

**NOTICE OF PROPOSED CHANGES TO
PROPOSED NATIONAL INSTRUMENT 44-101,
PROPOSED FORM 44-101F1, PROPOSED FORM 44-101F2
PROPOSED COMPANION POLICY 44-101CP
SHORT FORM PROSPECTUS DISTRIBUTIONS
AND RULE 44-801
AND
RESCISSION OF NATIONAL POLICY STATEMENT NO. 47
PROMPT OFFERING QUALIFICATION SYSTEM**

A. Substance and Purpose of Proposed National Instrument, Forms and Companion Policy

1. Introduction

On July 23, 1999, the Canadian Securities Administrators (the "CSA") published the following four instruments (collectively, the "1999 proposed Instruments") for comment:

- proposed National Instrument 44-101 Short Form Prospectus Distributions (the "1999 proposed National Instrument")
- proposed Form 44-101F1 AIF (the "1999 proposed AIF")
- proposed Form 44-101F2 Short Form Prospectus (the "1999 proposed Prospectus Form") (the two forms, collectively, the "1999 Proposed Forms")
- proposed Companion Policy 44-101CP (the "1999 proposed Policy").

The 1999 proposed Instruments were published at (1999), 22 OSCB (POP Supp). The accompanying notice (the "1999 Notice") summarized these proposed instruments and requested comments.

The Instruments had previously been published for comment on February 20, 1998 at (1998), 21 OSCB 1138 (the "1998 Instruments").

The CSA received comments on the 1999 proposed Instruments from four commentators. The list of commentators is contained in Appendix A of this Notice and a summary of their comments, together with the CSA's responses to those comments, are contained in Appendix B of this Notice.

In addition to considering the comments received on the 1999 proposed Instruments, the CSA also considered the comments received by the Ontario Securities Commission (the "Commission") on proposed Rule 41-501 General Prospectus Requirements ("proposed Rule 41-501"), which was published for comment on July 23, 1999 at (1999), 22 OSCB (LF Supp). Given the degree of similarity between the proposed Instruments and proposed Rule 41-501, many of the comments received on proposed Rule 41-501 were also relevant to the CSA's consideration of the proposed Instruments. A list of these commentators on proposed Rule 41-501 is included in Appendix C. A summary of the comments on proposed Rule 41-501 is included in Appendix D, together with the Commission's responses to those comments.

The CSA also considered the changes proposed by the Commission to proposed Rule 41-501, which is being republished for comment concurrently with the proposed Instruments. In addition, the CSA considered a relevant comment it received on proposed National Instrument 81-101 Mutual Fund Prospectus Disclosure.

As a result of these considerations and further deliberations of the CSA, the Commission has revised the 1999 proposed Instruments and is republishing them for comment.

The republished versions of these Instruments are referred to in this Notice collectively as the "proposed Instruments" and separately as the "proposed National Instrument", the "proposed AIF", the "proposed Prospectus Form" (the two forms, collectively, the "proposed Forms") and the "proposed Policy".

This Notice summarizes changes of a substantive nature that have been made to the 1999 proposed Instruments. Other changes of relevance to readers are in most cases identified in the footnotes to the proposed Instruments.

It is expected that the proposed Instruments will come into effect mid-2000. Prior to that time the proposed new requirements will not be in force; however, issuers are encouraged to follow these requirements.

2. *Substance and Purpose*

The substance and purpose of the proposed Instruments are to reformulate National Policy Statement No. 47 Prompt Offering Qualification System. The proposed National Instrument and the proposed Forms are designed to continue to allow issuers to access Canadian capital markets rapidly and with a minimum of regulatory impediments, while maintaining current levels of investor

protection and public disclosure. The proposed Policy provides guidance as to the exercise of regulatory discretion under the proposed National Instrument and the manner in which provisions in the proposed National Instrument are intended to be interpreted or applied by the Canadian securities regulatory authorities.

For additional information concerning the background to the proposed Instruments, reference should be made to the Notice for the 1998 Instruments, the 1999 Notice and Appendices B and D of this Notice.

B. Summary of Changes to the Proposed Instruments

Changes of a substantive nature that have been made to the proposed Instruments are summarized here.

National Instrument 44-101

1. *Qualification Criteria*

In response to comments, a new element has been added to each type of qualification criteria. An issuer filing a *preliminary* short form prospectus more than 90 days after the end of its most recently completed financial year must have filed its financial statements for that year in order to be qualified to file a prospectus in the form of a short form prospectus. In sections 2.5 and 2.6 dealing with guaranteed distributions, this criterion has been changed to require that the credit supporter, not the issuer, must have filed financial statements for that year.

2. *Financial Statement Disclosure for Significant Acquisitions*

(a) Significance Test

The three tests for determining whether an acquisition of a business by an issuer is "significant" and, consequently whether the financial statement disclosure requirements in Part 4 of the proposed Instrument apply, are set out in subsection 1.2(1) of the proposed Instrument. In the 1999 proposed Instrument, the second of these three tests measured the acquired business' revenue against the revenue of the issuer. In response to comments received on the 1999 proposed Instrument, the "revenue" test has been deleted and replaced by an "investment" test. This new test measures an issuer's investments in and advances to an acquired business against the assets of the

issuer and closely parallels the investment test used by the Securities and Exchange Commission (the "SEC") to determine the significance of an acquisition to an issuer for the purposes of determining whether financial statements of the acquired business are required disclosure. (See SEC Rule 3-05(b) of Regulation S-X under the United States Securities Exchange Act of 1934.) This investment test is, in the CSA's view, better suited to hi-tech and other new economy businesses and also offers the benefit of greater harmonization with the SEC's practice.

The other two tests have remained unchanged: the first which measures the assets of the acquired business against the assets of the issuer and the third which measures the net income of the acquired business against the net income of the issuer. If any one of the three tests is satisfied at the 20% level, the acquisition is considered under the proposed National Instrument to be "significant" to the issuer.

(b) Timing of the Application of the Significance Test

The three tests for significance of an acquisition are applied under the proposed National Instrument at two points in time: first, at the time of acquisition and, again, at the time of filing the preliminary prospectus. An acquisition is "significant" only if it satisfies one of the three tests on both dates.

The earlier date is new. It has been added to the proposed National Instrument in response to comments received advocating the need for (i) certainty as to whether an acquisition is significant at an earlier date, and (ii) greater harmonization with the SEC's practice. This earlier date gives issuers the benefit of certainty as to whether an acquisition is not significant at the time the acquisition is made. If the acquisition is not significant on this earlier date, there is no need to consider the second date as the test is cumulative. The second date was previously included in the 1999 proposed National Instrument and has been retained because it is important, in the CSA's view, to recognize the potential growth of issuers between the date of acquisition and the date of a prospectus offering and the corresponding potential decline in the significance of any acquisition made.

(c) Periods Required

In response to comments, Part 4 of the proposed National Instrument has been revised to require separate financial statements of an acquired business only for periods before the acquisition, not after.

(d) Pro Forma Financial Statements

The periods for which *pro forma* financial statements need to be included in a prospectus reflecting recent significant acquisitions have been revised in a minor way in response to comments. The *pro forma* statements giving effect to significant acquisitions completed in the previous year are required only as of the beginning of the current financial year, not also at the beginning of the most recent interim period as had been the case in the 1999 proposed National Instrument.

(e) Exceptions to Disclosure Requirements for Significant Acquisitions

In Part 4 of the proposed National Instrument, a number of limited exceptions have been added to the financial statement disclosure requirements for significant acquisitions. The first exception applies if the acquired business changed its financial year end during the period for which the issuer is required to include financial statements of the business. To benefit from the exception, the issuer must include audited financial statements of the business for a nine month period in the year in which the year end changed. A second exception has been added that permits an issuer to omit separate financial statements of the business for the oldest financial year otherwise required if audited financial statements for a more recent year than is otherwise required are included.

3. ***Financial Statement Disclosure for Multiple Acquisitions that are not otherwise Significant or Related***

The requirements for financial statement disclosure for multiple acquisitions by an issuer that do not, separately, meet the significance test and are otherwise not related are set out in Part 5 of the proposed National Instrument. This Part has been revised to require *pro forma* financial statements reflecting multiple acquisitions, in addition to the requirement in the 1999 proposed National Instrument for separate financial statements of a majority of the acquired businesses.

A number of limited exceptions to the disclosure requirements for multiple acquisitions have also been added to Part 5 of the proposed National Instrument. These exceptions essentially parallel the exceptions in Part 4 to the disclosure requirements for significant acquisitions.

4. ***Definition of "Significant Disposition"***

In response to comments, the CSA have added in section 1.6 of the proposed National Instrument quantitative standards for determining whether a disposition is significant to an issuer for the purposes of providing narrative disclosure in Item 3.2 of the proposed AIF and Item 11.1 of the proposed Prospectus Form. The significance is measured based on two tests: the first is the assets of the business disposed compared to the assets of the issuer and, second, the net income of the

business disposed of measured against the net income of the issuer. If either of these two tests are satisfied at the 20 percent level, the disposition is considered significant.

5. *Foreign GAAS*

The proposed National Instrument imposes two requirements dealing specifically with financial statements included in a short form prospectus that are accompanied by a foreign auditor's report. First, the foreign auditor's report must be accompanied by a statement by the auditor confirming that the auditing standards applied are substantially equivalent to Canadian GAAS. Secondly, the issuer must file a letter from the auditor discussing the auditor's expertise to make the determination that the foreign auditing standards applied are substantially equivalent to Canadian GAAS. The second requirement has been revised in the proposed National Instrument to reflect the CSA's view that United States GAAS is substantially equivalent to Canadian GAAS. The requirement contains an exception for U.S. auditors. However, no exception for U.S. auditors has been made to the first requirement as the CSA continue to believe that prospectus readers should be informed that the U.S. auditing standards applied are substantially equivalent to Canadian GAAS.

6. *Drafting Changes*

The proposed National Instrument has been revised to break it up into more Parts and more sections for greater ease of reference. Drafting changes have also been made throughout the proposed National Instrument to reduce the number of cross-references to different Parts of the Instrument and to generally respond to comments received that the 1999 proposed National Instrument was difficult to read.

7. *Appendix A - Consent to Collection of Personal Information*

Appendix A has been renamed Authorization of Indirect Collection of Personal Information. It has been revised to parallel the equivalent form under proposed Rule 41-501 and to reflect the information required under securities legislation and the notification and authorization required under freedom of information and protection of privacy legislation in other jurisdictions.

Form 44-101F1 AIF

In response to comments, the CSA have revised Item 3.2 of the proposed AIF to require narrative disclosure for dispositions that meet the quantitative test that has been added to the proposed National Instrument.

The requirement to provide selected quarterly information and discussion has been moved from Item 5.2 of the 1999 proposed AIF to Item 2 of the proposed Schedule 1 to Form 44-101F1 MD&A, as the CSA wish to ensure that the MD&A distributed to shareholders includes both the quarterly results and a discussion of those results.

Item 8.3 of the proposed AIF which requires disclosure concerning directors, officers and significant shareholders has been revised to no longer require disclosure of a settlement agreement entered into before National Instrument 44-101 came into force unless the disclosure would likely be considered to be important to a reasonable investor in making an investment decision.

Item 1 of the proposed Schedule 1 to Form 44-101F1 MD&A has been amended to require a discussion of any events or items which have had a material impact on the issuer's fourth quarter financial condition or results of operations.

Form 44-101F2 Short Form Prospectus

The CSA have revised Item 7 of the proposed Prospectus Form which deals with earnings coverage ratios. The CSA received a number of comments on the treatment of "compound instruments" that combine elements of debt and equity. Item 7 has been revised to require issuers, in the case of compound instruments, to recalculate and disclose in notes to earnings coverage ratios the ratios calculated treating the equity component of those instruments as debt.

The CSA has added requirements in Item 11.1 of the proposed Prospectus Form for disclosure of: (i) significant probable acquisitions; and (ii) significant dispositions and significant probable dispositions that meet the quantitative test that has been added to the proposed National Instrument.

Item 16.1 of the proposed Prospectus Form which requires disclosure concerning promoters has been revised, similar to Item 8.3 of the proposed AIF, to no longer require disclosure of a settlement agreement entered into before National Instrument 44-101 came into force unless the disclosure would likely be considered to be important to a reasonable investor in making an investment decision.

Companion Policy 44-101CP

1. Significant Acquisitions

The commentary in Part 4 of the proposed Policy discussing the significance test for business acquisitions has been expanded to discuss the tests and the timing of their application. Explanation has also been added concerning the definition of "probable acquisition" and its reference to the "reasonable person".

2. *Foreign GAAS*

Commentary has been added to Part 5 of the proposed Policy to emphasize that auditor independence is, in the view of the CSA, a critical element of Canadian GAAS that needs to be reflected, among other things, in foreign GAAS before a determination can be made that the foreign GAAS and Canadian GAAS are substantially equivalent.

3. *Registration Requirements*

Commentary has been added to section 6.9 of the proposed Policy reminding issuers and other market participants to ensure that members of underwriting syndicates are in compliance with the applicable registration requirements in each jurisdiction in which the syndicate members are participating in the distribution of securities.

C. *Summary of Changes to the Proposed Implementing Rule*

Proposed Rule 44-801 is the local rule implementing the proposed National Instrument and Forms in Ontario. The proposed Implementing Rule has been modified to provide that proposed Rule 41-501, in its entirety, does not apply to short form prospectus distributions. Minor drafting changes have also been made to the proposed Implementing Rule.

D. *Comments*

Interested parties are invited to make written submissions with respect to the proposed National Instrument, proposed Forms and proposed Policy. Submissions received by February 15, 2000 will be considered.

Submissions should be made in duplicate to:

British Columbia Securities Commission
Alberta Securities Commission

Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario M5H 3S8

Submissions should also be addressed to the Commission des valeurs mobilières du Québec as follows:

Claude St-Pierre, Secretary
Commission des valeurs mobilières du Québec
800 Victoria Square
Stock Exchange Tower
P.O. Box 246, 17th Floor
Montréal, Québec H4Z 1G3

A diskette containing the submissions (in DOS or Windows format, preferably WordPerfect) should also be submitted. As the Act requires that a summary of written comments received during the comment period be published, confidentiality of submissions cannot be maintained.

Questions may be referred to any of:

Cameron McInnis
Associate Chief Accountant, Corporate Finance
British Columbia Securities Commission
(604) 899-6767
cmcinnis@bscs.bc.ca

Agnes Lau
Deputy Director, Capital Markets
Alberta Securities Commission
(780) 422-2191
agnes.lau@seccom.ab.ca

Joanne Peters
Senior Legal Counsel
Ontario Securities Commission
(416) 593-8134
jpeters@osc.gov.on.ca

Pierre Martin
Senior Legal Counsel
Commission des valeurs mobilières du Québec
(514) 940-2199 ext. 4557
pierre.martin@cvmq.com

Proposed National Instrument, Forms and Companion Policy

The text of the proposed National Instrument, proposed Forms and proposed Policy follows, together with footnotes that are not part of the proposed National Instrument, proposed Forms and proposed Policy but have been included to provide background and explanation.

