by the person or company and who is named as having prepared or certified a part of the prospectus or prepared or certified a report or valuation described or included in the prospectus.
- (2) For the purpose of paragraph (1), if the ownership is less than one per cent, a general statement to that effect shall be sufficient. If there is no ownership interest, no statement is required.
- (3) If a person, or a director, officer or employee of a person or company referred to in paragraph (1) is or is expected to be elected, appointed or employed as a director, officer or employee of the investment fund or of any associate or affiliate of the investment fund, disclose the fact or expectation.

INSTRUCTIONS

- (1) *Item 36.2 does not apply to:*
- (a) *auditors of a business acquired by the investment fund provided they have not or will not be appointed as the investment fund's auditor subsequent to the acquisition;*

- (b) *the investment fund's predecessor auditors, if any, for those periods when they were not the investment fund's auditor; and*
 - (c) *the investment fund's auditor for the period before they became the investment fund's auditor.*
- (2) *Item 36. does not apply to direct, indirect or beneficial interests held through investment funds.*

Item 37: Other Material Facts

Other Material Facts

- 37.1** Give particulars of any material facts about the securities being distributed that are not disclosed under the preceding items and are necessary in order for the prospectus to contain full, true and plain disclosure of all material facts relating to the securities to be distributed.

Item 38: Purchasers' Statutory Rights of Withdrawal and Rescission

General

- 38.1** For investment funds other than mutual funds, under the sub-heading "Purchasers' Statutory Rights of Withdrawal and Rescission" include a statement in substantially the following form, with bracketed information completed:

"Securities legislation in [certain of the provinces [and territories] of Canada/the Province of [insert name of local jurisdiction, if applicable]] provides purchasers with the right to withdraw from an agreement to purchase securities. This right may be exercised within two business days after receipt or deemed receipt of a prospectus and any amendment. [In several of the provinces/provinces and territories], [T/t]he securities legislation further provides a purchaser with remedies for rescission [or [, in some jurisdictions,] damages] if the prospectus and any amendment contains a misrepresentation or is not delivered to the purchaser, provided that the remedies for rescission [or damages] are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province [or territory]. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province [or territory] for the particulars of these rights or consult with a legal adviser."

Mutual Funds

- 38.2** For mutual funds (including labour sponsored investment funds and commodity pools), under the sub-heading "Purchasers' Statutory Rights of Withdrawal and Rescission" include a statement in substantially the following form:

“Securities legislation in [certain of the provinces [and territories] of Canada/the Province of [insert name of local jurisdiction, if applicable]] purchasers with the right to withdraw from an agreement to purchase mutual fund securities within two business days after receipt of a prospectus or within 48 hours after the receipt of a confirmation of a purchase of such securities. If the agreement is to purchase such securities under a contractual plan, the time period during which withdrawal may be made may be longer. [In several of the provinces/provinces and territories], [T/t]he securities legislation further provides a purchaser with remedies for rescission [or [, in some jurisdictions,] damages] if the prospectus and any amendment contains a misrepresentation or is not delivered to the purchaser, provided that the remedies for rescission [or damages] are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser’s province [or territory]. The purchaser should refer to the applicable provisions of the securities legislation of the province [or territory] for the particulars of these rights or should consult with a legal adviser.”

Non-fixed Price Offerings

38.3 In the case of a non-fixed price offering, if applicable in the jurisdiction in which the prospectus is filed, replace the second sentence in the legend in Item 38.1 with a statement in substantially the following form:

“This right may only be exercised within two business days after receipt or deemed receipt of a prospectus and any amendment, irrespective of the determination at a later date of the purchase price of the securities distributed.”

Item 39 Exemptions and Approvals

General

39.1 Describe all exemptions from or approvals under securities legislation obtained by the investment fund or the manager of the investment fund that continue to be relied upon by the investment fund or the manager.

Financial Disclosure

Item 40 Documents Incorporated by Reference

Mandatory Incorporation by Reference

40.1 (1) If the investment fund is in continuous distribution except for scholarship plans, specifically incorporate by reference the following documents in the prospectus, by means of the following statement in substantially the following words under the heading “Financial Disclosure” and under the sub-heading “Documents Incorporated by Reference”:

Additional information about the Fund is available in the following documents:

1. If applicable, the annual information form.
2. The most recently filed comparative annual financial statements of the investment fund, together with the accompanying report of the auditor, filed either before or after the date of the prospectus.
3. The most recently filed interim financial statements of the investment fund that were filed before or after the date of the prospectus.
4. The most recently filed annual management report of fund performance of the investment fund that was filed before or after the date of the prospectus.
5. The most recently filed interim management report of fund performance of the investment fund that was filed before or after the date of the prospectus.

These documents are incorporated by reference into the prospectus, which means that they legally form part of this document just as if they were printed as part of this document. You can get a copy of these documents, at your request, and at no cost, by calling [toll-free/collect] [insert the toll-free telephone number or telephone number where collect calls are accepted] or from your dealer.

[If applicable] These documents are available on the [investment fund's/investment fund family's] Internet site at [insert investment fund's Internet site address], or by contacting the [investment fund/investment fund family] at [insert investment fund's /investment fund family's email address].

These documents and other information about the Fund are available on the Internet at www.sedar.com.

Mandatory Incorporation by Reference of Future Documents

- 40.2** State that any documents, of the type described in section 40.1, if filed by the investment fund after the date of the prospectus and before the termination of the distribution, are deemed to be incorporated by reference in the prospectus.

Item 41: Financial Statements

Annual Financial Statements

- 41.1** (1) Unless incorporated by reference under Item 40, include in the prospectus, the comparative annual financial statements and audit report in the form specified by Part 2 and Part 3 of NI 81-106 for the investment fund's most recently completed

financial year, or if the investment fund has not completed 2 financial years, annual financial statements and audit report for one financial year.

- (2) If an investment fund's most recent financial year ended within 90 days of the date of the prospectus referred to in subsection (1), the investment fund may treat the previous year as the most recent financial year under subsection (1).
- (3) If the investment fund has not completed its first financial year, the fund must include in the prospectus financial statements for the period from the date of the fund's formation to a date not more than 90 days before the date of the prospectus.

Interim Financial Statements

- 41.2** Unless incorporated by reference under Item 40, include in the prospectus, financial statements for the investment fund in the form specified by Part 2 and Part 3 of NI 81-106 for the interim period that began immediately after the financial year to which the annual financial statements required to be included in the prospectus under section 41.1 relate, if the prospectus is filed 60 days or more after the end of that interim period.

Management Report of Fund Performance

- 41.3** Unless incorporated by reference under Item 40, include in the prospectus the most recently filed interim management report of fund performance, if filed after the most recently filed annual management report of fund performance and include the most recently filed annual management report of fund performance.

Item 42: Certificates

Certificate of the Investment Fund

- 42.1** Include a certificate of the investment fund in the following form:
“This prospectus [together with the documents incorporated herein by reference] constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by the securities legislation of [insert name of each jurisdiction in which qualified].”

Certificate of the Manager

- 42.2** Include a certificate of the manager of the investment fund in the same form as the certificate signed by the investment fund.

Certificate of Underwriter

42.3 Where a person or company is required to provide a certificate in the underwriter certificate form, the certificate must state:

“To the best of our knowledge, information and belief, this prospectus constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by the securities legislation of [insert the jurisdictions in which qualified].”

Certificate of promoter

42.4 If there is a promoter of the investment fund or a subsidiary of the investment fund, include a certificate in the same form as the certificate signed by the investment fund.

Amendments

- 42.5** (1) For an amendment to a prospectus that does not restate the prospectus, omit the reference in the language in sections 42.1 and 42.3 to “prospectus” and replace it with “prospectus dated [insert date] as amended by this amendment”.
- (2) For an amended and restated prospectus, omit the reference in the language in sections 42.1 and 42.3 to “prospectus” and replace it with “amended and restated prospectus”.

Non-offering prospectus

42.6 For a non-offering prospectus, omit the reference in the language in sections 42.1 and 42.3 to “securities offered by this prospectus” and replace it with “securities previously issued by the investment fund”.

APPENDIX B

Schedule 4

COMPANION POLICY TO NATIONAL INSTRUMENT 41-101 GENERAL PROSPECTUS REQUIREMENTS

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**COMPANION POLICY
TO NATIONAL INSTRUMENT 41-101
GENERAL PROSPECTUS REQUIREMENTS**

PART 1: Introduction, Interrelationship with Securities Legislation, and Definitions

Introduction and purpose

- 1.1** This Policy describes how the provincial and territorial securities regulatory authorities (or “we”) intend to interpret or apply the provisions of the Instrument. Some terms used in this Policy are defined or interpreted in the Instrument, NI 14-101, or a definition instrument in force in the jurisdiction.

Interrelationship with other securities legislation

This Policy

- 1.2(1)** The Instrument applies to any prospectus filed under securities legislation and any distribution of securities subject to the prospectus requirement, other than a prospectus filed under NI 81-101 or a distribution of securities under such a prospectus, or unless otherwise stated. Parts of this Policy may not apply to all issuers.

Local securities legislation

- (2)** The Instrument, while being the primary instrument regulating prospectus distributions, is not exhaustive. Issuers should refer to the implementing law of the jurisdictions and other securities legislation of the local jurisdiction for additional requirements that may apply to the issuer’s prospectus distribution.

Continuous disclosure (NI 51-102)

- (3)** NI 51-102 and other securities legislation imposes ongoing disclosure and filing obligations on reporting issuers. The regulator may consider issues raised in the context of a continuous disclosure review when determining whether it is in the public interest to refuse to issue a receipt for a prospectus. Consequently, unresolved issues may delay or prevent the issuance of a receipt.

Reporting issuers are generally required to file periodic and timely disclosure documents under applicable securities legislation. Reporting issuers may also be required to file periodic and timely disclosure documents pursuant to an order issued by the securities regulatory authority or an undertaking to the securities regulatory authority. Failure to comply with any requirement to file periodic and timely disclosure documents could

cause the regulator to refuse a receipt for the prospectus.

Short form prospectus distributions (NI 44-101)

- (4) As set out in section 2.1 of NI 44-101 [*Short Form Prospectus*], an issuer must not file a prospectus in the form of Form 44-101F1 unless the issuer is qualified under any of sections 2.2 through 2.6 of NI 44-101 to file a short form prospectus. An issuer that is qualified to file a short form prospectus must satisfy the requirements of NI 44-101, including the filing requirements of Part 4 of NI 44-101 [*Filing Requirements for a Short Form Prospectus*], as well as any applicable requirements of the Instrument. Therefore, issuers qualified to file a short form prospectus and selling security holders of those issuers that wish to distribute securities under the short form system should refer to the Instrument, this Policy, and NI 44-101 and its companion policy.

Shelf distributions (NI 44-102)

- (5) Issuers qualified under NI 44-101 to file a prospectus in the form of a short form prospectus and their security holders can distribute securities under a short form prospectus using the shelf distribution procedures under NI 44-102. The Companion Policy to NI 44-102 explains that the distribution of securities under the shelf system is governed by the requirements and procedures of NI 44-101 and securities legislation, except as supplemented or varied by NI 44-102. Therefore, issuers qualified to file a short form prospectus and selling security holders of those issuers that wish to distribute securities under the shelf system should refer to the Instrument, this Policy, NI 44-101 and its companion policy, and NI 44-102 and its companion policy.

PREP procedures (NI 44-103)

- (6) NI 44-103 contains the post-receipt pricing (PREP) procedures. All issuers and selling security holders can use the PREP procedures of NI 44-103 to distribute securities. Issuers and selling security holders that wish to distribute securities using the PREP procedures as provided for in NI 44-103 should refer to the Instrument, this Policy, and NI 44-103 and its companion policy. Issuers and selling security holders that wish to distribute securities under a short form prospectus using the PREP procedures should also refer to NI 44-101 and its companion policy for any additional requirements.

Mutual reliance review system (MRRS) (NP 43-201)

- (7) National Policy 43-201 *Mutual Reliance Review System for Prospectuses* and, in Québec, *Notice 43-201 relating to the Mutual Reliance Review System for Prospectuses* (“NP 43-201”) describes the practical application of the mutual reliance review system relating to the filing and review of prospectuses, including investment fund and shelf prospectuses, amendments to prospectuses and related materials. While use of NP 43-201 is optional, NP 43-201 represents the only means by which an issuer can enjoy the benefits of coordinated review by the securities regulatory authorities in the various jurisdictions in

which the issuer has filed a prospectus. Under NP 43-201, one securities regulatory authority acts as the principal regulator for all materials relating to a filer.

No target time frame applies to the review of a prospectus of an issuer if the issuer has not elected to use NP 43-201.

Selective review

- (8) The securities regulatory authorities in some jurisdictions have, formally or informally, adopted a system of selective review of certain documents, including prospectuses and amendments to prospectuses. Under the selective review system, these documents may be subject to an initial screening to determine whether they will be reviewed and, if reviewed, whether they will be subject to a full review, an issue-oriented review or an issuer review. Application of the selective review system, taken together with MRRS, may result in certain prospectuses and amendments to prospectuses not being reviewed beyond the initial screening.

Definitions

Asset-backed security

- 1.3(1) The definition of “asset-backed security” is the same definition used in NI 51-102.

The definition is designed to be flexible to accommodate future developments in asset-backed securities. For example, it does not include a list of “eligible” assets that can be securitized. Instead, the definition is broad, referring to “receivables or other financial assets” that by their terms convert into cash within a finite time period. These would include, among other things, notes, leases, instalment contracts and interest rate swaps, as well as other financial assets, such as loans, credit card receivables, accounts receivable and franchise or servicing arrangements. The reference to “and any rights or other assets...” in the definition is sufficiently broad to include “ancillary” or “incidental” assets, such as guarantees, letters of credit, financial insurance or other instruments provided as a credit enhancement for the securities of the issuer or which support the underlying assets in the pool, as well as cash arising upon collection of the underlying assets that may be reinvested in short-term debt obligations.

The term, a “discrete pool” of assets, can refer to a single group of assets as a “pool” or to multiple groups of assets as a “pool”. For example, a group or pool of credit card receivables and a pool of mortgage receivables can, together, constitute a “discrete pool” of assets. The reference to a “discrete pool” of assets is qualified by the phrase “fixed or revolving” to clarify that the definition covers “revolving” credit arrangements, such as credit card and short-term trade receivables, where balances owing revolve due to periodic payments and write-offs.

While typically a pool of securitized assets will consist of financial assets owed by more than one obligor, the definition does not currently include a limit on the percentage of the pool of securitized assets that can be represented by one or more financial assets owing by the same or related obligors (sometimes referred to as an “asset concentration test”).

Business day

- (2) Section 1.1 of the Instrument [*Definitions*] defines business day as any day other than a Saturday, Sunday or a statutory holiday. In some cases, a statutory holiday may only be a statutory holiday in one jurisdiction. The definition of business day should be applied in each local jurisdiction in which a prospectus is being filed. For example, subsection 2.3(2) of the Instrument [*General requirements*] states that an issuer must not file a prospectus more than 3 business days after the date of the prospectus. A prospectus is dated Day 1. Day 2 is a statutory holiday in Québec but not in Alberta. If the prospectus is filed in both Alberta and Québec, it must be filed no later than Day 4, despite the fact that Day 2 was not a business day in Québec. If the prospectus is filed only in Québec, it could be filed on Day 5.

PART 2: General Requirements

Experience of officers and directors

- 2.1 Securities legislation requires that a securities regulatory authority or regulator refuse to issue a receipt for a prospectus if it appears that the proceeds received from the sale of securities to be paid to the treasury of the issuer, together with other resources of the issuer, will be insufficient to accomplish the purposes stated in the prospectus. In addition to financial resources, resources include people. We believe that a sufficient number of the directors and officers of the issuer should have relevant knowledge and experience so that a securities regulatory authority or regulator will not conclude that the human and other resources are insufficient to accomplish these purposes. If the requisite knowledge and experience are not possessed by the directors and officers, a securities regulatory authority or regulator may be satisfied that the human and other resources are sufficient if it is shown that the issuer has contracted to obtain the knowledge and experience from others.

Role of underwriter

- 2.2 The due diligence investigation undertaken by an underwriter in relation to the business of the issuer often results in enhanced quality of disclosure in the prospectus. In addition, an underwriter typically provides valuable advice regarding the pricing and marketing of securities. For these reasons, we strongly encourage underwriter participation in prospectus offerings, particularly where the offering is an initial public offering.

Indirect distributions

- 2.3 Securities legislation prohibits a person from distributing a security unless a prospectus is filed and receipted or the distribution is exempt from the prospectus requirement. Securities legislation also prohibits a person from trading in a security where the trade would be a distribution of such security, unless a prospectus is filed and receipted or the distribution is exempt from the prospectus requirement. Securities legislation defines distribution as including a trade in a security that has not been previously issued, a trade out of a control block and any transaction or series of transactions involving a purchase and sale of or a repurchase and resale in the course of or incidental to a distribution. In Quebec, the definition of “distribution” is broad enough to include these transactions.

Occasionally, a prospectus is filed to qualify securities for sale to one purchaser or to a small group of related purchasers where it appears that the purchaser does not have a *bona fide* intention to invest in the securities but rather is acquiring the securities with a view to immediately reselling them in the secondary market. This can be the case where the purchaser is a lender to the issuer or where the securities are issued as consideration for the acquisition of assets.

Where the offering and subsequent resale are in substance a single distribution, in order to comply with securities legislation, the distribution to the public purchasers should be made by way of prospectus in order that the subsequent purchasers have the benefit of prospectus disclosure and all the rights and remedies provided to prospectus purchasers under provincial and territorial securities legislation.

Considerations relevant to determining whether a distribution under a prospectus is only one transaction in a series of transactions in the course of or incidental to the ultimate distribution include:

- the number of persons or companies who are likely to purchase securities in each transaction;
- whether the purchasers’ traditional business is that of financing as opposed to investing;
- whether a purchaser is likely to acquire more of a specified class of securities of the issuer than it is legally entitled to, or practically wishes to, hold (e.g., more than 10% of a class of equity securities where the purchaser wishes to avoid becoming an insider or 20% of a class of equity securities where the purchaser wishes to avoid becoming a controlling shareholder);
- the type of security distributed (e.g., loan repayment rights) and whether or not the security is convertible into publicly traded securities of the issuer;
- whether the purchase price of the securities is set at a substantial discount to their market price; and
- whether the purchaser is committed to hold the securities it acquires for any specified time period.

Over-allocation

- 2.4** Underwriters of a distribution may over-allocate a distribution in order to hold a short position in the securities following closing. This over-allocation position allows the underwriters to engage in limited market stabilization to compensate for the increased liquidity in the market following the distribution. If the market price of the securities decreases following the closing of the distribution, the short position created by the over-allocation position may be filled through purchases in the market. This creates upward pressure on the price of the securities. If the market price of the securities increases following the closing of the distribution, the over-allocation position may be filled through the exercise of an over-allotment option (at the issue offering price). Underwriters would not generally engage in market stabilization activities without the protection provided by an over-allotment option.

Over-allotment options are permitted solely to facilitate the over-allocation of the distribution and consequent market stabilization. Accordingly, an over-allotment option may only be exercised for the purpose of filling the underwriters' over-allocation position. The exercise of an over-allotment option for any other purpose would raise public policy concerns.

To form part of the over-allocation position, securities must be sold to *bona fide* purchasers as of the closing of the offering. Securities held by an underwriter or in proprietary accounts of an underwriter for sale at a future date do not form part of the over-allocation position. Further, as discussed below, section 11.3 of the Instrument [*Distributions of securities under a prospectus to an underwriter*] restricts the distribution of securities under a prospectus to an underwriter. Since section 11.2 of the Instrument [*Over-allocation*] requires that all securities that are sold to create the over-allocation position be distributed under the prospectus, securities cannot be sold to an underwriter to increase the size of the over-allocation position.

Distribution of securities under a prospectus to an underwriter

- 2.5** Section 11.3 of the Instrument [*Distributions of securities under a prospectus to an underwriter*] restricts the distribution of securities under a prospectus to a person acting as an underwriter, other than an over-allotment option, the securities underlying an over-allotment option and compensation securities or options exercisable in aggregate for up to 5% of the base offering under the prospectus. The 5% limit should be determined as if all convertible or exchangeable securities offered under the prospectus were exercised for the underlying securities. The number of securities issueable or transferable on the exercise of the compensation securities or any over-allotment do not form part of the base offering.

Certificates

Discretion of regulator regarding control persons

2.6(1) Subsection 5.11(4) [*Certificate of promoter*], subsection 5.13(6) [*Certificate of substantial beneficiary of the offering*] and section 5.14 [*Certificate of selling security holders*] of the Instrument, provides the regulator in jurisdictions other than Ontario with the discretion to require a prospectus certificate from control persons of promoters or former promoters, substantial beneficiaries of the offering or selling security holders. These provisions are intended to ensure that statutory liability may not be avoided through the interposition of a holding entity. When deciding whether to exercise its discretion, the regulator may consider whether it appears that a person or company is organizing its business and affairs to avoid a requirement to sign a prospectus certificate or to avoid liability as a selling security holder under provincial and territorial securities legislation.

Substantial beneficiaries of the offering

- (2) Section 5.13 of the Instrument requires substantial beneficiaries of the offering to sign a prospectus certificate. The definition of substantial beneficiary of the offering captures those parties who, by virtue of control, have the best information about a significant business of the issuer and, by virtue of their direct or indirect receipt of the proceeds of the offering, have a substantial economic interest in the offering. The certificate is required to provide an incentive for such parties to ensure that the prospectus does in fact contain full, true and plain disclosure regarding the offered securities.
- (3) The control of a significant business and direct or indirect receipt of 20% of the proceeds of an offering are both required to bring a person or company within the definition of a substantial beneficiary of the offering. Repayment of debt may constitute indirect receipt of proceeds of an offering. The control element of this test is intended to preclude the inclusion of *bona fide*, arms' length, commercial lenders to an issuer. However, in the unusual circumstance where such a lender falls within the definition of substantial beneficiary of the offering as a result of security taken or realized in connection with a loan, an application for relief from the certificate requirement may be appropriate.

Public interest

- (4) Securities legislation provides the regulator with discretion to refuse a receipt for a prospectus where it is not in the public interest to issue the receipt. Statutory liability in connection with prospectus disclosure is provided under securities legislation to provide discipline in complying with the requirement that a prospectus contain full, true and plain disclosure of all material facts relating to the offered securities and to protect the integrity of the Canadian public markets. Where an offering is structured in a manner that circumvents the objects and purposes of securities legislation and results in a person or company accessing the public markets without accountability, significant public interest

concerns may be raised. Such public interest concerns will be addressed on a case by case basis as part of the analysis of whether a receipt should be issued for a final prospectus. There may be circumstances in which it will be appropriate for the regulator to request a person or company, that is not otherwise required to do so, to certify a prospectus as a means of resolving such public interest concerns.

In Ontario, substantial beneficiaries of the offering and officers and directors of a reverse take-over acquirer are not required to provide a prospectus certificate under sections 5.13 and 5.8 of the Instrument. The discretion to require certificates from a selling security holder or control persons of a promoter, substantial beneficiary or selling security holder and the general discretion to require certificate from any person or company also do not apply in Ontario. The fact that these provisions of the Instrument do not apply in Ontario should not be interpreted as affecting the public interest analysis that is undertaken in connection with the issuance of a receipt for a final prospectus.

Chief executive officer and chief financial officer

- (5) The Instrument and securities legislation require that prospectus certificates of certain persons or companies to be signed by the chief executive officer and chief financial officers of such persons or companies. The terms chief executive officer and chief financial officer should be read to include the individuals who have the responsibilities normally associated with these positions or act in a similar capacity. This determination should be made irrespective of an individual's corporate title or whether that individual is employed directly or acts pursuant to an agreement or understanding.

Promoters of issuers of asset-backed securities

- 2.7 Securities legislation in some jurisdictions in Canada define "promoter" and require, in certain circumstances, a promoter of an issuer to assume statutory liability for prospectus disclosure. Asset-backed securities are commonly issued by a "special purpose" entity, established for the sole purpose of facilitating one or more asset-backed offerings. The securities regulatory authorities are of the opinion that special purpose issuers of asset-backed securities will have a promoter because someone will typically have taken the initiative in founding, organizing or substantially reorganizing the business of the issuer. We interpret the business of such issuers to include the business of issuing asset-backed securities and entering into the supporting contractual arrangements.

For example, in the context of a securitization program under which assets of one or more related entities are financed by issuing asset-backed securities (sometimes called a "single seller program"), we will usually consider an entity transferring or originating a significant portion of such assets, an entity initially agreeing to provide on-going collection, administrative or similar services to the issuer, and the entity for whose primary economic benefit the asset-backed program is established, to be a promoter of the issuer if it took the initiative in founding, organizing or substantially reorganizing the business of the issuer. Persons or companies contracting with the issuer to provide credit

enhancements, liquidity facilities or hedging arrangements or to be a replacement servicer of assets, and investors who acquire subordinated investments issued by the issuer, will not typically be promoters of the issuer solely by virtue of such involvement.

In the context of a securitization program established to finance assets acquired from numerous unrelated entities (sometimes called a “multi-seller program”), we will usually consider the person or company (frequently a bank or an investment bank) establishing and administering the program in consideration for the payment of an on-going fee, for example, to be a promoter of the issuer if it took the initiative in founding, organizing or substantially reorganizing the business of the issuer. Individual sellers of the assets into a multi-seller program are not ordinarily considered to be promoters of the issuer, despite the economic benefits accruing to such persons or companies from utilizing the program.

As with single-seller programs, other persons or companies contracting with the issuer to provide services or other benefits to the issuer of the asset-backed securities will not typically be promoters of the issuer solely by virtue of such involvement.

Where an entity is determined to be a promoter of an issuer at the time of the issuer’s initial public offering, the entity continues to be a promoter of the issuer, in the case of subsequent offerings by the issuer, if the entity’s relationship to the issuer and involvement in the offerings remains substantially the same. Accordingly, where an entity establishes a special purpose issuer to act as a dedicated securitization vehicle, and the prospectus filed in connection with a subsequent offering continues to include disclosure relating to the entity’s securitization program, we will expect the entity to certify the prospectus as a promoter.

While we have included this discussion of promoters as guidance to issuers of asset-backed securities, the question of whether a particular person or company is a “promoter” of an issuer is ultimately a question of fact to be determined in light of the particular circumstances.

Special warrants

Distributions to resale market

- 2.8(1)** In certain special warrant transactions, the dealer involved in the private placement may itself have purchased special warrants from the issuer on an exempt basis, notwithstanding that it has not disclosed any commitment to do so.

Provincial and territorial securities legislation generally requires that a dealer not acting as agent of the purchaser who receives an order or subscription for a security offered in a distribution to which a prospectus requirement applies to deliver to the purchaser the latest prospectus. Where a dealer acquires special warrants, with a view to exercising them and reselling the underlying securities, such a resale would be a distribution that must be made by way of a prospectus or pursuant to an exemption from the prospectus requirements.

It is a requirement, therefore, that any dealer who has acquired special warrants with a view to their distribution or the distribution of the underlying securities deliver during the period of distribution a prospectus to its purchasers (where the sale to such purchasers is made otherwise than pursuant to a prospectus exemption) in order that such purchasers have the benefit of all rights and remedies provided to prospectus purchasers under provincial and territorial securities legislation.

In connection with their prospectus review procedure, our staff may request confidential disclosure by the issuer of all beneficial purchasers of special warrants.

Underwriters' certificate and due diligence

- (2) While the special warrant transaction is, in form, two separate distributions, the first an exempt private placement distribution and the second a conversion of the warrants under a prospectus, such a transaction is, in substance, a single distribution under a prospectus of the underlying securities to the warrant investors.

The registrants involved in placing the special warrants are, therefore, also involved in prospectus distribution and such registrants in a contractual relationship with the issuer must include their certificate in the prospectus under subsection 5.9(1) of the Instrument [*Certificate of underwriter*] or securities legislation. We note that the resulting incentive to such registrants to participate in the due diligence investigation of the issuer is also beneficial to the secondary market.

The obligation to deliver an underwriter's certificate as described in this Policy should not be construed as an extension of the scope of distributions any registrant is authorized to make under applicable provincial and territorial securities legislation.

Offerings of convertible or exchangeable securities

- 2.9 Investor protection concerns may arise where the distribution of a convertible or exchangeable security is qualified under a prospectus and the subsequent exercise of the convertible or exchangeable security is made on a prospectus-exempt basis. Examples of such offerings include issuing instalment receipts, subscription receipts and stand-alone warrants or long-term warrants. Reference to stand-alone warrants or long-term warrants is intended to refer to warrants and other forms of exchangeable or convertible securities that are offered under a prospectus as a separate and independent form of investment. This would not apply to an offering of warrants where the warrants may reasonably be regarded as incidental to the offering as a whole.

The investor protection concern arises because the conversion or exchange feature of the security may operate to limit the remedies available to an investor for incomplete or inaccurate disclosure in a prospectus. For example, an investor may pay part of the purchase price at the time of the purchase of the convertible security and part of the purchase price at the time of the conversion. To the extent that an investor makes a

further “investment decision” at the time of conversion, the investor should continue to enjoy the benefits of statutory rights or comparable contractual rights in relation to this further investment. In such circumstances, issuers should ensure that:

- (a) the distribution of both the convertible or exchangeable securities and the underlying securities will be qualified by the prospectus; or
- (b) the statutory rights that an investor would have if he or she purchased the underlying security offered under a prospectus are otherwise provided to the investor by way of a contractual right of action.

PART 3: Filing and Receipting Requirements

Extension of 90-day period for issuance of final receipt

- 3.1** The effect of subsection 2.3(1) of the Instrument [*General requirements*] is to ensure that issues are not being marketed by means of preliminary prospectuses containing outdated information. Part 19 of the Instrument [*Exemption*] gives a securities regulatory authority or regulator discretion to exempt the issuer from compliance with any provision of subsection 2.3(1) of the Instrument [*General requirements*] if the applicable securities regulatory authority or regulator is satisfied that there is sufficient justification for so doing.

Confidential material change reports

- 3.2** An issuer cannot meet the standard of “full, true and plain” disclosure, while a material change report has been filed but remains undisclosed publicly. Accordingly, an issuer who has filed a confidential material change report may not file a prospectus until the material change that is the subject of the report is generally disclosed, and an issuer may not file a confidential material change report during a distribution and continue with the distribution. If circumstances arise that cause an issuer to file a confidential material change report during the distribution period of securities under a prospectus, the issuer should cease all activities related to the distribution until
- (a) the material change is generally disclosed and an amendment to the prospectus is filed, if required; or
 - (b) the decision to implement the material change has been rejected and the issuer has so notified the regulator of each jurisdiction where the confidential material change report was filed.

Supporting documents

- 3.3** Material that is filed in a jurisdiction will be made available for public inspection in that jurisdiction, subject to the provisions of securities legislation in the local jurisdiction

regarding confidentiality of filed material. Material that is delivered to a regulator, but not filed, is not generally required under securities legislation to be made available for public inspection.

Consents of lawyers

- 3.4** The names of lawyers or law firms frequently appear in prospectuses in two ways. First, the underwriters, the issuer and selling security holders may name the lawyers upon whose advice they are relying. Second, the opinions of counsel that the securities may be eligible for investment under certain statutes may be expressed or opinions on the tax consequences of the investment may be given.

In the first case, we are of the view that the lawyer is not, in the words of subsection 10.1(1) of the Instrument [*Consents of experts*], named as having prepared or certified a part of the prospectus and is not named as having prepared or certified a report, valuation, statement or opinion referred to in the prospectus. Accordingly, this subsection does not require the written consent of the lawyer. In the second case, because the opinions or similar reports are prepared for the purpose of inclusion in the prospectus, we are of the view that this subsection applies and requires the consent.