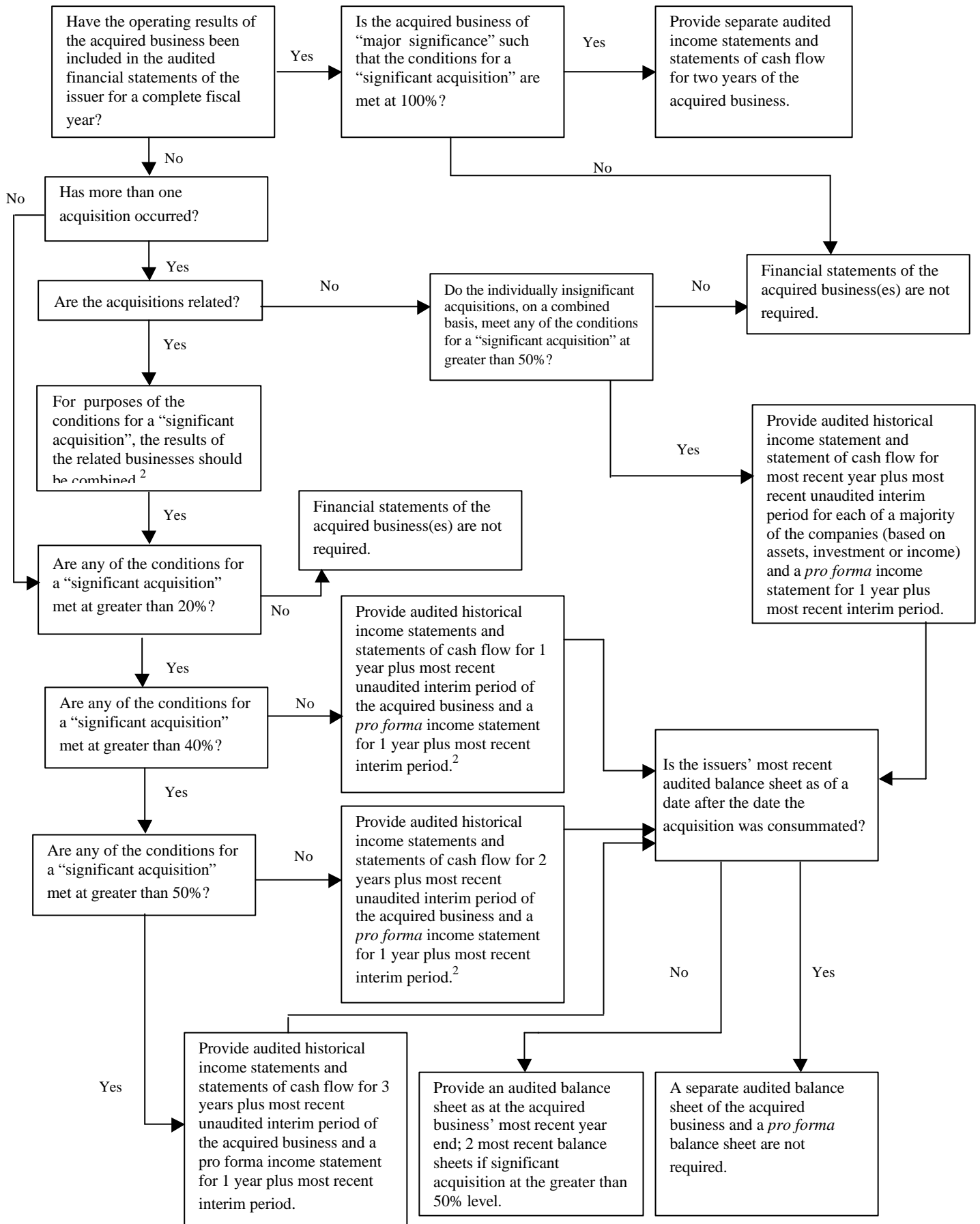
DATED: December 17, 1999

**APPENDIX A
TO NOTICE OF PROPOSED CHANGES
TO PROPOSED NATIONAL INSTRUMENT 44-101
LIST OF COMMENTATORS**

Commentators on proposed National Instrument 44-101:

1. Canadian Bond Rating Service by letter dated September 2, 1999.
2. The Canadian Institute of Chartered Accountants Task Force (Prospectuses and Other Offering Documents) by letter dated September 23, 1999.
3. KPMG by letter dated September 23, 1999 and by supplementary letter dated September 24, 1999.
4. Deloitte & Touche by letter dated September 24, 1999.

**APPENDIX A
OVERVIEW OF BUSINESS ACQUISITIONS DECISION CHART¹**



¹ This decision chart provides general guidance and should be read in conjunction with National Instrument 44-101 and Companion Policy 44-101CP.

² If an acquisition of related businesses constitutes a significant acquisition when the results of the related businesses are combined, the required financial statements shall be provided for each of the related businesses.

NATIONAL INSTRUMENT 44-101¹
SHORT FORM PROSPECTUS DISTRIBUTIONS

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions²

In this Instrument

"acquisition of related businesses" means the acquisitions of two or more businesses if

- (a) the businesses were under common control or management before the acquisitions were completed, or
- (b) each acquisition was conditional upon the completion of each other acquisition;

"AIF" means an annual information form

- (a) in the form of Form 44-101F1 AIF,

¹ The proposed Instrument is an initiative of the Canadian Securities Administrators (the "CSA") and is expected to be adopted as a rule in British Columbia, Alberta, Ontario, Manitoba and Nova Scotia, as a Commission Regulation in Saskatchewan and as a Policy in all other jurisdictions represented by the CSA. This proposed Instrument is derived from National Policy Statement No. 47 ("NP47") and, in part, National Policy Statement No. 1 ("NP1") of the Canadian securities regulatory authorities and related Blanket Orders or Rulings adopted by them. The proposed National Instrument was first published for comment on February 20, 1998 at (1998), 21 OSCB 1138. A revised version of the proposed National Instrument was published on July 23, 1999 at (1999), 22 OSCB (POP Supp) (the "1999 proposed National Instrument"). Unless otherwise specified, changes noted in these footnotes refer to changes made to the 1999 proposed National Instrument. Footnotes included in the 1999 proposed National Instrument have generally not been repeated here.

² A national definition instrument has been adopted as National Instrument 14-101 Definitions. It contains definitions of certain terms used in more than one national instrument. National Instrument 14-101 also provides that a term used in a national instrument and defined in the statute relating to securities of the applicable jurisdiction, the definition of which is not restricted to a specific portion of the statute, will have the meaning in that jurisdiction given to it in that statute, unless the context otherwise requires. National Instrument 14-101 also provides that a provision or a reference within a provision in a national instrument that specifically refers by name to a jurisdiction, other than the local jurisdiction, shall not have any effect in the local jurisdiction, unless otherwise stated in the provision.

- (b) in the form referred to in section 3.4, or
- (c) in the form of Appendix A to National Policy Statement No. 47, if the annual information form was filed before this Instrument came into force;

"alternative credit support" means support, other than a guarantee, for the payments to be made by an issuer of securities, as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities, that

- (a) obliges the person or company providing the support to provide the issuer with funds sufficient to enable the issuer to make the stipulated payments, or
- (b) entitles the holder of the securities to receive payment from the person or company providing the support, if the issuer fails to make a stipulated payment;

"approved rating" means, for a security, a rating at or above one of the following rating categories issued by an approved rating organization for the security or a rating category that replaces a category listed below:

Approved Rating Organization	Long Term Debt	Short Term Debt	Preferred Shares
CBRS Inc.	B++	A-2	P-3
Dominion Bond Rating Service Limited	BBB	R-2	Pfd-3
Duff & Phelps Credit Rating Co.	BBB-	D-3	BBB-
Fitch IBCA, Inc.	BBB	F3	BBB
Moody's Investors Service, Inc.	Baa	Prime-3	"baa"
Standard & Poor's	BBB	A-3	BBB

Corporation

Thomson BankWatch, Inc. BBB TBW-3 BBB

"approved rating organization" means each of CBRS Inc., Dominion Bond Rating Service Limited, Duff & Phelps Credit Rating Co., Fitch IBCA, Inc., Moody's Investors Service, Inc., Standard & Poor's Corporation, Thomson BankWatch, Inc., and any of their successors;

"asset-backed security" means a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, and any rights or other assets designed to assure the servicing or timely distribution of proceeds to securityholders;

"associated party" means, if used to indicate a relationship with a person or company,

- (a) a partner, other than a limited partner, of the person or company,
- (b) a trust or estate in which the person or company has a substantial beneficial interest or for which the person or company serves as trustee or in a similar capacity,
- (c) an issuer in respect of which the person or company beneficially owns or controls, directly or indirectly, voting securities carrying more than 10 percent of the voting rights attached to all outstanding voting securities of the issuer,
- (d) a relative of the person who has the same home as that person,
- (e) an individual who has the same home as the person and who is either married to the person or is living with the person in a conjugal relationship outside marriage, or
- (f) a relative of an individual mentioned in paragraph (e) who has the same home as the person;

"auditor's report" means

- (a) a Canadian auditor's report,³ or
- (b) in the case of an issuer incorporated or organized in a foreign jurisdiction
 - (i) a Canadian auditor's report, or
 - (ii) a foreign auditor's report;

"cash equivalent" means an evidence of indebtedness that has a remaining term to maturity of 365 days or less and that is issued, or fully and unconditionally guaranteed as to principal and interest, by

- (a) the government of Canada or the government of a jurisdiction,
- (b) the government of the United States of America, the government of one of the states of the United States of America, the government of another sovereign state or a permitted supranational agency, if, in each case, the evidence of indebtedness has an approved rating, or
- (c) a Canadian financial institution⁴, or other entity that is regulated as a banking institution, loan corporation, trust company, or insurance company or credit union by the government, or an agency of the government, of the country under whose laws the entity is incorporated or organized or a political subdivision of that country, if, in either case, the Canadian financial institution or other entity has outstanding short term debt securities

³ The term "Canadian auditor's report" is defined in National Instrument 14-101 Definitions. The definition is "an auditor's report prepared in accordance with Canadian GAAS". The term "Canadian GAAS" is also defined in National Instrument 14-101 Definitions. The definition is "generally accepted auditing standards determined with reference to the Handbook". The term "Handbook" is defined in National Instrument 14-101 Definitions to mean "the Handbook of the Canadian Institute of Chartered Accountants, as amended from time to time".

⁴ The term "Canadian financial institution" is defined in National Instrument 14-101 Definitions as "a bank, loan corporation, trust company, insurance company, treasury branch, credit union or caisse populaire that, in each case, is authorized to carry on business in Canada or a jurisdiction, or the Confédération des caisses populaires et d'économie Desjardins du Québec".

that have received an approved rating from any approved rating organization;

"cash settled derivative" means a specified derivative, the terms of which provide for settlement only by means of cash or cash equivalent, the amount of which is determinable by reference to the underlying interest of the specified derivative;

"connected issuer" has the meaning ascribed to that term in securities legislation;⁵

"convertible" means, if used to describe securities, that the rights and attributes attached to the securities include the right or option to purchase, convert into or exchange for or otherwise acquire equity securities of an issuer, or any other security that itself includes the right or option to purchase, convert into or exchange for or otherwise acquire equity securities of an issuer;

"credit supporter" means a person or company that provides a guarantee or alternative credit support for any of the payments to be made by an issuer of securities as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities;

"current AIF" means

- (a) for an issuer other than an issuer subsisting under the laws of a foreign jurisdiction that has filed an AIF in the form of a current annual report on Form 20-F under section 3.4
 - (i) during the period of 140 days following the issuer's most recently completed financial year,
 - (A) if the issuer has filed an initial AIF for its most recently completed financial year that has been accepted for filing under this Instrument, the initial AIF,

⁵ This definition has been added to replace a reference to Multilateral Instrument 33-105 Underwriting Conflicts which has not yet come into force. The term is used in Form 44-101F2.

⁶ The definition of "securities legislation" in National Instrument 14-101 is "for the local jurisdiction, the statute and other instruments listed in Appendix B opposite the name of the local jurisdiction".

- (B) if the issuer has filed a renewal AIF under this Instrument for its most recently completed financial year, the renewal AIF,
 - (C) if the issuer has not filed an AIF for its most recently completed financial year and has filed an initial AIF for the financial year preceding its most recently completed financial year that has been accepted for filing under this Instrument, the initial AIF, or
 - (D) if the issuer has not filed an AIF for its most recently completed financial year and has filed a renewal AIF under this Instrument for the financial year preceding its most recently completed financial year, the renewal AIF,
- (ii) at any time after 140 days following the issuer's most recently completed financial year,
- (A) if the issuer has filed an initial AIF for its most recently completed financial year that has been accepted for filing under this Instrument, the initial AIF, or
 - (B) if the issuer has filed a renewal AIF under this Instrument for its most recently completed financial year, the renewal AIF, or
- (iii) an AIF of the issuer filed before this Instrument came into force that would constitute a "Current AIF" for the purposes of National Policy Statement No. 47 if that instrument was applicable, or
- (b) for an issuer subsisting under the laws of a foreign jurisdiction that has filed an AIF in the form of a current annual report on Form 20-F under section 3.4
- (i) during the period of 180 days following the issuer's most recently completed financial year

- (A) if the issuer has filed an initial AIF for its most recently completed financial year that has been accepted for filing under this Instrument, the initial AIF,
 - (B) if the issuer has filed a renewal AIF under this Instrument for its most recently completed financial year, the renewal AIF,
 - (C) if the issuer has not filed an AIF for its most recently completed financial year and has filed an initial AIF for the financial year preceding its most recently completed financial year that has been accepted for filing under this Instrument, the initial AIF, or
 - (D) if the issuer has not filed an AIF for its most recently completed financial year and has filed a renewal AIF under this Instrument for the financial year preceding its most recently completed financial year, the renewal AIF,
- (ii) at any time after 180 days following the issuer's most recently completed financial year,
- (A) if the issuer has filed an initial AIF for its most recently completed financial year that has been accepted for filing under this Instrument, the initial AIF, or
 - (B) if the issuer has filed a renewal AIF under this Instrument for its most recently completed financial year, the renewal AIF, or
- (iii) an AIF of the issuer filed before this Instrument came into force that would constitute a "Current AIF" for the purposes of National Policy Statement No. 47 if that instrument was applicable;

"equity security" means any security of an issuer that carries a residual right to participate in the earnings of the issuer and, upon the liquidation or winding up of the issuer, in its assets;

"executive officer" means an individual who is or at any time during the most recently completed financial year was

- (a) a chair of the issuer, if that individual performed the functions of the office on a full time basis,
- (b) a vice-chair of the issuer, if that individual performed the functions of the office on a full time basis,
- (c) the president of the issuer,
- (d) a vice-president of the issuer in charge of a principal business unit, division, or function such as sales, finance, or production,
- (e) an officer of the issuer or any of its subsidiaries who performed a policy-making function in respect of the issuer, or
- (f) any other person who performed a policy-making function in respect of the issuer;

"foreign auditor's report" means a report of an auditor that is prepared in accordance with foreign GAAS;

"foreign GAAP" means a body of generally accepted accounting principles, other than Canadian GAAP, that are as comprehensive as Canadian GAAP;

"foreign GAAS" means a body of generally accepted auditing standards, other than Canadian GAAS, that are substantially equivalent to Canadian GAAS;

"income from continuing operations" means net income or loss, excluding discontinued operations and extraordinary items, and before income taxes;

"initial AIF" means an AIF, as may be revised from time to time, filed by an issuer in the local jurisdiction, if at the time of filing the issuer either

- (a) has not previously had a current AIF in the local jurisdiction, or

(b) previously had a current AIF in the local jurisdiction and no longer has one;

"~~interim~~ interim period" means a completed three, six or nine month period in the financial year that commenced immediately following the end of the most recently completed financial year for which audited annual financial statements are included in a short form prospectus;

"investee" means an entity that the Handbook⁷ recommends that an issuer account for by the equity method or the proportionate consolidation method;

"MD&A" means the management's discussion and analysis of financial condition and results of operations of an issuer required to be disclosed in an AIF;

"MRRS" has the meaning ascribed to that term in National Policy 43-201 Mutual Reliance Review System for Prospectuses and AIFs;

"MRRS decision document" means a decision document issued under National Policy 43-201 for a preliminary short form prospectus, a short form prospectus, an amendment to a preliminary short form prospectus or a short form prospectus, an initial AIF or a renewal AIF;

"non-convertible" means, if used to describe a security, a security that is not convertible;

"participant" means an issuer that is a party to a reorganization;

"permitted supranational agency" means the International Bank for Reconstruction and Development, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the Caribbean Development Bank, the European Bank for Reconstruction and Development, the African Development Bank and any person or company prescribed under paragraph (g) of the definition of "foreign property" in subsection 206(1) of the ITA;⁸

⁷ National Instrument 14-101 Definitions defines the term "Handbook" as "the Handbook of the Canadian Institute of Chartered Accountants, as amended from time to time".