Documents affecting the rights of security holders

- 3.5(1)** Subclause 9.2(a)(ii)(A) of the Instrument [*Documents Affecting the Rights of Security Holders*] requires the issuer to file copies of its articles of incorporation, amalgamation, continuation or any other constating or establishing documents, unless the document is a statutory or regulatory instrument. This carve out for a statutory or regulatory instrument is very narrow. For example, the carve out would apply to Schedule I or Schedule II banks under the Bank Act, whose charter is the Bank Act. It would not apply when only the form of the constating document is prescribed under statute or regulation, such as articles under the Canada Business Corporations Act.
- (2)** Subclause 9.2(a)(ii)(E) of the Instrument [*Documents Affecting the Rights of Security Holders*] requires an issuer to file copies of contracts that can reasonably be regarded as materially affecting the rights of an issuer's security holders generally. A warrant indenture is one example of this type of contract. We would expect that contracts entered into in the ordinary course of business would not usually affect the rights of security holders generally, and so would not be required to be filed under this subclause.

Material contracts

Contracts entered into in the ordinary course of business

- 3.6(1)** Under subsection 9.1(1) of the Instrument [*Application and interpretation*], the filing requirement only applies to material contracts: There is no requirement to file a contract if it is not material.

Subparagraph 9.2(a)(iii) of the Instrument [*Material Contracts*] requires the issuer to file with a preliminary prospectus any material contract, other than a contract entered into in the ordinary course of business. Whether a contract was entered into in the ordinary course of business is a question of fact. It must be considered in the context of the issuer's business and industry.

Paragraphs 9.1(1)(a) through (e) of the Instrument [*Application and interpretation*] describe specific types of contracts that are not considered to be contracts entered into in the ordinary course of business. The exemption from the requirement to file material contracts for contracts entered into in the ordinary course of business is not available for any contract of the type described in these paragraphs. Accordingly, such a material contract must be filed under subparagraph 9.2(a)(iii) of the Instrument [*Material Contracts*].

Under paragraph 9.1(1)(f) of the Instrument [*Application and interpretation*], any contract on which the issuer's business is substantially dependent is also considered not to be a contract entered into in the ordinary course of business. These contracts include contracts not otherwise described in paragraphs 9.1(1)(a) through (e) of the Instrument [*Application and interpretation*].

Management or administration agreements

- (2) Under paragraph 9.1(1)(e) of the Instrument [*Application and interpretation*] management or administration agreements are not considered to be contracts entered into in the ordinary course of business. Management or administration agreements include any management contract or any compensatory plan, contract or arrangement including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing in which any director or any of the named executive officers of the company participates, other than the following:
- (a) ordinary purchase and sales agency agreements;
 - (b) agreements with managers of stores in a chain organization or similar organization;
 - (c) contracts providing for labour or salesperson's bonuses or payments to a class of security holders, as such;
 - (d) any compensatory plan, contract or arrangement which pursuant to its terms is available to employees, officers or directors generally and which in operation provides for the same method of allocation of benefits between management and non-management participants.

Omission or redaction

(3) Subparagraph 9.2(a)(iii) [*Material Contracts*] of the Instrument permits certain provisions of a material contract that is required to be filed to be omitted or marked so as to be unreadable subject to three conditions.

(a) An executive officer of the issuer has reasonable grounds to believe that disclosure of any omitted or redacted provisions would be seriously prejudicial to the interests of the issuer or would violate confidentiality provisions.

A boilerplate blanket confidentiality provision covering the entire contract would not satisfy this condition.

(b) An executive officer of the issuer has reasonable grounds to believe that any omitted or redacted provisions do not contain information relating to the issuer or its securities that would be necessary to understanding the contract.

Provisions that are necessary to understanding the contract include provisions disclosing the information listed in subsection 9.1(2) of the Instrument [*Application and interpretation*].

(c) The issuer must include a description of the type of information that has been omitted or redacted in the copy of the material contract filed by the issuer.

A brief one-sentence description immediately following the omitted or redacted information would be sufficient in most cases.

Response letters and marked up copies

3.7 In response to a comment letter for a preliminary prospectus, an issuer should include draft wording for the changes it proposes to make to a prospectus to address staff's comments. When the comments of the various securities regulators have been resolved, a draft of the prospectus with all proposed changes from the preliminary prospectus should be clearly marked and submitted as far as possible in advance of the filing of final material. These procedures may prevent delay in the issuing of a receipt for the prospectus, particularly if the number or extent of changes are substantial.

Undertaking in respect of credit supporter disclosure, including financial statements

3.8 Under subparagraph 9.3(a)(x) of the Instrument [*Required documents for filing a final long form prospectus*], an issuer must file an undertaking, in a form acceptable to the regulators, to file the periodic and timely disclosure of a credit supporter. For credit supporters that are reporting issuers with a current AIF (as defined in NI 44-101), the undertaking will likely be to continue to file the documents it is required to file under NI 51-102. For credit supporters registered under the 1934 Act, the undertaking will likely

be to file the types of documents that would be required to be incorporated by reference into a Form S-3 or Form F-3 registration statement. For other credit supporters, the types of documents to be filed pursuant to the undertaking will be determined through discussions with the regulators on a case-by-case basis.

If an issuer, a parent credit supporter, and a subsidiary credit supporter satisfy the conditions of the exemption in 34.3 of Form 41-101F1 [*Issuer is wholly-owned subsidiary of, and one or more subsidiary credit supporters controlled by, parent credit supporter*]. For continuous disclosure filings, an undertaking may provide that the subsidiary credit supporter will file periodic and timely disclosure if the issuer and the credit supporters no longer satisfy the conditions of the exemption in this item.

If an issuer and a credit supporter satisfy the conditions the exemption in 34.4 of Form 41-101F1 [*One or more credit supporters controlled by issuer*]. For continuous disclosure filings, an undertaking may provide that the credit supporter will file periodic and timely disclosure if the issuer and the credit supporter no longer satisfy the conditions of the exemption in this item.

For the purposes of such an undertaking, references to disclosure included in the prospectus should be replaced with references to the issuer or parent credit supporter's continuous disclosure filings. For example, if an issuer and subsidiary credit supporter(s) plan to continue to satisfy the conditions of the exemption in item 34.4 of Form 41-101F1 [*One or more credit supporters controlled by issuer*] for continuous disclosure filings, the undertaking should provide that the issuer will file with its consolidated financial statements,

- (a) a statement that the financial results of the credit supporter(s) are included in the consolidated financial results of the issuer if
 - (i) the issuer continues to have limited independent operations, and
 - (ii) the impact of any subsidiaries of the issuer on a combined basis, excluding the credit supporter(s) but including any subsidiaries of the credit supporter(s) that are not themselves credit supporters, on the consolidated financial statements of the issuer continues to be minor, or
- (b) for any periods covered by issuer's consolidated financial statements, consolidating summary financial information for the issuer presented in the format set out in subparagraph 34.4(e)(ii) of Form 41-101F1 [*One or more credit supporters controlled by issuer*].

Disclosure of investigations or proceedings

- 3.9** Securities legislation provides that, subject to certain conditions, the securities regulatory authorities or the regulator must issue a receipt for a prospectus unless it appears that it

would not be in the public interest to do so. The securities regulatory authority or the regulator will consider whether there are ongoing or recently concluded investigation or proceeding relating to

- an issuer,
- a promoter,
- a substantial beneficiary of the offering,
- a principal security holder, director or officer of the issuer, or
- an underwriter or other person or company involved in a proposed distribution

when it determines if it should refuse to issue a receipt for the prospectus. That decision will be made on a case-by-case basis and will depend upon the facts known at the time.

If the facts and circumstances do not warrant the denial of a receipt for a prospectus, securities legislation nonetheless imposes an obligation to provide full, true and plain disclosure of all material facts relating to the securities offered by the prospectus. Disclosure of an ongoing or recently concluded investigation or proceeding relating to a person or company involved in a proposed distribution may be necessary to meet this standard. The circumstances in which disclosure will be required and the nature and extent of the disclosure will also be determined on a case-by-case basis. In making this determination, all relevant facts, including the allegations that gave rise to the investigation or proceeding, the status of the investigation or proceeding, the seriousness of the alleged breaches that are the subject of the investigation or proceeding and the degree of involvement in the proposed distribution by the person or company under investigation will be considered.

Amendments

3.10(1) Except in Ontario, subsection 6.5(1) of the Instrument [*Amendment to a preliminary prospectus*] and in Ontario, securities legislation, provides that if a material adverse change occurs after a receipt for a preliminary prospectus is obtained, an amendment to the preliminary prospectus must be filed as soon as practicable, but in any event within 10 days after the change occurs. If a preliminary prospectus indicates the number or value of the securities to be distributed under the prospectus, an increase in the number or value is, absent unusual circumstances, unlikely to constitute a material adverse change requiring an amendment to the preliminary prospectus.

(2) If, after filing a preliminary prospectus, an issuer decides to attach or add to the securities offered under a prospectus a right to convert into, or a warrant to acquire, the security of the issuer being offered under the preliminary prospectus, the attachment or addition of the conversion feature or warrant is, absent unusual circumstances, unlikely to constitute a material adverse change requiring an amendment to the preliminary prospectus.

(3) Securities legislation provides that no person or company shall distribute securities, unless a preliminary prospectus and a prospectus have been filed and receipts have been

issued by the securities regulatory authority or regulator. If an issuer intends to add a new class of securities to the distribution under the prospectus after the preliminary prospectus has been filed and receipted, we interpret this requirement to mean an issuer must file an amended and restated preliminary prospectus.

Similarly, if an issuer wishes to add a new class of securities to a prospectus before the distribution under that prospectus is completed the issuer must file a preliminary prospectus for that class of securities and an amended and restated prospectus and obtain receipts for both the preliminary prospectus and the amended prospectus. Alternatively the issuer may file a separate preliminary prospectus and prospectus for the new class of securities. We interpret this requirement to also apply to mutual funds. If a mutual fund adds a new class or series of securities to a prospectus that is referable to a new separate portfolio of assets, a preliminary prospectus must be filed. However, if the new class or series of securities is referable to an existing portfolio of assets, the new class or series may be added by way of amendment.

- (4) Any changes to the terms or conditions of the security being distributed, such as the deletion of a conversion feature, may constitute a material adverse change requiring an amendment to the preliminary prospectus.
- (5) Under provincial and territorial securities legislation, a regulator must not issue a receipt for a prospectus in certain circumstances, including if the regulator considers it prejudicial to the public interest to do so. The purpose of subsection 6.6(3) of the Instrument [*Amendment to a final prospectus*] is to clarify that these receipt refusal grounds apply to an amendment to a final prospectus or a final short form prospectus in certain jurisdictions.

Reduced price distributions

- 3.11 Subsection 7.2(3) of the Instrument [*Non-fixed price offerings and reduction of offering price*] permits an issuer to reduce the offering price of the securities being distributed without filing an amendment to the prospectus if certain conditions are satisfied. Satisfying the conditions in this subsection means the underwriter's compensation should decrease by the amount that the aggregate price paid by purchasers for the securities is less than the gross proceeds paid by the underwriter to the issuer or selling security holder. Item 20.8 of Form 41-101F1 [*Reduced price distributions*] requires disclosure of this fact.

Registration requirements

- 3.12 Issuers filing a prospectus and other market participants are reminded to ensure that members of underwriting syndicates are in compliance with registration requirements under provincial and territorial securities legislation in each jurisdiction in which syndicate members are participating in the distribution of securities under the prospectus.

Failure to comply with the registration requirements could cause the regulator to refuse to issue a receipt for the prospectus.

PART 4: General Content of Long Form Prospectus

Style of long form prospectus

4.1 Provincial and territorial securities legislation requires that a long form prospectus contain “full, true and plain” disclosure. Issuers should apply plain language principles when they prepare a long form prospectus including:

- using short sentences;
- using definite everyday language;
- using the active voice;
- avoiding superfluous words;
- organizing the document into clear, concise sections, paragraphs and sentences;
- avoiding jargon;
- using personal pronouns to speak directly to the reader;
- avoiding reliance on glossaries and defined terms unless it facilitates understanding of the disclosure;
- avoiding vague boilerplate wording;
- avoiding abstract terms by using more concrete terms or examples;
- avoiding multiple negatives;
- using technical terms only when necessary and explaining those terms;
- using charts, tables and examples where it makes disclosure easier to understand.

Question and answer and bullet point formats are consistent with the disclosure requirements of the Instrument.

Cover page disclosure for non-fixed price distributions

4.2 Item 1.7 of Form 41-101F1 [*Pricing range*] states that, if the offering price or the number of securities being distributed has not been determined at the date of the preliminary long form prospectus, the issuer must disclose a *bona fide* estimate of the range in which the offering price or the number of securities being distributed is expected to be set. A difference between this *bona fide* estimate and the actual offering price or number of securities being distributed is not generally a material adverse change for which the issuer must file an amended preliminary long form prospectus.

Issuers with negative operating cash flow

4.3 Subsection 6.3(1) of Form 41-101F1 [*Principal purposes – generally*] requires disclosure of each of the principal purposes for which the issuer will use the net proceeds. If an issuer has negative operating cash flow in its most recently completed financial year for which financial statements have been included in the long form prospectus, the issuer

should prominently disclose that fact in the use of proceeds section of the long form prospectus. The issuer should also disclose whether, and if so, to what extent, the issuer will use the proceeds of the distribution to fund any anticipated negative operating cash flow in future periods. An issuer should disclose negative operating cash flow as a risk factor under subsection 21.1(1) of Form 41-101F1 [*Risk factors*].

MD&A

Additional information for venture issuers without significant revenue

4.4(1) Item 8.6 of Form 41-101F1 [*Additional disclosure for venture issuers or IPO venture issuers without significant revenue*] requires certain venture issuers and IPO venture issuers to provide in their annual or interim MD&A or MD&A supplement (unless the information is included in their annual and interim financial statements), a breakdown of material costs whether capitalized, deferred or expensed. A component of cost is generally considered to be a material component if it exceeds the greater of

- (a) 20% of the total amount of the class, and
- (b) \$25,000.

Disclosure of outstanding security data

(2) Item 8.4 of Form 41-101F1 [*Disclosure of outstanding security data*] requires disclosure of information relating to the outstanding securities of the issuer as of the latest practicable date. The “latest practicable date” should be, as close as possible, to the date of the long form prospectus. Disclosing the number of securities outstanding at the most recently completed financial year is generally not sufficient to meet this requirement.

Distribution of asset-backed securities

4.5 Item 10.3 of Form 41-101F1 [*Asset-backed securities*] specifies additional disclosure that applies to distributions of asset-backed securities. Disclosure for a special purpose issuer of asset-backed securities will generally explain

- the nature, performance and servicing of the underlying pool of financial assets,
- the structure of the securities and dedicated cash flows, and
- any third party or internal support arrangements established to protect holders of the asset-backed securities from losses associated with non-performance of the financial assets or disruptions in payment.

The nature and extent of required disclosure may vary depending on the type and attributes of the underlying pool and the contractual arrangements through which holders of the asset-backed securities take their interest in such assets.

An issuer of asset-backed securities should consider these factors when preparing its long form prospectus:

- (a) The extent of disclosure respecting an issuer will depend on the extent of the issuer's on-going involvement in the conversion of the assets comprising the pool to cash and the distribution of cash to security holders; this involvement may, in turn, vary dramatically depending on the type, quality and attributes of the assets comprising the pool and on the overall structure of the transaction.
- (b) Disclosure about the business and affairs of the issuer should relate to the financial assets underlying the asset-backed securities.
- (c) Disclosure about the originator or the seller of the underlying financial assets will often be relevant to investors in the asset-backed securities particularly where the originator or seller has an on-going involvement with the financial assets comprising the pool. For example, if asset-backed securities are serviced with the cash flows from a revolving pool of receivables, an evaluation of the nature and reliability of the future origination or the future sales of underlying assets by the seller to or through the issuer may be a critical aspect of an investor's investment decision.

To address this, the focus of disclosure respecting an originator or seller of the underlying financial assets should deal with whether there are current circumstances that indicate that the originator or seller will not generate adequate assets in the future to avoid an early liquidation of the pool and, correspondingly, an early payment of the asset-backed securities. Summary historical financial information respecting the originator or seller will ordinarily be adequate to satisfy the disclosure requirements applicable to the originator or seller in circumstances where the originator or seller has an ongoing relationship with the assets comprising the pool.

Subparagraph 10.3(d)(i) of Form 41-101F1 [*Asset-backed securities*] requires issuers of asset-backed securities to describe any person or company who originated, sold or deposited a material portion of the financial assets comprising the pool, irrespective of whether the person or company has an on-going relationship with the assets comprising the pool. The securities regulatory authorities consider 33 1/3 % of the dollar value of the financial assets comprising the pool to be a material portion in this context.

Underlying securities

- 4.6** If the securities being distributed are convertible into or exchangeable for other securities, or are a derivative of, or otherwise linked to, other securities, a description of the material attributes of the underlying securities will generally be necessary to meet the requirements of securities legislation that a long form prospectus contain full, true and plain disclosure of all material facts concerning the securities being distributed.

Restricted securities

- 4.7** Item 10.6 of Form 41-101F1 [*Restricted securities*] specifies additional disclosure for restricted securities, including a detailed description of any significant provisions under applicable corporate and securities law that do not apply to the holders of the restricted securities but do apply to the holders of another class of equity securities. An example of such provisions would be rights under takeover bids.

Audit committees

- 4.8** With respect to the condition under subsection 19.1(3) of Form 41-101F1 [*Audit committees*], an issuer should consider whether it will become a reporting issuer in Ontario upon obtaining a receipt for its final long form prospectus. Since Ontario has not adopted MI 11-101, an issuer that becomes a reporting issuer in Ontario upon obtaining a receipt for its final long form prospectus will not be eligible to rely on the exemption contained in section 3.2 of MI 11-101 [*Continuous Disclosure Exemptions*].

Corporate governance

- 4.9** For the purpose of the requirements in subsections 19.2(1) or (2) of Form 41-101F1 [*Corporate governance*], an issuer may be eligible to apply the British Columbia test for independence described in subsection 1.2(2) of NI 58-101 [*Meaning of Independence*]. Under subsection 19.2(3), an issuer that will become a reporting issuer in a jurisdiction other than British Columbia upon obtaining a receipt for its final long form prospectus may not apply the British Columbia test for independence.

Risk factors

- 4.10** Item 21 of Form 41-101F1 [*Risk Factors*] requires an issuer to include risk factor disclosure in the long form prospectus. Issuers should not deemphasize risk factors by including excessive caveats or conditions.

Credit supporter disclosure

- 4.11** A long form prospectus must include, under Item 33 of Form 41-101F1 [*Credit Supporter Disclosure, Including Financial Statements*], disclosure about any credit supporters that have provided a guarantee or alternative credit support for all or substantially all of the payments to be made under the securities being distributed. Disclosure about a credit supporter may be required even if the credit supporter has not provided full and unconditional credit support.

Exemptions for certain issues of guaranteed securities

- 4.12** Requiring disclosure about the issuer and any applicable credit supporters in a long form prospectus may result in unnecessary disclosure in some instances. Item 34 of Form 41-

101F1 [*Exemptions for Certain Issues of Guaranteed Securities*] provides exemptions from the requirement to include both issuer and credit supporter disclosure where such disclosure is not necessary to ensure that the long form prospectus includes full, true and plain disclosure of all material facts concerning the securities to be distributed.

These exemptions are based on the principle that, in these instances, investors will generally require issuer disclosure or credit supporter disclosure to make an informed investment decision. These exemptions are not intended to be comprehensive and issuers may apply for exemptive relief from the requirement to provide both issuer and credit supporter disclosure, as appropriate.

PART 5: Content of Long Form Prospectus (Financial Statements)

Exemptions from financial disclosure requirements

- 5.1** Request for exemptions from financial disclosure should be made in accordance with Part 19 of the Instrument [*Exemption*], which requires the issuer to make submissions in writing along with the reasons for the request. Written submissions should be filed at the time the preliminary long form prospectus is filed, and include any proposed alternative disclosure. If the application involves a novel and substantive issue or raises a novel public policy concern, we encourage issuers to use the pre-filing procedures under NP 43-201. Issuers that are not filing their prospectuses under MRRS should also follow the principles outlined and procedures set out in NP 43-201.

General financial statement requirements

- 5.2** If an issuer has filed annual or interim financial statements for periods that are more recent than those the issuer must otherwise include in a long form prospectus before it files the prospectus, sections 32.6 [*Additional financial statements or financial information filed or released*] and 35.8 [*Additional financial statements or financial information of the business filed or released*] of Form 41-101F1 require the issuer to include those financial statements in the long form prospectus. Issuers should update the disclosure in the prospectus accordingly in order to satisfy the requirement that the long form prospectus contain full, true and plain disclosure of all material facts relating to the securities being distributed. However, if information derived from more recent annual or interim financial statements is released to the public by the issuer before the financial statements are filed, the prospectus should include the information included in the news release or public communication. There is no specific requirement in the Instrument to otherwise update the prospectus, or *pro forma* financial statements to reflect the more recent information.

We are of the view that the directors of an issuer should endeavor to consider and approve financial statements in a timely manner and should not delay the approval and filing of the statements for the purpose of avoiding their inclusion in a long form

prospectus. Once the financial statements have been approved, they should be filed as soon as possible.

Interpretation of issuer – primary business

- 5.3(1)** An issuer is required to provide historical financial statements under Item 32 of Form 41-101F1 [*Financial Statement Disclosure for Issuers*] for a business or related businesses that a reasonable investor would regard as the primary business of the issuer. Examples of when a reasonable investor would regard the primary business of the issuer to be the acquired business or related businesses are when the acquisition(s) was
- (a) a reverse takeover,
 - (b) a qualifying transaction for a Capital Pool Company, or
 - (c) an acquisition that is a significant acquisition at over the 100% level under subsection 35.1(4) of Form 41-101F1 [*Application and definitions*].
- (2) The periods for which the issuer must provide financial statements under Item 32 of Form 41-101F1 [*Financial Statement Disclosure for Issuers*] for acquired business or businesses that are regarded as the primary business of the issuer would be determined in reference to sections 32.2 [*Annual financial statements*] and 32.3 [*Interim financial statements*] of Form 41-101F1, and with the same exceptions, where applicable, set out in subsections 32.4 (a) to (e) of Form 41-101F1 [*Exceptions to financial statement requirements*].

Interpretation of issuer – predecessor entity

- 5.4(1)** An issuer is required to provide historical financial statements under Item 32 of the Form 41-101F1 [*Financial Statement Disclosure for Issuers*] for any predecessor entity. This includes financial statements of acquired businesses that are unrelated and not otherwise individually significant, but together form the basis of the business of the issuer.
- (2) If an issuer determines the financial statements of certain acquired business referred to in subsection 5.4(1) [*Interpretation of issuer – primary business*] are not relevant, the issuer should utilize the pre-filing procedures in NP 43-201 to determine whether it would require an exemption from the requirement to include these financial statements.

Sufficiency of financial history included in a long form prospectus

- 5.5(1)** Item 32 of Form 41-101F1 [*Financial Statement Disclosure for the Issuers*] prescribes the issuer financial statements that must be included in a long form prospectus. We recognize that an issuer, at the time of filing a long form prospectus, may have been in existence for less than one year. We expect that in many situations the limited historical financial statement information that is available for such an issuer may be adequately

supplemented by other relevant information disclosed in the long form prospectus. However, if the issuer cannot provide financial statements for a period of at least 12 months and the long form prospectus does not otherwise contain information concerning the business conducted or to be conducted by the issuer that is sufficient to enable an investor to make an informed investment decision, a securities regulatory authority or regulator may consider this a key factor when deciding whether it should refuse to issue a receipt for the long form prospectus.

- (2) A reference to a prospectus includes a preliminary prospectus. Consequently, the time references in sections 32.2 [*Annual financial statements*], 32.3 [*Interim financial statements*], 35.5 [*Recently completed acquisitions*] and 35.6 [*Probable acquisitions*] of Form 41-101F1 should be considered as at the date of the preliminary long form prospectus and again at the date of the final long form prospectus for both the issuer and any business acquired or to be acquired. Depending on the period of time between the dates of the preliminary and final long form prospectuses, an issuer may have to include more recent financial statements.

Applications for exemption from requirement to include financial statements of the issuer

- 5.6(1) We believe investors should receive in a long form prospectus for an IPO no less than 3 years of audited historical financial statements and that relief from the financial statements requirements should be granted only in unusual circumstances and generally not related solely to cost or the time involved in preparing and auditing the financial statements.
- (2) In view of our reluctance to grant exemptions from the requirement to include audited historical financial statements, issuers seeking relief should consult with staff on a pre-filing basis.
- (3) Considerations relevant to granting an exemption from the requirement to include financial statements, generally for the years immediately preceding the issuer's most recently completed financial year, may include the following:

The issuer's historical accounting records have been destroyed and cannot be reconstructed.

- (a) In this case, as a condition of granting the exemption, the issuer may be requested by a securities regulatory authority or regulator to
 - (i) represent in writing to the securities regulatory authority or regulator, no later than the time the preliminary long form prospectus is filed, that the issuer made every reasonable effort to obtain copies of, or reconstruct, the historical accounting records necessary to prepare and audit the financial statements, but such efforts were unsuccessful, and

- (ii) disclose in the long form prospectus the fact that the historical accounting records have been destroyed and cannot be reconstructed.

The issuer has emerged from bankruptcy and current management is denied access to the historical accounting records necessary to audit the financial statements.

- (b) In this case, as a condition of granting the exemption, the issuer may be requested by a securities regulatory authority or regulator to
 - (i) represent in writing to the securities regulatory authority or regulator, no later than the time the preliminary long form prospectus is filed, that the issuer has made every reasonable effort to obtain access to, or copies of, the historical accounting records necessary to audit the financial statements but that such efforts were unsuccessful, and
 - (ii) disclose in the long form prospectus the fact that the issuer has emerged from bankruptcy and current management is denied access to the historical accounting records.

The issuer has undergone a fundamental change in the nature of its business or operations affecting a majority of its operations and all, or substantially all, of the executive officers and directors of the company have changed.

- (c) The evolution of a business or progression along a development cycle will not be considered to be a fundamental change in an issuer's business or operations. Relief from the requirement to include financial statements of the issuer required by the Instrument for the year in which the change occurred, or for the most recently completed financial year if the change in operations occurred during the issuer's current financial year, generally will not be granted.
- (4) If, in unusual circumstances, relief from Part 4 of the Instrument [*Financial Statements and Related Documents*] is granted, additional financial information will likely be requested to allow a reader to gain a similar understanding of the entity's financial position and prospects as one would gain from the information required in Part 4 of the Instrument [*Financial Statements and Related Documents*].

Examples of acceptable additional information include audited interim financial statements, audited divisional statements of income or cash flows, financial statements accompanied by an auditor's report containing a reservation of opinion, or audited statements of net operating income.

Additional information

- 5.7 An issuer may find it necessary, in order to meet the requirement for full, true and plain disclosure contained in securities legislation, to include certain additional information in

its long form prospectus, such as separate financial statements of a subsidiary of the issuer in a long form prospectus, even if the financial statements of the subsidiary are included in the consolidated financial statements of the issuer. For example, separate financial statements of a subsidiary may be necessary to help explain the risk profile and nature of the operations of the subsidiary.

Audit and review of financial statements included or incorporated by reference into a long form prospectus

- 5.8(1)** Part 4 of the Instrument [*Financial Statements and Related Documents*] requires that all financial statements included in a long form prospectus be audited, except financial statements specifically exempted in the Instrument. This requirement extends to financial statements of subsidiaries and other entities even if the financial statements are not required to be included in the long form prospectus but have been included at the discretion of the issuer.
- (2)** NI 52-107 requires that financial statements, other than acquisition statements, that are required to be audited by securities legislation, such as this Instrument, be accompanied by an auditor's report that does not contain a reservation if they were audited in accordance with Canadian GAAS, or contain an unqualified opinion if they were audited in accordance with U.S. GAAS. This requirement applies to all financial statements included in the long form prospectus under Item 32 of Form 41-101F1 [*Financial Statement Disclosure of Issuers*], including financial statements from entities acquired or to be acquired that are primary business or the predecessor of the issuer. For greater clarity, subsection 6.2(6) of NI 52-107 [*Acceptable Auditing Standards for Acquisition Statements*] only applies to financial statements included in the long form prospectus pursuant to Item 35 of Form 41-101F1 [*Significant Acquisitions*].

Financial statement disclosure for significant acquisitions

Applicable principles in NI 51-102

- 5.9(1)** Generally, it is intended that the disclosure requirements set out in Item 35 of Form 41-101F1 [*Significant Acquisitions*] for significant acquisitions follow the requirements in Part 8 of NI 51-102 [*Business Acquisition Report*]. Unless otherwise specified, the principles set out in Part 8 of the companion policy to NI 51-102 [*Business Acquisition Report*] apply to disclosure in a long form prospectus except references to
- a “reporting issuer” should be read as “issuer”,
 - the “Policy” should be read as the “Companion Policy to NI 51-102”,
 - the “Instrument” should be read as “NI 51-102”, and
 - the “filing of a business acquisition report”, or the “obligation to file a business acquisition report” should be read as “providing the business acquisition report disclosure required under Item 35 [*Significant Acquisitions*] of NI 41-101”.

Completed significant acquisitions and the obligation to provide business acquisition report level disclosure for a non-reporting issuer.

- (2) For an issuer that is not a reporting issuer immediately before filing the long form prospectus (a “non-reporting issuer”), the long form prospectus disclosure requirements for a significant acquisition are generally intended to mirror those for reporting issuers subject to Part 8 of NI 51-102 [*Business Acquisition Report*]. To determine whether an acquisition is significant, non-reporting issuers would first look to the guidance under section 8.3 of NI 51-102 [*Determination of Significance*]. The initial test for significance would be calculated based on the financial statements of the issuer and acquired business or related businesses for the most recently completed financial year before the date of acquisition.

To recognize the possible growth of a non-reporting issuer between the date of its most recently completed year end and the date of the acquisition and the corresponding potential decline in significance of the acquisition to the issuer, issuers should refer to the guidance in paragraph 35.1(4)(b) of Form 41-101F1 [*Application and definitions*] to perform the optional test. The applicable time period for this optional test is derived from the most recent interim financial statements of the issuer and the acquired business or related businesses before the date of the long form prospectus.

The significance thresholds for IPO venture issuers are identical to the significance thresholds for venture issuers.

The timing of the disclosure requirements set out in subsection 35.3(2) of Form 41-101F1 [*Completed acquisitions for which issuer has not filed business acquisition report because issuer was not reporting issuer on date of acquisition*] are based on the principles under section 8.2 of NI 51-102 [*Obligation to File a Business Acquisition Report*]. For reporting issuers, subsection 8.2(2) of NI 51-102 [*Obligation to File a Business Acquisition Report*] sets out the timing of disclosures for significant acquisitions where the acquisition occurs within 45 days of the year end of the acquired business. However, for non-reporting issuers, paragraph 35.3(1)(d) [*Completed acquisitions for which issuer has not filed business acquisition report because issuer was not reporting issuer on date of acquisition*] imposes a disclosure requirement for all significant acquisitions completed more than 90 days before the date of the long form prospectus. This differs from the business acquisition report filing deadline under paragraph 8.2(2)(a) of NI 51-102 [*Obligation to File a Business Acquisition Report*] for reporting issuers where the business acquisition report deadline for any significant acquisition where the acquisition occurs within 45 days of the year end of the acquired business is at least 90 days from the date of the acquisition.

Probable acquisitions

- (3) A probable acquisition is defined as a proposed acquisition that “has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being

completed is high”. Our interpretation of the phrase “where a reasonable person would believe that the likelihood of the acquisition being completed is high” is consistent with the concept of a likely contingency in CICA Handbook section 3290 “Contingencies”. It is our view that the following factors may be relevant in determining whether the likelihood of an acquisition being completed is high:

- (a) whether the acquisition has been publicly announced;
- (b) whether the acquisition is the subject of an executed agreement;
- (c) the nature of conditions to the completion of the acquisition including any material third party consents required.

The test of whether a proposed acquisition “has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high” is an objective, rather than subjective, test in that the question turns on what a “reasonable person” would believe. It is not sufficient for an officer of an issuer to determine that he or she personally believes that the likelihood of the acquisition being completed is or is not high. The officer must form an opinion as to what a reasonable person would believe in the circumstances. In the event of a dispute, an objective test requires an adjudicator to decide whether a reasonable person would believe in the circumstances that the likelihood of an acquisition being completed was high. By contrast, if the disclosure requirement involved a subjective test, the adjudicator would assess an individual’s credibility and decide whether the personal opinion of the individual as to whether the likelihood of the acquisition being completed was high was an honestly held opinion. Formulating the disclosure requirement using an objective test rather than a subjective test strengthens the basis upon which the regulator may object to an issuer’s application of the test in particular circumstances.

We generally presume that the inclusion of financial statements or other information is required for all acquisitions that are, or would be, significant under Part 8 of NI 51-102 [*Business Acquisition Report*]. Reporting issuers can rebut this presumption if they can provide evidence that the financial statements or other information are not required for full, true and plain disclosure.

Satisfactory alternative financial statements or other information

(4) Issuers must satisfy the disclosure requirements in section 35.5 [*Recently completed acquisitions*] or section 35.6 [*Probable acquisitions*] of Form 41-101F1 by including either:

- (i) the financial statements or other information that would be required by Part 8 of NI 51-102 [*Business Acquisition Report*]; or
- (ii) satisfactory alternative financial statements or other information.

Satisfactory alternative financial statements or other information may be provided to satisfy the requirements of subsection 35.5(3) [*Recently completed acquisitions*] or subsection 35.6(3) [*Probable acquisitions*] of Form 41-101F1 when the financial statements or other information that would be required by Part 8 of NI 51-102 [*Business Acquisition Report*] relate to a financial year ended within 90 days before the date of the long form prospectus or an interim period ended within 60 days before the date of the long form prospectus for issuers that are venture issuers, and 45 days for issuers that are not venture issuers. In these circumstances, we believe that satisfactory alternative financial statements or other information would not have to include any financial statements or other information for the acquisition or probable acquisition related to:

- (a) a financial year ended within 90 days before the date of the long form prospectus;
or
- (b) an interim period ended within 60 days before the date of the long form prospectus for issuers that are venture issuers, and 45 days for issuers that are not venture issuers.

An example of satisfactory alternative financial statements or other information that we will generally find acceptable would be:

- (c) comparative annual financial statements or other information for the acquisition or probable acquisition for at least the number of financial years as would be required under Part 8 of NI 51-102 [*Business Acquisition Report*], audited for the most recently completed annual period in accordance with section 4.2 of the Instrument [*Audit of financial statements*], and reviewed for the comparative period in accordance with section 4.3 of the Instrument [*Review of unaudited financial statements*];
- (d) comparative interim financial statements or other information for the acquisition or probable acquisition for any interim period ended subsequent to the latest annual financial statements included in the long form prospectus and more than 60 days before the date of the long form prospectus for issuers that are venture issuers, and 45 days for issuers that are not venture issuers reviewed in accordance with section 4.3 of the Instrument [*Review of unaudited financial statements*]; and
- (e) *pro forma* financial statements or other information required under Part 8 of NI 51-102 [*Business Acquisition Report*].

If the issuer intends to include financial statements as set out in the example above as satisfactory alternative financial statements, we ask that this be highlighted in the cover letter to the long form prospectus. If the issuer does not intend to include financial statements or other information, or intends to file financial statements or other information that are different from those set out above, we encourage the utilization of pre-filing procedures in NP 43-201.

Acquired business has recently completed an acquisition

- (5) When an issuer acquires a business or related businesses that has itself recently acquired another business or related businesses (an “indirect acquisition”), the issuer should consider whether long form prospectus disclosure about the indirect acquisition, including historical financial statements, is necessary to satisfy the requirement that the long form prospectus contain full, true and plain disclosure of all material facts relating to the securities being distributed. In making this determination, the issuer should consider the following factors:
- if the indirect acquisition would meet any of the significance tests in section 35.1(4) of Form 41-101F1 [*Application and definitions*] when the issuer applies each of those tests to its proportionate interest in the indirect acquisition of the business; and
 - if the amount of time between the separate acquisitions is such that the effect of the first acquisition is not adequately reflected in the results of the business or related businesses the issuer is acquiring.

Financial statements or other information

- (6) Subsections 35.5(2)(b) [*Recently completed acquisitions*] and 35.6(2)(b) [*Probable acquisitions*] discuss financial statements or other information for the acquired business or related businesses. This “other information” is intended to capture the financial information disclosures required under Part 8 of NI 51-102 [*Business Acquisition Report*] other than financial statements. An example of “other information” would include the operating statements, property descriptions, production volumes and reserves disclosures described under section 8.10 of NI 51-102 [*Acquisition of an Oil and Gas Property*].

Updated *pro forma* financial statements to date of long form prospectus

- (7) In addition to the *pro forma* financial statements for completed acquisitions that are required to be included in a long form prospectus under Item 35 of Form 41-101F1 [*Significant Acquisitions*], an issuer may include a set of *pro forma* financial statements prepared as at the date of the long form prospectus. This Item does not provide an exemption from the requirements to include the *pro forma* financial statements otherwise required if the issuer voluntarily includes *pro forma* financial statements for completed acquisitions prepared as at the date of the long form prospectus. However, the regulator will consider granting exemptive relief from those requirements on a case-by-case basis. An issuer applying for such relief should utilize the pre-filing procedures in NP 43-201.

PART 6: Advertising or Marketing Activities in Connection with Prospectus Offerings

Scope

- 6.1(1) The discussion below is focused on the impact of the prospectus requirement on advertising or marketing activities in connection with a prospectus offering.
- (2) Issuers and market participants who engage in advertising or marketing activities must also consider the impact of the registration requirement in each jurisdiction where such advertising or marketing activities are undertaken. Unless an exemption to the registration requirement is available, such activities may be made only by a person or company who is registered in the appropriate category having regard to the securities that are the subject of the advertising or marketing activities.
- (3) Advertising or marketing activities are also subject to regulation under securities legislation and other rules, including those relating to disclosure and insider trading and registration, which are not discussed below.

The prospectus requirement

- 6.2(1) Securities legislation generally provides that no one may trade in a security where that trade would be a distribution unless the prospectus requirement has been satisfied, or an exemption is available.
- (2) The analysis of whether any particular advertising or marketing activities is prohibited by virtue of the prospectus requirement turns largely on whether the activities constitute a trade and, if so, whether such a trade would constitute a distribution.
- (3) In Québec, since securities legislation has been designed without the notion of a “trade”, the analysis is dependent solely on whether the advertising or marketing activities constitute a distribution.

Definition of “trade”

- (4) Securities legislation (other than the securities legislation of Québec) defines a “trade” in a non-exhaustive manner to include, among other things
 - any sale or disposition of a security for valuable consideration,
 - any receipt by a registrant of an order to buy or sell a security, and
 - any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing.
- (5) Any advertising or marketing activities that can be reasonably regarded as intended to promote a distribution of securities would be “conduct directly or indirectly in furtherance” of the distribution of a security and, therefore, would fall within the definition of a trade.

Definition of distribution

- (6) Even though advertising or marketing activities constitute a “trade” for the purposes of securities legislation (other than the securities legislation of Québec), they would be prohibited by virtue of the prospectus requirement only if they also constitute a distribution under securities legislation. Securities legislation (other than the securities legislation of Québec) defines a distribution to include a “trade” in, among other things, previously unissued securities and securities that form part of a control block.

- (7) The definition of distribution under the securities legislation of Québec includes the endeavour to obtain or the obtaining of subscribers or purchasers of previously unissued securities.

Prospectus exemptions

- (8) It has been suggested by some that advertising or marketing activities, even if clearly made in furtherance of a distribution, could be undertaken in certain circumstances on a prospectus exempt basis. Specifically, it has been suggested that if an exemption from the prospectus requirement is available in respect of a specific distribution (even though the securities will be distributed under a prospectus), advertising or marketing related to such distribution would be exempt from the prospectus requirement. This analysis is premised on an argument that the advertising or marketing activities constitute one distribution that is exempt from the prospectus requirement while the actual sale of the security to the purchaser constitutes a second discrete distribution effected pursuant to the prospectus.
- (9) We are of the view that this analysis is contrary to securities legislation. In these circumstances, the distribution in respect of which the advertising or marketing activities are undertaken is the distribution pursuant to the anticipated prospectus. Advertising or marketing must be viewed in the context of the prospectus offering and as an activity in furtherance of that distribution. If it were otherwise, the overriding concerns implicit and explicit in securities legislation regarding equal access to information, conditioning of the market, tipping and insider trading, and the provisions of the legislation designed to ensure such access to information and curb such abuses, could be easily circumvented.
- (10) We recognize that an issuer and a dealer may have a demonstrable *bona fide* intention to effect an exempt distribution and this distribution may be abandoned in favour of a prospectus offering. In these very limited circumstances, there may be two separate distributions. From the time when it is reasonable for a dealer to expect that a *bona fide* exempt distribution will be abandoned in favour of a prospectus offering, the general rules relating to advertising or marketing activities that constitute an act in furtherance of a distribution will apply.

Advertising or marketing activities

6.3(1) The prospectus requirement applies to any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a distribution unless a prospectus exemption is available. Accordingly, advertising or marketing activities intended to promote the distribution of securities, in any form, would be prohibited by virtue of the prospectus requirement. Advertising or marketing activities subject to the prospectus requirement may be oral, written or electronic and include:

- television or radio advertisements or commentaries;
- published materials;
- correspondence;
- records;
- videotapes or other similar material;
- market letters;

- research reports;
 - circulars;
 - promotional seminar text;
 - telemarketing scripts;
 - reprints or excerpts of any other sales literature.
- (2) Advertising or marketing activities that are not in furtherance of a distribution of securities would not generally fall within the definition of a distribution and, therefore, would not be prohibited by virtue of the prospectus requirement. The following activities would not generally be subject to the prospectus requirement:
- advertising and publicity campaigns that are aimed at either selling products or services of the issuer or raising public awareness of the issuer;
 - communication of factual information concerning the business of the issuer that is released in a manner, timing and form that is consistent with the regular past communications practices of the issuer if that communication does not refer to or suggest the distribution of securities;
 - the release or filing of information that is required to be released or filed pursuant to securities legislation.
- (3) Any activities that form part of a plan or series of activities undertaken in anticipation or in furtherance of a distribution would usually trigger the prospectus requirement, even if they would be permissible if viewed in isolation. Similarly, we may still consider advertising or marketing activities that do not indicate that a distribution of securities is contemplated to be in furtherance of a distribution by virtue of their timing and content. In particular, where a private placement or other exempt distribution occurs prior to or contemporaneously with a prospectus offering, we may consider activities undertaken in connection with the exempt distribution as being in furtherance of the prospectus offering.

Pre-marketing and solicitation of expressions of interest in the context of a bought deal

- 6.4(1)** In general, any advertising or marketing activities undertaken in connection with a prospectus prior to the issuance of a receipt for the preliminary prospectus are prohibited under securities legislation by virtue of the prospectus requirement.
- (2) In the context of a bought deal, a limited exception to the prospectus requirement has been provided in Part 7 of NI 44-101 [*Solicitations of Expressions of Interest*]. The exception is limited to communications by a dealer, directly or through any of its directors, officers, employees or agents, with any person or company (other than another dealer) for the purpose of obtaining from that person or company information as to the interest that it, or any person or company that it represents, may have in purchasing securities of the type that are proposed to be distributed, prior to a preliminary prospectus relating to those securities being filed with the relevant securities regulatory authorities.
- (3) The conditions set out in Part 7 of NI 44-101 [*Solicitations of Expressions of Interest*], including the entering into of an enforceable agreement between the issuer and an

underwriter or underwriters who have agreed to purchase the securities and the issuance and filing of a press release announcing the agreement, must be satisfied prior to any solicitation of expressions of interest.

- (4) A distribution of securities commences at the time when
- a dealer has had discussions with an issuer or a selling security holder, or with another dealer that has had discussions with an issuer or a selling security holder about the distribution, and
 - those distribution discussions are of sufficient specificity that it is reasonable to expect that the dealer (alone or together with other dealers) will propose to the issuer or the selling security holder an underwriting of the securities.
- (5) We understand that many dealers communicate on a regular basis with clients and prospective clients concerning their interest in purchasing various securities of various issuers. We will not generally consider such ordinary course communications as being made in furtherance of a distribution. However, from the commencement of a distribution, communications by the dealer, with a person or company designed to have the effect of determining the interest that it, or any person or company that it represents, may have in purchasing securities of the type that are the subject of distribution discussions, that are undertaken by any director, officer, employee or agent of the dealer
- (a) who participated in or had actual knowledge of the distribution discussions, or
 - (b) whose communications were directed, suggested or induced by a person referred to in (a), or another person acting directly or indirectly at or upon the direction, suggestion or inducement of a person referred to in (a),
- are considered to be in furtherance of the distribution and contrary to securities legislation.
- (6) From the commencement of the distribution no communications, market making, or other principal trading activities in securities of the type that are the subject of distribution discussions may be undertaken by a person referred to in paragraph 5(a), above, or at or upon the direction, suggestion or inducement of a person or persons referred to in paragraph 5(a) or (b) above until the earliest of:
- the issuance of a receipt for a preliminary prospectus in respect of the distribution,
 - the time at which a press release that announces the entering into of an enforceable agreement in respect of a bought deal is issued and filed in accordance with Part 7 of NI 44-101 [*Solicitations of Expressions of Interest*], and
 - the time at which the dealer determines not to pursue the distribution.
- (7) We note that the Investment Dealers Association has adopted IDA by-law 29.13 which is consistent with the above discussion relating to pre-marketing of bought deals of equity securities. However, the principles articulated above apply to all offerings, whether of debt or equity, or a combination.

Advertising or marketing activities during the waiting period

6.5(1) Securities legislation provides an exception to the prospectus requirement for limited advertising or marketing activities during the waiting period between the issuance of the receipt for the preliminary prospectus and the receipt for the final prospectus. Despite the prospectus requirement, it is permissible during the waiting period to

- (a) distribute notices, circulars, advertisements, letters or other communications that
- “identify” the securities proposed to be issued,
 - state the price of such securities, if then determined, and
 - state the name and address of a person or company from whom purchases of securities may be made,

provided that any such notice, circular, advertisement, letter or other communication states the name and address of a person or company from whom a preliminary prospectus may be obtained,

- (b) distribute the preliminary prospectus, and
- (c) solicit expressions of interest from a prospective purchaser, if prior to such solicitation or forthwith after the prospective purchaser indicates an interest in purchasing the securities, a copy of the preliminary prospectus is forwarded to the prospective purchaser.
- (2) The use of any other marketing information or materials during the waiting period would result in the violation of the prospectus requirement.
- (3) The “identification” of the security does not permit an issuer or dealer to include a summary of the commercial features of the issue. These details are set out in the preliminary prospectus which is intended as the main disclosure vehicle pending the issuance of the final receipt. The purpose of the permitted advertising or marketing activities during the waiting period is essentially to alert the public to the availability of the preliminary prospectus.
- (4) For the purpose of identifying a security, the advertising or marketing material may only
- indicate whether a security represents debt or a share in a company or an interest in a non-corporate entity (e.g. a unit of undivided ownership in a film property) or a partnership interest,
 - name the issuer if the issuer is a reporting issuer, or name and describe briefly the business of the issuer if the issuer is not already a reporting issuer (the description of the business should be cast in general terms and should not attempt to summarize the proposed use of proceeds),
 - indicate, without giving details, whether the security qualifies the holder for special tax treatment, and
 - indicate how many securities will be made available.

Green sheets

- 6.6(1)** We understand that there is a practice for dealers to prepare summaries of the principal terms of an offering, sometimes referred to as green sheets. Typically green sheets include information beyond the limited information for which an exemption to the prospectus requirement is available during the waiting period. If so, we would consider the distribution of a green sheet to a potential investor to contravene the prospectus requirement.
- (2) Including material information in a green sheet or other marketing communication that is not contained in the preliminary prospectus could indicate a failure to provide in the preliminary prospectus full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and result in the prospectus certificate constituting a misrepresentation.
- (3) We may request copies of green sheets and other advertising or marketing materials as part of our prospectus review procedures. Any discrepancies between the content of a green sheet and the preliminary prospectus could result in the delay or refusal of a receipt for a final prospectus and, in appropriate circumstances, could result in enforcement action.

Advertising or marketing activities following the issuance of a receipt for a final prospectus

- 6.7** Advertising or marketing activities that are not prohibited by the prospectus requirement during the waiting period may also be undertaken on the same basis after a receipt has been issued for the final prospectus relating to the distribution. In addition, the prospectus and any document filed with or referred to in the prospectus may be distributed.

Sanctions and enforcement

- 6.8** Any contravention of the prospectus requirement through the advertising or marketing activities is a serious matter that could result in a cease trade order in respect of the preliminary prospectus to which such advertising or marketing activities relate. In addition, a receipt for a final prospectus relating to any such offering may be refused. In appropriate circumstances, enforcement proceedings may be initiated.

Media reports and coverage

- 6.9(1)** We recognize that an issuer does not have control over media coverage; however, an issuer should take appropriate precautions to ensure that media coverage which can reasonably be considered to be in furtherance of a distribution of securities does not occur after a decision has been made to file a preliminary prospectus or during the waiting period.
- (2) We may investigate the circumstances surrounding media coverage of an issuer which appears immediately prior to or during the waiting period and which can reasonably be considered as being in furtherance of a distribution of securities. Action will be taken in appropriate circumstances.

Disclosure practices

6.10 At a minimum, participants in all prospectus distributions should consider the following practices to avoid contravening securities legislation:

- Directors or officers of an issuer should not give interviews to the media immediately prior to or during the waiting period. Directors and officers should normally limit themselves to responding to unsolicited inquiries of a factual nature made by shareholders, securities analysts, financial analysts, the media and others who have a legitimate interest in such information.
- No director or officer of an issuer should make any statement during the period of distribution of securities (which includes the period from the commencement of the distribution as described in subsection 6.4(4) [*Pre-marketing and solicitation of expressions of interest in the context of a bought deal*] until the closing of the distribution) which constitutes a forecast, projection or prediction with respect to future financial performance, unless that statement relates to and is consistent with a forecast contained in the prospectus.
- Underwriters and legal counsel have the responsibility of ensuring that the issuer and all directors and officers of the issuer who may come in contact with the media are fully aware of the restrictions applicable during the period of distribution of securities. It is not sufficient to make those restrictions known only to the officers comprising the working group.
- Issuers, dealers and other market participants should develop, implement, maintain and enforce procedures to ensure that advertising or marketing activities that are contrary to securities legislation are not undertaken whether intentionally or through inadvertence.

Misleading or untrue statements

6.11 In addition to the prohibitions on advertising or marketing activities that result from the prospectus requirement, securities legislation in certain jurisdictions prohibits any person or company from making any misleading or untrue statements that would reasonably be expected to have a significant effect on the market value of securities. Therefore, in addition to ensuring that advertising or marketing activities are carried out in compliance with the prospectus requirement, issuers, dealers and their advisors must ensure that any statements made in the course of advertising or marketing activities are not untrue or misleading and otherwise comply with securities legislation.

**Appendix A
Financial Statement Disclosure Requirements for Significant Acquisitions**

Chart 1 – Reporting Issuer

Financial Statement Disclosure Requirements for Significant Acquisitions.

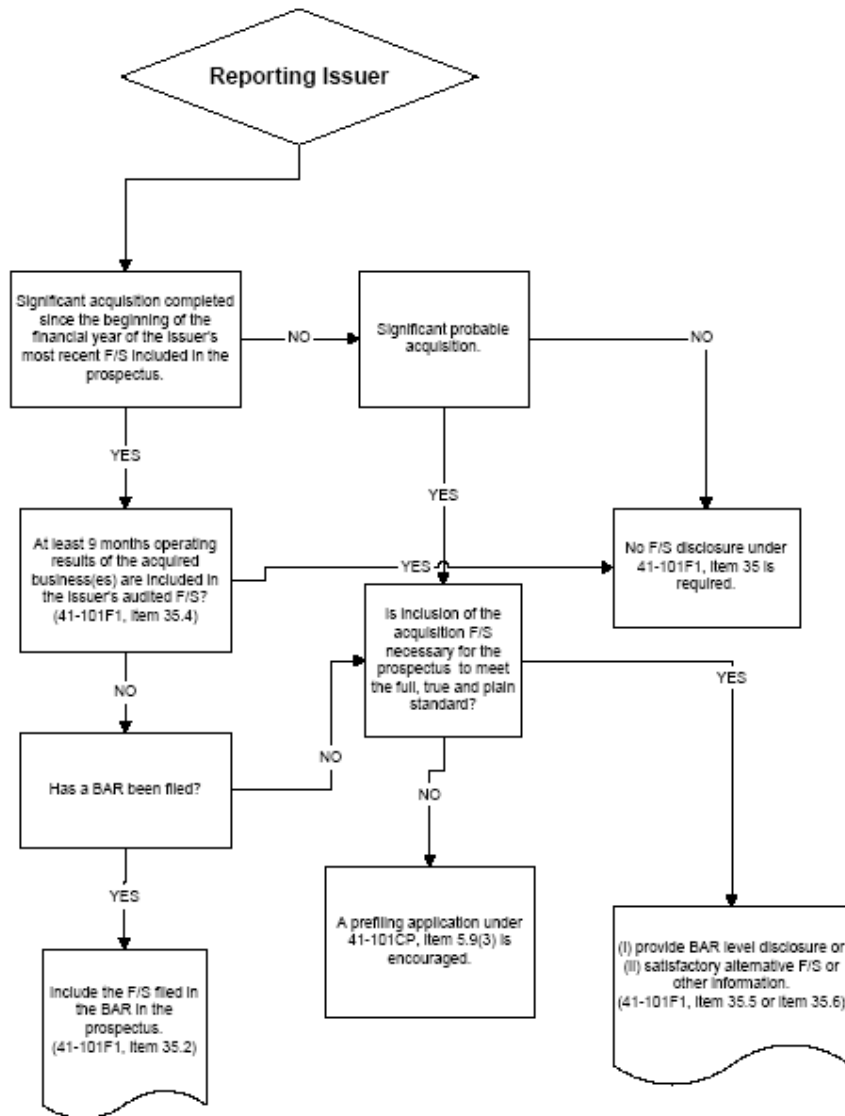
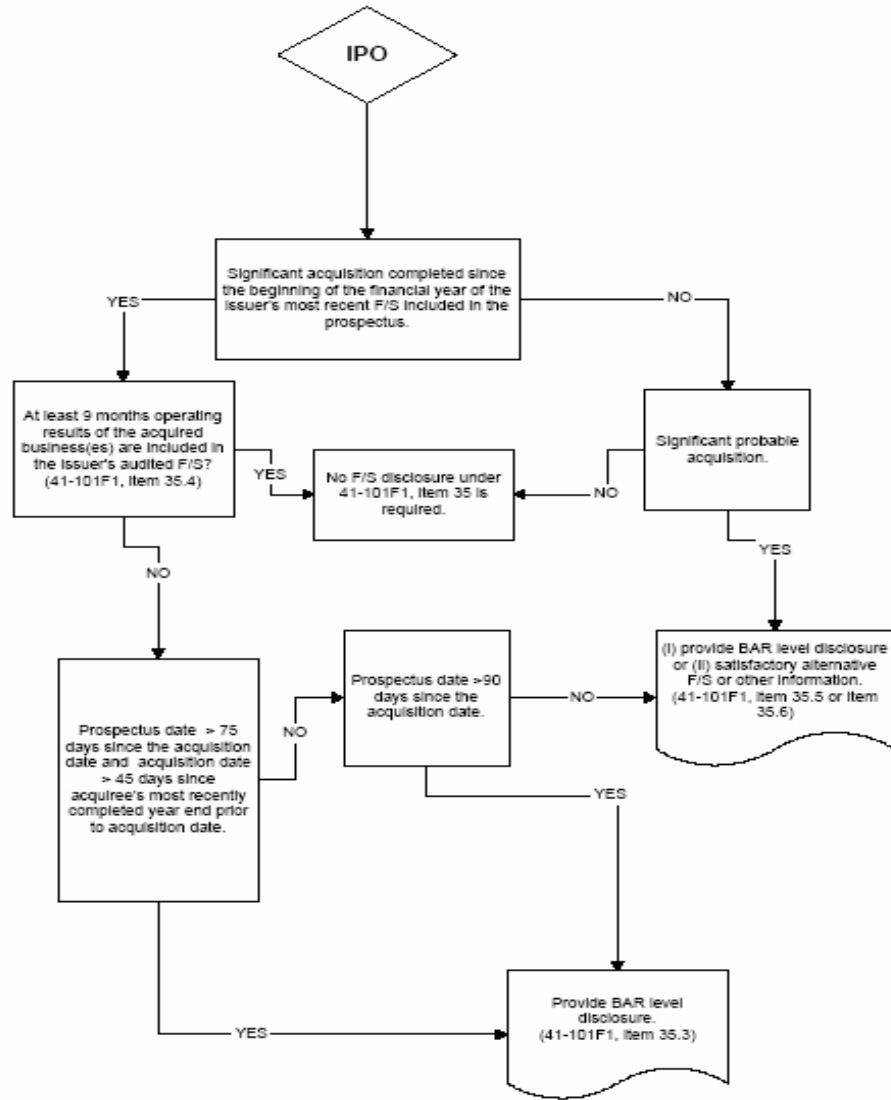


Chart 2 – Non-Reporting Issuer

Financial Statement Disclosure Requirements for Significant Acquisitions.



Note

These decision charts provide general guidance and should be read in conjunction with Form 41-101F1.

APPENDIX C

Amendments to National Instrument 14-101 *Definitions*

1.1 The definition of “*prospectus requirement*” in subsection 1.1(3) of National Instrument 14-101 *Definitions* is amended by striking out “receipts obtained” and substituting “the regulator has issued receipts”.

1.2 This Instrument comes into force on

APPENDIX D

Amendments to National Instrument 44-101 *Short Form Prospectus Distributions* and Form 44-101F1 *Short Form Prospectus* of National Instrument 44-101 *Short Form Prospectus Distributions*

Schedule 1 Amendments To National Instrument 44-101 *Short Form Prospectus Distributions*

1.1 National Instrument 44-101 *Short Form Prospectus Distributions* is amended by this Instrument.

1.2 Section 1.1 is amended by repealing the following definitions:

- (a) “alternative credit support”;
- (b) “asset backed security”;
- (c) “business acquisition report”;
- (d) “convertible”
- (e) “credit supporter”;
- (f) “derivative”;
- (g) “designated foreign jurisdiction”;
- (h) “equity securities”;
- (i) “executive officer”;
- (j) “foreign disclosure requirements”;
- (k) “Form 44-101F1”;
- (l) “Form 51-102F2”;
- (m) “Form 51-102F3”;

- (n) “Form 51-102F4”;
- (o) “Form 51-102F5”;
- (p) “full and unconditional credit support”;
- (q) “information circular”;
- (r) “interim period”
- (s) “investment fund”;
- (t) “mineral project”;
- (u) “NI 13-101”;
- (v) “NI 43-101”;
- (w) “NI 44-102”;
- (x) “NI 51-102”;
- (y) “NI 52-107”;
- (z) “NI 81-106”;
- (aa) “non-convertible”
- (bb) “reorganization”;
- (cc) “special warrant”;
- (dd) “U.S. GAAS”.

1.3 Section 1.1 is amended

- (a) **in the definition of “AIF” by striking out “NI 51-102” and substituting “National Instrument 51-102 *Continuous Disclosure Obligations*” and by striking out “NI 81-106” and substituting “National Instrument 81-106 *Investment Fund Continuous Disclosure*”;**

- (b) **in the definition of “material change” by striking out “Form 51-102F3” and substituting “Form 51-102F3 *Material Change Report* of NI 51-102”.**
- (c) **by repealing the definition of “restricted security” and substituting the following:**

“restricted security” has the same meaning as in Part 12 of NI 41-101;
- (d) **in the definition of “successor issuer” by striking out “reorganization” and substituting “restructuring transaction” wherever it occurs;**
- (e) **in paragraph (e) of the definition of “U.S. credit supporter” by adding “as defined in National Instrument 71-101 *The Multijurisdictional Disclosure System*” after “is not a commodity pool issuer”.**

1.4 The following is added after section 1.1:

1.1.1 Definitions NI 41-101 - Every term that is defined or interpreted in National Instrument 41-101 *General Prospectus Requirements*, the definition or interpretation of which is not restricted to a specific portion of NI 41-101, except for Part 12 of NI 41-101, has, if used in this Instrument, the meaning ascribed to it in NI 41-101.

1.5 Section 1.5 is repealed.

1.6 The following is added after section 1.5:

1.6 Referencing Instruments - In this Instrument, a reference to

- (a) a national instrument, after its first citation, may be made by citing the number of the instrument preceded by “NI”, and
- (b) a form in a national instrument, after its first citation, may be made by citing the number of the Form preceded by “Form”.

1.7 Section 2.1(1) is amended by striking out “Form 44-101F1” and substituting “Form 44-101F1 *Short Form Prospectus* of this Instrument”.

1.8 Section 2.2(a) is amended by striking out “NI 13-101” and substituting “National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*”.

1.9 Section 2.3(2) is amended by striking out “NI 44-102” and substituting “National Instrument 44-102 *Shelf Distributions*.”

1.10 Section 2.7 is amended

- (a) **in subsection (1)(b) by adding “or each predecessor entity’s” before “comparative annual financial statements for its most recently completed financial year”;**
- (b) **by repealing subsection (2) and substituting the following:**
 - (2) Paragraph 2.2(d), paragraph 2.3(1)(d) and paragraph 2.6(1)(b) do not apply to a successor issuer if
 - (a) the successor issuer is not exempt from the requirement in the applicable CD rule to file annual financial statements within a prescribed period after its financial year end, but the successor issuer has not yet, since the completion of the restructuring transaction which resulted in the successor issuer, been required under the applicable CD rule to file annual financial statements, and
 - (b) an information circular relating to the restructuring transaction that resulted in the successor issuer was filed by the successor issuer or an issuer that was a party to the restructuring transaction, and such information circular
 - (i) complied with applicable securities legislation, and
 - (ii) included disclosure in accordance with Item 14.2 or 14.5 of Form 51-102F5 *Information Circular* to NI 51-102 for the successor issuer.