⁸ The term "ITA" is defined in National Instrument 14-101 Definitions as meaning "the *Income Tax Act* (Canada)".

"POP regulator" means, for an issuer filing an AIF, preliminary short form prospectus, short form prospectus or amendment to a short form prospectus,

- (a) the regulator in the local jurisdiction, if
 - (i) the AIF, preliminary short form prospectus, short form prospectus or amendment is filed only in the local jurisdiction, or
 - (ii) the AIF, preliminary short form prospectus, short form prospectus or amendment is filed in more than one jurisdiction and the issuer has not elected to use the MRRS, or
- (b) the person referred to in Appendix D of National Instrument 14-101 Definitions opposite the name of the jurisdiction that acts as principal regulator for the review of the document under National Policy 43-201, together with the regulator in each jurisdiction, if any, that has opted out of, without having opted back into, the MRRS, if
 - (i) the AIF, preliminary short form prospectus, short form prospectus or amendment is filed in more than one local jurisdiction, and
 - (ii) the issuer has elected to use the MRRS;

"principal obligor" means, for an asset-backed security, a person or company that is obligated to make payments, has guaranteed payments, or has provided alternative credit support for payments, on financial assets that represent a third or more of the aggregate amount owing on all of the financial assets underlying the asset-backed security;

"probable acquisition of a business" means a proposed acquisition of a business that has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high;

"probable acquisition of related businesses" means

- (a) proposed acquisitions of two or more businesses if

- (i) each proposed acquisition has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high, and
- (ii) either
 - (A) the businesses are under common control or management, or
 - (B) each acquisition is conditional upon the completion of each other acquisition, or
- (b) a completed acquisition of a business and a proposed acquisition of a business if
 - (i) the proposed acquisition has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high, and
 - (ii) either
 - (A) the businesses were under common control or management, or
 - (B) the proposed acquisition was conditional upon the completed acquisition;⁹

"probable disposition of a business" means a proposed disposition of a business that has progressed to a state where a reasonable person would believe that the likelihood of the disposition being completed is high;¹⁰

"renewal AIF" means an AIF filed by an issuer in the local jurisdiction, as may be revised from time to time, if at the time of filing the issuer had a current AIF;

⁹ Paragraph (b) is new.

¹⁰ This definition is new.

"reorganization" means

- (a) a statutory amalgamation,
- (b) a statutory merger, or
- (c) a statutory arrangement;

"SEDAR" has the meaning ascribed to that term in National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR);

"specified 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;

"successor issuer" means an issuer existing as a result of a reorganization, other than, in the case where the reorganization involved a divestiture of a portion of a participant's business, an issuer that succeeded to or otherwise acquired the portion of the business divested;

"underlying interest" means, for a specified derivative, the security, commodity, financial instrument, currency, interest rate, foreign exchange rate, economic indicator, index, basket, agreement, benchmark or any other reference, interest or variable, and, if applicable, the relationship between any of the foregoing, from, to or on which the market price, value or any payment obligation of the specified derivative is derived, referenced or based; and

"U.S. GAAS" means the body of generally accepted auditing standards in the United States of America.¹¹

1.2 Significant Acquisitions¹²

- (1) For the purposes of this Instrument, an acquisition of a business, an acquisition of related businesses, a probable acquisition of a business or

¹¹ This definition is new.

¹² Each test is applied on two dates; the earlier of the two dates is new.

a probable acquisition of related businesses is a significant acquisition, if it satisfies any of the following three conditions:

1. **The Asset Test.** The issuer's proportionate share of the total consolidated assets of the business or related businesses exceeds 20 percent of the consolidated assets of the issuer as at both
 - (a) the date of the most recent financial year end of the issuer before the date of the acquisition, without giving effect to the acquisition; and
 - (b) the date of the most recent balance sheet of the issuer included in the preliminary short form prospectus, without giving effect to the acquisition.

2. **The Investment Test.** The issuer's consolidated investments in and advances to the business or the related businesses exceeds 20 percent of the consolidated assets of the issuer as at both
 - (a) the date of the most recent financial year end of the issuer before the date of the acquisition, without giving effect to the acquisition; and
 - (b) the date of the most recent balance sheet of the issuer included in the short form prospectus, without giving effect to the acquisition.¹³

3. **The Income Test.** Both the following subparagraph (a) and subparagraph (b) are true:
 - (a) The issuer's proportionate share of the consolidated income from continuing operations of the business or the related businesses for the most recently completed financial year of the business or the related businesses before the date of the acquisition exceeds 20 percent of the total consolidated income from continuing operations

¹³

This test is new and replaces the revenue test in the 1999 proposed National Instrument.

of the issuer for the most recently completed financial year of the issuer before the date of the acquisition.

- (b) The income from continuing operations referred to in the following clause (i) exceeds 20 percent of the income from continuing operations referred to in the following clause (ii):
 - (i) The issuer's proportionate share of the consolidated income from continuing operations of the business or the related businesses for the later of
 - (A) the most recently completed financial year of the business or the related businesses that ended more than 90 days before the date of the preliminary short form prospectus, or
 - (B) the 12 months ended on the last day of the most recently completed interim period of the business or related businesses that ended more than 60 days before the date of the preliminary short form prospectus.
 - (ii) The income from continuing operations of the issuer on a consolidated basis for the later of
 - (A) the most recently completed financial year, without giving effect to the acquisition, or
 - (B) the 12 months ended on the last day of the most recently completed interim period of the issuer for which statements are included in the preliminary short form

prospectus, without giving effect to the acquisition.

- (2) In determining whether an acquisition of related businesses or a probable acquisition of related businesses is a significant acquisition, the related businesses shall be considered on a combined basis.
- (3) Unless the context otherwise requires, the term "significant acquisition" refers to an acquisition of a business, an acquisition of related businesses, a probable acquisition of a business or a probable acquisition of related businesses that satisfies any of the three conditions in subsection (1).¹⁴

1.3 Application of Income Test¹⁵

- (1) For the purposes of paragraph 3 of subsection 1.2(1), if
 - (a) the issuer's income from continuing operations on a consolidated basis for the most recently completed financial year referred to in subclause 3(b)(ii)(A) of subsection 1.2(1) was not a loss; and
 - (b) the issuer's income from continuing operations on a consolidated basis for that year is
 - (i) positive, and
 - (ii) lower by 20 percent or more than the average consolidated income from continuing operations of the issuer for the three most recently completed financial years,

then, the average consolidated income for the three most recently completed financial years shall, subject to subsection (3), be substituted in determining whether the condition set out in paragraph 3 of subsection 1.2(1) is satisfied.

¹⁴ This subsection is new.

¹⁵ This section is new.

- (2) For the purposes of paragraph 3 of subsection 1.2(1), if
 - (a) the issuer's income from continuing operations on a consolidated basis for the most recent 12 month period referred to in subclause 3(b)(ii)(B) of subsection 1.2(1) was not a loss; and
 - (b) the issuer's income from continuing operations on a consolidated basis for that 12 month period is
 - (i) positive, and
 - (ii) lower by 20 percent or more than the average consolidated income from continuing operations of the issuer for the three previous 12 month periods,

then, the average consolidated income for the three previous 12 month periods shall, subject to subsection (3), be substituted in determining whether the condition set out in paragraph 3 of subsection 1.2(1) is satisfied.

- (3) If the issuer's income from continuing operations on a consolidated basis for either of the two earlier periods referred to in subsection (1) or (2) is a loss, the issuer's income from continuing operations for that period is considered to be zero for the purposes of calculating the average consolidated income for the three previous periods.

1.4 Probable Acquisitions

- (1) The term "probable acquisition" refers to both a probable acquisition of a business and a probable acquisition of related businesses.
- (2) The term "significant probable acquisition" refers to a probable acquisition of a business, and a probable acquisition of related businesses, that is a significant acquisition under section 1.2.

1.5 Acquisitions - The term "acquisition" includes an acquisition of an interest in a business accounted for using the equity method.¹⁶

1.6 Significant Dispositions¹⁷

(1) For the purposes of this Instrument, a disposition of a business, including a probable disposition of a business, is a significant disposition, if it satisfies either of the following conditions:

1. The issuer's proportionate share of the total consolidated assets of the business exceeds 20 percent of the consolidated assets of the issuer, after giving effect to the disposition, as at the date of the most recent financial year end of the issuer before the date of the disposition, without giving effect to the disposition.
2. The issuer's proportionate share of the consolidated income from continuing operations of the business for the most recently completed financial year of the business before the date of the disposition exceeds 20 percent of the total consolidated income from continuing operations of the issuer for the most recently completed financial year of the issuer before the date of the disposition, without giving effect to the disposition.

(2) Unless the context otherwise requires, the term "significant disposition" refers to a disposition of a business and a probable disposition of a business that satisfies either of the two conditions in subsection (1).

1.7 References to Information Included in a Document - References in this Instrument to information included in a document refer to both information contained directly in the document and information incorporated by reference in the document.

1.8 References to Information to be Included in a Document - Provisions of this Instrument that require an issuer to include information in a document require an

¹⁶ This section is new and has been added for greater clarity.

¹⁷ This section is new and has been added to provide a quantitative test to measure the significance of a disposition.

issuer either to insert the information directly in the document or to incorporate the information in the document by reference.

- 1.9** **Incorporation by Reference** - A document deemed by this Instrument to be incorporated by reference in another document is conclusively deemed for purposes of securities legislation to be incorporated by reference in the other document.

PART 2 **QUALIFICATION TO FILE A PROSPECTUS IN THE FORM OF A SHORT FORM PROSPECTUS**

2.1 **Short Form Prospectus**

- (1) An issuer shall not file a prospectus in the form of Form 44-101F2 Short Form Prospectus, unless the issuer is qualified under section 2.2, 2.3, 2.4, 2.5, 2.6, 2.7 or 2.8 to file a prospectus in the form of a short form prospectus.
- (2) An issuer that is qualified under section 2.2, 2.3, 2.4, 2.5, 2.6, 2.7 or 2.8 to file a prospectus in the form of a short form prospectus or that has been exempted from subsection (1) under section 13.1 may file
 - (a) a preliminary prospectus, prepared and certified in the form of Form 44-101F2 Short Form Prospectus, pertaining to a type of securities for which the issuer is qualified under this Instrument or permitted under any exemption to file a short form prospectus; and
 - (b) a prospectus, prepared and certified in the form of Form 44-101F2 Short Form Prospectus, pertaining to a type of securities for which the issuer is qualified under this Instrument or permitted under any exemption to file a short form prospectus.
- (3) An issuer that filed and obtained a receipt for a preliminary short form prospectus for a distribution of securities under National Policy Statement No. 47

- (a) is considered to have satisfied the requirement in securities legislation to file and obtain a receipt for a preliminary prospectus for the distribution unless, in the case where securities legislation provides for lapsing of a preliminary prospectus, the issuer's preliminary short form prospectus has lapsed; and
 - (b) may file a prospectus, prepared and certified in the form of Form 44-101F2 Short Form Prospectus, for the distribution if in the case where securities legislation provides for lapsing of a preliminary prospectus, the issuer's preliminary short form prospectus has not lapsed.
- (4) If an issuer, before the coming into force of this Instrument, filed and obtained a receipt under National Policy Statement No. 47 for a short form prospectus pertaining to a distribution of securities, the prospectus requirement does not apply to the distribution only insofar as the prospectus requirement concerns the form and content of a preliminary prospectus and prospectus and only for one year from the date of the receipt issued for the short form prospectus pertaining to the distribution.
- (5) A short form prospectus shall, at the issuer's option, be prepared in accordance with securities legislation in effect at either the date of issuance of a receipt for the preliminary short form prospectus or the date of issuance of a receipt for the short form prospectus.

2.2

Basic Qualification Criteria - An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of any of its securities in the local jurisdiction, if all of the following criteria are satisfied:

1. Either paragraph (a) or (b) is true:
 - (a) the issuer is a reporting issuer in the local jurisdiction and the issuer
 - (i) has been a reporting issuer in the local jurisdiction for the 12 calendar months preceding the date of the filing of its most recent AIF, or

(ii) is, and has been for the 12 calendar months preceding the date of the filing of its most recent AIF, a reporting issuer under Canadian securities legislation in at least one jurisdiction, other than the local jurisdiction, and has filed in the local jurisdiction all continuous disclosure documents that it was required to file during the 12 calendar months preceding the date of the filing of its most recent AIF under Canadian securities legislation of any jurisdiction in which it has been a reporting issuer; or

(b) all of the following are true:

1. The issuer is not a reporting issuer in the local jurisdiction.
2. The securities regulatory authority is unable to deem the issuer to be, or designate the issuer as, a reporting issuer.
3. The issuer is, and has been for the 12 calendar months preceding the date of the filing of its most recent AIF, a reporting issuer under Canadian securities legislation in at least one jurisdiction, other than the local jurisdiction.
4. The issuer has filed in the local jurisdiction all continuous disclosure documents that it was required to file during the 12 calendar months preceding the date of the filing of its most recent AIF under Canadian securities legislation of any jurisdiction in which it has been a reporting issuer.
5. The issuer has provided an undertaking to the securities regulatory authority that it will file all continuous disclosure documents that it would be required to file under securities legislation if it

were a reporting issuer from the time of the filing of its most recent AIF until the issuer becomes a reporting issuer.

2. The issuer has a current AIF.
3. The aggregate market value of the issuer's equity securities, listed and posted for trading on an exchange in Canada, is \$75,000,000 or more on a date within 60 days before the date of the filing of the issuer's preliminary short form prospectus.
4. If the issuer is filing a preliminary short form prospectus more than 90 days after the end of its most recently completed financial year, the issuer has filed financial statements for that year.¹⁸

2.3 Alternative Qualification Criteria for Substantial Issuers - An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of any of its securities in the local jurisdiction, if all of the following criteria are satisfied:

1. The issuer is
 - (a) a reporting issuer in the local jurisdiction; or
 - (b) a reporting issuer under Canadian securities legislation in at least one jurisdiction, other than the local jurisdiction, and satisfies the criterion in subparagraph 5 of paragraph 1(b) of section 2.2.
2. The issuer has a current AIF.
3. The aggregate market value of the issuer's equity securities, listed and posted for trading on an exchange in Canada, is

¹⁸

This last criterion is new and has been added to require issuers doing short form prospectus distributions to have filed their annual financial statements sooner than is otherwise required under continuous disclosure.

\$300,000,000 or more on a date within 60 days before the date of the filing of the issuer's preliminary short form prospectus.

4. If the issuer is filing a preliminary short form prospectus more than 90 days after the end of its most recently completed financial year, the issuer has filed financial statements for that year.¹⁹

2.4 Alternative Qualification Criteria for Issuers of Approved Rating Non-Convertible Securities

- (1) An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of non-convertible securities in the local jurisdiction, if all of the following criteria are satisfied:
 1. The issuer satisfies either of the 12 month reporting issuer history criteria in paragraph 1 of section 2.2.
 2. The issuer has a current AIF.
 3. The securities to be distributed
 - (a) have received an approved rating on a provisional basis;
 - (b) are not the subject of an announcement by an approved rating organization of which the issuer is or ought reasonably to be aware that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating; and
 - (c) have not received a provisional or final rating lower than an approved rating from any approved rating organization.

¹⁹

This last criterion is new and has been added to require issuers doing short form prospectus distributions to have filed their annual financial statements sooner than is otherwise required under continuous disclosure.

4. If the issuer is filing a preliminary short form prospectus more than 90 days after the end of its most recently completed financial year, the issuer has filed financial statements for that year.²⁰
- (2) Paragraph 3 of subsection (1) does not apply to an issuer filing a preliminary short form prospectus that is a base shelf prospectus under National Instrument 44-102 Shelf Distributions.

2.5 Alternative Qualification Criteria for Issuers of Guaranteed Non-Convertible Debt Securities, Preferred Shares and Cash Settled Derivatives

- (1) An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of non-convertible debt securities, non-convertible preferred shares or non-convertible cash settled derivatives in the local jurisdiction, if all of the following criteria are satisfied:
 1. A person or company
 - (a) fully and unconditionally guarantees the payments to be made by the issuer of securities as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities such that the holder of the securities is entitled to receive payment from the guarantor within 15 days of any failure by the issuer to make a payment as stipulated; or
 - (b) provides alternative credit support for the payments to be made by the issuer of securities as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities, that
 - (i) in the case

²⁰

This last criterion is new and has been added to require issuers doing short form prospectus distributions to have filed their annual financial statements sooner than is otherwise required under continuous disclosure.

- (A) where the securities are rated, 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 person or company providing the support, or
 - (B) where the securities are not rated, would result, if the securities were rated, 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, and
- (ii) 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 as stipulated.

2. The credit supporter

- (a) satisfies
 - (i) either of the 12 month reporting issuer history criteria in paragraph 1 of section 2.2, or
 - (ii) both
 - (A) the reporting issuer criterion in paragraph 1 of section 2.3, and
 - (B) the criterion that the credit supporter have equity securities, listed and posted for trading on an exchange in Canada,

the aggregate market value of which is \$300,000,000 or more on a date within 60 days before the date of the filing of the issuer's preliminary short form prospectus; and

- (b) has a current AIF.
3. Unless the aggregate market value of the credit supporter's equity securities listed and posted for trading on an exchange in Canada is \$75,000,000 or more on a date within 60 days before the date of the filing of the issuer's preliminary short form prospectus, then at the time the preliminary short form prospectus was filed
- (a) the credit supporter has outstanding non-convertible securities that
 - (i) have received an approved rating,
 - (ii) have not been the subject of an announcement by an approved rating organization of which the issuer is or ought reasonably to be aware that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, and
 - (iii) have not received a rating lower than an approved rating from any approved rating organization; and
 - (b) the securities to be issued by the issuer
 - (i) have received an approved rating on a provisional basis,
 - (ii) have not been the subject of an announcement by an approved rating organization of which the issuer is or ought reasonably to be aware that the

approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, and

- (iii) have not received a provisional or final rating lower than an approved rating from any approved rating organization.

4. If the issuer is filing a preliminary short form prospectus more than 90 days after the end of the most recently completed financial year of the credit supporter, the credit supporter has filed financial statements for that year.²¹

(2) For the purpose of paragraph 1 of subsection (1), 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.

(3) Subparagraph 3(b) of subsection 2.5(1) does not apply to an issuer filing a preliminary short form prospectus that is a base shelf prospectus under National Instrument 44-102 Shelf Distributions.

2.6 Alternative Qualification Criteria for Issuers of Guaranteed Convertible Debt Securities or Preferred Shares

(1) An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of convertible debt securities or convertible preferred shares in the local jurisdiction, if all of the following criteria are satisfied:

1. The debt securities or the preferred shares are convertible into securities of a credit supporter that

²¹

This last criterion is new and has been added to require issuers doing short form prospectus distributions to have filed their annual financial statements sooner than is otherwise required under continuous disclosure.

- (a) fully and unconditionally guarantees the payments to be made by the issuer of the securities as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities such that the holder of the securities is entitled to receive payment from the guarantor within 15 days of any failure by the issuer to make a payment as stipulated; or
- (b) provides alternative credit support for the payments to be made by the issuer of the securities as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities, that
 - (i) in the case
 - (A) where the securities are rated, 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
 - (B) where the securities are not rated, would result, if the securities were rated, 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, and
 - (ii) entitles the holder of the securities to receive payment from the credit supporter, or enable the holder to receive payment from the issuer, within 15 days of any failure by the issuer to make a payment as stipulated.

2. The credit supporter

(a) satisfies

(i) both

(A) either of the 12 month reporting issuer history criteria in paragraph 1 of section 2.2, and

(B) the criterion that the credit supporter have equity securities, listed and posted for trading on an exchange in Canada, the aggregate market value of which is \$75,000,000 or more on a date within 60 days before the date of the filing of the issuer's preliminary short form prospectus, or

(ii) both

(A) the reporting issuer criterion in paragraph 1 of section 2.3, and

(B) the criterion that the credit supporter have equity securities, listed and posted for trading on an exchange in Canada, the aggregate market value of which is \$300,000,000 or more on a date within 60 days before the date of the filing of the issuer's preliminary short form prospectus; and

(b) has a current AIF.

3. If the issuer is filing a preliminary short form prospectus more than 90 days after the end of the most recently completed financial

year of the credit supporter, the credit supporter has filed financial statements for that year.²²

- (2) For the purpose of paragraph 1 of subsection (1), 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.

2.7 Alternative Qualification Criteria for Issuers of Asset-Backed Securities

- (1) An issuer established in connection with a distribution of asset-backed securities is qualified to file a prospectus in the form of a short form prospectus for a distribution of asset-backed securities in the local jurisdiction, if all of the following criteria are satisfied:
 1. The issuer has a current AIF.
 2. The asset-backed securities to be distributed
 - (a) have received an approved rating on a provisional basis;
 - (b) have not been the subject of an announcement by an approved rating organization of which the issuer is or ought reasonably to be aware that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating; and
 - (c) have not received a provisional or final rating lower than an approved rating from any approved rating organization.

²²

This last criterion is new and has been added to require issuers doing short form prospectus distributions to have filed their annual financial statements sooner than is otherwise required under continuous disclosure.

3. If the issuer is filing a preliminary short form prospectus more than 90 days after the end of its most recently completed financial year, the issuer has filed financial statements for that year.²³
- (2) Paragraph 2 of subsection 2.7(1) does not apply to an issuer filing a preliminary short form prospectus that is a base shelf prospectus under National Instrument 44-102 Shelf Distributions.

2.8

Alternative Qualification Criteria Following Reorganizations - A successor issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of any of its securities in the local jurisdiction, if all of the following criteria are satisfied:

1. The successor issuer is deemed under section 2.10 to have or otherwise has a current AIF.
2. The successor issuer is a reporting issuer under Canadian securities legislation of any jurisdiction.
3. The aggregate market value of the successor issuer's equity securities, listed and posted for trading on an exchange in Canada, is \$75,000,000 or more on a date within 60 days before the date of the filing of the successor issuer's preliminary short form prospectus.
4. The aggregate market value of the equity securities of at least one of the participants, listed and posted for trading on an exchange in Canada, is \$75,000,000 or more on a date within 60 days before the date of the reorganization.
5. One of the participants satisfies the criterion in paragraph 4 and the 12 month reporting issuer history criterion in paragraph 1 of section 2.2.

²³

This last criterion is new and has been added to require issuers doing short form prospectus distributions to have filed their annual financial statements sooner than is otherwise required under continuous disclosure.

6. If the successor issuer is filing a preliminary short form prospectus more than 90 days after the end of its most recently completed financial year, the successor issuer has filed financial statements for that year.²⁴

2.9 Calculation of the Aggregate Market Value of an Issuer's Securities

- (1) For the purposes of this Part,
 - (a) the aggregate market value of the equity securities of an issuer on a date is the aggregate of the market value of each class of its equity securities on the date, calculated by multiplying
 - (i) the total number of equity securities of the class outstanding on the date, by
 - (ii) the closing price on the date of the equity securities of the class on the exchange in Canada on which that class of equity securities is principally traded; and
 - (b) instalment receipts may, at the option of the issuer, be deemed to be equity securities if
 - (i) the instalment receipts are listed and posted for trading on an exchange in Canada, and
 - (ii) the outstanding equity securities, the beneficial ownership of which is evidenced by the instalment receipts, are not listed and posted for trading on an exchange in Canada.
- (2) For the purposes of subsection (1), in calculating the total number of equity securities of a class outstanding, an issuer shall exclude those equity securities of the class that are beneficially owned, or over which control or direction is exercised, by persons or companies that, alone or together

²⁴

This last criterion is new and has been added to require issuers doing short form prospectus distributions to have filed their annual financial statements sooner than is otherwise required under continuous disclosure.

with their respective affiliates and associated parties, beneficially own or exercise control or direction over more than 10 percent of the outstanding equity securities of the issuer.

- (3) Despite subsection (2), if a portfolio manager of a pension fund, mutual fund or non-redeemable investment fund, alone or together with its affiliates and associated parties, exercises control or direction in the aggregate over more than 10 percent of the outstanding equity securities of an issuer, and the fund beneficially owns or exercises control or direction over 10 percent or less of the issued and outstanding equity securities of the issuer, the securities that the fund beneficially owns or exercises control or direction over are not excluded unless the portfolio manager is an affiliate of the issuer.

2.10

Adoption by Successor Issuer of a Participant's AIF Following a Reorganization - A successor issuer that notifies the regulator that it has adopted as its own AIF the AIF of a participant in the reorganization, as a result of which the successor issuer exists, is deemed to have a current AIF for the purposes of securities legislation, if the AIF was a current AIF of the participant at the time of the reorganization, until the earlier of

- (a) the date the successor issuer files an AIF; and
- (b) either
 - (i) the date the AIF ceases to be a current AIF of the participant, if the participant continues to exist after the reorganization, or
 - (ii) the date that is 140 days following the end of the financial year to which the AIF relates, if the participant did not continue to exist after the reorganization.

PART 3 AIF

3.1 Initial AIF

- (1) An issuer filing an initial AIF shall file the AIF in Form 44-101F1 or the form referred to in section 3.4.
- (2) If an issuer revises its initial AIF, the issuer shall promptly
 - (a) file in all jurisdictions in which the initial AIF was filed the revised initial AIF and a copy of the revised initial AIF, blacklined to show changes from the initial AIF; and
 - (b) send a copy of the revised initial AIF to each person and company that was sent an initial AIF.
- (3) An issuer shall file a French language version of its initial AIF and any supporting documents before sending the French language version of the AIF to an investor or prospective investor.
- (4) An issuer that has prepared a French language version of its initial AIF shall file the French language version of the initial AIF and any supporting documents in New Brunswick concurrently with or as soon as practicable after filing the English language version of those documents.

3.2 Renewal AIF Filing Procedures

- (1) An issuer filing a renewal AIF shall file the AIF in Form 44-101F1 or the form referred to in section 3.4.
- (2) An issuer filing a renewal AIF for a financial year in which the issuer made a significant acquisition of a business or a significant acquisition of related businesses, or was a party to a reorganization that was material to the issuer, shall state in a covering letter accompanying the renewal AIF that the acquisition or reorganization occurred.
- (3) The POP regulator may decide to review a renewal AIF at any time, in which case the POP regulator shall

- (a) notify the issuer that the POP regulator will be reviewing the renewal AIF;
 - (b) review the renewal AIF before a receipt is issued for a short form prospectus incorporating by reference the renewal AIF; and
 - (c) send the issuer upon completion of the review a notice that the review of the renewal AIF has been completed.
- (4) Upon receipt of a notice from the POP regulator that its renewal AIF is being reviewed, an issuer shall promptly file the renewal AIF again, with the statement required under Item 1.2 of Form 44-101F1 added, in all jurisdictions in which the renewal AIF was filed.
- (5) If an issuer revises its renewal AIF, the issuer shall promptly
- (a) file in all jurisdictions in which the renewal AIF was filed the revised renewal AIF and a copy of the revised renewal AIF, blacklined to show changes from the renewal AIF; and
 - (b) send a copy of the revised renewal AIF to each person and company that was sent a renewal AIF.
- (6) An issuer shall file a French language version of its renewal AIF and any supporting documents before sending the French language version of the AIF to an investor or prospective investor.
- (7) An issuer that has prepared a French language version of its renewal AIF shall file the French language version of the renewal AIF and any supporting documents in New Brunswick concurrently with or as soon as practicable after filing the English language version of those documents.

3.3

Supporting Documents

- (1) In addition to any other requirement of securities legislation, an issuer that files an initial AIF and a renewal AIF shall
- (a) file the following:

1. **Material Incorporated by Reference** - Copies of all material incorporated by reference in the initial AIF or renewal AIF and not previously filed; and
2. **Mining Reports** - The technical reports required to be filed with an AIF under National Instrument 43-101 Standards of Disclosure for Mineral Projects and not previously filed, if the issuer has mineral exploration, development or production activities on a mineral property;²⁵ and

(b) deliver to the regulator the following:

1. **Personal Information** - For each director and executive officer of the issuer for whom the issuer has not previously delivered to the regulator the following information, a statement containing that individual's
 - (a) full name;
 - (b) position with or relationship to the issuer;
 - (c) employer's name and address, if other than the issuer;
 - (d) full residential address;
 - (e) date and place of birth; and
 - (f) citizenship.
2. **Authorization of Collection of Information** - An authorization in the form set out in Appendix A to the collection of personal information.²⁶

²⁵ This is new.

²⁶ This has been revised to refer to an "authorization" which more accurately reflects the requirements of local privacy legislation.

- (2) An issuer that files an AIF in the form of an annual report on Form 10-K, or on Form 20-F, under the 1934 Act²⁷ shall file an undertaking with the regulator to the effect that the issuer will provide to any person or company, upon request to the secretary of the issuer, the documents listed in Item 9.1(1) of Form 44-101F1.