1.11 Section 4.1 is amended

- (a) **by repealing subparagraph (a)(iv) and substituting the following:**
 - (iv) **Documents Affecting the Rights of Security Holders** - copies of all documents referred to in subsection 12.1(1) of NI 51-102 or section 16.4

of NI 81-106, as applicable, that relate to the securities being distributed, and that have not previously been filed;

(iv.1) Material Contracts -- copies of all material contracts referred to in section 12.2 of NI 51-102 or section 16.4 of NI 81-106 that have not previously been filed;

(b) by repealing paragraph (b) and substituting the following:

(b) deliver to the regulator, concurrently with the filing of the preliminary short form prospectus, the following:

(i) **Personal Information Form and Authorization to Collect, Use and Disclose Personal Information** –unless delivered within 3 years before filing of the preliminary short form prospectus, a completed Appendix A to NI 41-101 for

(A) each director and executive officer of an issuer;

(B) each director and executive officer of the manager of the issuer if the issuer is an investment fund;

(C) each promoter of the issuer and, except in Ontario, each substantial beneficiary of the offering; or

(D) if the promoter or substantial beneficiary of the offering is not an individual, each director and executive officer of the promoter or, except in Ontario, substantial beneficiary of the offering.

(ii) **Auditor's Comfort Letter regarding Audited Financial Statements** - if a financial statement of an issuer or a business included in a preliminary short form prospectus is accompanied by an unsigned auditor's report, a signed letter addressed to the regulator from the auditor of the issuer or of the business, as applicable, prepared in accordance with the form suggested for this circumstance by the Handbook.

1.12 Section 4.2(a) is amended

- (a) **by repealing subparagraph (iii) and substituting the following:**
- (iii) **Documents Affecting the Rights of Security Holders** - copies of any document described under subparagraph 4.1(a)(iv) that has not previously been filed;
 - (iii.1) **Material Contracts** – copies of any material contract described under subparagraph 4.1(a)(iv.1) that has not previously been filed;
- (b) **in paragraph (iv) by striking out “section 4.4” and substituting “section 10.1 of NI 41-101” and in subparagraph (B), by adding “or (vi)” after “subparagraph 4.1(a)(v)”;**
- (c) **in subparagraph (v), by striking out “Appendix C” and substituting “Appendix B of NI 41-101”;**
- (d) **by repealing subparagraph (vi) and substituting the following:**
- (vi) **Non-Issuer’s Submission to Jurisdiction** - a submission to jurisdiction and appointment of agent for service of process of
 - (A) each selling security holder, and
 - (B) each person or company required to provide a certificate under Part 5 of NI 41-101, other than an issuer,

in the form set out in Appendix C of NI 41-101, if the person or company is incorporated or organized under a foreign jurisdiction and does not have an office in Canada or is an individual who resides outside of Canada;
- (e) **in subparagraph (vii), by striking out “section 4.4” and substituting “section 10.1 of NI 41-101”.**
- (f) **in subparagraph (viii) by striking out “section 21.3 of Form 44-101F1” and substituting “section 5.12 of NI 41-101”;**

(g) **by striking out “and” at the end of subparagraph (viii) and adding the following after subparagraph (viii):**

- (ix) **Undertaking in Respect of Credit Supporter Disclosure** - an undertaking of the issuer, in a form acceptable to the regulators, to file the periodic and timely disclosure of a credit supporter similar to the disclosure provided under section 12.1 of Form 44-101F1, for so long as the securities being distributed are issued and outstanding;
- (x) **Undertaking to File Documents and Material Contracts** – if any document described in subparagraph (iii), (iii.1) or (iv) has not been executed or become effective before the filing of the final short form prospectus but will be executed or become effective on or before the completion of the distribution, the issuer must file with the applicable securities regulatory authority, no later than the time of filing of the final short form prospectus, an undertaking of the issuer to the applicable securities regulatory authority to file the document promptly and in any event within 7 days after the completion of the distribution;
- (xi) **Undertaking in Respect of Restricted Securities** – for distributions of non-voting securities, an undertaking of the issuer to give notice to holders of non-voting securities of a meeting of security holders if a notice of such meeting is given to its registered holders of voting securities; and

1.13 Section 4.2(b) is repealed and the following is substituted:

- (b) deliver to the regulators, no later than the filing of the final short form prospectus,
 - (i) a copy of the final short form prospectus, blacklined to show changes from the preliminary short form prospectus, and
 - (ii) if the issuer has made an application to list the securities being distributed on an exchange, a copy of a communication in writing from the exchange stating that the application for listing has been made and has been accepted subject to the issuer meeting the requirements for listing of the exchange.

1.14 Section 4.3 is repealed and the following is substituted:

4.3 Review of Unaudited Financial Statements -

- (1) Subject to subsection (2), any unaudited financial statements, other than *pro forma* financial statements, included in or incorporated by reference into a short form prospectus must have been reviewed in accordance with the relevant standards set out in the Handbook for a review of financial statements by the person or company's auditor or a public accountant's review of financial statements.
- (2) If NI 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* permits the financial statements of the person or company in subsection (1) to be audited in accordance with
 - (a) U.S. GAAS, the unaudited financial statements may be reviewed in accordance with U.S. review standards,
 - (b) International Standards on Auditing, the unaudited financial statements may be reviewed in accordance with International Standards on Review Engagement issued by the International Auditing and Assurance Standards Board, or
 - (c) auditing standards that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the issuer is subject, the unaudited financial statements
 - (i) may be reviewed in accordance with review standards that meet the foreign disclosure requirements of the designated foreign jurisdiction, or
 - (ii) do not have to be reviewed if
 - (A) the designated foreign jurisdiction does not have review standards for unaudited financial statements, and
 - (B) the short form prospectus includes disclosure that

the unaudited financial statements have not been reviewed.

1.15 Section 4.4 is repealed.

1.16 Section 4.5 is repealed.

1.17 PART 5 is repealed.

1.18 PART 6 is repealed.

1.19 The following is added after section 7.1:

7.2 Solicitations of Expressions of Interest - Over-allotment Options – The prospectus requirement does not apply to solicitations of expressions of interest before the filing of a preliminary short form prospectus for securities to be issued pursuant to an over-allotment option that are qualified for distribution under a short form prospectus in accordance with this Instrument, if

- (a) the issuer has entered into an enforceable agreement with the underwriters, who have agreed to purchase the securities offered under a short form prospectus, other than the securities issuable on the exercise of an over-allotment option,
- (b) the agreement referred to in paragraph (a) has fixed the terms of the distribution and requires that the issuer file a preliminary short form prospectus for the securities and obtain from the regulator a receipt, dated as of a date that is not more than four business days after the date that the agreement is entered into, for the preliminary short form prospectus,
- (c) the issuer has issued and filed a news release announcing the agreement immediately upon entering into the agreement,
- (d) upon issuance of a receipt for the preliminary short form prospectus, a copy of the preliminary short form prospectus is sent to each person or company who has expressed an interest in acquiring the securities, and
- (e) except as provided in paragraph (a), no agreement of purchase and sale for the securities is entered into until the short form prospectus has been filed and a receipt obtained.

1.20 Section 8.2 is amended

- (a) **in subsection (1) by striking out** “or subsection 4.5(3)”;
- (b) **by repealing subsection (2) and substituting the following:**

(2) The issuance of a receipt for a final short form prospectus or an amendment to a final short form prospectus is not evidence that the exemption is being granted unless

- (a) the person or company that sought the exemption sent to the regulator
 - (i) the letter or memorandum referred to in subsection 8.1(3), on or before the date of the filing of the preliminary short form prospectus, or
 - (ii) the letter or memorandum referred to in subsection 8.1(3) after the date of the filing of the preliminary short form prospectus and received a written acknowledgement from the regulator that the exemption may be acknowledged in the manner set out in subsection (1), and
- (b) the regulator has not before, or concurrently with, the issuance of the receipt sent notice to the person or company that sought the exemption, that the exemption sought may not be evidenced in the manner set out in subsection (1).

1.21 Appendices B, C and D are repealed.

1.22 Effective Date - This Instrument comes into force on

APPENDIX D

Schedule 2

Amendments to Form 44-101F1 *Short Form Prospectus* of National Instrument 44-101 *Short Form Prospectus Distributions*

1.1 Form 44-101 *Short Form Prospectus* is amended by this Instrument.

1.2 The INSTRUCTIONS before Item 1 are amended

- (a) **in Instruction (1), by striking out** “, and, in *Québec*, not to make any misrepresentation likely to affect the value or market price of,”;
- (b) **in Instruction (2) by adding** “or NI 41-101” **before** “shall bear that definition or interpretation.”;
- (c) **in Instruction (8),**
 - (i) **by striking out** “, and in *Quebec*, disclosure of all material facts likely to affect the value or the market price of the securities to be distributed,”;
 - (ii) **by adding** “For this purpose, subsidiaries and investees include entities that are consolidated, proportionately consolidated, or accounted for using the equity method.” **after** “If it is more likely than not that a person or company will become a subsidiary or investee, it may be necessary to also include disclosure with respect to the person or company.”;
- (d) **by adding the following after Instruction (12):**
 - (13) *If an issuer discloses financial information in a short form prospectus in a currency other than the Canadian dollar, prominently disclose the currency in which the financial information is disclosed.*
 - (14) *Except as otherwise required or permitted, include information in a narrative form. The issuer may include graphs, photographs, maps, artwork or other forms of illustration, if relevant to the business of the issuer or the distribution and not misleading. Include descriptive headings. Except for*

information that appears in a summary, information required under more than one item need not be repeated.

(15) Certain requirements in this Form 44-101F1 make reference to requirements in another instrument. Issuers must also refer to any instructions to the requirements in the other instrument unless otherwise noted.

1.3 Item 1.3 is amended by striking out “[Insert if the offering is made in Quebec - “For the purpose of the Province of Quebec, this simplified prospectus contains information to be completed by consulting the permanent information record. A copy of the permanent information record may be obtained without charge from the secretary of the issuer at the above-mentioned address and telephone number and is also available electronically at www.sedar.com]”.

1.4 Item 1.6 is amended by

- (a) repealing subsection (2) and substituting the following:**
 - (2)** If there is an over-allotment option or an option to increase the size of the distribution before closing,
 - (a)** disclose that a purchaser who acquires securities forming part of the underwriters’ over-allocation position acquires those securities under this short form prospectus, regardless of whether the over-allocation position is ultimately filled through the exercise of the over-allotment option or secondary market purchases, and
 - (b)** describe the terms of the option.
- (b) by adding the following after subsection (3):**
 - (3.1)** If a minimum subscription amount is required from each subscriber, provide details of the minimum subscription requirements in the table required under subsection (1).
- (c) adding the following after subsection (7):**

INSTRUCTIONS

(1) *Estimate amounts, if necessary. For non-fixed price distributions that are being made on a best efforts basis, disclosure of the information called for by the table may be set forth as a percentage or a range of percentages and need not be set forth in tabular form.*

(2) *If debt securities are being distributed, also express the information in the table as a percentage.*

1.5 The following Item 1.6.1 is added after item 1.6:

1.6.1 Offering price in currency other than Canadian dollar - If the offering price of the securities being distributed is disclosed in a currency other than the Canadian dollar, disclose in bold face type the reporting currency.

1.6 The following is added after Item 1.7:

1.7.1 Pricing Range -If the offering price or the number of securities being distributed has not been determined at the date of the preliminary short form prospectus, disclose a *bona fide* estimate of the range in which the offering price or the number of securities being distributed is expected to be set.

1.7 Item 1.10 is amended by repealing the INSTRUCTIONS after subsection (6).

1.8 Item 1.11 is repealed and the following is substituted:

1.11 International Issuers - If the issuer, a selling security holder, any person or company required to provide a certificate under Part 5 of NI 41-101, other than the issuer, is incorporated, continued, or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada, state the following on the cover page or under a separate heading elsewhere in the short form prospectus, with the bracketed information completed:

“The [issuer, selling security holder, person or company signing a certificate under Part 5 of NI 41-101 or securities legislation] is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada. Although [the person or company described above] has appointed [name(s) and addresses of agent(s) for service] as its agent(s) for service of

process in [list jurisdictions] it may not be possible for investors to realize on judgments obtained in Canada against [the person or company described above].”

1.9 Item 1.12 is repealed and the following is substituted:

1.12 Restricted securities

(1) Describe the numbers and class or classes of restricted securities being distributed using the appropriate restricted security term in the same type face and type size as the rest of the description.

(2) If the securities being distributed are restricted securities and the holders of the securities do not have the right to participate in a takeover bid made for other equity securities of the issuer, disclose that fact.

1.10 ITEM 4 is repealed and the following is substituted:

Item 4 Use of Proceeds

4.1 Proceeds

(1) State the estimated net proceeds to be received by the issuer or selling security holder or, in the case of a non-fixed price distribution or a distribution to be made on a best efforts basis, the minimum amount, if any, of net proceeds to be received by the issuer or selling security holder from the sale of the securities distributed.

(2) State the particulars of any provisions or arrangements made for holding any part of the net proceeds of the distribution in trust or escrow subject to the fulfillment of conditions.

(3) If the short form prospectus is used for a special warrant or similar transaction, state the amount that has been received by the issuer of the special warrants or similar securities on the sale of the special warrants or similar securities.

4.2 Principal purposes – generally

- (1) Describe in reasonable detail and, if appropriate, using tabular form, each of the principal purposes, with approximate amounts, for which the net proceeds will be used by the issuer.
- (2) If the closing of the distribution is subject to a minimum subscription, provide disclosure of the use of proceeds for the minimum and maximum subscriptions.

4.3 Principal purposes – indebtedness

- (1) If more than 10% of the net proceeds will be used to reduce or retire indebtedness and the indebtedness was incurred within the 2 preceding years, describe the principal purposes for which the proceeds of the indebtedness were used.
- (2) If the creditor is an insider, associate or affiliate of the issuer, identify the creditor and the nature of the relationship to the issuer and the outstanding amount owed.

4.4 Principal purposes – asset acquisition

- (1) If more than 10% of the net proceeds are to be used to acquire assets, describe the assets.
- (2) If known, disclose the particulars of the purchase price being paid for or being allocated to the assets or categories of assets, including intangible assets.
- (3) If the vendor of the assets is an insider, associate or affiliate of the issuer, give the name of the vendor and the method used in determining the purchase price.
- (4) Describe the nature of the title to or interest in the assets to be acquired by the issuer.

- (5) If part of the consideration for the acquisition of the assets consists of securities of the issuer, give brief particulars of the class, number or amount, voting rights, if any, and other appropriate information relating to the securities, including particulars of the issuance of securities of the same class within the 2 preceding years.

4.5 Principal purposes – insiders, etc. - If an insider, associate or affiliate of the issuer will receive more than 10% of the net proceeds, identify the insider, associate or affiliate and disclose the amount of net proceeds to be received.

4.6 Principal purposes – research and development - If more than 10% of the net proceeds from the distribution will be used for research and development of products or services, describe

- (a) the timing and stage of research and development programs that management anticipates will be reached using such proceeds,
- (b) the major components of the proposed programs that will be funded using the proceeds from the distribution, including an estimate of anticipated costs,
- (c) if the issuer is conducting its own research and development, is subcontracting out the research and development or is using a combination of those methods, and
- (d) the additional steps required to reach commercial production and an estimate of costs and timing.

4.7 Business objectives and milestones

- (1) State the business objectives that the issuer expects to accomplish using the net proceeds of the distribution under item 4.1.
- (2) Describe each significant event that must occur for the business objectives described under subsection (1) to be accomplished and state the specific time period in which each event is expected to occur and the costs related to each event.

4.8 Unallocated funds in trust or escrow

- (1) - Disclose that unallocated funds will be placed in a trust or escrow account, invested or added to the working capital of the issuer.
- (2) Give details of the arrangements made for, and the persons or companies responsible for,
 - (a) the supervision of the trust or escrow account or the investment of unallocated funds, and
 - (b) the investment policy to be followed.

4.9 Other sources of funding - If any material amounts of other funds are to be used in conjunction with the proceeds, state the amounts and sources of the other funds.

4.10 Financing by special warrants, etc.

- (1) If the short form prospectus is used to qualify the distribution of securities issued upon the exercise of special warrants or the exercise of other securities acquired on a short form prospectus-exempt basis, describe the principal purposes for which the proceeds of the short form prospectus-exempt financing were used or are to be used.
- (2) If all or a portion of the funds have been spent, explain how the funds were spent.

INSTRUCTION

For the purposes of the disclosure in item 4.2, the phrase “for general corporate purposes” will generally not be sufficient.

1.11 Item 5.1 is repealed and the following is substituted:

5.1 Disclosure of Conditions to Underwriters' Obligations - If securities are distributed by an underwriter that has agreed to purchase all of the securities at a specified price and the underwriter's obligations are subject to conditions,

- (a) include a statement in substantially the following form, with the bracketed information completed and with modifications necessary to reflect the terms of the distribution:

“Under an agreement dated [insert date of agreement] between [insert name of issuer or selling security holder] and [insert name(s) of underwriter(s)], as underwriter[s], [insert name of issuer or selling security holder] has agreed to sell and the underwriter[s] [has/have] agreed to purchase on [insert closing date] the securities at a price of [insert offering price], payable in cash to [insert name of issuer or selling security holder] against delivery. The obligations of the underwriter[s] under the agreement may be terminated at [its/their] discretion on the basis of [its/their] assessment of the state of the financial markets and may also be terminated upon the occurrence of certain stated events. The underwriter[s] [is/are], however, obligated to take up and pay for all of the securities if any of the securities are purchased under the agreement.”, and

- (b) describe any other conditions and indicate any information known that is relevant to whether such conditions will be satisfied.

1.12 Item 5.4 is repealed and the following is substituted:

5.4 Stabilization - If the issuer, a selling security holder or an underwriter knows or has reason to believe that there is an intention to over-allot or that the price of any security may be stabilized to facilitate the distribution of the securities, describe the nature of these transactions, including the anticipated size of any over-allocation position, and explain how the transactions are expected to affect the price of the securities.

1.13 The following is added after item 5.4:

5.4.1 Underwriting discounts - Interests of management and others in material transactions - Disclose any material underwriting discounts or commissions on the sale

of securities by the issuer if any of the persons or companies listed under item 13.1 of NI 51-102F2 were or are to be an underwriter or are associates, affiliates or partners of a person or company that was or is to be an underwriter.

1.14 Item 5.5 is repealed and the following is substituted:

5.5 Minimum distribution - If securities are being distributed on a best efforts basis and minimum funds are to be raised, state

- (a) the minimum funds to be raised,
- (b) that the issuer must appoint a registered dealer authorized to make the distribution, a Canadian financial institution, or a lawyer who is a practicing member in good standing with a law society of a jurisdiction in which the securities are being distributed, or in Quebec a notary, to hold in trust all funds received from subscriptions until the minimum amount of funds stipulated in paragraph (a) has been raised, and
- (c) that if the minimum amount of funds is not raised within the distribution period, the trustee must return the funds to the subscribers without any deductions.

5.5.1 Approvals - If the purpose of the distribution is to fund in whole or in part a new business of the issuer and the issuer has not obtained all material licenses, registrations and approvals necessary for the operation of the business, include a statement that

- (a) the issuer must appoint a registered dealer authorized to make the distribution, a Canadian financial institution, or a lawyer who is a practicing member in good standing with a law society of a jurisdiction in which the securities are being distributed, or in Quebec a notary, to hold in trust all funds received from subscriptions until all material licenses, registrations and approvals necessary for the operation of the business have been obtained, and
- (b) if all material licenses, registrations and approvals necessary for the operation of the business have not been obtained within 90 days from the

date of receipt of the final short form prospectus, the trustee must return the funds to subscribers.

1.15 Item 5.6 is repealed and the following is substituted:

5.6 Reduced Price Distributions - If the underwriter may decrease the offering price after the underwriter has made a reasonable effort to sell all of the securities at the initial offering price disclosed in the short form prospectus in accordance with the procedures permitted by this Instrument, disclose this fact and that the compensation realized by the underwriter will be decreased by the amount that the aggregate price paid by purchasers for the securities is less than the gross proceeds paid by the underwriter to the issuer or selling security holder.

1.16 The following is added after item 5.9:

5.10 Special warrants acquired by underwriters or agents - Disclose the number and dollar value of any special warrants acquired by any underwriter or agent and the percentage of the distribution represented by those special warrants.

1.17 Item 6.1 is amended

(a) by repealing subsection (1) and substituting the following:

- (1)** If the securities being distributed are debt securities having a term to maturity in excess of one year or are preferred shares, disclose the following earnings coverage ratios adjusted in accordance with subsection (2):
- (a) the earnings coverage ratio based on the most recent 12 month period included in the issuer's current annual financial statements,
 - (b) if there has been a change in year end and the issuer's most recent financial year is less than nine months in length, the earnings coverage calculation for its old financial year, and
 - (c) the earnings coverage ratio based on the 12 month period ended on the last day of the most recently completed period for which interim financial statements of the issuer have been included in the short form prospectus.

(b) **in subsection (2)(c) by adding** “, since the date of the annual or interim financial statements,” **after** “in accordance with the issuer’s GAAP”;

(c) **by repealing subsection (5) and substituting the following:**

(5) If the short form prospectus includes a *pro forma* income statement, calculate the *pro forma* earnings coverage ratios for the periods of the *pro forma* income statement, and disclose them in the short form prospectus.

(d) **by adding the following after *Instruction (1)*:**

(1.1) *If the issuer's financial year is less than 12 months in length, the earnings coverage ratio in subsection (1) should be calculated on an annualized basis.*

(e) **by striking out *Instruction (8)*.**

1.18 Item 7.3(b) is amended by striking out “and” at the end of subparagraph (ii) and adding the following after subparagraph (iii):

(iv) servicing and other administrative fees, and

(v) any significant variances experienced in the matters referred to in subparagraphs (i) through (iii);

1.19 Item 7.7 is repealed and the following is substituted:

7.7 Restricted securities

(1) If the issuer has outstanding, or proposes to distribute under a short form prospectus restricted securities, subject securities or securities that are, directly or indirectly, convertible into or exercisable or exchangeable for restricted securities or subject securities, provide a detailed description of

(a) the voting rights attached to the restricted securities that are the subject of the distribution or that will result from the distribution, either directly or following a conversion exchange or exercise, and the voting rights, if any, attached to the securities of any other class of securities of the issuer that

are the same or greater on a per security basis than those attached to the restricted securities,

- (b) any significant provisions under applicable corporate and securities law that do not apply to the holders of the restricted securities that are the subject of the distribution or that will result from the distribution, either directly or following a conversion exchange or exercise, but do apply to the holders of another class of equity securities, and the extent of any rights provided in the constating documents or otherwise for the protection of holders of the restricted securities,
 - (c) any rights under applicable corporate law, in the constating documents or otherwise, of holders of restricted securities that are the subject of the distribution or that will result from the distribution, either directly or following a conversion exchange or exercise, to attend, in person or by proxy, meetings of holders of equity securities of the issuer and to speak at the meetings to the same extent that holders of equity securities are entitled, and
 - (d) how the issuer complied with, or basis upon which it was exempt from, the requirements of Part 7 of NI 41-101.
- (2) If holders of restricted securities do not have all of the rights referred to in subsection (1) the detailed description referred to in that subsection must include, in bold type, a statement of the rights the holders do not have.
- (3) If the issuer is required to include the disclosure referred to in subsection (1), state the percentage of the aggregate voting rights attached to the issuer's securities that will be represented by restricted securities after giving effect to the issuance of the securities being offered.

1.20 Item 7.9 is repealed and the following is substituted:

Ratings

- 7.9** If the issuer has asked for and received a stability rating, or if the issuer has received any other kind of rating, including a provisional rating, from

one or more approved rating organizations for the securities being distributed and the rating or ratings continue in effect, disclose

- (a) each security rating, including a provisional rating or stability rating, received from an approved rating organization,
- (b) the name of each approved rating organization that has assigned a rating for the securities to be distributed,
- (c) a definition or description of the category in which each approved rating organization rated the securities to be distributed and the relative rank of each rating within the organization's classification system,
- (d) an explanation of what the rating addresses and what attributes, if any, of the securities to be distributed are not addressed by the rating,
- (e) any factors or considerations identified by the approved rating organization as giving rise to unusual risks associated with the securities to be distributed,
- (f) a statement that a security rating or a stability rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time by the rating organization, and
- (g) any announcement made by, or any proposed announcement known to the issuer to be made by, an approved rating organization that the organization is reviewing or intends to revise or withdraw a rating previously assigned and required to be disclosed under this paragraph.

INSTRUCTION

There may be factors relating to a security that are not addressed by a ratings agency when they give a rating. For example, in the case of cash settled derivatives, factors in addition to the creditworthiness of the issuer, such as the

continued subsistence of the underlying interest or the volatility of the price, value or level of the underlying interest may be reflected in the rating analysis. Rather than being addressed in the rating itself, these factors may be described by an approved rating organization by way of a superscript or other notation to a rating. Any such attributes must be discussed in the disclosure under this item.

1.21 The following is added after Item 7:

Item 7A. Prior Sales

7A.1 Prior Sales - For each class of securities of the issuer distributed under the short form prospectus and securities that are convertible into those classes of securities, state, for the 12 month period before the date of the short form prospectus,

- (a) the price at which the securities have been sold, and
- (b) the number of securities sold.

7A.2 Trading Price and Volume

- (1) For each class of securities of the issuer that is traded or quoted on a Canadian marketplace, identify the marketplace and the price ranges and volume traded or quoted on the Canadian marketplace on which the greatest volume of trading or quotation generally occurs.
- (2) If a class of securities of the issuer is not traded or quoted on a Canadian marketplace, but is traded or quoted on a foreign marketplace, identify the foreign marketplace and the price ranges and volume traded or quoted on the foreign marketplace on which the greatest volume or quotation generally occurs.
- (3) Provide the information required under subsections (1) and (2) on a monthly basis for each month or, if applicable, partial months of the 12-month period before the date of the short form prospectus.

1.22 Item 10.1 is amended

(a) **by repealing subsection (2) and substituting the following:**

- (2) Describe any proposed acquisition by an issuer that
- (a) has progressed to a state where a reasonable person would believe that the likelihood of the issuer completing the acquisition is high; and
 - (b) would be a significant acquisition for the purposes of Part 8 of NI 51-102 or would be if it were not a reverse takeover as defined in NI 51-102 if completed as of the date of the short form prospectus.

(b) **by repealing subsection (3) and substituting the following:**

- (3) If disclosure about an acquisition or proposed acquisition is required under subsection (1) or (2), include financial statements or other information of the acquisition or proposed acquisition if the inclusion of the financial statements is necessary for the short form prospectus to contain full, true and plain disclosure of all the material facts relating to the securities being distributed.

(c) **by renumbering item 10.1 as item 10.2;**

(d) **by adding the following before item 10.2**

Item 10.1 Application and Definitions - This Item does not apply to a completed or proposed transaction by the issuer that was or will be accounted for as a reverse takeover or a transaction that is a probable reverse takeover.

1.23 The following is added after Item 10.

Item 10A Reverse Takeover and Probable Reverse Takeover

10A.1 Completed Reverse Takeover Disclosure – If the issuer has completed a reverse takeover since the end of the financial year in respect of which the issuer’s current AIF is incorporated by reference into the short form prospectus under paragraph 1. of subsection 11.1(1), provide disclosure about the reverse takeover acquirer by complying with the

following:

1. If the reverse takeover acquirer satisfies the criteria set out in paragraphs 2.2(a), (b), (c), and (d) of the Instrument, incorporating by reference into the short form prospectus all documents that would be required to be incorporated by reference under Item 11 if the reverse takeover acquirer were the issuer of the securities.
2. If paragraph 1 does not apply to the reverse takeover acquirer, including in the short form prospectus the same disclosure about the reverse takeover acquirer that would be required to be contained in a prospectus, other than a short form prospectus in the form of this Form, if the reverse takeover acquirer were the issuer of the securities being distributed and the reverse takeover acquirer was distributing those securities by way of the prospectus.

10A.2 Probable Reverse Takeover Disclosure – If the issuer is involved in a probable reverse takeover, provide disclosure about the probable reverse takeover acquirer by complying with the following:

1. If the probable reverse takeover acquirer satisfies the criteria set out in paragraphs 2.2(a), (b), (c), and (d) of the Instrument, incorporating by reference into the short form prospectus all documents that would be required to be incorporated by reference under Item 11 if the probable reverse takeover acquirer were the issuer of the securities.
2. If paragraph 1 does not apply to the probable reverse takeover acquirer, including in the short form prospectus the same disclosure about the probable reverse takeover acquirer that would be required to be contained in a prospectus, other than a short form prospectus in the form of this Form, if the probable reverse takeover acquirer were the issuer of the securities being distributed and the probable reverse takeover acquirer was distributing those securities by way of the prospectus.

1.24 Item 11.1 is amended

- (a) **by deleting “end” and substituting “beginning” in paragraph 6. and by deleting “.” at the end of paragraph 6 and adding the following “, unless the issuer**

- (a) incorporated the BAR by reference into its AIF, or
- (b) incorporated at least 9 months of the acquired business or related businesses operations into the issuer's most recent financial statements.”
- (b) by deleting “end” and substituting “beginning” in paragraph 7.**
- (c) by adding the following after paragraph 7.:**
 - 8. The most recent Form 51-101F1 - *Statement of Reserves Data and Other Oil and Gas Information*, Form 51-101F2 - *Report on Reserves Data by Independent Qualified Reserves Evaluator or Auditor* and Form 51-101F3 - *Report of Management and Directors on Oil and Gas Disclosure*, filed by an SEC issuer as that term is defined in NI 51-102, unless
 - (a) the issuer's current AIF is in the form of Form 51-102F2; or
 - (b) the issuer is otherwise exempted from the requirements of National Instrument 51-101 - *Standards of Disclosure for Oil and Gas Activities*.
- (d) by renumbering paragraphs 8. and 9. as paragraphs 9. and 10. and by repealing paragraph 10. and substituting the following:**
 - 10. Any other disclosure document of the type listed in paragraphs 1 through 8 that the issuer has filed pursuant to an exemption from any requirement under securities legislation since the beginning of the financial year in respect of which the issuer's current AIF is filed.

1.25 Item 11.3 is amended

- (a) by repealing subsection (1) and substituting the following:**

If the issuer does not have a current AIF or current annual financial statements and is relying on the exemption in subsection 2.7(1) of the Instrument, include the disclosure, including financial statements and related MD&A, that would otherwise have been required to have been included in a current AIF and current annual financial statements and related MD&A under section 11.1.

- (b) **in the INSTRUCTION by striking out “reorganization” and substituting “restructuring transaction”.**

1.26 Item 12.1, 4. is amended by striking out “, and in Quebec, disclosure of all material facts likely to affect the value or the market price, of”.

1.27 Item 13 is repealed and the following is substituted:

Item 13 Exemptions for Certain Issues of Guaranteed Securities

13.1 Definitions and interpretation

(1) In this Item

(a) the impact of subsidiaries, on a combined basis, on the financial results of the parent entity is “minor” if each item of the summary financial information of the subsidiaries, on a combined basis, represents less than 3% of the total consolidated amounts,

(b) a parent entity has “limited independent operations” if each item of its summary financial information represents less than 3% of the total consolidated amounts,

(c) a subsidiary is a “finance subsidiary” if it has minimal assets, operations, revenues or cash flows other than those related to the issuance, administration and repayment of the security being distributed and any other securities guaranteed by its parent entity,

(d) “parent credit supporter” means a credit supporter of which the issuer is a subsidiary,

(e) “parent entity” means a parent credit supporter for the purposes of items 13.2 and 13.3 and an issuer for the purpose of item 13.4,

(f) “subsidiary credit supporter” means a credit supporter that is a subsidiary of the parent credit supporter, and

(g) “summary financial information” includes the following line items:

- (i) sales or revenues;
 - (ii) income from continuing operations;
 - (iii) net earnings or loss; and
 - (iv) unless the issuer's GAAP permits the preparation of the credit support issuer's balance sheet without classifying assets and liabilities between current and non-current and the credit support issuer provides alternative meaningful financial information which is more appropriate to the industry,
 - (A) current assets;
 - (B) non-current assets;
 - (C) current liabilities; and
 - (D) non-current liabilities.
- (2) For the purposes of this Item, consolidating summary financial information must be prepared on the following basis
- (a) an entity's annual or interim summary financial information must be derived from the entity's financial information underlying the corresponding consolidated financial statements of the parent entity included in the short form prospectus,
 - (b) the parent entity column must account for investments in all subsidiaries under the equity method, and
 - (c) all subsidiary entity columns must account for investments in non-credit supporter subsidiaries under the equity method.

13.2 Issuer is wholly-owned subsidiary of parent credit supporter - Despite items 6 and 11, an issuer is not required to incorporate by reference into the short form prospectus any of its documents under paragraphs 1 to 4 and 6 to 8 of subsection

11.1(1) or include in the short form prospectus its earning coverage ratios under item 6.1, if

- (a) a parent credit supporter has provided full and unconditional credit support for the securities being distributed;
- (b) the parent credit supporter satisfies the criterion in paragraph 2.4(1)(b) of the Instrument;
- (c) the securities being distributed are non-convertible debt securities, non-convertible preferred shares, or convertible debt securities or convertible preferred shares that are convertible, in each case, into non-convertible securities of the parent credit supporter;
- (d) the parent credit supporter is the beneficial owner of all the issued and outstanding equity securities of the issuer;
- (e) no other subsidiary of the parent credit supporter has provided a guarantee or alternative credit support for all or substantially all of the payments to be made under the securities being distributed;
- (f) the issuer includes in the short form prospectus either
 - (i) a statement that the financial results of the issuer are included in the consolidated financial results of the parent credit supporter, if
 - (A) the issuer is a finance subsidiary, and
 - (B) the impact of any subsidiaries of the parent credit supporter on a combined basis, excluding the issuer, on the consolidated financial results of the parent credit supporter is minor, or
 - (ii) for the periods covered by the parent credit supporter's interim and annual consolidated financial statements included in the short form prospectus under item 12.1, consolidating summary financial

information for the parent credit supporter presented with a separate column for each of the following:

- (A) the parent credit supporter;
- (B) the issuer;
- (C) any other subsidiaries of the parent credit supporter on a combined basis;
- (D) consolidating adjustments;
- (E) the total consolidated amounts.

13.3 Issuer is wholly-owned subsidiary of, and one or more subsidiary credit supporters controlled by, parent credit supporter -

- (1) Despite items 6, 11 and 12, an issuer is not required to incorporate by reference into the short form prospectus any of its documents under paragraphs 1 to 4 and 6 to 8 of subsection 11.1(1), or include in the short form prospectus its earning coverage ratios under item 6.1, or include in the short form prospectus the disclosure of one or more subsidiary credit supporters required by item 12.1, if
 - (a) a parent credit supporter and one or more subsidiary credit supporters have each provided full and unconditional credit support for the securities being distributed;
 - (b) the parent credit supporter satisfies the criterion in paragraph 2.4(1)(b) of the Instrument;
 - (c) the guarantees or alternative credit supports are joint and several;
 - (d) the securities being distributed are non-convertible debt securities, non-convertible preferred shares, or convertible debt securities or convertible preferred shares that are convertible, in each case, into non-convertible securities of the parent credit supporter;

- (e) the parent credit supporter is the beneficial owner of all the issued and outstanding equity securities of the issuer;
- (f) the parent credit supporter controls each subsidiary credit supporter and the parent credit supporter has consolidated the financial statements of each subsidiary credit supporter into the parent credit supporter's financial statements that are included in the short form prospectus; and
- (g) the issuer includes in the short form prospectus for the periods covered by the parent credit supporter's financial statements included in the short form prospectus under item 12.1, consolidating summary financial information for the parent credit supporter presented with a separate column for each of the following:
 - (i) the parent credit supporter;
 - (ii) the issuer;
 - (iii) each subsidiary credit supporter on a combined basis;
 - (iv) any other subsidiaries of the parent credit supporter on a combined basis;
 - (v) consolidating adjustments;
 - (vi) the total consolidated amounts,

(2) Despite paragraph (1)(g)

- (a) if the impact of any subsidiaries of the parent credit supporter on a combined basis, excluding the issuer and all subsidiary credit supporters, on the consolidated financial results of the parent credit supporter is minor, column (iv) may be combined with another column, and

- (b) if the issuer is a finance subsidiary, column (ii) may be combined with another column.

13.4 One or more credit supporters controlled by issuer - Despite Item 12, an issuer is not required to include in the short form prospectus the credit supporter disclosure for one or more credit supporters required by item 12.1, if

- (a) one or more credit supporters have each provided full and unconditional credit support for the securities being distributed,
- (b) if there is more than one credit supporter, the guarantee or alternative credit supports are joint and several,
- (c) the securities being distributed are non-convertible debt securities or non-convertible preferred shares, or convertible debt securities or convertible preferred shares that are convertible, in each case, into non-convertible securities of the issuer,
- (d) the issuer controls each credit supporter and the issuer has consolidated the financial statements of each credit supporter into the issuer's financial statements that are included in the short form prospectus, and
- (e) the issuer includes in the short form prospectus either
 - (i) a statement that the financial results of the credit supporter(s) are included in the consolidated financial results of the issuer, if
 - (A) the issuer has limited independent operations, and
 - (B) the impact of any subsidiaries of the issuer on a combined basis, excluding the credit supporter(s) but including any subsidiaries of the credit supporter(s) that are not themselves credit supporters, on the consolidated financial results of the issuer is minor, or
 - (ii) for the periods covered by the issuer's financial statements included in the short form prospectus under Item 11, consolidating

summary financial information for the issuer, presented with a separate column for each of the following:

- (A) the issuer;
- (B) the credit supporters on a combined basis;
- (C) any other subsidiaries of the issuer on a combined basis;
- (D) consolidating adjustments;
- (E) the total consolidated amounts.

1.28 Item 14.1 is amended by

- (a) **renumbering item 14.1 as 14.1(1) and by adding “of the distribution” after “selling security holder is also an underwriter”;**
- (b) **repealing the INSTRUCTION and substituting the following:**
 - (2) For the purposes of subsection (1), “connected issuer” and “related issuer” have the same meanings as in NI 33-105.

1.29 Item 15.1 is amended by striking out “statement, report or valuation” and substituting “report, valuation, statement or opinion” wherever it occurs.

1.30 Item 16 is repealed and the following is substituted:

Item 16 Promoters and substantial beneficiaries of the offering

16.1 Promoters and substantial beneficiaries of the offering

- (1) For a person or company, that is, or has been within the 3 years immediately preceding the date of the short form prospectus, a promoter of the issuer or subsidiary of the issuer, or that is a substantial beneficiary of the offering as defined in section 5.13 of NI 41-101, state
 - (a) the person or company’s name,

(b) the number and percentage of each class of voting securities and equity securities of the issuer or any of its subsidiaries beneficially owned, directly or indirectly, or over which control is exercised by the person or company,

(c) the nature and amount of anything of value, including money, property, contracts, options or rights of any kind received or to be received by the promoter or substantial beneficiary of the offering, directly or indirectly, from the issuer or from a subsidiary of the issuer, and the nature and amount of any assets, services or other consideration received or to be received by the issuer or a subsidiary of the issuer in return, and

(d) for an asset acquired within the 3 years before the date of the preliminary short form prospectus, or to be acquired, by the issuer or by a subsidiary of the issuer from a promoter or substantial beneficiary of the offering

(i) the consideration paid or to be paid for the asset and the method by which the consideration has been or will be determined,

(ii) the person or company making the determination referred to in subparagraph (i) and the person or company's relationship with the issuer, the promoter or substantial beneficiary of the offering, or an affiliate of the issuer, promoter or substantial beneficiary of the offering, and

(iii) the date that the asset was acquired by the promoter or substantial beneficiary of the offering and the cost of the asset to the promoter or substantial beneficiary of the offering.

(2) If a promoter or a substantial beneficiary of the offering referred to in subsection (1) has been a director, executive officer, or promoter of any person or company during the 10 years ending on the date of the preliminary short form prospectus, that while that person was acting in that capacity,

- (a) was the subject of an order that denied the person or company access to any exemptions under provincial or territorial securities legislation, for a period of more than 30 consecutive days, state the fact and describe the basis on which the order was made and whether the order is still in effect,
 - (b) was subject to an event that resulted, after the director, executive officer or promoter ceased to be a director, executive officer or promoter, in the person or company being subject to an order that denied the relevant person or company access to any exemption under securities legislation, for a period of more than 30 consecutive days, state the fact and describe the basis on which the order was made and whether the order is still in effect, or
 - (c) within a year of that person ceasing to act in that capacity, became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or been subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets, state the fact.
- (3) If a promoter of the issuer or a substantial beneficiary of the offering referred to in subsection (1) has, within the 10 years before the date of the short form prospectus, become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency, or was subject to or instituted any proceedings, arrangement or compromise with creditors, or had a receiver, receiver manager or trustee appointed to hold the assets of the promoter or substantial beneficiary of the offering, state the fact.
- (4) Describe the penalties or sanctions imposed and the grounds on which they were imposed or the terms of the settlement agreement and the circumstances that gave rise to the settlement agreement, if a promoter or substantial beneficiary of the offering referred to in subsection (1) has been subject to
- (a) any penalties or sanctions imposed by a court relating to provincial or territorial securities legislation or by a provincial or territorial

securities regulatory authority or has entered into a settlement agreement with a provincial or territorial securities regulatory authority, or

- (b) any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor in making an investment decision.

(5) Despite subsection (4), no disclosure is required of a settlement agreement entered into before December 31, 2000 unless the disclosure would likely be considered important to a reasonable investor in making an investment decision.

1.31 Item 18.1 is amended by striking out “, and in Québec not to make any misrepresentation likely to affect the value or market price of,”

1.32 Item 21 is repealed and the following is substituted:

Item 21 Certificates

21.1 Certificates - Include the certificates required by Part 5 of NI 41-101 or securities legislation.

21.2 Issuer certificate form - An issuer certificate form must state

“This short form prospectus, together with the documents incorporated herein by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this short form prospectus as required by the securities legislation of [insert the jurisdictions in which qualified].”

21.3 Underwriter certificate form - An underwriter certificate form must state

“To the best of our knowledge, information and belief, this short form prospectus, together with the documents incorporated herein by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this short form prospectus as required by the securities legislation of [insert the jurisdictions in which qualified].”

21.4 Amendments -

- (1) For an amendment to a short form prospectus that does not restate the short form prospectus, omit the references in the language in sections 21.2 and 21.3 to “short form prospectus” and replace it with “short form prospectus dated [insert date] as amended by this amendment”.
- (2) For an amended and restated short form prospectus, omit the references in the language in sections 21.2 and 21.3 to “short form prospectus” and replace it with “amended and restated short form prospectus”.

APPENDIX D

Schedule 3

COMPANION POLICY TO NATIONAL INSTRUMENT 44-101 *SHORT FORM PROSPECTUS DISTRIBUTIONS*

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**COMPANION POLICY 44-101CP
TO NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS**

PART 1 INTRODUCTION AND DEFINITIONS

1.1 Introduction and Purpose - National Instrument 44-101 *Short Form Prospectus Distributions* (“NI 44-101”) sets out the substantive tests for an issuer to qualify to file a prospectus in the form of a short form prospectus. The purpose of NI 44-101 is to shorten the time period in which, and streamline the procedures by which, qualified issuers and their selling security holders can obtain access to the Canadian capital markets through a prospectus offering.

British Columbia, Alberta, Ontario, Manitoba, Nova Scotia and New Brunswick have adopted NI 44-101 by way of rule. Saskatchewan and Québec have adopted it by way of regulation. All other jurisdictions have adopted NI 44-101 by way of related blanket ruling or order. Each jurisdiction implements NI 44-101 by one or more instruments forming part of the law of that jurisdiction (referred to as the “implementing law of the jurisdiction”). Depending on the jurisdiction, the implementing law of the jurisdiction can take the form of regulation, rule, ruling or order.

This Companion Policy to NI 44-101 (also referred to as “this Companion Policy” or this “Policy”) provides information relating to the manner in which the provisions of NI 44-101 are intended to be interpreted or applied by the provincial and territorial securities regulatory authorities, as well as the exercise of discretion under NI 44-101. **The Companion Policy to National Instrument 41-101 General Prospectus Requirements provides guidance for prospectuses filed under securities legislation including short form prospectuses. Issuers should refer to the Companion Policy to NI 41-101 as well as this Policy.**

Terms used and not defined in this Companion Policy that are defined or interpreted in NI 44-**101, NI 41-101** or a definition instrument in force in the jurisdiction should be read in accordance with NI 44-**101, NI 41-101** or the definition instrument, unless the context otherwise requires.

To the extent that any provision of this Policy is inconsistent or conflicts with the applicable provisions of NI 44-101 **and NI 41-101** in those jurisdictions that have adopted NI 44-101 by way of related blanket ruling or order, the provisions of NI 44-**101 and NI 41-101** prevail over the provisions of this Policy.

1.2 Interrelationship with Local Securities Legislation - NI 44-**101 and NI 41-101**, while being the primary ~~instrument~~**instruments** regulating short form prospectus distributions, ~~is~~**are** not exhaustive. Issuers are reminded to refer to the implementing law of the jurisdiction and other securities legislation of the local

jurisdiction for additional requirements that may be applicable to the issuer's short form prospectus distribution.

- 1.3 Interrelationship with Continuous Disclosure (NI 51-102 and NI 81-106)** - The short form prospectus distribution system established under NI 44-101 is based on the continuous disclosure filings of reporting issuers pursuant to NI 51-102 or, in the case of an investment fund, NI 81-106. Issuers who wish to use the system should be mindful of their ongoing disclosure and filing obligations under the applicable CD rule. Issues raised in the context of a continuous disclosure review may be taken into consideration by the regulator when determining whether it is in the public interest to refuse to issue a receipt for a short form prospectus. Consequently, unresolved issues may delay or prevent the issuance of a receipt.
- 1.4 Interrelationship with MRRS** - National Policy 43-201 *Mutual Reliance Review System for Prospectuses* and, in Québec, *Notice 43-201 relating to the Mutual Reliance Review System for Prospectuses* ("NP 43-201") describes the practical application of the mutual reliance review system relating to the filing and review of prospectuses, including investment fund and shelf prospectuses, amendments to prospectuses and related materials. While use of NP 43-201 is optional, NP 43-201 represents the only means by which an issuer can enjoy the benefits of co-ordinated review by the securities regulatory authorities in the various jurisdictions in which the issuer has filed a short form prospectus. Under NP 43-201, one securities regulatory authority or regulator as defined in *NI 14-101 Definitions* ("NI 14-101"), as applicable, acts as the principal regulator for all materials relating to a filer.
- 1.5 Interrelationship with Selective Review** - The securities regulatory authorities in some jurisdictions have, formally or informally, adopted a system of selective review of certain documents, including short form prospectuses and amendments to short form prospectuses. Under the selective review system, these documents may be subject to an initial screening to determine whether they will be reviewed and, if reviewed, whether they will be subject to a full review, an issue-oriented review or an issuer review. Application of the selective review system, taken together with MRRS, may result in certain short form prospectuses and amendments to short form prospectuses not being reviewed beyond the initial screening.
- 1.6 Interrelationship with Shelf Distributions (NI 44-102)** - Issuers qualified under NI 44-101 to file a prospectus in the form of a short form prospectus and their security holders can distribute securities under a short form prospectus using the shelf distribution procedures under NI 44-102. The Companion Policy to NI 44-102 explains that the distribution of securities under the shelf system is governed by the requirements and procedures of NI 44-101 and securities legislation, except as supplemented or varied by NI 44-102. Therefore, issuers qualified to file a prospectus in the form of a short form prospectus and selling security holders of those issuers that wish to distribute securities under the shelf system should have regard to NI 44-101 and this Policy first, and then refer to NI 44-102 and the accompanying policy for any additional requirements.

1.7 Interrelationship with PREP Procedures (NI 44-103) - NI 44-103 *Post-Receipt Pricing* (“NI 44-103”) contains the post-receipt pricing procedures (the “PREP procedures”). All issuers and selling security holders can use the PREP procedures of NI 44-103 to distribute securities. Issuers and selling security holders that wish to distribute securities under a prospectus in the form of a short form prospectus using the PREP procedures should have regard to NI 44-101 and this Policy first, and then refer to NI 44-103 and the accompanying policy for any additional requirements.

1.8 Definitions

- (1) **Approved rating** - Cash settled derivatives are covenant-based instruments that may be rated on a similar basis to debt securities. In addition to the creditworthiness of the issuer, other factors such as the continued subsistence of the underlying interest or the volatility of the price, value or level of the underlying interest may be reflected in the rating analysis for cash settled derivatives. These additional factors may be described by a rating agency by way of a superscript or other notation to a rating. The inclusion of such notations for covenant-based instruments that otherwise fall within one of the categories of an approved rating does not detract from the rating being considered to be an approved rating for the purposes of NI 44-101.

A rating agency may also restrict its rating to securities of an issuer that are denominated in local currency. This restriction may be denoted, for example, by the designation “LC”. The inclusion of such a designation in a rating that would otherwise fall within one of the categories of an approved rating does not detract from the rating being considered to be an approved rating for the purposes of NI 44-101.

- (2) **Asset-backed security** - ~~The definition of “asset backed security” is the same definition used in NI 51-102.~~ **Issuers should refer to section 1.3(1) of the Companion Policy to NI 41-101.**

~~The definition is designed to be flexible to accommodate future developments in asset backed securities. For example, it does not include a list of “eligible” assets that can be securitized. Instead, the definition is broad, referring to “receivables or other financial assets” that by their terms convert into cash within a finite time period. These would include, among other things, notes, leases, instalment contracts and interest rate swaps, as well as other financial assets, such as loans, credit card receivables, accounts receivable and franchise or servicing arrangements. The reference to “and any rights or other assets...” in the definition is sufficiently broad to include “ancillary” or “incidental” assets, such as guarantees, letters of credit, financial insurance or other instruments provided as a credit enhancement for the securities of the issuer or which support the underlying assets in the pool, as well as cash arising upon collection of the underlying assets that may be reinvested in short term debt obligations.~~

~~The term, a “discrete pool” of assets, can refer to a single group of assets as a “pool” or to multiple groups of assets as a “pool”. For example, a group or pool of credit card receivables and a pool of mortgage receivables can, together, constitute a “discrete pool” of assets. The reference to a “discrete pool” of assets is qualified by the phrase “fixed or revolving” to clarify that the definition covers “revolving” credit arrangements, such as credit card and short term trade receivables, where balances owing revolve due to periodic payments and write-offs.~~

~~While typically a pool of securitized assets will consist of financial assets owed by more than one obligor, the definition does not currently include a limit on the percentage of the pool of securitized assets that can be represented by one or more financial assets owing by the same or related obligors (sometimes referred to as an “asset concentration test”).~~

- (3) **Current AIF** - An issuer’s AIF filed under the applicable CD rule is a “current AIF” until the issuer files an AIF for the next financial year, or is required by the applicable CD rule to have filed its annual financial statements for the next financial year. If an issuer fails to file a new AIF by the filing deadline under the applicable CD rule for its annual financial statements, it will not have a current AIF and will not qualify under NI 44-101 to file a prospectus in the form of a short form prospectus. If an issuer files a revised or amended AIF for the same financial year as an AIF that has previously been filed, the most recently filed AIF will be the issuer’s current AIF.

An issuer that is a *venture issuer* for the purpose of NI 51-102, and certain investment funds, may have no obligation under the applicable CD rule to file an AIF. However, to qualify under NI 44-101 to file a prospectus in the form of a short form prospectus, that issuer will be required to file an AIF in accordance with the applicable CD rule so as to have a “current AIF”. A current AIF filed by an issuer that is a venture issuer for the purposes of NI 51-102 can be expected to expire later than a non-venture issuer’s AIF, due to the fact that the deadlines for filing annual financial statements under NI 51-102 are later for venture issuers than for other issuers.

- (4) **Current annual financial statements** - An issuer’s comparative annual financial statements filed under the applicable CD rule, together with the accompanying auditor’s report, are “current annual financial statements” until the issuer files, or is required under the applicable CD rule to have filed, its comparative annual financial statements for the next financial year. If an issuer fails to file its comparative annual financial statements by the filing deadline under the applicable CD rule, it will not have current annual financial statements and will not be qualified under NI 44-101 to file a prospectus in the form of a short form prospectus.

Where there has been a change of auditor and the new auditor has not audited the comparative period, the report of the former auditor on the comparative period must be included in the prospectus. The issuer may file the report of the former

auditor on the comparative period with the annual financial statements that are being incorporated by reference into the short form prospectus, and clearly incorporate by reference the former auditor's report in addition to the new auditor's report. Alternatively, the issuer can incorporate by reference into the short form prospectus its comparative financial statements filed for the previous year, including the audit reports thereon.

- (5) ~~Regulator— The regulator for each jurisdiction is listed in Appendix D to NI 14-101. In practice, that person has often delegated his or her powers to act under NI 44-101 to another staff member of the same securities regulatory authority or, under the relevant statutory framework, another person is permitted to exercise those powers. Generally, the person exercising the powers of the regulator for the purposes of NI 44-101 holds, as of the date of this Policy, the following position in each jurisdiction:~~

Jurisdiction	Position
Alberta	Director, Capital Markets
British Columbia	Director, Corporate Finance
Manitoba	Director, Corporate Finance
New Brunswick	Executive Director
Newfoundland and Labrador	Director of Securities
Northwest Territories	Deputy Registrar of Securities
Nova Scotia	Director of Securities
Nunavut	Registrar of Securities
Ontario	Manager, Corporate Finance or, in the case of an investment fund, Manager, Investment Funds
Prince Edward Island	Registrar of Securities
Québec	Manager, Corporate Finance
Saskatchewan	Deputy Director, Corporate Finance (except for applications for exemptions from Part 2 of NI 44-101, for which the regulator is the Saskatchewan Financial Services Commission)
Yukon Territory	Registrar of Securities

~~Further delegation may take place among staff or under securities legislation.~~

- (6) **Successor Issuer** - The definition of “successor issuer” requires that the issuer exist “as a result of a restructuring transaction”. In the case of an amalgamation,

the amalgamated corporation is regarded by the securities regulatory authorities as existing “as a result of a restructuring transaction”. Also, if a corporation is incorporated for the sole purpose of facilitating a restructuring transaction, the securities regulatory authorities regard the new corporation as “existing as a result of a restructuring transaction” despite the fact that the corporation may have been incorporated before the restructuring transaction. The definition of “successor issuer” also contains an exclusion applicable to divestitures. For example, an issuer may carry out a restructuring transaction that results in the distribution to security holders of a portion of its business or the transfer of a portion of its business to another issuer. In that case, the entity that carries on the portion of the business that was “spun-off” is not a successor issuer within the meaning of the definition.

PART 2 QUALIFICATION TO FILE A PROSPECTUS IN THE FORM OF A SHORT FORM PROSPECTUS

2.1 Basic Qualification Criteria - Reporting Issuers with Equity Securities Listed on a Short Form Eligible Exchange (Section 2.2 of NI 44-101)

- (1) Section 2.2 of NI 44-101 provides that an issuer with equity securities listed and posted for trading on a short form eligible exchange and that is up-to-date in its periodic and timely disclosure filings in all jurisdictions in which it is a reporting issuer satisfies the criteria for being qualified to file a prospectus in the form of a short form prospectus if it meets the other general qualification criteria. In addition to the listing requirement, the issuer may not be an issuer whose operations have ceased or whose principal asset is its exchange listing. The purpose of this requirement is to ensure that eligible issuers have an operating business in respect of which the issuer must provide current disclosure through application of the applicable CD rule.

The basic qualification criteria are structured to allow most Canadian listed issuers to participate in the expedited offering system created by this Instrument, provided their public disclosure record provides investors with satisfactory and sufficient information about the issuer and its business, operations or capital. The securities regulatory authorities believe that it is in the public interest to allow an issuer’s public disclosure to be incorporated into a short form prospectus, provided that the resulting prospectus provides prospective investors with full, true and plain disclosure about the issuer and the securities being distributed. The securities regulatory authority may not be prepared to issue a receipt for a short form prospectus if the prospectus, together with the documents incorporated by reference, fails to provide such full, true and plain disclosure and, in Québec, disclosure of material facts likely to affect the value or the market price of the securities to be distributed. In such circumstances, the securities regulatory authority may require, in the public interest, that the issuer utilize the long form prospectus regime. In addition, the securities regulatory authorities may also

require that the issuer utilize the long form prospectus regime if the offering is, in essence, an initial public offering by a business or if:

- (a) the offering is for the purpose of financing a dormant or inactive issuer whether or not the issuer intends to use the proceeds to reactivate the issuer or to acquire an active business; or
 - (b) the offering is for the purpose of financing a material undertaking that would constitute a material departure from the business or operations of the issuer as at the date of its current annual financial statements and current AIF.
- (2) A new reporting issuer or a successor issuer may satisfy the criteria to have current annual financial statements or a current AIF by filing its comparative annual financial statements or an AIF, respectively, in accordance with NI 51-102 or NI 81-106, as applicable, for its most recently completed financial year. It is not necessary that the issuer be required by the applicable CD rule to have filed such documents. An issuer may voluntarily choose to file either of these documents in accordance with the applicable CD rule for the purposes of satisfying the eligibility criteria under NI 44-101.

Alternatively, an issuer may rely on the exemption from the requirement to file such documents in section 2.7 of NI 44-101. That section provides an exemption from the current AIF and current annual financial statement requirements for new reporting issuers and successor issuers who have not yet been required to file such documents and who have filed a prospectus or information circular containing disclosure which would have been included in such documents had they been filed under the applicable CD rule.

- (3) An issuer need not have filed all of its continuous disclosure filings in the local jurisdiction in order to be qualified to file a short form prospectus, but under sections 4.1 and 4.2 of NI 44-101 it will be required to file in the local jurisdiction all documents incorporated by reference into the short form prospectus no later than the date of filing the preliminary short form prospectus.

2.2 Alternative Qualification Criteria - Issuers that are Not Listed (Sections 2.3, 2.4, 2.5 and 2.6 of NI 44-101) - Issuers that do not have equity securities listed and posted for trading on a short form eligible exchange in Canada may nonetheless be qualified to file a prospectus in the form of a short form prospectus under the following alternative qualification criteria of NI 44-101:

1. Section 2.3, which applies to issuers which are reporting issuers in at least one jurisdiction, and who are intending to issue non-convertible securities with a provisional approved rating.

2. Section 2.4, which applies to issuers of non-convertible debt securities, non-convertible preferred shares or non-convertible cash settled derivatives, if another person or company that satisfies prescribed criteria provides full and unconditional credit support for the payments to be made by the issuer of the securities.
3. Section 2.5, which applies to issuers of convertible debt securities or convertible preferred shares, if the securities are convertible into securities of a credit supporter that satisfies prescribed criteria and provides full and unconditional credit support for the payments to be made by the issuer of the securities.
4. Section 2.6, which applies to issuers of asset-backed securities.

Under sections 2.4, 2.5 and 2.6 of NI 44-101, an issuer is not required to be a reporting issuer in any jurisdiction in order to qualify to file a prospectus in the form of a short form prospectus. Section 2.3 requires the issuer to be a reporting issuer in at least one jurisdiction of Canada.

2.3 Alternative Qualification Criteria - Issuers of Guaranteed Debt Securities, Preferred Shares and Cash Settled Derivatives (Sections 2.4 and 2.5 of NI 44-101) - Sections 2.4 and 2.5 of NI 44-101 allow an issuer to qualify to file a prospectus in the form of a short form prospectus based on full and unconditional credit support, which may take the form of a guarantee or alternative credit support. The securities regulatory authorities are of the view that a person or company that provides the full and unconditional guarantee or alternative credit support is not, simply by providing that guarantee or alternative credit support, issuing a security.

2.4 Alternative Qualification Criteria - Issuers of Asset-Backed Securities (Section 2.6 of NI 44-101)

- (1) In order to be qualified to file a prospectus in the form of a short form prospectus under section 2.6 of NI 44-101, an issuer must have been established in connection with a distribution of asset-backed securities. Ordinarily, asset-backed securities are issued by special purpose issuers established for the sole purpose of purchasing financial assets with the proceeds of one or more distributions of these securities. This ensures that the credit and performance attributes of the asset-backed securities are dependent on the underlying financial assets, rather than upon concerns relating to ancillary business activities and their attendant risks. Qualification to file a prospectus in the form of a short form prospectus under section 2.6 of NI 44-101 has been limited to special purpose issuers to avoid the possibility that an otherwise ineligible issuer would structure securities falling within the definition of “asset-backed security”.
- (2) The qualification criteria for a distribution of asset-backed securities under a prospectus in the form of a short form prospectus are intended to provide sufficient flexibility to accommodate future developments. To qualify under

section 2.6 of NI 44-101, the securities to be distributed must satisfy the following two criteria:

1. First, the payment obligations on the securities must be serviced primarily by the cash flows of a pool of discrete liquidating assets such as accounts receivable, instalment sales contracts, leases or other assets that by their terms convert into cash within a specified or determinable period of time.
2. Second, the securities must (i) receive an approved rating on a provisional basis, (ii) not have been the subject of an announcement regarding a downgrade to a rating that is not an approved rating, and (iii) not have received a provisional or final rating lower than an approved rating from any approved rating organization.

The qualification criteria do not distinguish between pass-through (i.e., equity) and pay-through (i.e., debt) asset-backed securities. Consequently, both pay-through and pass-through securities, as well as residual or subordinate interests, may be distributed under a prospectus in the form of a short form prospectus if all other applicable requirements are met.

2.5 Timely and Periodic Disclosure Documents - To be qualified to file a short form prospectus under sections 2.2 and 2.3 of NI 44-101, an issuer must file with the securities regulatory authority in each jurisdiction in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction under applicable securities legislation, pursuant to an order issued by the securities regulatory authority, or pursuant to an undertaking to the securities regulatory authority. Similarly, a credit supporter must satisfy this qualification criterion for an issuer to be qualified to file a short form prospectus under sections 2.4 and 2.5 of NI 44-101.

This qualification criterion applies to all disclosure documents including, if applicable, a disclosure document the issuer or credit supporter (i) has undertaken to file with a provincial or territorial securities regulatory authority, (ii) must file pursuant to a condition in a written order or decision granting exemptive relief to the issuer or credit supporter from a requirement to file periodic and timely disclosure documents, (iii) must file pursuant to a condition in securities legislation exempting the issuer or credit supporter from a requirement to file periodic and timely disclosure documents, and (iv) has represented that it will file pursuant to a representation in a written order or decision granting exemptive relief to the issuer or credit supporter from a requirement to file periodic and timely disclosure documents. These disclosure documents must be incorporated by reference into a short form prospectus pursuant to paragraph ~~8 or 9~~ **or 10** of subsection 11.1(1) of Form 44-101F1.