3.4 **Alternative Form of AIF** - An issuer that has securities registered under section 12 of the 1934 Act or has a reporting obligation under subsection 15(d) of the 1934 Act may file an AIF in the form of a current annual report on Form 10-K, or on Form 20-F, under the 1934 Act.

PART 4 DISCLOSURE IN A SHORT FORM PROSPECTUS OF FINANCIAL STATEMENTS FOR SIGNIFICANT ACQUISITIONS²⁸

4.1 **Scope** - This Part applies only to

- (a) acquisitions completed during an issuer's three most recently completed financial years;
- (b) acquisitions completed during an issuer's current financial year; and
- (c) probable acquisitions.

²⁷ The term "1934 Act" means the Securities Exchange Act of 1934 of the United States of America.

²⁸ The provisions dealing with business acquisition disclosure have been subdivided into two Parts: Part 4 which deals with significant acquisitions and Part 5 which deals with multiple acquisitions that are not otherwise significant or related.

4.2 Financial Statement Disclosure for Significant Acquisitions

- (1) If an issuer has made a significant acquisition or is proposing to make a significant probable acquisition, the issuer shall include in its short form prospectus the following financial statements of each business acquired or to be acquired:
 1. Income statements for at least the periods specified in section 4.3.
 2. Statements of retained earnings and cash flow statements for the periods for which income statements are included under paragraph 1.²⁹
 3. A balance sheet as at the date on which each of the periods specified in section 4.3 ended, except that, if section 4.3 specifies that separate financial statements of the business are to be included for three financial years, a balance sheet as at the end of the earliest of the three financial years is not required.³⁰
 4. An income statement and a cash flow statement for
 - (a) the most recently completed interim period that ended more than 60 days before the date of the short form prospectus; and
 - (b) the comparable period in the preceding financial year.
 5. A balance sheet as at the date on which the most recently completed interim period referred to in paragraph 4 ended.
 6. A *pro forma* balance sheet of the issuer as at the date of the issuer's most recent balance sheet included in the short form prospectus that

²⁹ The specific reference to "statements of retained earnings" is new.

³⁰ This paragraph has been revised for greater clarity.

- (a) gives effect, as if they had taken place as at the date of the *pro forma* balance sheet, to
 - (i) significant acquisitions that have been completed, but are not reflected in the issuer's most recent annual or interim balance sheet included in the short form prospectus, and
 - (ii) significant probable acquisitions; and
- (b) separately identifies each significant probable acquisition.

7. A *pro forma* income statement of the issuer that

- (a) gives effect to
 - (i) significant acquisitions completed during the most recently completed financial year of the issuer,
 - (ii) significant acquisitions completed during the issuer's current financial year, and
 - (iii) significant probable acquisitions;
- (b) gives effect to
 - (i) the acquisitions referred to in clause (a)(i) as if they had taken place at the beginning of the most recent financial year of the issuer for which audited financial statements are included in the short form prospectus, and
 - (ii) the acquisitions referred to in clauses (a)(ii) and (iii) as if they had taken place at the beginning of
 - (A) the most recent financial year of the issuer for which audited financial

statements are included in the short form prospectus, and

(B) the most recent interim period of the issuer for which financial statements are included in the short form prospectus;³¹ and

(c) separately identifies each significant probable acquisition.

8. *Pro forma* earnings per share based on the *pro forma* financial statements referred to in paragraphs 6 and 7.

(2) If an issuer is required under subsection (1) to include financial statements in a short form prospectus for more than one business because the significant acquisition involves an acquisition of related businesses or a probable acquisition of related businesses, the financial statements required under subsection (1) shall be presented separately for each business, except for the periods during which the businesses have been under common control or management, in which case the issuer may present the financial statements of the businesses on a combined basis.

(3) If an issuer is required under subsection (1) to include *pro forma* financial statements in a short form prospectus, the issuer shall include in the short form prospectus a description of the underlying assumptions on which the *pro forma* financial statements are prepared, cross-referenced to each related *pro forma* adjustment.

4.3 Reporting Periods³²

³¹ Paragraph (b) has been revised to require the *pro forma* statement to give effect to acquisitions completed in the previous year only as of the beginning of the year in which the acquisition occurred, not also at the beginning of the most recent interim period.

³² This section has been reorganized for greater clarity and expanded to include the exception that appeared in subsection 4.6(1) in the 1999 proposed National Instrument in an effort to consolidate more of the provisions dealing with reporting periods in one section.

- (1) No financial statements are required under section 4.2 to be included in a short form prospectus if
 - (a) the results of the business for a complete financial year have been reflected in the audited consolidated financial statements of the issuer included in the short form prospectus; and
 - (b) none of the three conditions specified in subsection 1.2(1) would be satisfied if the 20 percent threshold in the conditions were changed to 100 percent.
- (2) If the results of the business for a complete financial year have been reflected in the audited consolidated financial statements of the issuer included in the short form prospectus and any of the three conditions specified in subsection 1.2(1) would be satisfied if the 20 percent threshold in the conditions were changed to 100 percent, separate financial statements of a business are required for as many periods before the acquisition as may be necessary so that, when these periods are added to the periods for which the financial statements in the short form prospectus of the issuer for the periods following the acquisition reflect the results of the business, financial statements reflecting the results of the business, either separately or on a consolidated basis, are included for a total of three years or such lesser period as the business has been in existence.
- (3) Subject to subsections (1) and (2), the periods for which the financial statements are required under paragraphs 1, 2 and 3 of subsection 4.2(1) to be included in a short form prospectus shall be determined by reference to the three conditions set out in subsection 1.2(1) as follows:
 1. If none of the three conditions are satisfied if the 20 percent threshold is changed to 40 percent, financial statements shall be included for
 - (a) the most recently completed financial year of the business before the date of the acquisition, if the acquisition was completed more than 90 days before the date of the short form prospectus;

- (b) the most recently completed financial year of the business ended more than 90 days before the date of the short form prospectus, if the acquisition either has not been completed at the date of the short form prospectus or was completed 90 days or less before the date of the short form prospectus; or
 - (c) such shorter period, ended more than 90 days before the date of the short form prospectus, as the business has been in existence.
- 2. If any of the three conditions are satisfied if the 20 percent threshold is changed to 40 percent, but none of the three conditions are satisfied if the 20 percent threshold is changed to 50 percent, financial statements shall be included for
 - (a) each of the two most recently completed financial years of the business before the date of the acquisition, if the acquisition was completed more than 90 days before the date of the short form prospectus;
 - (b) each of the two most recently completed financial years of the business ended more than 90 days before the date of the short form prospectus, if the acquisition either has not been completed at the date of the short form prospectus or was completed 90 days or less before the date of the short form prospectus; or
 - (c) such shorter period, ended more than 90 days before the date of the short form prospectus, as the business has been in existence.
- 3. If any of the three conditions are satisfied if the 20 percent threshold is changed to 50 percent, financial statements shall be included for
 - (a) each of the three most recently completed financial years of the business before the date of the acquisition, if the

acquisition was completed more than 90 days before the date of the short form prospectus;

- (b) each of the three most recently completed financial years of the business ended more than 90 days before the date of the short form prospectus, if the acquisition either has not been completed at the date of the short form prospectus or was completed 90 days or less before the date of the short form prospectus; or
 - (c) such shorter period, ended more than 90 days before the date of the short form prospectus, as the business has been in existence.
- (4) Despite subsection (3), the balance sheets of a business referred to in paragraphs 3 and 5 of subsection 4.2(1) are not required to be included in a short form prospectus, if the acquisition of the business was completed before the date of the issuer's most recent audited balance sheet included in the short form prospectus.

4.4 Additional Financial Statements of the Business Approved, Filed or Released

- (1) An issuer shall include in its short form prospectus annual and interim financial statements of a business for a financial period more recent than the periods for which financial statements are required under subsection 4.2(1) if, before the short form prospectus is filed
- (a) the board of directors having responsibility for the business at the end of the financial period has approved the statements for the more recent period;
 - (b) the statements for the more recent period have been filed with the securities regulatory authority; or
 - (c) the financial statements for the more recent period, or selected information from those statements, have been released to the public.

- (2) If annual financial statements are required under subsection (1) for a financial year ended 90 days or less before the date of the short form prospectus, an issuer may omit the financial statements for the most recently completed interim period from the short form prospectus.

4.5 Exceptions to Disclosure Requirements for Significant Acquisitions if More Recent Statements Included

- (1) Despite subsection 4.3(3), an issuer may omit separate financial statements of a business for the oldest financial year otherwise required under subsection 4.3(3), if audited financial statements of the business are included in the short form prospectus for a financial year ended 90 days or less before the date of the short form prospectus.³³
- (2) Despite subsection 4.3(3), an issuer may omit separate financial statements of a business for the oldest financial year otherwise required under subsection 4.3(3) if
 - (a) audited financial statements are included in the short form prospectus for a period of at least nine months in the financial year after the most recent year for which separate financial statements are required under subsection (3);
 - (b) the business is not seasonal;
 - (c) separate financial statements of a business are required under subsection 4.3(3) for more than one financial year;
 - (d) the issuer has not included audited financial statements in the prospectus for a period of less than 12 months using the exception set out in section 4.6.³⁴
- (3) Despite subsection 4.2(1), an issuer may omit from a short form prospectus the financial statements of a business for the interim period

³³ This subsection is new.

³⁴ Paragraphs (c) and (d) are new.

otherwise required under subsection 4.2(1) if the issuer includes annual financial statements of the business for a financial year ended 90 days or less before the date of the short form prospectus.³⁵

4.6 Exception to Disclosure Requirements for Significant Acquisitions if Financial Year End Changed - Despite section 4.3, an issuer may omit separate financial statements of a business for a financial year in which the business changed its financial year end, if the issuer includes audited financial statements of the business for a period of at least nine months of the financial year in which the year end changed.³⁶

4.7 Exception to Disclosure Requirements for Significant Acquisitions Accounted for Using the Equity Method

- (1) Despite subsection 4.2(1), an issuer may omit from its prospectus the financial statements of a business and the *pro forma* financial statements for an acquisition of a business otherwise required under subsection 4.2(1) if
 - (a) the acquisition is, or will be, an investment accounted for using the equity method, as that term is defined in the Handbook;
 - (b) disclosure is included in the short form prospectus for the periods for which financial statements are otherwise required under subsection 4.2(1) that
 - (i) summarizes information as to the assets, liabilities and results of operations of the business, and
 - (ii) describes the issuer's proportionate interest in the business and any contingent issuance of securities by the business that might significantly affect the issuer's share of earnings;

³⁵ This subsection is new.

³⁶ This exception is new.

- (c) the financial statements of the business, from which the disclosure provided under paragraph (b) has been derived, have been audited; and
- (d) the short form prospectus
 - (i) identifies the audited financial statements from which the disclosure provided under paragraph (b) has been derived, and
 - (ii) describes the nature of the audit opinion.³⁷

4.8 Additional Disclosure for Significant Acquisitions After Financial Year End Accounted for Using the Purchase Method

- (1) An issuer shall include in the subsequent event note in its financial statements included in a short form prospectus or elsewhere in a short form prospectus the information referred to in subsection (2), if
 - (a) the issuer
 - (i) has made a significant acquisition since its most recent financial year end, or
 - (ii) is proposing to make a significant probable acquisition; and
 - (b) the purchase method is, or will be, used to account for the acquisition.
- (2) The information required under subsection (1) is
 - (a) if
 - (i) determined by the date of the note, details of the purchase equation, namely the allocation of the purchase price to

³⁷

This exception has been broken out into a separate section for ease of reference.

the underlying assets being acquired, the underlying liabilities being assumed and any resulting goodwill, or

- (ii) not determined by the date of the note, the issuer's reasonable estimate of the allocation; and
- (b) the terms and status of the acquisition, including any material conditions to the completion of the acquisition that have not yet been satisfied.
- (3) Information required under subsection (1) that is included in a short form prospectus elsewhere than in a subsequent event note in the issuer's financial statements included in the short form prospectus is required shall be accompanied by an auditor's report without a reservation of opinion.

4.9 Audit Requirement for Financial Statements of a Business - Financial statements of a business included in a short form prospectus under this Part, other than *pro forma* financial statements, shall be accompanied by an auditor's report without a reservation of opinion.³⁸

4.10 Exception to Audit Requirement for Interim Financial Statements of a Business - Despite section 4.9, an issuer may omit from its short form prospectus an auditor's report for the interim financial statements of a business included under this Part.³⁹

4.11 Exception to Audit Requirement for Recent Financial Statements of a Business

- (1) Despite section 4.9, an issuer may omit from its short form prospectus an auditor's report for the annual financial statements of a business required

³⁸ This section is new and supplements the general audit requirement in section 6.2. The reference to "without reservation of opinion" is new and has been added for greater clarity.

³⁹ This section replaces section 5.2 in the 1999 proposed National Instrument and has been added to reduce cross-references to different Parts of the Rule.

to be included under paragraphs (a) and (c) of subsection 4.4(1), if the auditor has not issued an auditor's report on the financial statements.⁴⁰

- (2) Despite section 4.9, an issuer may omit from its prospectus an auditor's report for the annual financial statements of a business included under subsection 4.5(3), if the auditor has not issued an auditor's report on the financial statements.⁴¹

4.12 **Compilation Report for *Pro Forma* Financial Statements** -The *pro forma* financial statements included in a short form prospectus under this Part shall be accompanied by a compilation report signed by the auditor and prepared in accordance with the Handbook.

PART 5 FINANCIAL STATEMENT DISCLOSURE FOR MULTIPLE ACQUISITIONS THAT ARE NOT OTHERWISE SIGNIFICANT OR RELATED⁴²

5.1 **Scope** - This Part applies only to an issuer that

- (a) has acquired two or more businesses since the beginning of its most recently completed financial year;
- (b) is proposing to make two or more probable acquisitions of a business; or
- (c) has acquired one or more businesses since the beginning of its most recently completed financial year and is proposing to make one or more probable acquisitions of a business,

⁴⁰ This section replaces section 5.2 in the 1999 proposed National Instrument and has been added to reduce cross-references to different Parts of the Rule.

⁴¹ This subsection is new.

⁴² The provisions dealing with financial statement disclosure for multiple acquisitions that are not otherwise significant or related have been broken out into a separate Part for ease of reference.

excluding, in each case, acquisitions that are significant acquisitions, significant probable acquisitions, acquisitions of related businesses and probable acquisitions of related businesses.⁴³

5.2 Historical Financial Statement Disclosure

- (1) An issuer shall include in a short form prospectus separate financial statements of each business required under subsection (2) for the periods referred to in subsection (3), if any of the three conditions specified in subsection 1.2(1) would be satisfied if
 - (a) the 20 percent threshold in the conditions were changed to 50 percent;
 - (b) the total consolidated assets of the businesses referred to in section 5.1 were considered on a combined basis;
 - (c) the issuer's consolidated investments in and advances to the businesses referred to in section 5.1 were considered on a combined basis; and
 - (d) the consolidated income from continuing operations of the businesses referred to in section 5.1 were considered on a combined basis.⁴⁴

- (2) An issuer shall include financial statements under subsection (1) for only those businesses referred to in section 5.1 that, on a combined basis and using the basis, or one of the bases, upon which the conditions in subsection (1) are satisfied, represent a majority of
 - (a) the total consolidated assets of all of the businesses referred to in section 5.1;

⁴³ This has been revised and broken out into a separate section for greater clarity.