2.6 Notice Declaring Intention – Subsection 2.8(1) of NI 44-101 provides that an issuer is not qualified to file a short form prospectus under Part 2 of NI 44-101 unless it has filed, with its notice regulator, a notice declaring its intention to be qualified to file a short form prospectus under NI 44-101. This notice must be filed in substantially the form of Appendix A of NI 44-101 at least 10 business days prior to the issuer filing its first

preliminary short form prospectus. This is a new requirement that came into effect on December 30, 2005. The securities regulatory authorities expect that this notice will be a one-time filing for issuers that intend to be participants in the short form prospectus distribution system established under NI 44-101. Subsection 2.8(2) provides that this notice is operative until withdrawn. Though the notice must be filed with the notice regulator, an issuer may voluntarily file the notice with any other securities regulatory authority or regulator of a jurisdiction of Canada.

Subsection 2.8(4) of NI 44-101 is a transitional provision that has the effect of deeming issuers that, as of December 29, 2005, have a current AIF under the pre-December 30, 2005 short form prospectus distribution system to have filed this notice and no additional filing is required to satisfy the notice requirements set out in subsection 2.8(1) of NI 44-101.

PART 3 FILING AND RECEIPTING OF SHORT FORM PROSPECTUS

3.1 Previously filed documents

Sections 4.1 and 4.2 of the Instrument require the filing of specified documents that have not been previously filed. Issuers that are relying on previous filing of these specified documents are reminded that the documents should have been filed on the issuer's filer profile for SEDAR.

3.2 Confidential Material Change Reports – Confidential material change reports cannot be incorporated by reference into a short form prospectus. ~~It is the view of the securities regulatory authorities that an issuer cannot meet the standard of “full, true and plain” disclosure and, in Québec, disclosure of all material facts likely to affect the value or the market price of the securities to be distributed, while a material change report has been filed but remains undisclosed publicly. Accordingly, an issuer who has filed a confidential material change report may not file a short form prospectus until the material change that is the subject of the report is generally disclosed, and an issuer may not file a confidential material change report during a distribution and continue with the distribution. If circumstances arise that cause an issuer to file a confidential material change report during the distribution period of securities under a short form prospectus, the issuer should cease all activities related to the distribution until~~ **Issuers should refer to section 3.2 of the Companion Policy to NI 41-101 for further guidance.**

- ~~1. the material change is generally disclosed and an amendment to the short form prospectus is filed, if required; or~~
- ~~2. the decision to implement the material change has been rejected and the issuer has so notified the regulator of each jurisdiction where the confidential material change report was filed.~~

3.3 Supporting Documents

- (1) ~~Material that is filed in a jurisdiction will be made available for public inspection in that jurisdiction, subject to the provisions of securities legislation in the local jurisdiction regarding confidentiality of filed material. Material that is delivered to a regulator, but not filed, is not required under securities legislation to be made available for public inspection. However, the regulator may choose to make such material available for inspection by the public.~~
- (2) ~~Any material incorporated by reference in a preliminary short form prospectus or a short form prospectus is required under sections 4.1 and 4.2 of NI 44-101 to be filed with the preliminary short form prospectus or short form prospectus unless previously filed. When an issuer files a previously unfiled document with its short form prospectus, the issuer should ensure that the document is filed under the SEDAR category of filing and filing subtype specifically applicable to the document, rather than the generic type "Other". For example, an issuer that has incorporated by reference an interim financial statement in its short form prospectus and has not previously filed the statement should file that statement under the "Continuous Disclosure" category of filing, and the "Interim Financial Statements" filing subtype.~~

Issuers should refer to section 3.3 of the Companion Policy to NI 41-101.

- 3.4 **Experts' Consent** - Issuers are reminded that under section 4.4 10.1 of NI 41-101 an auditor's consent is required to be filed for audited financial statements that are included as part of other continuous disclosure filings that are incorporated by reference into a short form prospectus. For example, a separate auditor's consent is required for each set of audited financial statements that are included as part of a business acquisition report or an information circular incorporated by reference into a short form prospectus.

- 3.5 **Undertaking in Respect of Credit Supporter Disclosure - ~~If disclosure about a credit supporter~~** Under subparagraph 4.2(a)(ix) of the Instrument, an issuer must file an undertaking in a form acceptable to the regulators, to file the periodic and timely disclosure of a credit supporter is required to be included in the short form prospectus under section 12.1 of Form 44-101F1, the issuer must undertake to file the credit supporter's periodic and timely disclosure. This undertaking will likely be to file documents similar to the credit supporter's disclosure required under section 12.1 of Form 44-101F1. For credit supporters that are reporting issuers with a current AIF, the undertaking will likely be to file the types of documents listed in subsection 11.1(1) of Form 44-101F1. For credit supporters registered under the 1934 Act, the undertaking will likely be to file the types of documents that would be required to be incorporated by reference into a Form S-3 or Form F-3 registration statement. For other credit supporters, the types of documents to be filed pursuant to the undertaking will be determined through discussions with the regulators on a case-by-case basis.

- 3.6 **Amendments and Incorporation by Reference of Subsequently Filed Material Change Reports** - The requirement in securities legislation NI 41-101 or securities legislation for the filing of an amendment to a preliminary prospectus and prospectus is

not satisfied by the incorporation by reference in a preliminary short form prospectus or a short form prospectus of a subsequently filed material change report.

3.7 Short Form Prospectus Review - No target time frame applies to the review of a short form prospectus of an issuer if the issuer has not elected to use MRRS.

~~**3.8 “Waiting Period” Review time frames for “equity line” short form prospectuses** –If the securities legislation of the local jurisdiction contains the concept of a “waiting period” such that the securities legislation requires that there be a specified period of time between the issuance of a receipt for a preliminary short form prospectus and the issuance of a receipt for a short form prospectus, the implementing law of the jurisdiction removes that requirement as it would otherwise apply to a distribution under NI 44-101.- An issuer that is eligible to use the short form prospectus system may file a preliminary short form prospectus relating to the distribution of securities in connection with an “equity line” financing. Under an equity line arrangement, the issuer typically enters into an agreement with one or more purchasers which provides that, over a certain term, the issuer may from time to time require the purchasers to subscribe for a certain number of securities of the issuer usually at a discount from the market price. Equity line financing raise a number of important policy issues relating to the appropriate treatment of such offerings under existing securities law. Accordingly, these prospectuses will generally be reviewed within the time periods applicable to a long form prospectus.~~

~~**3.9 Registration Requirements** - Issuers filing a preliminary short form prospectus or short form prospectus and other market participants are reminded to ensure that members of underwriting syndicates are in compliance with registration requirements under provincial and territorial securities legislation in each jurisdiction in which syndicate members are participating in the distribution of securities under the short form prospectus. Issuers should refer to section 3.12 of the Companion Policy to NI 41-101 for further guidance.~~

PART 4 CONTENT OF SHORT FORM PROSPECTUS

4.1 Prospectus Liability - Nothing in the short form prospectus regime established by NI 44-101 is intended to provide relief from liability arising under the provisions of securities legislation of any jurisdiction in which a short form prospectus is filed if the short form prospectus contains an untrue statement of a material fact or omits to state a material fact that is required to be stated therein or that is necessary to make a statement not misleading in light of the circumstances in which it was made.

4.2 Style of Prospectus - Provincial and territorial securities legislation requires that a prospectus contain “full, true and plain” disclosure and, in Québec, disclosure of all material facts likely to affect the value or the market price of the securities to be distributed. To that end, issuers and their advisors are reminded that they should ensure that disclosure documents are easy to read, and we encourage issuers to adopt the

following plain language principles in preparing a prospectus in the form of a short form prospectus:

- using short sentences;
- using definite everyday language;
- using the active voice;
- avoiding superfluous words;
- organizing the document into clear, concise sections, paragraphs and sentences;
- avoiding jargon;
- using personal pronouns to speak directly to the reader;
- avoiding reliance on glossaries and defined terms unless it facilitates understanding of the disclosure;
- avoiding vague boilerplate wording;
- avoiding abstract terms by using more concrete terms or examples;
- avoiding multiple negatives;
- using technical terms only when necessary and explaining those terms;
- using charts, tables and examples where it makes disclosure easier to understand;
- using technical terms only when necessary and explaining those terms;
- using charts, tables and examples if it makes disclosure easier to understand.

Question and answer and bullet point formats are consistent with the disclosure requirements of the Instrument.

4.3 ~~Firm Commitment Underwritings~~ Cover page disclosure for non-fixed price distributions ~~If an underwriter has agreed to purchase a specified number or principal amount of the securities to be distributed at a specified price, subsection 1.10(4) of Form 44-101F1 requires the short form prospectus to contain a statement that the securities are to be taken up by the underwriter, if at all, on or before a date not later than 42 days after the date of the receipt for the short form prospectus. If the provincial and territorial securities legislation of a jurisdiction requires that a prospectus indicate that the securities must be taken up by the underwriter within a period that is different than the period provided under NI 44-101, the implementing law of a jurisdiction exempts issuers from that requirement if they comply with NI 44-101.~~ **Section 1.7.1 of Form 44-101F1 provides that, if the offering price or the number of securities being distributed has not been determined at the date of the preliminary short form prospectus, the issuer must disclose a *bona fide* estimate of the range in which the offering price or the number of securities being distributed is expected to be set. We believe that a difference between this *bona fide* estimate and the actual offering price or number of securities being distributed is not generally a material adverse change for which an amended preliminary short form prospectus must be filed.**

4.4 ~~Minimum Distribution~~ Issuers with negative operating cash flow ~~If a minimum amount of funds is required by an issuer and the securities are proposed to be distributed on a best efforts basis, section 5.5 of Form 44-101F1 requires that the short form prospectus state that the distribution will not continue for a period of more than 90 days~~

~~after the date of receipt for the short form prospectus if subscriptions representing the minimum amount of funds are not obtained within that period unless each of the persons and companies who subscribed within that period has consented to the continuation. If the provincial and territorial securities legislation of a jurisdiction requires that a distribution may not continue for more than a specified period if subscriptions representing the minimum amount of funds are not obtained within that period and the specified period is different than the period provided under NI 44-101, the implementing law of a jurisdiction exempts issuers from that requirement if they comply with NI 44-101.~~

Section 4.2 of Form 44-101F1 requires disclosure of each of the principal purposes for which the net proceeds will be used by an issuer. If an issuer has negative operating cash flow in its most recently completed financial year for which financial statements have been included in the short form prospectus, the issuer should prominently disclose that fact in the use of proceeds section of the short form prospectus. The issuer should also disclose whether, and if so, to what extent, the proceeds of the distribution will be used to fund any anticipated negative operating cash flow in future periods. An issuer should disclose negative operating cash flow as a risk factor under subsection 17.1(1) of Form 44-101F1 or item 5.2 in NI 51-102F2.

4.5 Distribution of Asset-backed Securities

- (1) Section 7.3 of Form 44-101F1 specifies additional disclosure applicable for distributions of asset-backed securities. Applicable disclosure for a special purpose issuer of asset-backed securities generally pertains to the nature, performance and servicing of the underlying pool of financial assets, the structure of the securities and dedicated cash flows and any third party or internal support arrangements established to protect holders of the asset-backed securities from losses associated with non-performance of the financial assets or disruptions in payment. The nature and extent of required disclosure may vary depending on the type and attributes of the underlying pool and the contractual arrangements through which holders of the asset-backed securities take their interest in such assets.
- (2) The following factors should be considered by an issuer of asset-backed securities in preparing its short form prospectus:
 1. The extent of disclosure respecting an issuer will depend on the extent of the issuer's on-going involvement in the conversion of the assets comprising the pool to cash and the distribution of cash to security holders; this involvement may, in turn, vary dramatically depending on the type, quality and attributes of the assets comprising the pool and on the overall structure of the transaction.
 2. Requested disclosure respecting the business and affairs of the issuer should be interpreted to apply to the financial assets underlying the asset-backed securities.

3. Disclosure respecting the originator or the seller of the underlying financial assets will be relevant to investors in the asset-backed securities particularly in circumstances where the originator or seller has an on-going relationship with the financial assets comprising the pool. For example, if asset-backed securities are serviced with the cash flows from a revolving pool of receivables, an evaluation of the nature and reliability of the future origination or the future sales of underlying assets by the seller to or through the issuer may be a critical aspect of an investor's investment decision. To address this, the focus of disclosure respecting an originator or seller of the underlying financial assets should deal with whether there are current circumstances that indicate that the originator or seller will not generate adequate assets in the future to avoid an early liquidation of the pool and, correspondingly, an early payment of the asset-backed securities. Summary historical financial information respecting the originator or seller will ordinarily be adequate to satisfy the disclosure requirements applicable to the originator or seller in circumstances where the originator or seller has an ongoing relationship with the assets comprising the pool.

- (3) Paragraph 7.3(d)(i) of Form 44-101F1 requires issuers of asset-backed securities to describe any person or company who originated, sold or deposited a material portion of the financial assets comprising the pool, irrespective of whether the person or company has an on-going relationship with the assets comprising the pool. The securities regulatory authorities consider 33 $\frac{1}{3}$ % of the dollar value of the financial assets comprising the pool to be a material portion in this context.

4.6 Distribution of Derivatives - Section 7.4 of Form 44-101F1 specifies additional disclosure applicable to distributions of derivatives. This prescribed disclosure is formulated in general terms for issuers to customize appropriately in particular circumstances.

4.7 Underlying Securities - ~~Issuers are reminded that~~ If securities being distributed are convertible into or exchangeable for other securities, or are a derivative of, or otherwise linked to, other securities, a description of the material attributes of the underlying securities would generally be necessary to meet the requirement of securities legislation that a prospectus contain full, true and plain disclosure of all material facts relating to, ~~and, in Québec disclosure of all material facts likely to affect the value or the market price of the securities~~ being distributed.

~~**4.8 Offerings of Convertible or Exchangeable Securities** - Investor protection concerns may arise where the distribution of a convertible or exchangeable security is qualified under a prospectus and the subsequent exercise of the convertible or exchangeable security is made on a prospectus exempt basis. Examples of such offerings include the issuance of instalment receipts, subscription receipts and stand-alone warrants or long-term warrants. Reference to stand-alone warrants or long-term warrants is intended to refer to warrants and other forms of exchangeable or convertible securities that are~~

~~offered under a prospectus as a separate and independent form of investment. This would not apply to an offering of warrants where the warrants may reasonably be regarded as incidental to the offering as a whole.~~

~~The investor protection concern arises because the conversion or exchange feature of the security may operate to limit the remedies available to an investor for incomplete or inaccurate disclosure in a prospectus. For example, an investor may pay part of the purchase price at the time of the purchase of the convertible security and part of the purchase price at the time of the conversion. To the extent that an investor makes a further “investment decision” at the time of conversion, the investor should continue to enjoy the benefits of statutory rights or comparable contractual rights in relation to this further investment. In such circumstances, issuers should ensure that either:~~

- ~~(a) the distribution of both the convertible or exchangeable securities and the underlying securities will be qualified by the prospectus; or~~
- ~~(b) the statutory rights that an investor would have if he or she purchased the underlying security offered under a prospectus are otherwise provided to the investor by way of a contractual right of action.~~

4.8 **4.9-Restricted Securities** - Section 7.7 of Form 44-101F1 specifies additional disclosure applicable to restricted securities, including a detailed description of any significant provisions under applicable corporate and securities law that do not apply to the holders of the restricted securities but do apply to the holders of another class of equity securities. An example of such provisions would be rights under takeover bids.

4.9 **4.10 Recent and Proposed Acquisitions**

~~(1)-(1)~~ Subsection 10.2(2) of Form 44-101F1 requires prescribed disclosure of a proposed acquisition that has progressed to a state “where a reasonable person would believe that the likelihood of the acquisition being completed is high” and that would, if completed on the date of the short form prospectus, be a significant acquisition for the purposes of Part 8 of NI 51-102. ~~The securities regulatory authorities interpret~~ **Our interpretation of** the phrase “where a reasonable person would believe that the likelihood of the acquisition being completed is high” **is consistent with the concept of a likely contingency in CICA Handbook section 3290.** It is ~~the~~ **our** view of the securities regulatory authorities that the following factors may be relevant in determining whether the likelihood of an acquisition being completed is high:

1. **(a)** whether the acquisition has been publicly announced;
2. **(b)** whether the acquisition is the subject of an executed agreement; and
3. **(c)** the nature of conditions to the completion of the acquisition including any material third party consents required.

The test of whether a proposed acquisition “has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high” is an objective, rather than subjective, test in that the question turns on what a “reasonable person” would believe. It is not sufficient for an officer of an issuer to determine that he or she personally believes that the likelihood of the acquisition being completed is or is not high. The officer must form an opinion as to what a reasonable person would believe in the circumstances. In the event of a dispute, an objective test requires an adjudicator to decide whether a reasonable person would believe in the circumstances that the likelihood of an acquisition being completed was high. By contrast, if the disclosure requirement involved a subjective test, the adjudicator would assess an individual’s credibility and decide whether the personal opinion of the individual as to whether the likelihood of the acquisition being completed was high was an honestly held opinion. Formulating the disclosure requirement using an objective test rather than a subjective test strengthens the basis upon which the regulator may object to an issuer’s application of the test in particular circumstances.

~~(2)~~ (2) Subsection 10.2(3) of Form 44-101F1 requires inclusion of the financial statements or other information relating to certain acquisitions or proposed acquisitions if the acquisition or proposed acquisition is a reverse takeover or if the inclusion of the financial statements or other information is necessary in order for the short form prospectus to contain full, true and plain disclosure of all material facts relating to, ~~and in Québec, disclosure of all material facts likely to affect the value or the market price of,~~ the securities being distributed. ~~The securities regulatory authorities~~ We generally presume that the inclusion of financial statements or other information is required for all acquisitions that are, or would be, significant under Part 8 of NI 51-102. Issuers can rebut this presumption if they can provide evidence that the financial statements or other information are not required for full, true and plain disclosure.

Instruction (2) of section 10.2 of Form 44-101F1 provides that issuers must satisfy the requirements of subsection 10.2(3) of Form 44-101F1 by including either:

(i) the financial statements or other information that would be required by Part 8 of NI 51-102; or

(ii) satisfactory alternative financial statements or other information. ~~The securities regulatory authorities~~

~~believe that s-~~ Satisfactory alternative financial statements or other information may be provided to satisfy the requirements of ~~subsection~~ subsection 10.2(3) when the financial statements or other information that would be required by Part 8 of NI 51-102 relate to a financial year ended within 90 days before the date of the ~~short form prospectus~~ or an interim period ended within 60 days before the date of the ~~short form prospectus~~ for issuers that are venture issuers, and 45 days for issuers that are not venture issuers. In these circumstances, ~~the securities regulatory authorities~~ we believe that satisfactory alternative financial statements or other information would not have to include any financial statements or other information for the acquisition or ~~proposed~~ probable acquisition related to:

~~(a)-(a)~~ a financial year ended within 90 days before the date of the short form prospectus; or

~~(b)-(b)~~ an interim period ended within 60 days before the date of the short form prospectus **for issuers that are venture issuers, and 45 days for issuers that are not venture issuers.**

~~The securities regulatory authorities believe that~~**An example of** satisfactory alternative financial statements or other information ~~would instead have to include, for the acquisition or proposed acquisition:~~ **that we will generally find acceptable would be:**

~~(c)-(c)~~ comparative annual financial statements or other information **for the acquisition or probable acquisition** for at least the number of financial years as would be required under Part 8 of NI 51-102; **102, audited for the most recently completed annual period in accordance with NI 52-107, and reviewed for the comparative period in accordance with section 4.3 of the Instrument;**

~~(d)-(d)~~ comparative interim financial statements or other information **for the acquisition or probable acquisition** for any interim period ended subsequent to the latest annual financial statements included in the short form prospectus and more than 60 days before the date of the short form prospectus **for issuers that are venture issuers, and 45 days for issuers that are not venture issuers reviewed in accordance with section 4.3 of the Instrument;** and

~~(e)-(e)~~ *pro forma* financial statements or other information required under Part 8 of NI 51-102.

~~The securities regulatory authorities encourage issuers to utilize the pre-filing procedures in NP 43-201 if~~

If the issuer intends to omit from its short form prospectus, the include financial statements or other information required under subsection 10.1(3) of Form 44-101F1 or intends to file as set out in the example above as satisfactory alternative financial statements or other information in lieu of the financial statements or other information required by Part 8 of NI 51-102, we ask that this be highlighted in the cover letter to the prospectus. If the issuer does not intend to include financial statements or other information, or intends to file financial statements or other information that are different from those set out above, we encourage the utilization of pre-filing procedures in NP 43-201.

(3) When an issuer acquires a business or related businesses that has itself recently acquired another business or related businesses (an “indirect acquisition”), the issuer should consider whether long form prospectus disclosure about the indirect acquisition, including historical financial statements, is necessary to satisfy the requirement that the long form prospectus contain full, true and plain disclosure of all material facts relating to the securities being distributed. In making this determination, the issuer should consider the following factors:

- if the indirect acquisition would meet any of the significance tests in section 35.1(4) of Form 41-101F1 [Application and definitions] when the issuer applies each of those tests to its proportionate interest in the indirect acquisition of the business; and
- if the amount of time between the separate acquisitions is such that the effect of the first acquisition is not adequately reflected in the results of the business or related businesses the issuer is acquiring.

(4) Subsection 10.2(3) discusses financial statements or other information for the completed or proposed acquisition of the business or related businesses. This “other information” is intended to capture the financial information disclosures required under Part 8 of NI 51-102 other than financial statements. An example of “other information” would include the operating statements, property descriptions, production volumes and reserves disclosures described under section 8.10 of NI 51-102.

4.10 Updated *pro forma* financial statements to date of prospectus - In addition to the *pro forma* financial statements for completed acquisitions that are required to be included in a business acquisition report incorporated by reference into a prospectus under Item 11 of Form 44-101F1, an issuer may include a set of *pro forma* financial statement prepared as at the date of the prospectus. This Item does not provide an exemption from the requirements to include the *pro forma* financial statements otherwise required if the issuer voluntarily includes *pro forma* financial statements for completed acquisitions prepared as at the date of the prospectus. However, the regulator will consider granting exemptive relief from those requirements on a case by case basis. An issuer applying for relief should utilize the pre-filing procedures in NP 43-201.

4.11 General Financial Statement Requirements - A reporting issuer is required under the applicable CD rule to file its annual financial statements and related MD&A 90 days after year end (or 120 days if the issuer is a *venture issuer* as defined in NI 51-102). Interim financial statements and related MD&A must be filed 45 days after the last day of an interim period (or 60 days for a venture issuer). The financial statement requirements in NI 44-101 are based on these continuous disclosure reporting time frames and do not impose accelerated filing deadlines for a reporting issuer’s financial statements. However, to the extent an issuer has filed financial statements in advance of the deadline for doing so, those financial statements must be incorporated by reference in the short form prospectus. ~~The securities regulatory authorities~~ **We** are of the view that directors of an issuers should endeavor to review consider and approve financial statements in a timely manner and should not delay the approval and ~~release~~ filing of the financial statements ~~in order to~~ for the purpose of avoiding their inclusion in a short form

prospectus. **Once the financial statements have been approved, they should be filed as soon as possible.**

4.12 Risk factors

Item 17 of Form 44-101F1 and item 5.2 of NI 51-102F2 require an issuer to include risk factor disclosure in the short form prospectus. Issuers should only disclose risk factors that a reasonable investor would consider relevant to an investment in the securities being distributed and should not de-emphasize risk factors by including excessive caveats or conditions.

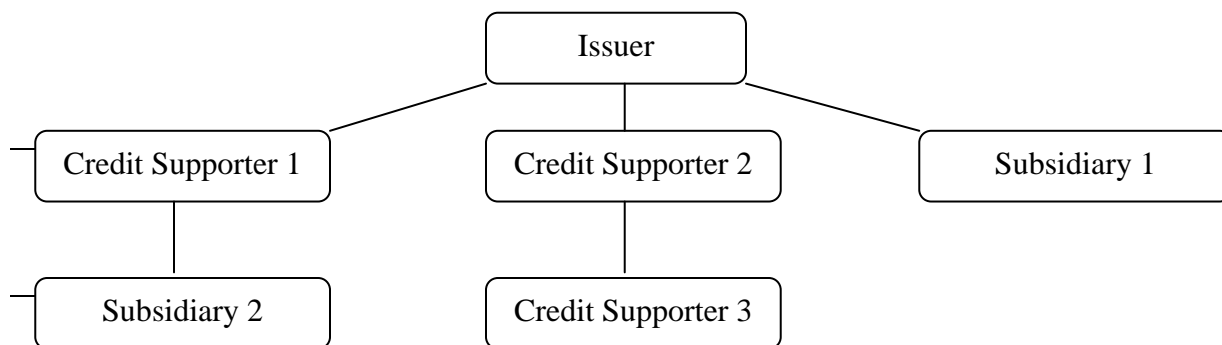
4.12-4.13 Credit Supporter Disclosure - In addition to the issuer's documents required to be incorporated by reference under sections 11.1 and 11.2 of Form 44-101F1 and the issuer's earnings coverage ratios required to be included under Item 6 of Form 44-101F1, a short form prospectus must include, under section 12.1 of Form 44-101F1, disclosure about any credit supporters that have provided a guarantee or alternative credit support for all or substantially all of the payments to be made under the securities being distributed. ~~This type of guarantee or alternative credit support is not necessarily full and unconditional credit support as contemplated in sections 2.4 and 2.5 of NI 44-101.~~ Accordingly, disclosure about a credit supporter may be required even if the credit supporter has not provided full and unconditional credit support.

~~Disclosure relating to all applicable credit supporters is generally required to ensure that the short form prospectus includes full, true and plain disclosure of all material facts concerning, and in Québec, disclosure of all material facts likely to affect the value or the market price of, the securities to be distributed. This is based on the principle that investors need both issuer and credit supporter disclosure to make an informed investment decision because both the issuer and the credit supporter are liable for payments to be made under the securities being distributed.~~

4.13-4.14 Exemptions for Certain Issues of Guaranteed Securities - Requiring disclosure about the issuer and any applicable credit supporters in a short form prospectus may result in unnecessary disclosure in some instances. Item 13 of Form 44-101F1 provides exemptions from the requirement to include both issuer and credit supporter disclosure where such disclosure is not necessary to ensure that the short form prospectus includes full, true and plain disclosure of all material facts concerning, ~~and in Québec, disclosure of all material facts likely to affect the value or the market price of, the securities to be distributed.~~

The exemptions in Item 13 of Form 44-101F1 are based on the principle that, in these instances, investors will generally require either issuer disclosure or credit supporter disclosure to make an informed investment decision. The exemptions set out in Item 13 of Form 44-101F1 are not intended to be comprehensive and issuers may apply for exemptive relief from the requirement to provide both issuer and credit supporter disclosure, as appropriate.

The following example illustrates the application of the exemption in section 13.3 of Form 44-101F1.



Facts:

- ~~Credit Supporter 1, Credit Supporter 2, and Credit Supporter 3 are credit supporters.~~
- ~~Credit Supporter 1, Credit Supporter 2, and Credit Supporter 3 have each provided full and unconditional credit support for the securities being distributed.~~
- ~~The guarantees or alternative credit supports of Credit Supporter 1, Credit Supporter 2, and Credit Supporter 3, are joint and several.~~
- ~~The securities being distributed are non-convertible debt securities or non-convertible preferred shares.~~
- ~~Credit Supporter 1, Credit Supporter 2, and Credit Supporter 3 are wholly owned subsidiaries of Issuer.~~
- ~~Subsidiary 1 and Subsidiary 2 are not credit supporters.~~

Disclosure required in short form prospectus

- ~~Issuer must incorporate by reference into the short form prospectus the documents required by Item 11 of Form 44-101F1.~~
- ~~Under the exemption in section 13.3 of Form 44-101F1, Issuer is not required to include the disclosure of Credit Supporter 1, Credit Supporter 2, or Credit Supporter 3, as otherwise required by section 12.1 of Form 44-101F1.~~
- ~~If Issuer has no operations or only minimal operations that are independent of Credit Supporter 1, Credit Supporter 2, and Credit Supporter 3, and each item of the summary financial information (as set out in Instruction (1) to Item 13 of Form 44-101F1) of Subsidiary 1 plus Subsidiary 2 is less than 3% of corresponding consolidated amounts of Issuer, the short form prospectus must state that the financial results of Credit Supporter 1 (less Subsidiary 2), Credit Supporter 2, and Credit Supporter 3 are included in the consolidated financial results of Issuer.~~
- ~~If paragraph (e)(i) of section 13.3 of Form 44-101F1 does not apply, the short form prospectus must include consolidating summary financial information for Issuer with a separate column for each of:~~
 - ~~Issuer (Issuer's investment in Credit Supporter 1, Credit Supporter 2, and Subsidiary 1 should be accounted for under the equity method);~~

- ~~Credit Supporter 1 plus Credit Supporter 2 (Credit Supporter 1's investment in Subsidiary 2 should be accounted for under the equity method but Credit Supporter 2 should consolidate Credit Supporter 3);~~
- ~~Subsidiary 1 plus Subsidiary 2;~~
- ~~consolidating adjustments; and~~
- ~~total consolidated amounts.~~

Part 5 CERTIFICATES

5.1 Non-corporate Issuers

5.1 Issuers should refer to section 2.6 of the Companion Policy to NI 41-101.

- ~~(1) Paragraph 21.1(a) of Form 44-101F1 requires an issuer to include a certificate in the prescribed form signed by the chief executive officer and the chief financial officer or, if no such officers have been appointed, a person acting on behalf of the issuer in a capacity similar to a chief executive officer and a person acting on behalf of the issuer in a capacity similar to a chief financial officer. For a non-corporate issuer that is a trust and has a trust company acting as its trustee, this officers' certificate is frequently signed by authorized signing officers of the trust company that perform functions on behalf of the trust similar to those of a chief executive officer and a chief financial officer. In some cases, these functions are delegated to and performed by other persons (e.g. employees of a management company). If the declaration of trust governing the issuer delegated the trustee's signing authority, the officers' certificate may be signed by the persons to whom authority is delegated under the declaration of trust to sign documents on behalf of the trustee or on behalf of the trust, provided that those persons are acting in a capacity similar to a chief executive officer or chief financial officer of the issuer.~~
- ~~(2) Paragraph 21.1(b) of Form 44-101F1 requires an issuer to include a certificate in the prescribed form signed on behalf of the board of directors, by two directors of the issuer, other than the persons referred to in paragraph 21.1(a), duly authorized to sign. Issuers that are not companies are directed to the definition of "director" and, in Québec, the definition of "senior executive" in securities legislation to determine the appropriate signatories to the certificate. The definition of "director" or, in Québec, "senior executive" in securities legislation typically includes a person acting in a capacity similar to that of a director of a company.~~

5.2 Promoters of Issuers of Asset-backed Securities

- ~~(1) Securities legislation in some jurisdictions in Canada contains definitions of "promoter" and requires, in certain circumstances, a promoter of an issuer to assume statutory liability for prospectus disclosure. Asset-backed securities are commonly issued by a "special purpose" entity, established for the sole purpose of facilitating one or more asset-backed offerings. The securities regulatory authorities are of the opinion that special purpose issuers of asset-backed~~

~~securities will have a promoter because someone will typically have taken the initiative in founding, organizing or substantially reorganizing the business of the issuer. The securities regulatory authorities interpret the business of such issuers to include the business of issuing asset backed securities and entering into the supporting contractual arrangements.~~

- ~~(2) — For example, in the context of a securitization program under which assets of one or more related entities are financed by issuing asset backed securities (sometimes called a “single seller program”), an entity transferring or originating a significant portion of such assets, an entity initially agreeing to provide on going collection, administrative or similar services to the issuer, and the entity for whose primary economic benefit the asset backed program is established, will each be a promoter of the issuer if it took the initiative in founding, organizing or substantially reorganizing the business of the issuer. Persons or companies contracting with the issuer to provide credit enhancements, liquidity facilities or hedging arrangements or to be a replacement servicer of assets, and investors who acquire subordinated investments issued by the issuer, will not typically be promoters of the issuer solely by virtue of such involvement.~~
- ~~(3) — In the context of a securitization program established to finance assets acquired from numerous unrelated entities (sometimes called a “multi-seller program”), the person or company (frequently a bank or an investment bank) establishing and administering the program in consideration for the payment of an on going fee, for example, will be a promoter of the issuer if it took the initiative in founding, organizing or substantially reorganizing the business of the issuer. Individual sellers of the assets into a multi-seller program are not ordinarily considered to be promoters of the issuer, despite the economic benefits accruing to such persons or companies from utilizing the program. As with single seller programs, other persons or companies contracting with the issuer to provide services or other benefits to the issuer of the asset backed securities will not typically be promoters of the issuer solely by virtue of such involvement.~~
- ~~(4) — While the securities regulatory authorities have included this discussion of promoters as guidance to issuers of asset backed securities, the question of whether a particular person or company is a “promoter” of an issuer is ultimately a question of fact to be determined in light of the particular circumstances.~~

Document comparison done by DeltaView on Thursday, July 20, 2006 09:44:20

Input:	
Document 1	pcdocs://asc_lib1/2237034/1
Document 2	pcdocs://asc_lib1/2237035/1
Rendering set	ASC_Standard

Legend:	
<u>Insertion</u>	
Deletion	
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Style change	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	69
Deletions	112
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	181

APPENDIX E

Schedule 1 Amendments to National Instrument 44-102 *Shelf Distributions*

PART 1:

1.1 National Instrument 44-102 *Shelf Distributions* is amended by this Instrument.

1.2 Section 1.1(1) is amended

(a) by adding the following definition before “NI 44-101”:

“NI 41-101” means National Instrument 41-101 *General Prospectus Requirements*;

(b) by repealing the definition of “novel” and substituting the following:

"novel" means,

(a) for a specified derivative proposed to be distributed using the shelf procedures and that has an underlying interest that is not a security of the issuer

(i) a derivative of a type that has not been distributed by the issuer by way of prospectus in at least one jurisdiction before the proposed distribution,
or

(ii) a derivative of a type that has been distributed by the issuer by way of prospectus in at least one jurisdiction before the proposed distribution, but

(A) the attributes of the derivative differ materially from the attributes of derivatives of the same type previously distributed by the issuer by way of prospectus,

(B) the structure and contractual arrangements underlying the derivative differ materially from the structure and contractual

arrangements underlying derivatives of the same type previously distributed by the issuer by way of prospectus, or

(C) the type of the underlying interest for the derivative differs materially from the type of underlying interest for derivatives of the same type previously distributed by the issuer by way of prospectus, and

(b) for an asset-backed security proposed to be distributed using the shelf procedures

(i) a security of a type that has not been distributed by way of prospectus in at least one jurisdiction before the proposed distribution, or

(ii) a security of a type that has been distributed by way of prospectus in at least one jurisdiction before the proposed distribution, but

(A) the attributes of the security differ materially from the attributes of securities of the same type previously distributed by way of prospectus,

(B) the structure and contractual arrangements underlying the security differ materially from the structure and contractual arrangements underlying securities of the same type previously distributed by way of prospectus, or

(C) the type of financial assets servicing the security differ materially from the type of financial assets servicing securities of the same type previously distributed by way of prospectus;

1.3 Section 1.1(2) is amended by adding “NI 41-101 and” before “NI 44-101” wherever it occurs.

1.4 The following sections are amended by repealing sections 2.2(3)(c), 2.3(3)(c), 2.4(3)(c) 2.5(3)(c) and 2.6(3)(c) and by substituting “In Ontario, the lapse date prescribed by securities legislation.”

1.5 Section 2.8 is repealed.

1.6 Subparagraph 4.1(2)(b)(ii) is amended by striking out “21” and substituting “10 business”.

1.7 Section 6.1 is amended by striking out “and, in Quebec, to contain no misrepresentation that is likely to affect the value or the market price of the securities to be distributed.”.

1.8 Section 6.2 is amended

- (a) **in subsection (3) by striking out “Any unaudited financial statements of an issuer or an acquired business” and substituting “Subject to subsection (4), any unaudited financial statements, other than pro forma financial statements,” and by striking out “an entity” and substituting “a person or company’s”.**
- (b) **by repealing subsection (4) and substituting the following:**
 - (4) *If NI 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency* permits the financial statements of the person or company in subsection (3) to be audited in accordance with
 - (a) U.S. GAAS, the unaudited financial statements may be reviewed in accordance with U.S. review standards,
 - (b) International Standards on Auditing, the unaudited financial statements may be reviewed in accordance with International Standards on Review Engagement issued by the International Auditing and Assurance Standards Board, or
 - (c) auditing standards that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the issuer is subject, the unaudited financial statements
 - (i) may be reviewed in accordance with review standards that meet the foreign disclosure requirements of the designated foreign jurisdiction, or
 - (ii) do not have to be reviewed if

(A) the designated foreign jurisdiction does not have review standards for unaudited financial statements, and

(B) the base shelf prospectus includes disclosure that the unaudited financial statements have not been reviewed.

(c) **in subsection (5) by adding “, if applicable” after “The review specified in subsection (3)”.**

1.9 Section 6.7 is amended by striking out “and, in Quebec, contain no misrepresentation that is likely to affect the value or the market price of the securities to be distributed,”.

1.10 Section 7.2(1) is amended

(a) **by adding “notary in Quebec,” before “solicitor” and by adding “or business” before “whose profession”;**

(b) **by striking out “report or valuation” wherever it occurs and substituting “report, valuation, statement or opinion”.**

(c) **by adding the following after paragraph (b):**

(c) named in the document as having opined on financial statements from which selected information included in the base shelf prospectus or shelf prospectus supplement has been derived and which audit opinion is referred to in the base shelf prospectus or shelf prospectus supplement directly or in a document incorporated by reference

1.11 Section 11.1 is amended by adding the following after subsection (2):

(2.1) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

1.12 Section 11.2(2) is repealed and the following is substituted:

(2) The issuance of a receipt for a base shelf prospectus or an amendment to a base shelf prospectus is not evidence that the exemption is being granted unless

- (a) the person or company that sought the exemption sent to the regulator
 - (i) the letter or memorandum referred to in subsection 11.1(3), on or before the date of the filing of the base shelf prospectus or an amendment to a base shelf prospectus, or
 - (ii) the letter or memorandum referred to in subsection 11.1(3) after the date of the filing of base shelf prospectus or an amendment to a base shelf prospectus and received a written acknowledgement from the regulator that the exemption may be evidence in the manner set out in subsection (1), and
- (b) the regulator has not before, or concurrently with, the issuance of the receipt sent notice to the person or company that sought the exemption, that the exemption sought may not be evidenced in the manner set out in subsection (1).

1.13 PART 12 is repealed.

1.14 Appendix A to NI 44-102 is amended

- (a) **by repealing section 1.1 and substituting the following:**

1.1 Issuer Certificate Form - If a base shelf prospectus establishes an MTN program or other continuous distribution, or if method 2 has not been elected by an issuer, the preliminary base shelf prospectus and the base shelf prospectus shall contain an issuer certificate form stating:

“This short form prospectus, together with the documents incorporated in this prospectus by reference, will, as of the date of the last supplement to this prospectus relating to the securities offered by this prospectus and the supplement(s), constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus and the supplement(s) as required by the securities legislation of [insert name of each jurisdiction in which qualified].”

(b) by repealing section 1.2 substituting the following:

1.2 Underwriter Certificate Form - If the base shelf prospectus establishes an MTN program or other continuous distribution or if method 2 has not been elected by the underwriter, the preliminary base shelf prospectus and a base shelf prospectus shall contain an underwriter's certificate form stating:

“To the best of our knowledge, information and belief, this short form prospectus, together with the documents incorporated in this prospectus by reference will, as of the date of the last supplement to this prospectus relating to the securities offered by this prospectus and the supplement(s), constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus and the supplement(s) as required by the securities legislation of [insert name of each jurisdiction in which qualified].”

(c) by repealing section 1.3 and substituting the following:

1.3 Credit Supporter's Certificate - A preliminary base shelf prospectus and base shelf prospectus shall contain a certificate in the form described in section 1.1, if

(a) NI 41-101 or securities legislation requires a certificate from the credit supporter; and

(b) either

(i) the base shelf prospectus establishes an MTN program or other continuous distribution, or

(ii) method 2 has not been elected by the credit supporter.

(d) by repealing section 2.1 and substituting the following:

2.1 Issuer Certificate Form - If an issuer certificate form described in section 1.1 was not included in the corresponding base shelf prospectus, a shelf prospectus supplement that establishes an MTN program or other continuous distribution shall contain an issuer certificate form stating:

“The short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, will, as of the date of the last supplement to the prospectus relating to the securities offered by the prospectus and the supplement(s), constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and the supplement(s) as required by the securities legislation of [insert name of each jurisdiction in which qualified].”

(e) by repealing section 2.2 substituting the following:

2.2 Underwriter Certificate Form - If an underwriter’s certificate form described in section 1.2 was not included in the corresponding base shelf prospectus, a shelf prospectus supplement that establishes an MTN program or other continuous distribution shall contain an underwriter’s certificate form stating:

“To the best of our knowledge, information and belief, the short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, will, as of the date of the last supplement to the prospectus relating to the securities offered by the prospectus and the supplement(s), constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and the supplement as required by the securities legislation of [insert name of jurisdiction in which qualified].”

(f) by repealing section 2.3 and substituting the following:

2.3 Credit Supporter’s Certificate - A shelf prospectus supplement that establishes an MTN program or other continuous distribution program shall contain a certificate in the form described in section 2.1, if

- (a) NI 41-101 or securities legislation requires a certificate from the credit supporter; and
- (b) a certificate of the credit supporter in the form described in section 1.3 was not included in the corresponding base shelf prospectus.

1.15 Appendix B to NI 44-102 is amended

(a) by repealing section 1.1 and substituting the following:

1.1 Issuer Certificate Form - If method 2 is elected by an issuer, the preliminary base shelf prospectus and the base shelf prospectus shall contain an issuer certificate form stating:

“This short form prospectus, together with the documents incorporated in this prospectus by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by the securities legislation of [insert name of each jurisdiction in which qualified].”

(b) by repealing section 1.2 substituting the following:

1.2 Underwriter Certificate Form - If method 2 is elected by an underwriter, a preliminary base shelf prospectus and a base shelf prospectus shall contain an underwriter’s certificate form stating:

“To the best of our knowledge, information and belief, this short form prospectus, together with the documents incorporated in this prospectus by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by the securities legislation of [insert name of each jurisdiction in which qualified].”

(c) by repealing section 1.3 and substituting the following:

1.3 Credit Supporter’s Certificate - A base shelf prospectus shall contain a certificate described in section 1.1, if

- (a) NI 41-101 or securities legislation requires a certificate of the credit supporter, and
- (b) method 2 is elected by the credit supporter

(d) **in section 1.4(1), by repealing paragraph (b) and substituting the following:**

(b) the certificate described in section 1.2 signed by each underwriter who has elected method 2.

(e) **by repealing section 2.1 and substituting the following:**

2.1 Issuer Certificate Form - If method 2 is elected by an issuer, each shelf prospectus supplement shall contain an issuer certificate form stating:

“The short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, constitutes full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and this supplement as required by the securities legislation of [insert name of each jurisdiction in which qualified].”

(f) **by repealing section 2.2 substituting the following:**

2.2 Underwriter Certificate Form - If method 2 is elected by an underwriter, a shelf prospectus supplement shall contain an underwriter’s certificate form stating:

“To the best of our knowledge, information and belief, the short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, constitutes full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and this supplement as required by the securities legislation of [insert name of jurisdiction in which qualified].”

(g) **by repealing section 2.3 and substituting the following:**

2.3 Credit Supporter’s Certificate - Each shelf prospectus supplement shall contain a certificate in form described in section 2.1, if

(a) NI 41-101 or securities legislation requires a certificate of a credit supporter; and

(b) method 2 is elected by the credit supporter.

(h) in section 2.4(1), by repealing paragraph (b) and substituting the following:

(b) the certificate described in section 2.2 signed by each underwriter who has elected method 2.

1.16 This Instrument comes into force on

APPENDIX E

Schedule 2

Amendments to Companion Policy 44-102CP to National Instrument 44-102 *Shelf Distributions*

1.1 Subsection 2.2(1) is amended by striking out “(iii) the lapse date of the receipt, if any, prescribed by securities legislation” **and substituting the following** “in Ontario, the lapse date of the receipt prescribed by securities legislation”.

1.2 Section 2.4 is amended

- (a) **in subsection (2) by striking out** “Particularly in the area of distributions of novel specified derivatives and asset-backed securities, the securities regulatory authorities wish to encourage adequate prospectus disclosure, either in the base shelf prospectus or the shelf prospectus supplement, of the attributes of and the risks associated with these products” **and substituting** “All material attributes of the products, and the risks associated with them, should be disclosed in either the base shelf prospectus or the shelf prospectus supplement”;
- (b) **in subsection (3) by striking out** “section 4.1” **and substituting** “subsection 4.1(1) of NI 44-102”;
- (c) **by repealing subsections (4) and (5) and adding the following after subsection (3):**

(4) The term “novel” has a different meaning depending on whether it pertains to specified derivatives or asset-backed securities. In the case of asset-backed securities, the term is intended to apply to a distribution of asset-backed securities that is structured in a manner that differs materially from the manner in which any public distribution that has previously taken place in a jurisdiction was structured. In the case of specified derivatives, an issuer or selling security holder must pre-clear any distribution of derivative securities that are of a type that have not previously been distributed to the public by the issuer.

(5) The securities regulatory authorities are of the view that the definition of the term "novel" should be read relatively restrictively. A security would not be novel merely because a new underlying interest was used. For example, where the underlying interest is a market index, the use of a different market index would not be considered "novel", provided that information about the index methodology, the constituents that make up the index, as well as the daily index level, are available to the public. However, in circumstances where an issuer or its advisor is uncertain if a product is novel, the securities regulatory authorities encourage the issuer to either treat products as novel or to seek input from staff prior to filing a base shelf prospectus or prospectus supplement, as the case may be.

(6) If the product is not novel, then the shelf prospectus supplements concerning the product need not be reviewed by the securities regulatory authorities. The securities regulatory authorities are of the view that the disclosure in shelf prospectus supplements in such circumstances should be no less comprehensive than the disclosure that has previously been reviewed by a securities regulatory authority in a jurisdiction. The securities regulatory authorities also believe that the rights provided to investors in such products should be no less comprehensive than the rights provided in offerings previously reviewed by a securities regulatory authority in a jurisdiction.

(7) The securities regulatory authorities have a particular interest in reviewing novel specified derivatives that are functionally similar to investment fund products. These products have generally taken the form of linked notes issued under a medium term note program. These derivatives provide returns that are similar to investment fund products but are not necessarily subject to the investment funds regulatory regime. As a result, the securities regulatory authorities will review such offerings while keeping investment fund conflicts and disclosure concerns in mind.

(8) In circumstances where it is apparent to the issuer or selling security holder that a specified derivative that is subject to the pre-clearance process is similar to a specified derivative that has already been the subject to the pre-clearance process, the issuer or selling security holder is encouraged, for the purpose of expediting the pre-clearance process, to file along with the shelf prospectus

supplement a blackline to the relevant precedent shelf prospectus supplement. The issuer or selling security holder is also encouraged to provide a cover letter setting out the material attributes of the specified derivative that differ from the securities offered under the precedent shelf prospectus.

1.3 Subsection 4.1 (1) is amended by striking out “ by an issuer, credit supporter and underwriter” **and** “The method selected by an issuer applies to a promoter.”

APPENDIX F

Schedule 1

Amendments to National Instrument 44-103 *Post-Receipt Pricing*

1.1 National Instrument 44-103 *Post-Receipt Pricing* is amended by this Instrument.

1.2 The following definition is added after “base PREP prospectus”:

“NI 41-101” means National Instrument 41-101 *General Prospectus Requirements*;

“NI 44-101” means National Instrument 44-101 *Short Form Prospectus Distributions*;

1.3 Section 1.1(2) is amended by adding “NI 41-101 and” before “NI 44-101” wherever it occurs.

1.4 Section 3.2(1) is amended

(a) **by repealing paragraph 7. and substituting the following:**

7. An issuer certificate form stating:

“The [insert, if applicable, “short form”] prospectus, together with the documents and information incorporated herein by reference, will, as of the date of the supplemented prospectus providing the information permitted to be omitted from this prospectus, constitute, full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required under securities legislation of [insert name of each jurisdiction in which qualified].”

(b) **by repealing paragraph 8. and substituting the following:**

8. An underwriter certificate form stating:

“To the best of our knowledge, information and belief, this [insert, if applicable “short form”] prospectus, together with the documents and information incorporated by reference, will, as of the date of the supplemented prospectus providing the information permitted to be omitted from this prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required under securities legislation of [insert name of each jurisdiction in which qualified].”

(c) by repealing paragraph 9.

1.5 Section 4.1 is amended by striking out “and, in Quebec, to contain no misrepresentation that is likely to affect the value or the market price of the securities to be distributed.”

1.6 Section 4.5 (2) is amended

(a) by repealing paragraph 3. and substituting the following:

3. Instead of the issuer certificate form required under paragraph 7. of subsection 3.2(1), an issuer certificate form stating:

“This [insert, if applicable, “short form”] prospectus [insert in the case of a short form prospectus distribution - “, together with the documents incorporated herein by reference”] constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required under securities legislation of [insert name of each jurisdiction in which qualified].”

(b) by repealing paragraph 4. and substituting the following:

4. Instead of the underwriter certificate form required under paragraph 8. of subsection 3.2(1), an underwriter certificate form stating:

“To the best of our knowledge, information and belief, this [insert, if applicable, “short form”] prospectus [insert in the case of a short form prospectus distribution - “, together with the documents incorporated herein by reference,”] constitutes full, true and plain disclosure of all

material facts relating to securities offered by this prospectus as required under the securities legislation of [insert name of each jurisdiction in which qualified].”

(c) **by repealing paragraph 5.**

1.7 Section 6.1 is amended by adding the following after subsection (2):

(2.1) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

1.8 Section 6.2(2) is repealed and the following is substituted:

(2) The issuance of a receipt for a base PREP prospectus or an amendment to a base PREP prospectus is not evidence that the exemption is being granted unless

- (a) the person or company that sought the exemption sent to the regulator
 - (i) the letter or memorandum referred to in subsection 6.1(3), on or before the date of the filing of the preliminary short form prospectus, or
 - (ii) the letter or memorandum referred to in subsection 6.1(3) after the date of the filing of the preliminary short form prospectus and received a written acknowledgement from the regulator that the exemption may be evidenced in the manner set out in subsection (1), and
- (b) the regulator has not before, or concurrently with, the issuance of the receipt sent notice to the person or company that sought the exemption, that the exemption sought may not be evidenced in the manner set out in subsection (1).

1.9 Section 7.1 is repealed.

1.10 This Instrument comes into force on

APPENDIX F

Schedule 2

Amendments to Companion Policy 44-103CP to National Instrument 44-103 *Post-Receipt Pricing*

1.1 The following is added after section 3.5:

- 3.6 The issuer must disclose a *bona fide* estimate of the range in which the offering price or the number of securities being distributed is expected to be set.

APPENDIX G

Amendments to National Instrument 45-101 *Rights Offerings*, Form 45-101F - *Information Required in a Rights Offering Circular*

1.1 Item 3.2 of Form 45-101F *Information Required in a Rights Offering Circular* is repealed.

APPENDIX H

Schedule 1

Amendments to National Instrument 51-102 *Continuous Disclosure Obligations*

1.1 National Instrument 51-102 *Continuous Disclosure Obligations* is amended by this Instrument.

1.2 Section 1.1 is amended by adding the following definition after “material change”:

“material contract” means any contract that an issuer or any of its subsidiaries is a party to, that is material to the issuer;

1.3 Section 8.4(5)(b) is amended by striking out “after the ending date’ and substituting “since the beginning”.

1.4 Section 8.10(3)(e)(ii) is amended by striking out “after the ending date” and substituting “since the beginning”.

1.5 Section 12.2 is repealed and the following is substituted:

- (1) Unless previously filed, a reporting issuer must file a copy of any material contract, other than a contract entered into in the ordinary course of business, that was entered into within the last financial year, or before the last financial year but is still in effect.
- (2) For the purposes of this Instrument, a “contract entered into in the ordinary course of business” does not include the following:
 - (a) any contract to which directors, officers or promoters are parties, unless the contracts are for the purchase or sale of current assets at fair value;
 - (b) any continuing contract to sell the major part of the reporting issuer’s products or services or to purchase the major part of the reporting issuer’s requirements of goods, services, or raw materials or any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name upon which the reporting issuer’s business depends to a material extent;

- (c) any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 20% of such fixed assets of the reporting issuer on a consolidated basis;
 - (d) any credit agreements;
 - (e) any management or administration agreements; and
 - (f) any contract on which the reporting issuer's business is substantially dependent.
- (3) A reporting issuer may omit or mark so as to be unreadable certain provisions of a contract referred to in subsection (1) or (2) if
- (a) an executive officer of the reporting issuer has reasonable grounds to believe that disclosure of those provisions would be seriously prejudicial to the interests of the reporting issuer or would violate confidentiality provisions,
 - (b) an executive officer of the reporting issuer has reasonable grounds to believe that those provisions do not contain information relating to the reporting issuer or its securities that would be necessary to understanding the contract, and
 - (c) in the copy of the material contract filed by the reporting issuer, immediately after a provision has been omitted or marked so as to be unreadable, the reporting issuer includes a description of the type of information that has been omitted or marked so as to be unreadable.
- (4) For the purposes of this Instrument, provisions that are "necessary to understanding the contract" include provisions disclosing the following:
- (a) the name or description of a material customer or a material supplier,
 - (b) interest rate and other similar terms in a material credit agreement,
 - (c) the duration and nature of all patents, trademarks, licenses, franchises and concessions held,

- (d) required disclosure in the MD&A section relating to loan arrangements and instalment payment obligations on debt,
 - (e) disclosure about related party transactions,
 - (f) material contingency, indemnification, anti-assignability, and take-or-pay clauses, and
 - (g) financial covenants in material financing or credit agreements.
- (5) Despite subsection (1), a reporting issuer is not required to file a material contract entered into before January 1, 2002.

1.6 Section 13.4 is amended

(a) **in subsection (1)**

(i) **in the definition of “designated credit support securities”**

A) **by adding “non-convertible” before “securities of the credit supporter” wherever it occurs;**

B) **by striking out “in respect of which a credit supporter has provided” and substituting “in respect of which a parent credit supporter has provided”;**

(ii) **by adding the following after the definition of “designated credit support securities”:**

“parent credit supporter” means a credit supporter of which the reporting issuer is a subsidiary;

“subsidiary credit supporter” means a credit supporter that is a subsidiary of the parent credit supporter;

(b) **in subsection (1.1)**

(i) **in paragraph (b) by striking out “of consolidating summary financial information”;**

(ii) **by adding “parent” before “credit supporter” wherever it occurs;**

(iii) **by repealing paragraph (c) and substituting the following:**

(c) all subsidiary entity columns must account for investments in non-credit supporter subsidiaries under the equity method.

(c) **in subsection (2)**

(i) **by adding the heading “ Issuer is wholly-owned subsidiary of parent credit supporter”;**

(ii) **by striking out “subsection” and substituting “section”;**

(iii) **by adding “parent” before “credit supporter” wherever it occurs;**

(iv) **by striking out “and” at the end of paragraph (i), by adding “and” at the end of paragraph (j) and by adding the following after paragraph (j):**

(k) no person or company other than the parent credit supporter has provided a guarantee or alternative credit support for the payments to be made under any issued and outstanding securities of the credit support issuer.

Issuer is wholly-owned subsidiary of, and one or more subsidiary credit supporters controlled by, parent credit supporter

(2.1) A credit support issuer satisfies the requirements of this Instrument where there is a parent credit supporter and one or more subsidiary credit supporters if

(a) the conditions in paragraphs (2)(a) to (f), (i), and (j) are complied with;

(b) the parent credit supporter controls each subsidiary credit supporter and parent credit supporter has consolidated the financial statements of each subsidiary credit supporter into the parent credit supporter’s financial statements that are filed or referred to under paragraph (2)(d);

- (c) the credit support issuer files, in electronic format, in the notice referred to in clause (2)(d)(ii)(A) or in or with the copy of the interim and annual consolidated financial statements filed under subparagraph (2)(d)(i) or clause (2)(d)(ii)(B), for the periods covered by the interim or annual consolidated financial statements of the parent credit supporter filed, consolidating summary financial information for the parent credit supporter presented with a separate column for each of the following:
 - (i) the parent credit supporter;
 - (ii) the credit support issuer;
 - (iii) each subsidiary credit supporter on a combined basis;
 - (iv) any other subsidiaries of the parent credit supporter on a combined basis;
 - (v) consolidating adjustments; and
 - (vi) the total consolidated amounts;
- (d) no person or company, other than the parent credit supporter or a subsidiary credit supporter has provided a guarantee or alternative credit support for the payments to be made under the issued and outstanding designated credit support securities; and
- (e) the guarantees or alternative credit supports are joint and several.

(2.2) Despite paragraph (2.1)(c), the information set out in a column in accordance with

- (a) subparagraph (2.1)(c)(iv), may be combined with the information set out in accordance with any of the other columns in paragraph (2.1)(c); if each item of the summary financial information set out in a column in accordance with paragraph (2.1)(c)(iv) represents less than 3% of the corresponding items on the consolidated financial statements of the parent credit supporter being filed or referred to under paragraph (2)(d),
- (b) subparagraph (2.1)(c)(ii) may be combined with the information set out in accordance with any of the other columns in paragraph

(2.1)(c); if the credit support issuer has minimal assets, operations, revenues or cash flows other than those related to the issuance, administration and repayment of the securities described in paragraph (2)(c).

(d) in subsection (3) by repealing paragraphs (a) to (e) and substituting the following:

- (a) the conditions in paragraphs (2)(a) to (c) are complied with;
- (b) if the insider is not a credit supporter,
 - (i) the insider does not receive, in the ordinary course, information as to material facts or material changes concerning a credit supporter before the material facts or material changes are generally disclosed, and
 - (ii) the insider is not an insider of a credit supporter in any capacity other than by virtue of being an insider of the credit support issuer; and
- (c) if the insider is a credit supporter, the insider does not beneficially own any designated credit support securities;

(e) in subsection (4) by adding “parent” before “credit supporter” wherever it occurs.

1.7 Effective Date - This Instrument comes into force on

APPENDIX H

Schedule 2

Amendments to Form 51-102F2 *Annual Information Form* of National Instrument 51-102 *Continuous Disclosure Obligations*

1.1 Form 51-102F2 *Annual Information Form* is amended by this Instrument.

1.2 Form 51-102F2 *Annual Information Form* is amended

- (a) **in item 5.2 by striking out** “Risks should be disclosed in the order of their seriousness” **and substituting** “Disclose the risks in order of seriousness from the most serious to the least serious. A risk factor should not be deemphasized by including excessive caveats or conditions.”;
- (b) **by adding the following after subsection 5.3(2):**
 - (2.1) If any of the information disclosed in accordance with subsection (2) has been audited, disclose the existence and results of the audit.
- (c) **in Item 6 by adding** “or distributions” **after** “dividends” **wherever it occurs and by striking out** “share” or “shares” **and substituting** “security” or “securities”;
- (d) **In subsection 8(2) by adding** “but is traded or quoted on a foreign marketplace” **after** “If a class of securities of your company is not traded or quoted on a Canadian marketplace,”.

(e) **by repealing item 9 and substituting the following:**

Item 9: Escrowed Securities and Securities Subject to Contractual Restriction on Transfer

9.1- Escrowed securities and securities subject to contractual restriction on transfer

- (1) State, in substantially the following tabular form, the number of securities of each class of your company held, to your company’s knowledge, in escrow or that are subject to a contractual restriction on transfer and the percentage that

number represents of the outstanding securities of that class for your company's most recently completed financial year.

ESCROWED SECURITIES AND SECURITIES SUBJECT TO CONTRACTUAL RESTRICTION ON TRANSFER

Designation of class	Number of securities held in escrow or that are subject to a contractual restriction on transfer	Percentage of class

(2) In a note to the table disclose the name of the depository, if any, and the date of and conditions governing the release of the securities from escrow or the date the contractual restriction on transfer ends, as applicable.

INSTRUCTION

For purposes of this item, escrow includes securities subject to a pooling agreement.

(f) in item 15.1

(i) by repealing subsection (1) and substituting the following:

(1) Give particulars of every material contract, other than a contract entered into in the ordinary course of business, that was entered into within the most recently completed financial year, or before the most recently completed financial year but is still in effect.

(ii) by repealing subparagraph (i) of the Instruction.

APPENDIX H

Schedule 3

Amendments to Companion Policy 51-102CP to National Instrument 51-102 *Continuous Disclosure Obligations*

1.1 Companion Policy 51-102CP to NI 51-102 Continuous Disclosure Obligations is amended

(a) **by adding the following after subsection Section 8.7(7):**

(8) When a reporting issuer acquires a business that has itself recently acquired another business or related businesses (an “indirect acquisition”), the reporting issuer should consider including disclosure of the indirect acquisition in the business acquisition report, including historical financial statements, if the omission of these statements would cause the business acquisition report to be misleading, untrue or substantially incomplete. In making this determination, the reporting issuer should consider the following factors:

- if the indirect acquisition would meet any of the significance tests in section 8.3 of NI 51-102 when the reporting issuer applies each of those tests to its proportionate interest in the indirect acquisition of the business, and
- if the amount of time between the separate acquisitions is such that the effect of the first acquisition is not adequately reflected in the results of the business or related businesses the reporting issuer is acquiring.

(b) **by repealing section 12.3 and substituting the following:**

Contracts entered into in the ordinary course of business

12.3(1) The filing requirement only applies to material contracts. There is no requirement to file a contract if it is not material.

Section 12.2 of the Instrument requires the issuer to file any material contract, other than a contract entered into in the ordinary course of business. Whether a contract was entered into in the ordinary course of

business is a question of fact. It must be considered in the context of the issuer's business and industry.

Subsection 12 (1.1) of the Instrument describes specific types of contracts that are not considered to be contracts entered into in the ordinary course of business. The exemption from the requirement to file material contracts for contracts entered into in the ordinary course of business is not available for any contract of the type described in this subsection. Accordingly, such a material contract must be filed under section 12.2 of the Instrument.

Under paragraph 12.2(1.1)(f) of the Instrument, any contract on which the issuer's business is substantially dependent is also considered not to be a contract entered into in the ordinary course of business. These contracts include contracts not otherwise described in paragraphs 12.2(1.2)(a) through (e) of the Instrument.

We expect that the contracts filed under section 12.2 of the Instrument to be filed by a reporting issuer will generally be the same contracts the reporting issuer is required to provide disclosure of under section 15.1 of Form 51-102F2. The exemption in subsection 12.2(1.2) of the Instrument does not affect the reporting issuer's obligation in item 15.1 of Form 51-102F2 to disclose the particulars of the material contracts including particulars of material contracts referred to in subsection 12.2(1.1).