⁴⁴ This has been revised for greater clarity.

- (b) the issuer's consolidated investments in and advances to all of the businesses referred to in section 5.1; or
 - (c) the consolidated income from continuing operations of all of the businesses referred to in section 5.1.⁴⁵
- (3) An issuer shall include financial statements of a business under subsection (1) for
- (a) the most recently completed financial year of the business ended more than 90 days before the date of the short form prospectus or such shorter period ended more than 90 days before the date of the short form prospectus as the business has been in existence; and
 - (b) the most recently completed interim period of the business ended more than 60 days before the date of the short form prospectus.
- (4) Despite subsections (1), (2) and (3), the balance sheets of a business referred to in subsection (2) are not required to be included in a short form prospectus, if the acquisition of the business was completed before the date of the issuer's most recent audited balance sheet included in the short form prospectus.⁴⁶

5.3 Additional Financial Statements of the Business Approved, Filed or Released

- (1) An issuer shall include in its short form prospectus annual and interim financial statements of a business for a financial period more recent than the periods for which financial statements are required under section 5.2 if, before the short form prospectus is filed

⁴⁵ This has been revised for greater clarity.

⁴⁶ This subsection is new.

- (a) the board of directors having responsibility for the business at the end of the financial period has approved the statements for the more recent period;
 - (b) the statements for the more recent period have been filed; or
 - (c) the financial statements for the more recent period, or selected information from those statements, have been released to the public.
- (2) If annual financial statements are required under subsection (1) for a financial year ended 90 days or less before the date of the short form prospectus, an issuer may omit the financial statements for the most recently completed interim period from the short form prospectus.⁴⁷

5.4 Exceptions to Disclosure Requirements for Multiple Acquisitions if More Recent Statements Included

- (1) Despite section 5.2, an issuer may omit the financial statements for the financial year otherwise required under section 5.2 if audited financial statements of the business are included in the short form prospectus for a financial year ended 90 days or less before the date of the short form prospectus.
- (2) Despite section 5.2, an issuer may omit from the short form prospectus the financial statements of a business for the interim period otherwise required under section 5.2 if the issuer includes annual financial statements of the business for a financial year ended 90 days or less before the date of the short form prospectus.⁴⁸

5.5 Exception to Disclosure Requirements for Multiple Acquisitions if Financial Year End Changed - Despite section 5.2, an issuer may omit separate financial statements of a business for a financial year in which the business changed its financial year end, if the issuer includes audited financial statements of the

⁴⁷ This section is new.

⁴⁸ This section is new.

business for a period of at least nine months of the financial year in which the year end changed.⁴⁹

5.6 Pro Forma Financial Statement Disclosure

(1) If subsection 5.2(1) applies, the issuer shall include in its short form prospectus the following financial statements of each business referred to in section 5.1:

1. A *pro forma* balance sheet of the issuer as at the date of the issuer's most recent balance sheet included in the short form prospectus that

(a) gives effect, as if they had taken place as at the date of the *pro forma* balance sheet, to

(i) the acquisitions of businesses

(A) for which the issuer has included separate financial statements under section 5.2, and

(B) that have been completed, but are not reflected in the issuer's most recent annual or interim balance sheet included in the short form prospectus, and

(ii) probable acquisitions of businesses for which the issuer has included separate financial statements under section 5.2; and

(b) separately identifies each probable acquisition.

2. A *pro forma* income statement of the issuer that

⁴⁹

This section is new.

- (a) gives effect to the acquisitions of businesses for which the issuer has included separate financial statements under section 5.2 as if they had taken place at the beginning of
 - (i) the most recent financial year of the issuer for which audited financial statements are included in the short form prospectus, and
 - (ii) the most recent interim period of the issuer for which financial statements are included in the short form prospectus; and
 - (b) separately identifies each probable acquisition.
3. *Pro forma* earnings per share based on the *pro forma* financial statements referred to in paragraphs 1 and 2.
- (2) If an issuer is required under subsection (1) to include *pro forma* financial statements in a short form prospectus, the issuer shall include in the short form prospectus a description of the underlying assumptions on which the *pro forma* financial statements are prepared, cross-referenced to each related *pro forma* adjustment.⁵⁰

5.7 Audit Requirement for Financial Statements of a Business - Financial statements of a business included in a short form prospectus under this Part, other than *pro forma* financial statements, shall be accompanied by an auditor's report without a reservation of opinion.⁵¹

5.8 Exception to Audit Requirement for Interim Financial Statements of a Business - Despite section 5.7, an issuer may omit from its short form prospectus

⁵⁰ This section is new.

⁵¹ This section is new and supplements the general audit requirement in section 6.2. The reference to "without reservation of opinion" is new and has been added for greater clarity.

an auditor's report for the interim financial statements of a business included under this Part.⁵²

5.9 Exception to Audit Requirement for Recent Financial Statements of a Business

- (1) Despite section 5.7, an issuer may omit from its short form prospectus an auditor's report for the annual financial statements of a business required to be included under paragraphs (a) and (c) of subsection 5.3(1), if the auditor has not issued an auditor's report on the financial statements.
- (2) Despite section 5.7, an issuer may omit from its short form prospectus an auditor's report for the annual financial statements of a business included under subsection 5.4(2), if the auditor has not issued an auditor's report on the financial statements.⁵³

5.10 Compilation Report for *Pro Forma* Financial Statements -The *pro forma* financial statements included in a short form prospectus under this Part shall be accompanied by a compilation report signed by the auditor and prepared in accordance with the Handbook.

PART 6 OTHER FINANCIAL STATEMENT MATTERS

6.1 Generally Accepted Accounting Principles

- (1) The financial statements of a person or company incorporated or organized in a jurisdiction that are included in a preliminary short form prospectus or a short form prospectus shall be prepared in accordance with Canadian GAAP.⁵⁴

⁵² This section replaces section 5.2 in the 1999 proposed National Instrument and has been added to reduce cross-references to different Parts of the Rule.

⁵³ This section is new.

⁵⁴ The term "Canadian GAAP" is defined in National Instrument 14-101 Definitions. The definition is "generally accepted accounting principles determined with reference to the Handbook". The term "Handbook" is defined in the same instrument as "the Handbook of the Canadian Institute of Chartered Accountants, as amended from time to time".

- (2) The financial statements of a person or company incorporated or organized in a foreign jurisdiction that are included in a preliminary short form prospectus or a short form prospectus shall be prepared in accordance with
 - (a) Canadian GAAP; or
 - (b) foreign GAAP, if the notes to the financial statements
 - (i) explain and quantify the effect of material differences between Canadian GAAP and foreign GAAP that relate to measurements, and
 - (ii) provide disclosure consistent with Canadian GAAP requirements to the extent not already reflected in the financial statements.

6.2 Audit Requirement

- (1) Subject to the exceptions in this Instrument to the audit requirements in sections 4.9 and 5.7, financial statements included in a short form prospectus, other than the following, shall be accompanied by an auditor's report without a reservation of opinion:⁵⁵
 - 1. Comparative interim financial statements required to be incorporated by reference under paragraph 3 of Item 12.1 or paragraph 2 of 12.2 of Form 44-101F2.
 - 2. The comparative annual financial statements of the issuer for the most recently completed financial year if
 - (a) the financial statements are required to be incorporated by reference in a short form prospectus solely by reason of paragraph 4(b) or 4(c) of Item 12.1 of Form 44-101F2;

⁵⁵

The reference to "without reservation of opinion" has been added for clarity.

- (b) the auditor of the issuer has not issued an auditor's report on the financial statements; and
 - (c) comparative financial statements, together with the accompanying auditor's report, for the year preceding the most recently completed financial year are included in the short form prospectus.
3. The comparative interim financial statements of a credit supporter required to be incorporated by reference under Item 13.2 of Form 44-101F2.
 4. The *pro forma* financial statements if the *pro forma* financial statements are accompanied by a compilation report signed by the auditor and prepared in accordance with the Handbook.

6.3 Foreign Auditor's Report - If the financial statements included in a short form prospectus are accompanied by a foreign auditor's report, the auditor's report shall be accompanied by a statement by the auditor

- (a) disclosing any material differences in the form and content of the foreign auditor's report as compared to a Canadian auditor's report; and
- (b) confirming that the auditing standards applied are substantially equivalent to Canadian GAAS.

6.4 Audit Committee Review of Financial Statements Included in a Short Form Prospectus - An issuer shall not file a preliminary short form prospectus or a short form prospectus unless each financial statement of a person or company included in the preliminary short form prospectus or short form prospectus has been reviewed by the audit committee of the board of directors of the person or company, if the person or company has or is required to have an audit committee.

6.5 Third Quarter Financial Statements - In the case where an issuer files a short form prospectus before its directors have approved the comparative audited annual financial statements for its most recently completed financial year and before the time period for filing the statements under securities legislation has

expired, the requirement in securities legislation to include in a prospectus its financial statements for the most recently completed financial year does not apply if the issuer includes in its short form prospectus the interim financial statements for the third quarter of the last completed financial year.

PART 7 DEEMED INCORPORATION BY REFERENCE

7.1 Deemed Incorporation by Reference of Filed Documents - If an issuer does not incorporate by reference in its short form prospectus a document required to be incorporated by reference under Item 12.1 of Form 44-101F2, the document is deemed for purposes of securities legislation to be incorporated by reference in the issuer's short form prospectus as of the date of the short form prospectus to the extent not otherwise modified or superseded by a statement contained in the short form prospectus or in any other subsequently filed document that also is, or is deemed to be, incorporated by reference in the short form prospectus.⁵⁶

7.2 Deemed Incorporation by Reference of Subsequently Filed Documents - If an issuer does not incorporate by reference in its short form prospectus a document required to be incorporated by reference under Item 12.2 of Form 44-101F2, the document is deemed for purposes of securities legislation to be incorporated by reference in the issuer's short form prospectus as of the date the issuer filed the document to the extent not otherwise modified or superseded by a statement contained in the short form prospectus or in any other subsequently filed document that also is, or is deemed to be, incorporated by reference in the short form prospectus.⁵⁷

PART 8 FILING REQUIREMENTS FOR A SHORT FORM PROSPECTUS

8.1 Required Documents for Filing a Preliminary Short Form Prospectus

⁵⁶ This has been revised to reflect Item 12.1(2) of proposed Form 44-101F2.

⁵⁷ This has been revised to reflect Item 12.1(2) of proposed Form 44-101F2.

- (1) **General** - In addition to any other documents required to be filed or delivered to the regulator under securities legislation, an issuer that files a preliminary short form prospectus shall
 - (a) file the following with the preliminary short form prospectus:
 1. **Signed Copy** - A signed copy of the preliminary short form prospectus.
 2. **Qualification Certificate** - A certificate executed on behalf of the issuer by one of its executive officers certifying that all of the criteria on which the issuer is relying in order to be qualified to file a prospectus in the form of a short form prospectus have been satisfied.
 3. **Material Incorporated by Reference** - Copies of all material incorporated by reference in the preliminary short form prospectus and not previously filed.
 4. **Earnings Coverage Explanation** - An explanation of the manner by which the earnings coverage ratios were calculated, if the preliminary short form prospectus is filed for a distribution of debt securities having a term to maturity in excess of one year or for a distribution of preferred shares.
 5. **Auditor's Comfort Letter regarding Audited Statements** - A signed letter 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, 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.
 6. **Material Contracts** - Subject to subsections (2) and (3), copies of all material contracts to which the issuer is a party that have not previously been filed.

7. **Mining Reports** - The technical reports required to be filed with a preliminary short form prospectus under National Instrument 43-101, if the issuer has mineral exploration, development or production activities on a mineral property.
 8. **Oil and Gas Reports** - Any technical report or certificate required to be filed with a preliminary short form prospectus under the successor instrument to National Policy No. 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators and not previously filed, if the issuer has oil and gas operations.
 9. **Reports and Valuations** - Subject to subsection (4), a copy of each report or valuation referred to in the preliminary short form prospectus for which a consent is required to be filed under section 8.3 and that has not previously been filed, other than a technical report that
 - (a) deals with a property of an issuer that has mineral exploration, development or mining properties or oil and gas operations; and
 - (b) is not otherwise required to be filed under paragraph 7 or 8; and
- (b) deliver to the regulator, concurrently with the filing of the preliminary short form prospectus, the following:
1. **Personal Information** - For each director and executive officer of an issuer, each promoter of the issuer or, if the promoter is not an individual, each director and executive officer of the promoter, for whom the issuer has not previously delivered the following information, a statement containing that individual's
 - (a) full name;

- (b) position with or relationship to the issuer;
- (c) employer's name and address, if other than the issuer;
- (d) full residential address;
- (e) date and place of birth; and
- (f) citizenship.

2. Authorization to Collection of Information - An authorization in the form set out in Appendix A to the collection of personal information.

- (2) **Ontario Exception regarding Material Contracts** - Despite subparagraph (1)(a)6, in Ontario, an issuer that files a preliminary short form prospectus is not required to file copies of any material contracts to which the issuer is a party, other than copies of material contracts that create or materially affect the rights or obligations of the holders of the securities being distributed.
- (3) **Nova Scotia Exception regarding Material Contracts** - Despite subparagraph (1)(a)6, in Nova Scotia, an issuer that files a preliminary short form prospectus is not required to file, but is required to deliver to the regulator, copies of all material contracts to which the issuer is a party that have not previously been delivered.
- (4) **Ontario and Nova Scotia Exception regarding Reports and Valuations** - Despite subparagraph (1)(a)9, in Ontario and Nova Scotia, an issuer that files a preliminary short form prospectus is not required to file, but is required to deliver to the regulator, a copy of each report or valuation required to be filed in other jurisdictions under subparagraph (1)(a)9.

8.2 Required Documents for Filing a Short Form Prospectus

- (1) **General** - In addition to any other documents required to be filed or delivered to the regulator under securities legislation, an issuer that files a short form prospectus shall
 - (a) file the following with the short form prospectus:
 1. **Signed Copy** - A signed copy of the short form prospectus.
 2. **Material Incorporated by Reference** - Copies of all material incorporated by reference in the short form prospectus and not previously filed.
 3. **Auditor's Comfort Letter regarding Unaudited Financial Statements** - A comfort letter to the regulator from the auditor of the issuer or the business, as applicable, prepared in accordance with the relevant standards in the Handbook, if an unaudited financial statement of an issuer or a business is included in a short form prospectus.
 4. **Comfort Letter regarding Foreign Auditor's Report** - A letter to the regulator from the auditor that discusses the auditor's expertise
 - (a) to audit the reconciliation of foreign GAAP to Canadian GAAP; and
 - (b) in the case of foreign GAAS other than U.S. GAAS, to make the determination that the auditing standards applied are substantially equivalent to Canadian GAAS, if a financial statement included in a short form prospectus has been prepared in accordance with foreign GAAP or includes a foreign auditor's report.
 5. **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.

6. **Non-Issuer's Submission to Jurisdiction** - A submission to jurisdiction and appointment of agent for service of process of the selling securityholder, promoter or credit supporter, as applicable, in the form set out in Appendix C, if a selling securityholder, promoter or credit supporter of an issuer is incorporated or organized under a foreign jurisdiction and does not have an office in Canada.
7. **Expert's Consent** - The consents required to be filed under section 8.3.
8. **Credit Supporter's Consent** - The written consent of the credit supporter to the inclusion of the statements in the short form prospectus, if statements of a credit supporter are required under Item 13.2 of Form 44-101F2 to be included in a short form prospectus and a certificate of the credit supporter is not required under Item 20.3 of Form 44-101F2 to be included in the short form prospectus.
9. **Underwriting Agreement** - Subject to subsection (2), a copy of the underwriting agreement for the distribution, unless previously filed.
10. **Other Material Contracts** - Subject to subsections (3) and (4), copies of all material contracts to which the issuer has been a party that have not previously been filed.
11. **Other Mining Reports** - Any technical report or certificate required to be filed with a short form prospectus under National Instrument 43-101 and not

previously filed, if the issuer has exploration, development or production activities on a mineral property.

12. Other Oil and Gas Reports - Any technical report or certificate required to be filed with a short form prospectus under the successor instrument to National Policy No. 2-B and not previously filed, if the issuer has oil and gas operations.

13. Other Reports and Valuations - Subject to subsection (5), a copy of each report or valuation referred to in the short form prospectus, for which a consent is required to be filed under section 8.3 and that has not previously been filed, other than a technical report that

(a) deals with a property of an issuer that has mineral exploration, development or mining properties or oil and gas operations; and

(b) is not otherwise required to be filed under paragraph 11 or 12; and

(b) deliver to the regulator, concurrently with the filing of the short form prospectus, a copy of the short form prospectus, blacklined to show changes from the preliminary short form prospectus.

(2) Ontario and Nova Scotia Exception regarding Underwriting Agreement - Despite subparagraph (1)(a)9, in Ontario and Nova Scotia, an issuer that files a short form prospectus is not required to file, but is required to deliver to the regulator, a signed copy of the underwriting agreement for the distribution.

(3) Ontario Exception regarding Other Material Contracts - Despite subparagraph (1)(a)10, in Ontario, an issuer that files a short form prospectus is not required to file copies of any material contracts to which the issuer is a party, other than copies of material contracts that create or materially affect the rights and obligations of the holders of the securities being distributed.

- (4) **Nova Scotia Exception regarding Other Material Contracts** - Despite subparagraph (1)(a)10, in Nova Scotia, an issuer that files a short form prospectus is not required to file, but is required to deliver to the regulator, copies of all material contracts to which the issuer is a party that have not previously been delivered.
- (5) **Ontario and Nova Scotia Exception regarding Reports and Valuations** - Despite subparagraph (1)(a)13, in Ontario and Nova Scotia, an issuer that files a short form prospectus is not required to file, but is required to deliver to the regulator, a copy of each report or valuation required to be filed in other jurisdictions under subparagraph (1)(a)13.

8.3 Consents of Experts

- (1) If any solicitor, auditor, accountant, engineer or appraiser, or any other person or company whose profession gives authority to a statement made by that person or company, is named in a short form prospectus or an amendment to a short form prospectus, either directly or in a document incorporated by reference
 - (a) as having prepared or certified any part of the short form prospectus or the amendment, or
 - (b) as having prepared or certified a report or valuation referred to in the short form prospectus or the amendment, either directly or in a document incorporated by reference,

the issuer shall file no later than the time the short form prospectus or the amendment is filed, the written consent of the person or company to being named and to that use of the report or valuation.
- (2) The consent of an auditor required under subsection (1) for a report on financial statements shall
 - (a) refer to the report stating its date and the dates of the financial statements on which the report is made; and

- (b) contain a statement that the auditor has read the short form prospectus and all information specifically incorporated by reference therein and has no reason to believe that there are any misrepresentations in the information in the short form prospectus derived from the financial statements upon which the auditor has reported or that is within the auditor's knowledge as a result of the audit of the financial statements.
- (3) Subsection (1) does not apply to an approved rating organization that issues a rating to the securities being distributed under the preliminary short form prospectus or short form prospectus.

8.4 Filing of French Version

- (1) An issuer shall file a French language version of a preliminary short form prospectus, short form prospectus, any amendment to a preliminary short form prospectus or short form prospectus and any supporting document before sending the French language version of a preliminary short form prospectus, a short form prospectus or an amendment to an investor or prospective investor.
- (2) An issuer that has prepared a French language version of a preliminary short form prospectus, short form prospectus, amendment to a preliminary short form prospectus or short form prospectus or any supporting document shall file the French language version of the document in New Brunswick concurrently with or as soon as practicable after filing the English language version of the document.

8.5 Prohibition on Filing - An issuer shall not file a preliminary short form prospectus or a short form prospectus if the issuer is in default in filing or delivering to the regulator a document required to be filed or delivered under securities legislation.

8.6 Material Contracts - An issuer shall make available all material contracts referred to in a short form prospectus for inspection at a reasonable time and place during the distribution of the securities under the short form prospectus.

PART 9 FILING REQUIREMENTS FOR AN AMENDMENT TO A SHORT FORM PROSPECTUS

9.1 Form of Amendment - An amendment to a preliminary short form prospectus or a short form prospectus shall consist of either an amendment that does not fully restate the text of the preliminary short form prospectus or short form prospectus or an amended and restated preliminary short form prospectus or short form prospectus.

9.2 Required Documents for Filing an Amendment - An issuer that files an amendment to a preliminary short form prospectus or short form prospectus shall

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

9.3 Consents - If an amendment to a preliminary short form prospectus or short form prospectus materially affects, or relates to, the subject matter to which a consent filed under section 8.2 or 8.3 or an auditors' comfort letter filed under section 8.1 or 8.2 refers, the issuer shall file with the amendment a new consent or auditors' comfort letter, as applicable.

9.4 Forwarding Amendments - An amendment to a preliminary short form prospectus shall be forwarded to each recipient of the preliminary short form prospectus according to the record of recipients to be maintained under securities legislation.

- 9.5** **Receipt for Amendment to Preliminary Short Form Prospectus** - The regulator shall issue a receipt for an amendment to a preliminary short form prospectus as soon as reasonably possible after the amendment is filed.

PART 10 **NON-FIXED PRICE OFFERINGS AND REDUCTION OF OFFERING PRICE UNDER SHORT FORM PROSPECTUS**

10.1 **Non-Fixed Price Offerings and Reduction of Offering Price under Short Form Prospectus**

- (1) Every security distributed under a short form prospectus shall be distributed at a fixed price.
- (2) Despite subsection (1), securities for which the issuer is qualified under Part 2 to file a prospectus in the form of a short form prospectus may be distributed for cash at non-fixed prices under a short form prospectus if, at the time of the filing of the preliminary short form prospectus, the securities have received a rating, on a provisional or final basis, from at least one approved rating organization.
- (3) Despite subsection (1), if securities are distributed for cash under a short form prospectus, the price of the securities may be decreased from the initial offering price disclosed in the short form 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 short form 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 securityholders or by the issuer and selling securityholders are disclosed in the short form prospectus as being fixed; and

- (c) the underwriters have made a reasonable effort to sell all of the securities distributed under the short form prospectus at the initial offering price disclosed in the short form prospectus.
- (4) Despite subsections (2) and (3), the price at which the rights under a rights offering may be exercised shall be fixed.

PART 11 CIRCULARS

11.1 Use of Short Form Prospectus Disclosure in Securities Exchange Take-Over Bid Circular and Securities Exchange Issuer Bid Circular

- (1) An issuer that makes a take-over bid or an issuer bid that includes consideration consisting, in whole or in part, of the issuer's securities satisfies the requirement in securities legislation to include, in a securities exchange take-over bid circular or a securities exchange issuer bid circular, the information prescribed by the form of prospectus appropriate for the issuer by including, in the securities exchange take-over bid circular or the securities exchange issuer bid circular, the information required under this Instrument to be included in a short form prospectus, if the issuer's securities offered as consideration are of a type for which the issuer is qualified under section 2.2, 2.3, 2.4 or 2.8 to file a prospectus in the form of a short form prospectus.
- (2) In determining, for the purpose of subsection (1), whether an issuer is qualified to file a prospectus in the form of a short form prospectus under section 2.2, 2.3, 2.4 or 2.8, references in those sections to the time of the filing of a preliminary short form prospectus shall be read as references to the time of the filing of the securities exchange take-over bid circular or securities exchange issuer bid circular.
- (3) Item 11 of Form 44-101F2 applies with necessary changes to a securities exchange take-over bid referred to in subsection (1), if the securities exchange take-over bid would result in the offeror making a significant acquisition.

11.2 Use of Short Form Prospectus Disclosure in Information Circular

- (1) An issuer that sends an information circular to securityholders disclosing information on a proposed reorganization that involves the issuer distributing its securities satisfies the requirement in securities legislation to include in an information circular the information prescribed by the form of prospectus appropriate for the issuer by including in the information circular, the information required under this Instrument to be included in a short form prospectus, if the issuer's securities to be distributed in connection with the reorganization are of a type for which the issuer is qualified under section 2.2, 2.3, 2.4 or 2.8 to file a prospectus in the form of a short form prospectus.
- (2) In determining, for the purpose of subsection (1), whether an issuer is qualified to file a prospectus in the form of a short form prospectus under section 2.2, 2.3, 2.4 or 2.8, references in those sections to the time of the filing of a preliminary short form prospectus shall be read as references to the time of the filing of the information circular.

11.3 Information Circular Disclosure regarding Availability of Information - An issuer that has a current AIF and sends its information circular, as required under securities legislation, to securityholders shall

- (a) send, upon request to the secretary of the issuer, a copy of the following documents to the person or company making the request and, in the case of a securityholder, without charge:
 1. The issuer's current AIF, together with one copy of any document, or the pertinent pages of any document, incorporated by reference in the current AIF.
 2. The issuer's most recently filed comparative annual financial statements, together with the accompanying report of the auditor, and any interim financial statements of the issuer that have been filed for any period after the end of its most recently completed financial year.

3. The issuer's information circular for its most recent annual meeting of shareholders that involved the election of directors or any annual filing prepared instead of that information circular, as appropriate; and
- (b) include in its information circular a statement describing the availability, without charge to a securityholder, upon request made to the secretary of the issuer, of the documents listed in paragraph (a).

PART 12 SOLICITATIONS OF EXPRESSIONS OF INTEREST

12.1 Solicitations of Expressions of Interest - 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 qualified for distribution under a short form prospectus in accordance with this Instrument, if

- (a) the issuer has entered into an enforceable agreement with an underwriter who has, or underwriters who have, agreed to purchase the securities;
- (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 a receipt for the preliminary short form prospectus from
 - (i) the regulator in at least one jurisdiction, dated not more than two business days after the date that the agreement is entered into, and
 - (ii) the Canadian securities regulatory authorities in any other jurisdictions in which the distribution is to be made, dated not more than three business days after the date that the agreement is entered into;
- (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.

PART 13 EXEMPTION

13.1 Exemption

- (1) The regulator or the securities regulatory authority may grant an exemption, in whole or in part, from the provisions of this Instrument subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario and Alberta, only the regulator may grant such an exemption.
- (3) An application made to the securities regulatory authority or regulator for an exemption from the provisions of this Instrument shall 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.

13.2 Evidence of Exemption

- (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, in whole or in part, from Part 2, may be evidenced by the issuance of a receipt for a short form prospectus or an amendment to a short form prospectus.
- (2) An exemption under this Part may be evidenced in the manner set out in subsection (1) only if

- (a) the person or company that sought the exemption
 - (i) sent to the regulator the letter or memorandum referred to in subsection 13.1(3) on or before the date of the filing of the preliminary short form prospectus, or
 - (ii) sent to the regulator the letter or memorandum referred to in subsection 13.1(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 sent notice to the contrary to the person or company that sought the exemption before, or concurrently with, the issuance of the receipt.

13.3

Exemption under Prior Policy - An issuer that, immediately before the time this Instrument came into force, was eligible to participate in the prompt offering qualification system contemplated by National Policy Statement No. 47 under an exemption, ruling, order, decision or other action of the securities regulatory authority or regulator, other than a blanket ruling or order,⁵⁸ is qualified to file a prospectus in the form of a short form prospectus, in reliance on the exemption, ruling, order, decision or other action and subject to the same conditions, if any, as are in the action, until the earliest of

- (a) the end of the period for which the AIF filed by the issuer before this Instrument came into force is a current AIF under this Instrument;
- (b) the expiration of the action; and
- (c) the revocation of the action by the securities regulatory authority or the regulator.

⁵⁸

The term "blanket rulings and orders" is defined in National Instrument 14-101 Definitions as meaning "rulings and orders issued under Canadian securities legislation in certain jurisdictions that are applicable to a class of persons, trades, intended trades, securities, exchange contracts or transactions".

**NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS
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FORM 44-101F1 AIF

SCHEDULE 1 TO FORM 44-101F1 MD&A

FORM 44-101F2 SHORT FORM PROSPECTUS

NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS
FORM 44-101F1
AIF

INSTRUCTIONS

- (1) *An AIF is intended to provide background information that is essential to a proper understanding of the nature of an issuer and its operations and prospects.*
- (2) *Focus the AIF disclosure on the issuer and external factors affecting the issuer specifically; do not focus, unless specifically required, on external factors that affect issuers generally.*
- (3) *Do not omit any of the disclosure prescribed by this Form. In determining the degree of detail required, apply a standard of materiality. Materiality is a matter of judgment in particular circumstances, 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. This concept of materiality is consistent with the financial reporting notion of materiality contained in the Handbook.*
- (4) *A requirement in this Form to discuss or disclose forward-looking information does not call for a forecast or projection as defined in the Handbook. An issuer that chooses to provide a forecast or projection is required to comply with National Instrument 52-101 Future-Oriented Financial Information, once in force. Until National Instrument 52-101 is in force, issuers should refer to National Policy No. 48 Future-Oriented Financial Information.*
- (5) *An issuer that is a special purpose vehicle may have to modify the disclosure items in this Form to reflect the special purpose nature of its business.*

- (6) *Any information required in an AIF may be incorporated by reference in the AIF. Clearly identify in an AIF any document incorporated by reference. If an excerpt of a document is incorporated by reference, clearly identify the excerpt in the AIF by caption and paragraph of the document. Any material incorporated by reference in an AIF is required under subsection 3.3(1) of National Instrument 44-101 to be filed with the AIF unless it has been previously filed.*
- (7) *Date an AIF no earlier than the date of the auditor's report on the issuer's financial statements for the financial year covered by the AIF.*
- (8) *Unless otherwise specified in this Form, present the information in an AIF as at a date not earlier than the end of the issuer's most recently completed financial year, except for*
 - (a) *an AIF filed by a successor issuer following a reorganization, in which case present the information as at a date not earlier than the latest financial year end of any of the participants in the reorganization that were reporting issuers at the time of the reorganization; and*
 - (b) *an AIF filed by an issuer of asset-backed securities that has not completed its first financial year, in which case present the information as at a date within 30 days before the date that the initial AIF is filed.*
- (9) *If a material change affecting the issuer occurs after the date as at which the disclosure in the AIF is required, and before filing, include this information in the AIF.*
- (10) *Terms used and not defined in this Form that are defined or interpreted in National Instrument 44-101 shall bear that definition or interpretation.*
- (11) *All references to an issuer in Items 3 through 6 of this Form are to be read as applying to an issuer and its subsidiaries and investees, if the*

disclosure concerning the issuer's subsidiaries and investees is material.