Management or administration agreements

(2) Under paragraph 12.2(2)(e) of the Instrument, management or administration agreements are considered not to be contracts entered into in the ordinary course of business. Management or administration agreements include any management contract or any compensatory plan, contract or arrangement including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing in which any director or any of the named executive officers of the company participates, other than the following:

(a) ordinary purchase and sales agency agreements;

- (b) agreements with managers of stores in a chain organization or similar organization;
- (c) contracts providing for labour or salesperson's bonuses or payments to a class of security holders, as such;
- (d) any compensatory plan, contract or arrangement which pursuant to its terms is available to employees, officers or directors generally and which in operation provides for the same method of allocation of benefits between management and non-management participants.

Omission or redaction

- (3) Paragraph 12.2(3) of the Instrument permits certain provisions of a material contract that is required to be filed to be omitted or marked so as to be unreadable subject to three conditions.
 - (a) An executive officer of the reporting issuer has reasonable grounds to believe that disclosure of any omitted or redacted provisions would be seriously prejudicial to the interests of the issuer or would violate confidentiality provisions. A boilerplate blanket confidentiality provision covering the entire contract would not satisfy this condition.
 - (b) An executive officer of the reporting issuer has reasonable grounds to believe that any omitted or redacted provisions do not contain information relating to the issuer or its securities that would be necessary to understanding the contract. Provisions that are necessary to understanding the contract include provisions disclosing the information listed in subsection 12.2(3) of the Instrument.
 - (c) The reporting issuer must include a description of the type of information that has been omitted or redacted in the copy of the material contract filed by the reporting issuer. A brief one-

sentence description immediately following the omitted or redacted information would be sufficient in most cases.

APPENDIX I

Schedule 1

Amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, Form 81-101F1 *Contents of Simplified Prospectus*, FORM 81-101F2 *Contents of Annual Information Form*

- 1.1 National Instrument 81-101 *Mutual Fund Prospectus Disclosure* is amended by this Instrument.
- 1.2 Section 2.1 is amended by:
- (1) deleting the word “and” at the end of subsection (c);
 - (2) deleting the word “form.” at the end of clause 2.1(d)(ii) and adding “form; and”; and
 - (3) by adding the following after subsection (d):

“(e) must not file a prospectus more than 90 days after the date of the receipt for the preliminary simplified prospectus.”.
- 1.3 Section 2.2 is amended by adding the following subsections:
- “(4) The following applies to an amendment to a preliminary simplified prospectus:
- (a) Except in Ontario, if, after a receipt is issued for a preliminary simplified prospectus but before a receipt for the simplified prospectus is issued, a material adverse change occurs, a mutual fund must file an amendment to the preliminary simplified prospectus as soon as practicable, but in any event within 10 days after the change occurs;
- [Note: In Ontario, a similar obligation to file an amendment to a preliminary prospectus is set out in subsection 57(1) of the *Securities Act* (Ontario).]¹**
- (b) The regulator must issue a receipt for an amendment to a preliminary simplified prospectus as soon as reasonably possible after the amendment is filed.

¹ Notes included in this Instrument have been inserted for convenience of reference only and do not form part of this Instrument or have any force or effect as a rule or policy.

(5) Except in Ontario, as soon as practicable, a mutual fund must deliver an amendment to a preliminary simplified prospectus to each recipient of the preliminary simplified prospectus according to the record of recipients required to be maintained under securities legislation.

[Note: In Ontario, similar requirements regarding the delivery of amendments to a preliminary prospectus are set out in subsection 57(3) of the *Securities Act* (Ontario).]

(6) The following applies to an amendment to a simplified prospectus:

(a) Except in Ontario, if, after a receipt for a simplified prospectus is issued but before the completion of the distribution under the simplified prospectus, a material change occurs, a mutual fund must file an amendment to the simplified prospectus as soon as practicable, but in any event within 10 days after the day the change occurs.

[Note: In Ontario, a similar obligation to file an amendment to a final prospectus is set out in subsection 57(1) of the *Securities Act* (Ontario).]

(b) Except in Ontario, if, after a receipt is issued for a simplified prospectus or an amendment to a simplified prospectus is issued but prior to the completion of the distribution under the simplified prospectus, securities in addition to the securities previously disclosed in the simplified prospectus or the amendment to the simplified prospectus are to be distributed, the mutual fund making the distribution must file an amendment to the simplified prospectus disclosing the additional securities, as soon as practicable, but in any event within 10 days after the decision to increase the number of securities offered is made.

[Note: In Ontario, subsection 57(2) of the *Securities Act* (Ontario), as varied by OSC Rule 41-801 *Implementing 41-101 General prospectus requirements*, provides for similar requirements in respect of amendments for the distribution of additional securities.]

(c) The regulator must issue a receipt for an amendment to a simplified prospectus required to be filed under this section unless the regulator considers that there are grounds set out in securities legislation that would cause the regulator not to issue the receipt for a simplified prospectus.

(d) The regulator must not refuse to issue a receipt under paragraph (c) without giving the mutual fund who filed the simplified prospectus an opportunity to be heard.”

1.4 Section 2.3 is amended by:

(1) by deleting paragraph 2.3(1)(a) and substituting the following:

“(a) file with a preliminary simplified prospectus and a preliminary annual information form:

(i) a signed copy of the preliminary annual information form;

(ii) if the manager of the mutual fund is incorporated, continued or organized under the laws of a foreign jurisdiction or resides outside of Canada, a submission to the jurisdiction and appointment of an agent for service of process of the manager of a mutual fund in form set out in Appendix D to National Instrument 41-101 *General Prospectus Requirements*.

(iii) copies of the following documents, and any amendments to the following documents, that have not previously been filed

(A) articles of incorporation, amalgamation, continuation or any other constating or establishing documents of the issuer, unless the constating or establishing document is a statutory or regulatory instrument,

(B) by-laws or other corresponding instruments currently in effect,

(C) any security holder or voting trust agreement that the issuer has access to and that can reasonably be regarded as material to an investor in securities of the issuer,

(D) any security holders' rights plans or other similar plans, and

(E) any other contract of the issuer or a subsidiary of the issuer that creates or can reasonably be regarded as materially affecting the rights or obligations of the issuer's security holders generally;

(iv) copies of any material contract that has not previously been filed, other than a contract entered into in the ordinary course of business, but certain provisions of the contract may be omitted or marked so as to be unreadable if

(A) the issuer has reasonable grounds to believe that disclosure of those provisions would be seriously prejudicial to the

interests of the issuer or would violate confidentiality provisions,

- (B) the issuer has reasonable grounds to believe that those provisions do not contain information relating to the issuer or its securities that would be necessary to understanding the contract, and
- (C) in the copy of the material contract filed by the issuer, immediately after a provision that has been omitted or marked so as to be unreadable, the issuer includes a description of the type of information that has been omitted or marked so as to be unreadable;

(v) the documents referred to in subparagraphs (iii) and (iv), must include copies of

- (A) any declaration of trust or trust agreement of the mutual fund, limited partnership agreement, or any other constating or establishing documents of the mutual fund.
- (B) any agreement of the mutual fund or the trustee with the manager of the mutual fund,
- (C) any agreement of the mutual fund, manager or trustee with the portfolio advisers of the mutual fund,
- (D) any agreement of the mutual fund, the manager or trustee with the custodian of the mutual fund, and
- (E) any agreement of the mutual fund, the manager or trustee with the principal distributor of the mutual fund;

(vi) any other supporting documents required to be filed under securities legislation.”

(2) by deleting subparagraphs 2.3(1)(b)(i),(ii) and (iii) and adding the following:

“(i) for

- (A) a new mutual fund, a copy of a draft opening balance sheet of the mutual fund, and
- (B) an existing mutual fund, a copy of the latest audited financial statements of the mutual fund, and

(ii) any personal information for the mutual fund that has not been previously delivered to the regulator in connection with a simplified prospectus of the mutual fund or another mutual fund managed by the manager,

(iii) a Personal Information Form and Authorization to Collect, Use and Disclose Personal Information in the form set out in Appendix A to National Instrument 41-101 *General Prospectus Requirements* for the indirect collection of the personal information referred to in subparagraph (ii) for each director or officer of the mutual fund, each promoter of the mutual fund, or if the promoter is not an individual, each director or officer of the promoter and each director or officer of the manager of the mutual fund;

(iv) a signed letter to the regulator from the auditor of the mutual fund prepared in accordance with the form suggested for this circumstance by the Handbook, if a financial statement of the mutual fund included in the preliminary simplified prospectus is accompanied by an unsigned auditor's report; and

(v) any other supporting documents required to be delivered or sent to the securities regulatory authority under securities legislation.”

(3) by deleting subparagraph 2.3(2)(a)(ii) and adding the following:

“(ii) a submission to the jurisdiction and appointment of an agent for service of process of the manager of the mutual fund in the form set out in Appendix C to National Instrument 41-101 *General Prospectus Requirements*, if the manager of the mutual fund is incorporated, continued or organized under the laws of a foreign jurisdiction or resides outside of Canada and if that document has not already been filed;

(iii) any other supporting documents required to be filed under securities legislation.”

(4) by deleting subparagraph 2.3(2)(b)(iv) and adding the following:

“(iv) any personal information for the mutual fund that has not been previously delivered to the regulator in connection with a simplified prospectus of the mutual fund or another mutual fund managed by the manager;

(v) a Personal Information Form and Authorization to Collect, Use and Disclose Personal Information in the form set out in Appendix A to National Instrument 41-101 *General Prospectus Requirements* for the indirect collection of the personal information referred to in subparagraph (iv) for each director or officer of the mutual fund, each promoter of the mutual fund, or if the promoter is not an individual, each director or officer of the promoter and each director or officer of the manager of the mutual fund;

(vi) a signed letter to the regulator from the auditor of the mutual fund prepared in accordance with the form suggested for this circumstance by the Handbook, if a financial statement of the mutual fund incorporated by reference into the pro forma simplified prospectus is accompanied by an unsigned auditor's report; and

(vii) any other supporting documents required to be delivered or sent to the securities regulatory authority under securities legislation.”

(5) by deleting subparagraph 2.3(3)(a)(iii) and adding the following:

“(iii) a submission to the jurisdiction and appointment of an agent for service of process of the manager of the mutual fund in the form set out in Appendix C to National Instrument 41-101, if the manager of the mutual fund is incorporated, continued or organized under the laws of a foreign jurisdiction or resides outside of Canada and if that document has not already been filed;

(iv) any consents required by section 2.8 of this Instrument, and

(v) any other supporting documents required to be delivered or sent to the securities regulatory authority under securities legislation.”

(6) by deleting subparagraph 2.3(3)(b)(iii) and adding the following:

“(iii) details of any changes to the personal information for the mutual fund since the delivery of that information in connection with the filing of the simplified prospectus of the mutual fund or another mutual fund managed by the manager;

(iv) a Personal Information Form and Authorization to Collect, Use and Disclose Personal Information in the form set out in Appendix A to National Instrument 41-101 *General Prospectus Requirements* for the indirect collection of the personal information referred to in subparagraph (iii) for each director or officer of the mutual fund, each promoter of the mutual fund, or if the promoter is not an individual, each director or officer of the promoter and each director or officer of the manager of the mutual fund;

(v) a copy of each report or valuation referred to in the simplified prospectus, for which a consent is required to be filed under section 2.8 and that has not previously been filed; and

(vi) any other supporting documents required to be delivered or sent to the securities regulatory authority under securities legislation.”

- (7) by deleting subparagraphs 2.3(4)(a)(i) and (ii) and adding the following:
- “(i) a signed copy of the amendment to the annual information form;
 - (ii) any consents required by section 2.8 of this Instrument;
 - (iii) a copy of any material contract of the mutual fund, and a copy of any amendment to a material contract of the mutual fund, not previously filed, and
 - (iv) any other supporting documents required to be filed under securities legislation; and”
- (8) by deleting subparagraph 2.3(4)(b)(iii) and adding the following:
- “(iii) details of any changes to the personal information for the mutual fund since the delivery of that information in connection with the filing of the simplified prospectus of the mutual fund or another mutual fund managed by the manager;
 - (iv) a Personal Information Form and Authorization to Collect, Use and Disclose Personal Information in the form set out in Appendix A to National Instrument 41-101 *General Prospectus Requirements* for the indirect collection of the personal information referred to in subparagraph (iii) for each director or officer of the mutual fund, each promoter of the mutual fund, or if the promoter is not an individual, each director or officer of the promoter and each director or officer of the manager of the mutual fund; and
 - (v) any other supporting documents required to be delivered or sent to the securities regulatory authority under securities legislation.”
- (9) by deleting subparagraphs 2.3(5)(a)(i) and (ii) and adding the following:
- “(i) a signed copy of the amendment to the annual information form;
 - (ii) any consents required by section 2.8 of this Instrument;
 - (iii) a copy of any material contract of the mutual fund, and a copy of any amendment to a material contract of the mutual fund, not previously filed, and
 - (iv) any other supporting documents required to be filed under securities legislation; and”
- (10) by amending paragraph 2.3(5)(b) by deleting “(b)” and substituting “(c)”.

(11) by adding the following as paragraph 2.3(5)(b):

“(b) at the time an amendment to an annual information form is filed, deliver or send to the securities regulatory authority

(i) details of any changes to the personal information for the mutual fund since the delivery of that information in connection with the filing of the simplified prospectus of the mutual fund or another mutual fund managed by the manager;

(ii) a Personal Information Form and Authorization to Collect, Use and Disclose Personal Information in the form set out in Appendix A to National Instrument 41-101 *General Prospectus Requirements* for the indirect collection of the personal information referred to in subparagraph (i) for each director or officer of the mutual fund, each promoter of the mutual fund, or if the promoter is not an individual, each director or officer of the promoter and each director or officer of the manager of the mutual fund; and

(iii) any other supporting documents required to be delivered or sent to the securities regulatory authority under securities legislation.”

1.5 Part 2 is amended by adding the following sections:

“2.5 **Lapse Date** – (1) This section does not apply in Ontario.

(2) In this section,

“Lapse date” means, with reference to a security that is being distributed under applicable securities legislation or this section, the date that is 12 months after the date of the most recent simplified prospectus relating to the security.

(3) Subject to subsection (2), the distribution of a security to which the prospectus requirement applies must not continue after the lapse date unless a new simplified prospectus that complies with applicable securities legislation and this Instrument is filed and a receipt for that new simplified prospectus is issued by the regulator.

(4) A distribution may be continued for a further twelve months after a lapse date if,

(a) a *pro forma* simplified prospectus prepared in accordance with this Instrument is filed not less than thirty days prior to the lapse date of the previous prospectus;

- (b) a simplified prospectus is filed not later than ten days following the lapse date of the previous simplified prospectus; and
- (c) a receipt for the simplified prospectus is issued by the regulator within twenty days following the lapse date of the previous simplified prospectus.

(5) The continued distribution of securities after the lapse date does not contravene subsection (3) unless and until any of the conditions of subsection (4) are not complied with.

(6) Subject to any extension granted under subsection (5), all distributions completed in reliance upon subsection (4) after the lapse date may be cancelled at the option of the purchaser within 90 days of the purchaser's first knowledge of the failure to comply with such conditions where any of the conditions to the continuation of a distribution under subsection (4) are not complied with.

(7) The regulator may, upon an application of a reporting issuer, extend, subject to such terms and conditions as it may impose, the times provided by subsection (4) where in its opinion it would not be prejudicial to the public interest to do so.

[Note: In Ontario, similar requirements and procedures regarding refiling of prospectuses are set out in section 62 of the *Securities Act* (Ontario).]

2.6 Audit of financial statements - Any financial statements, other than interim financial statements, included in or incorporated by reference in a simplified prospectus must meet the audit requirements in Part 2 of National Instrument 81-106 *Investment Fund Continuous Disclosure*.

2.7 Review of unaudited financial statements - Any unaudited financial statements included in or incorporated by reference in a simplified prospectus must have been reviewed in accordance with the relevant standards set out in the Handbook for a review of financial statements by the mutual fund's auditor or a public accountant's review of financial statements.

2.8 Approval of financial statements and related documents - A mutual fund must not file a simplified prospectus unless each financial statement and each management report of fund performance, as applicable, included in or incorporated by reference in the simplified prospectus has been approved in accordance with the requirements in Part 2 of National Instrument 81-106 *Investment Fund Continuous Disclosure*.

2.9 **Consents of experts** – (1) A mutual fund must file the written consent of any notary in Quebec, solicitor, auditor, accountant, engineer or appraiser, or any person or company whose profession or business gives authority to a statement made by that person or company named in a simplified prospectus or an amendment to a simplified prospectus, either directly or, if applicable, in a document incorporated by reference,

- (a) as having prepared or certified any part of the simplified prospectus or the amendment,
- (b) as having opined on financial statements from which selected information included in the simplified prospectus has been derived and which audit opinion is referred to in the simplified prospectus directly or in a document incorporated by reference, or
- (c) as having prepared or certified a report, valuation, statement or opinion referred to in the simplified prospectus or the amendment, directly or in a document incorporated by reference.

(2) The consent referred to in subsection (1) must

(a) be filed no later than the time the simplified prospectus or the amendment is filed or for the purposes of future financial statements that have been incorporated by reference in a simplified prospectus, no later than the date that those financial statements are filed,

(b) state that the person or company being named consents

- (i) to being named; and
- (ii) to the use of that person or company's report, valuation, statement or opinion,

(c) refer to the report, valuation, statement or opinion stating the date of the report, valuation, statement or opinion, and

(d) contain a statement that the person or company referred to in subsection (1)

(i) has read the simplified prospectus, and

(ii) has no reason to believe that there are any misrepresentations in the information contained in it that are

(A) derived from the report, valuation, statement or opinion, or

(B) within the knowledge of the person or company as a result of the services performed by the person or company in connection with the report, financial statements, valuation, statement or opinion.

(3) In addition to any other requirement of this section, the consent of an auditor or accountant must also state

(a) the dates of the financial statements on which the report of the person or company is made, and

(b) that the person or company has no reason to believe that there are any misrepresentations in the information contained in the simplified prospectus that are

(i) derived from the financial statements on which the person or company has reported, or

(ii) within the knowledge of the person or company as a result of the audit of the financial statements.

(4) Subsection (1) does not apply to an approved rating organization that issues a rating to the securities being distributed under the simplified prospectus.

2.10 Language of Documents – (1) A mutual fund must file a document required to be filed under this Instrument in the French language or in the English language.

(2) Despite subsection (1), if an issuer files a document only in the French language or only in the English language but delivers to an investor or prospective investor a version of the document in the other language, the mutual fund must file that other version not later than when it is first delivered to the investor or prospective investor.

(3) In Québec, the simplified prospectus and any document incorporated by reference must be in the French language or in the French and the English language.

2.11 Statement of rights – Except in Ontario, a simplified prospectus must contain a statement of the rights given to a purchaser under securities legislation for a failure to deliver the simplified prospectus or for a misrepresentation in the simplified prospectus.”

[Note: In Ontario, section 60 of the *Securities Act* (Ontario) requires the inclusion of a similar statement of rights.]

1.6 Part 3 is amended by adding the following subsection after subsection 3.2(2):

“(3) Except in Ontario, any dealer distributing a security during the waiting period must

(a) send a copy of the preliminary simplified prospectus to each prospective purchaser who indicates an interest in purchasing the security and requests a copy of such preliminary simplified prospectus; and

(b) maintain a record of the names and addresses of all persons and companies to whom the preliminary simplified prospectus has been forwarded.”

[**Note:** In Ontario, similar obligations regarding the distribution of a preliminary prospectus and maintaining a distribution list are set out in sections 66 and 67 of the *Securities Act* (Ontario).]

1.7 Part 6 is amended by the following:

(1) By deleting the words “Part 6” and substituting the words “Part 7”;

(2) By deleting the references to “6.1” and substituting “7.1”; and

(3) By deleting the references to “6.2” and substituting “7.2”.

1.8 Part 7 is amended by the following:

(1) By deleting the words “Part 7” and substituting the words “Part 8”;

(2) By deleting the references to “7.1” and substituting “8.1”;

(3) By deleting the references to “7.2” and substituting “8.2”;

(4) By deleting the references to “7.3” and substituting “8.3”; and

(5) By deleting the references to “7.4” and substituting “8.4”.

1.9 The following is added as Part 6:

“Part 6 - Certificates

6.1 **Application** - A certificate required under this Part may be omitted from a *pro forma* simplified prospectus.

6.2 **Interpretation** - For the purposes of this Part,

“manager certificate form” means a certificate in the form set out in Item 20 of Form 81-101F2 and attached to the annual information form

“mutual fund certificate form” means a certificate in the form set out in Item 19 of Form 81-101F2 and attached to the annual information form

“principal distributor certificate form” means a certificate in the form set out in section Item 22 of Form 81-101F2 and attached to the annual information form

“promoter certificate form” means a certificate in the form set out in Item 21 of Form 81-101F2 and attached to the annual information form

6.3 **Date of certificates** - The date of the certificates in a prospectus or an amendment to a prospectus must be within 3 business days before the filing of the prospectus or amendment to the prospectus, as applicable.

6.4 **Certificate of the mutual fund** – (1) Except in Ontario, a simplified prospectus of a mutual fund must be certified by the mutual fund.

[**Note:** In Ontario, the requirement that a prospectus contain a certificate of the issuer is set out in section 58 of the *Securities Act* (Ontario).]

(2) A mutual fund must certify its simplified prospectus in the form of the mutual fund certificate form.

6.5 **Certificate of principal distributor** - A simplified prospectus of a mutual fund must be certified by each principal distributor in the form of the principal distributor certificate form.

6.6 **Certificate of the manager** - A simplified prospectus of a mutual fund must be certified by the manager of the mutual fund in the form of the manager certificate form.

6.7 **Certificate of promoter** – (1) A simplified prospectus of a mutual fund must be certified by each promoter in the form of the promoter certificate form.

(2) The regulator may require any person or company who was a promoter of the mutual fund within the two preceding years to sign a certificate, in the applicable promoter certificate form.

(3) With the consent of the regulator, a certificate for a simplified prospectus may be signed by an agent duly authorized in writing by the person or company required to provide the certificate.

6.8 **Certificates of corporate mutual funds** – (1) Except in Ontario, if the mutual fund is a company, the certificate of the mutual fund required under section 6.4 must be signed

(a) by the chief executive officer and the chief financial officer of the mutual fund; and

(b) on behalf of the board of directors of the mutual fund, by

(i) any two directors of the mutual fund, other than the persons referred to in paragraph (a) above, or

(ii) if the mutual fund has only three directors, two of whom are the persons referred to in paragraph (a) above, all the directors of the mutual fund.

(2) Except in Ontario, if the regulator is satisfied that either or both of the chief executive officer or chief financial officer is cannot sign a certificate in a simplified prospectus, the regulator may accept a certificate signed by another officer.”

[Note: In Ontario, similar requirements regarding who must sign the issuer certificate are set out in section 58 of the *Securities Act* (Ontario).]

1.10 Form 81-101F1 *Contents of Simplified Prospectus* is amended

(a) in Item 6 of Part A by:

(i) adding the following after subsection (4):

“(5) Under the sub-heading “Short-term Trading”

(a) describe the adverse effects, if any, that short-term trades in securities of the mutual fund by an investor may have on other investors in the mutual fund;

(b) describe the restrictions, if any, that may be imposed by the mutual fund to deter short-term trades, including the circumstances, if any, under which such restrictions may not apply or may otherwise be waived;

(c) where the mutual fund does not impose restrictions on short-term trades, state the specific basis for the view of the manager that it is appropriate for the mutual fund not to do so; and

(d) if applicable, state that the annual information form includes a description of all arrangements, whether formal or informal, with any person or company, to permit short-term trades of securities of the mutual fund.”; and

(ii) adding the following Instruction at the end of Item 6:

“INSTRUCTION:

In responding to the disclosure required by subsection (5) above, include a brief description of the short-term trading activities in the mutual fund that are considered by the manager to be inappropriate or excessive. And, where the manager imposes a short-term trading fee, include a cross-reference to the disclosure provided under Item 8 of Part A of this Form”;
and

(b) in Item 8 of Part A by adding the following line item in the table after “Redemption Fees” under the heading “Fees and Expenses Payable Directly by You”:

Short-Term Trading Fee	<i>[specify percentage, as a percentage of]</i>
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1.11 Form 81-101F2 Contents of Annual Information Form is amended:

(a) in Item 12 by adding the following after subsection (8):

“(9) Describe the policies and procedures of the mutual fund relating to the monitoring, detection and deterrence of short-term trades of mutual fund securities by investors. If the mutual fund has no such policies and procedures, provide a statement to that effect.

(10) Describe any arrangements, whether formal or informal, with any person or company, to permit short-term trades in securities of the mutual fund, including

(a) the name of such person or company, and

(b) the terms of such arrangements, including

(i) any restrictions imposed on the short-term trades; and

(ii) any compensation or other consideration received by the manager, the mutual fund or any other party pursuant to such arrangements.”;

(b) by deleting Item 16(1)(a) and replacing it with the following:

“(a) articles of incorporation, continuation or amalgamation, the declaration of trust or trust agreement of the mutual fund, limited partnership agreement or any other constating or establishing documents of the mutual fund;”;

(c) by deleting Item 19(1) and replacing it with the following:

“(1) Include a certificate of the mutual fund that states:

(a) for a simplified prospectus and annual information form,

“This annual information form, together with the simplified prospectus required to be sent or delivered to a purchaser during the currency of this annual information form and the documents incorporated by reference into the simplified prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by the simplified prospectus and do not contain any misrepresentations.”

(b) for an amendment to a prospectus or annual information form that does not restate the prospectus or annual information form,

“This amendment no. [specify], together with the annual information form dated [specify], [as amended by (specify prior amendments and dates)] and the simplified prospectus dated [specify], [as amended by (specify prior amendments and dates)], required to be sent or delivered to a purchaser during the currency of the annual information form and the documents incorporated by reference into the simplified prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by the simplified prospectus and do not contain any misrepresentations.”

(c) for an amendment that amends and restates a prospectus or annual information form,

“This amended and restated annual information form, together with the amended and restated simplified prospectus required to be sent or delivered to a purchaser during the currency of this annual information form and the documents incorporated by reference into the simplified prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by the simplified prospectus and do not contain any misrepresentations.””

(1.1) For a non-offering prospectus, omit the reference in the language in Item 19(1)(a) to “securities offered by the simplified prospectus” and replace it with “securities previously issued by the mutual fund”.

1.12 This Instrument comes into force on [].

APPENDIX I

Schedule 2

**Amendments to Companion Policy 81-101CP – To National Instrument 81-101
*Mutual Fund Prospectus Disclosure***

- 1 Companion Policy 81-101CP – To National Instrument 81-101 Mutual Fund Prospectus Disclosure is amended by adding the following subsection in section 2.7:

“(5) Securities legislation provides that no person or company shall distribute securities, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued by the securities regulatory authority or regulator. We interpret this requirement to also apply to mutual funds. If a mutual fund adds a new class or series of securities to a simplified prospectus that is referable to a new separate portfolio of assets, a preliminary simplified prospectus must be filed. However, if the new class or series of securities is referable to an existing portfolio of assets, the new class or series may be added by way of amendment.”

APPENDIX J

Schedule 1

Amendments to National Instrument 81-104 *Commodity Pools*

- 1.1 National Instrument 81-104 *Commodity Pools* is amended by this Instrument.
- 1.2 Part 9 is repealed.
- 1.3 This Instrument comes into force on [].

APPENDIX J

Schedule 2

Amendments to Companion Policy 81-104CP – To National Instrument 81-104 *Commodity Pools*

1 Companion Policy 81-104CP to National Instrument 81-104 *Commodity Pools* is amended by:

(a) repealing Part 3;

(b) deleting subsection 4.1(4) and substituting the following subsection:

“(4) Mutual funds structured as limited partnerships may raise some concerns about the loss of limited liability if limited partners are viewed as participating in the management or control of the partnership. The statute and case law concerning when limited partners can lose their limited partner status, including the Quebec Civil Code, varies from province to province. The risks associated with this type of structure in the jurisdictions where the prospectus is filed should be disclosed.”

(c) deleting subsection 4.1(5) and substituting the following subsection:

“(5) Mutual funds structured as trusts are subject to their constitution and the common and civil law of trusts. A commodity pool operator should consider this law, together with the factual circumstances surrounding the establishment of the commodity pool, including the ability of the investors in the commodity pool to influence the administration and management of the commodity pool, to ensure that investors’ liability is limited to the amount they have invested in the commodity pool. If applicable, a commodity pool should disclose in the prospectus the risks associated with the structuring of a commodity pool as a trust in relation to the possibility that purchasers of securities of the commodity pool may become liable to make an additional contribution beyond the price of the securities.”

(d) deleting the number “4.1” in Part 4 and substituting the number “3.1”; and

(e) deleting the words “Part 4” and substituting the words “Part 3”.

APPENDIX K

Amendments to National Policy 43-201 *Mutual Reliance Review System For Prospectuses*

1.1 National Policy 43-201 *Mutual Reliance Review System for Prospectuses* is amended by this Instrument.

1.2 Section 2.1 is amended by

(a) **adding the following definition after “MI 11-101”:**

“NI 41-101” means National Instrument 41-101, *General Prospectus Requirements*;

(b) **repealing “OSC 41-501”;**

(c) **repealing “Q-28”.**

1.3 Item 1. in Section 7.4 is repealed.

1.4 Section 7.5 is amended by striking out “,other than subsection 7.4(1)”.

1.5 Subsections 10.1(2) and (3) are repealed.

1.6 Section 10.9 is repealed and the following is substituted:

10.9 Other requirements - Filers are reminded that the securities legislation and securities directions of certain jurisdictions provide that a distribution or additional distribution must not proceed until a receipt for a prospectus amendment is issued.

1.7 Appendix A is amended

(a) **by repealing the final paragraph under item 4 and substituting the following:**

If a distribution is made under NI 41-101 or NI 44-101, a completed authorization form in the form of Appendix A to NI 41-101 *Personal Information Form and*

Authorization of Indirect Collection, Use and Disclosure of Personal Information must be delivered.

- (b) **by repealing “PRELIMINARY OR PRO FORMA LONG FORM PROSPECTUS” and substituting the following:**

PRELIMINARY OR PRO FORMA LONG FORM PROSPECTUS

An issuer that files a preliminary long form prospectus or a *pro forma* long form prospectus pursuant to NI 41-101 must file and/or deliver the documents required to be filed and/or delivered as set out in section 9.2 of NI 41-101, along with

1. Filing fees; and
2. A letter to the principal regulator prepared in accordance with section 7.2.2 of this Policy.

- (c) **by repealing “FINAL LONG FORM PROSPECTUS” and substituting the following:**

FINAL LONG FROM PROSPECTUS

An issuer that files a final long form prospectus pursuant to NI 41-101 must file and/or deliver the documents required to be filed and/or delivered as set out in section 9.3 of NI 41-101, along with

1. Filing fees and other applicable fees including participation fees; and
2. A letter to the principal regulator prepared in accordance with section 7.4.4 of this Policy.

- (d) **by repealing “AMENDMENTS TO PRELIMINARY PROSPECTUS AND PROSPECTUS (SHORT FORM AND LONG FORM)” and substituting the following:**

AMENDMENTS TO PRELIMINARY PROSPECTUS AND PROSPECTUS (SHORT FORM AND LONG FORM)”

An issuer that files an amendment pursuant to NI 41-101 shall file and/or deliver the documents required to be filed and/or delivered as set out in sections 6.2 and 6.3 of NI 41-101, along with

1. Filing fees;
2. A letter prepared in accordance with section 10.1(2) of this Policy, if applicable; and
3. A letter to the principal regulator
 - (a) for a preliminary prospectus amendment, prepared in accordance with section 10.2.2 of this Policy; or
 - (b) for a prospectus amendment, prepared in accordance with section 10.6.4 of this Policy.