Item 1: Cover Page

1.1 Date - Insert the date of the AIF on the cover page.

1.2 Review of Renewal AIF - If the issuer has been notified that its renewal AIF is being reviewed, include the following statement in **bold type** on the cover page of the renewal AIF until notified that the review has been completed.

"This annual information form is currently under review by the Canadian securities regulatory authorities of one or more jurisdictions. Information contained herein is subject to change."

INSTRUCTION *The statement required under Item 1.2 may be added to paper copies of the renewal AIF by way of a stamp, sticker or other method that will ensure that the statement may not be deleted or removed from the renewal AIF.*

1.3 Revisions - If revisions are made to an AIF after filing, identify the AIF as a "revised initial AIF" or a "revised renewal AIF", as the case may be, on the cover page.

Item 2: Corporate Structure

2.1 Name and Incorporation

- (1) State the full corporate name of the issuer or, if the issuer is an unincorporated entity, the full name under which it exists and carries on business.
- (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.

If material, state whether the articles or other constituting or establishing documents of the issuer have been amended and describe the substance of the amendments.

2.2 Intercorporate Relationships - Describe, by way of a diagram or otherwise, the intercorporate relationships among the issuer and the issuer's subsidiaries as of the most recent financial year end of the issuer. For each subsidiary state

- (a) the percentage of the votes attaching to all voting securities of the subsidiary represented by voting securities beneficially owned, or over which control or direction is exercised, by the issuer;
- (b) the percentage of each class of non-voting securities beneficially owned, or over which control or direction is exercised, by the issuer; and
- (c) the place of incorporation or continuance.

INSTRUCTION *A particular subsidiary may be omitted if*

- (a) *the total assets of the subsidiary do not constitute more than 10 percent of the consolidated assets of the issuer at the most recent financial year end;*
- (b) *the sales and operating revenues of the subsidiary do not exceed 10 percent of the consolidated sales and operating revenues of the issuer at the most recent financial year end; 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 percent in those paragraphs were changed to 20 percent.*

Item 3: General Development of the Business

3.1 Three Year History - Describe the general development of the business of the issuer over the three most recently completed financial years. Include only major events or conditions that have influenced the general development of the business of the issuer. If the business consists of the production or distribution of more than one product or the rendering of more than one kind of service, describe the principal products or services. Also discuss changes in the business of the issuer that are expected to occur during the current financial year of the issuer.

INSTRUCTION *Include the business of subsidiaries only insofar as is necessary to explain the character and development of the business conducted by the combined enterprise.*

3.2 Acquisitions and Dispositions

- (1) Disclose
 - (a) any acquisition completed by the issuer during the most recently completed financial year for which financial statement disclosure would be required under Part 4 or 5 of National Instrument 44-101 if the AIF were a short form prospectus; and
 - (b) any significant disposition completed by the issuer during the most recently completed financial year.⁵⁹
- (2) Under paragraph (1) include particulars of
 - (a) the nature of the assets acquired or disposed of;
 - (b) the date of each acquisition or disposition;
 - (c) the consideration, both monetary and non-monetary, paid to or by the issuer;

⁵⁹

See sections 1.1 through 1.6 of National Instrument 44-101 for definitions and interpretation of "significant" acquisitions and dispositions.

- (d) any material obligations that must be complied with to keep any acquisition or disposition agreement in good standing;
- (e) the effect of the acquisition or disposition on the operating results and financial position of the issuer;
- (f) any valuation opinion obtained within the last 12 months required under Canadian securities legislation or Canadian securities directions or a requirement of a Canadian stock exchange or other Canadian market to support the value of the consideration received or paid by the issuer or any of its subsidiaries for the assets, including the name of the author, the date of the opinion, the assets to which the opinion relates and the value attributed to the assets; and
- (g) whether the transaction is at arm's length and, if not, the identity of the other parties and the relationship of the other parties to the issuer.

3.3 Trends - Discuss any trend, commitment, event or uncertainty that is both presently known to management and reasonably expected to have a material effect on the issuer's business, financial condition or results of operations, providing forward-looking information based on the issuer's expectations as of the date of the AIF.

INSTRUCTION *Issuers are encouraged, but not required, to supply other forward-looking information. Optional forward-looking disclosure involves anticipating a future trend or event or anticipating a less predictable effect of a known event, trend or uncertainty. This other forward-looking information is to be distinguished from presently known information that is reasonably expected to have a material effect on future operating results, such as known future increases in costs of labour or materials, which is information required to be disclosed.*

Item 4: Narrative Description of the Business

4.1 General

- (1) Describe the business of the issuer with reference to the reportable operating segments as defined in the Handbook and the issuer's business in general. Include the following for each reportable operating segment of the issuer:
 1. For principal products or services,
 - (a) the methods of their distribution and their principal markets;
 - (b) as dollar amounts or as percentages, for each of the two most recently completed financial years, the revenues for each category of principal products or services that accounted for 15 percent or more of total consolidated revenues for the applicable financial year derived from
 - (i) sales to customers, other than investees, outside the consolidated entity, and
 - (ii) sales or transfers to investees.
 2. The competitive conditions in the principal markets and geographic areas in which the issuer operates, including, if reasonably possible, an assessment of the issuer's competitive position.
 3. If there has been a public announcement of the introduction of a new product, the status of the product.
 4. The sources, pricing and availability of raw materials, component parts or finished products.
 5. The importance, duration and effect on the segment of identifiable intangible properties such as brand names, circulation lists,

copyrights, franchises, licences, patents, software, subscription lists and trademarks.

6. The extent to which the business of the segment is cyclical or seasonal.
 7. A description of any aspect of the issuer's business that may be affected in the current financial year by renegotiation or termination of contracts or sub-contracts and the likely effect.
 8. The financial and operational effects of environmental protection requirements on the capital expenditures, earnings and competitive position of the issuer in the current financial year and the expected effect in future years.
 9. The number of employees, as at the most recent financial year end or as an average over the year, whichever is more relevant.
 10. Any risks associated with foreign operations of the issuer and any dependence of the segment upon the foreign operations.
- (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 three most recently completed financial years or the current financial year.
 - (3) Disclose the nature and results of any material reorganization of the issuer or any of its subsidiaries within the three most recently completed financial years or the current financial year.

4.2 Issuers with Asset-backed Securities Outstanding - For issuers with asset-backed securities outstanding that were distributed under a prospectus, disclose

- (a) a description of any events, covenants, standards or preconditions that are dependant or based on the economic performance of the underlying pool of financial assets and that may impact on the

timing or amount of payments or distributions to be made under the asset-backed securities;

- (b) for the two most recently completed financial years of the issuer or a lesser period commencing on the first date on which the issuer had asset-backed securities outstanding, information on the underlying pool of financial assets relating to
 - (i) the composition of the pool as of the end of each financial year or partial period,
 - (ii) income and losses from the pool on at least a quarterly basis,
 - (iii) the payment, prepayment and collection experience of the pool on a quarterly basis, and
 - (iv) any significant variances experienced in the matters referred to in clauses (i), (ii) or (iii);

INSTRUCTIONS

- (1) *Present the information required under paragraph (b) in a manner that will enable a reader to easily determine if, and the extent to which, the events, covenants, standards and preconditions referred to in paragraph (a) have occurred, are being satisfied or may be satisfied.*
- (2) *If the information required under paragraph (b) is not compiled specifically on the underlying pool of financial assets, but is compiled on 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.*
- (c) if any of the information disclosed under paragraph (b) has been audited, the existence and results of the audit;

- (d) the investment parameters applicable to investments of any cash flow surpluses;
- (e) the amount of payments made in respect of principal and interest or capital and yield, each stated separately,⁶⁰ on asset-backed securities of the issuer outstanding during the most recently completed financial year or a lesser period commencing on the first date on which the issuer had asset-backed securities outstanding;
- (f) the occurrence of any events that have led or with the passage of time could lead to the accelerated payment of principal or capital of asset-backed securities; and
- (g) the identity of any principal obligors for the outstanding asset-backed securities of the issuer at the end of the most recent financial year or interim period, the percentage of the underlying pool of financial assets represented by obligations of each principal obligor and whether the principal obligor has filed an AIF in any jurisdiction or a Form 10-K or Form 20-F in the United States.

4.3 Issuers With Natural Resource Operations (other than Oil and Gas) -For issuers with natural resource operations, other than oil and gas operations, disclose the following information for each property material to the issuer:

1. Property Description and Location

- (a) The size and location of the property.
- (b) The nature and extent of the issuer's title to or interest in the property, including accompanying surface rights, the sufficiency of the rights for mining operations, obligations that must be met to retain the property and the expiry date of claims, licences and other property tenure rights.

⁶⁰

This paragraph has been revised to clarify that the disclosure of these payments should be stated separately.

- (c) The terms of any royalties, overrides, back-in rights, payments or other agreements and encumbrances to which the property is subject.
- (d) All environmental liabilities to which the property is subject.

2. Accessibility, Climate, Local Resources, Infrastructure and Physiography

- (a) The means of access to the property.
- (b) The proximity of the property to a population centre and the nature of transport.
- (c) To the extent relevant to the mining project, the climate and length of the operating season.
- (d) The availability of power and water, mining personnel and potential tailings and disposal areas.
- (e) The topography, elevation and vegetation.

3. History

- (a) The prior ownership of the property and ownership changes and the type, amount, quantity and results of the exploration work undertaken by previous owners, and any previous production on the property, to the extent known.
- (b) If a property was acquired within the three most recently completed financial years of the issuer or during its current financial year from, or is intended to be acquired by the issuer from, an insider or promoter of the issuer or an associate or affiliate of an insider or promoter, the name and address of the vendor, the relationship of the

vendor to the issuer and the consideration paid or intended to be paid to the vendor.

- (c) To the extent known, the name of every person or company that has received or is expected to receive a greater than five percent interest in the consideration received or to be received by the vendor referred to in subparagraph (b).

4. Geology - The geology of the region and the property.

5. Exploration Information - The nature and extent of all exploration work and metallurgical or other testing conducted by, or on behalf of, the issuer on the property, including

- (a) the results of all surveys and investigations;
- (b) an interpretation of the exploration information; and
- (c) whether the surveys and investigations have been carried out by the issuer or a contractor.

6. Mine realization - The mineralization encountered on the property, detailing length, width, depth, continuity and the basis of measurement together with a description of the type, character and distribution of the mineralization.

7. Sampling and Analysis - The sampling and assaying including

- (a) mineral occurrences and the nature of mineralization found;
- (b) mineral distributions, rock types, structural controls, cut-off grades and other parameters used to establish sampling intervals;
- (c) the location, number, type, spacing and density of samples collected;

- (d) the area covered;
 - (e) any drilling, sampling or recovery problems encountered that could materially impact the accuracy or reliability of the results;
 - (f) the assay procedures used; and
 - (g) quality control and check assay procedures.
- 8. Security of Samples** - The measures taken to ensure the validity and security of samples taken.
- 9. Resources and Reserves** - The resources and reserves, if any, including
- (a) the quantity and grade of each category of resource and reserve;
 - (b) the key assumptions, parameters and methods used to estimate the resource and reserve; and
 - (c) the extent to which the estimate of resources and reserves may be affected by metallurgical, environmental, permitting, infrastructure, mining, legal, title, political and other issues.
- 10. Mining Operations** - For development properties and production properties, the mining method, metallurgical process, production forecast, market contracts for sale of products, mine life and expected payback period of capital.

INSTRUCTIONS

- (1) *Issuers are reminded that disclosure regarding mineral exploration development or production activities on material properties is required to comply with National Instrument 43-101 Standards of Disclosure for Mineral Projects, once in*

force, including the use of the appropriate terminology to describe reserves and resources. Until National Instrument 43-101 is in force, issuers should refer to National Policy No. 22 Use of Information and Opinion Re Mining and Oil Properties by Registrants and Others.

- (2) *Disclosure is required for each property material to the issuer. Materiality is to be determined in the context of the issuer's overall business and financial condition, taking into account quantitative and qualitative factors. A property will not generally be considered material to an issuer if the book value of the property as reflected in the issuer's most recently filed financial statements or the value of the consideration paid or to be paid (including exploration obligations) is less than 10 percent of the book value of the total of the issuer's mineral properties and related plant and equipment.*
- (3) *The information required under these items shall be derived from or supported by information obtained from the report relating to the property prepared and filed with the regulator under National Instrument 43-101 Standards of Disclosure for Mineral Projects, once in force.*
- (4) *In giving the information required under these items, include the nature of ownership interests, such as fee interests, leasehold interests, royalty interests and any other types and variations of ownership interests.*

4.4 Issuers with Oil and Gas Operations - For issuers with oil and gas operations, disclose the following (in tabular form, if appropriate):

- 1. Drilling Activity** - The number of wells the issuer has drilled or has participated in drilling, the number of these wells that were completed as oil wells and gas wells that are capable of production, each stated separately, and the number of dry holes, expressed in each case as gross and net wells, during each of the two most recently completed financial years of the issuer.

2. **Location of Production** - The geographical areas of the issuer's production, the groups of oil and gas properties, the individual oil and gas properties and the plants, facilities and installations that, in each case, are owned or leased by the issuer and are material to the issuer's operations or exploratory activities.
3. **Location of Wells** - The location, stated separately for oil wells and gas wells, by jurisdiction, if in Canada, by state, if in the United States, and by country otherwise, of producing wells and wells capable of producing, in which the issuer has an interest and which are material, with the interest expressed in terms of gross and net wells.
4. **Interest in Material Properties** - For interests in material properties to which no proved reserves have been attributed, the gross acreage in which the issuer has an interest and the net interest of the issuer, and the location of acreage by geographical area.
5. **Reserve Estimates** - To the extent material, estimated reserve volumes and discounted cash flow from such reserves, stated separately by country and by categories and types that conform to the classifications, definitions and disclosure requirements of National Policy Statement No. 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators or any successor instrument, on both a gross and net basis as at the most recent financial year end, including information on royalties.
6. **Source of Reserve Estimates** - The source of the reserve estimates and whether the reserve estimates have been prepared by the issuer or by independent engineers or other qualified independent persons and any other information relating to reserve estimates required to be disclosed in an AIF by any successor instrument to National Policy Statement No. 2-B.
7. **Reconciliation of Reserves** - A reconciliation of the reserve volumes by categories and types that conform to the classifications, definitions and disclosure requirements of National Policy Statement No. 2-B or any successor instrument, as at the financial year end immediately preceding the most recently completed financial year to the reserve volume

information furnished under paragraph 5, with the effects of production, acquisitions, dispositions, discoveries and revision of estimates shown separately if material.

- 8. History** - For each quarter of the most recently completed financial year of the issuer, with comparative data for the same periods in the preceding financial year,
- (a) the average daily production, after deduction of royalties payable in kind, of
 - (i) conventional crude oil,
 - (ii) natural gas liquids, and
 - (iii) natural gas;
 - (b) the following on a per barrel basis for conventional crude oil and natural gas liquids and on a per thousand cubic feet basis for natural gas
 - (i) the average net product prices received,
 - (ii) royalties,
 - (iii) operating expenses, specifying the particular items included, and
 - (iv) netback received;
 - (c) the average net product price received for the following, if the issuer's production of the following is material to the issuer's overall production,
 - (i) light and medium conventional crude oil,
 - (ii) heavy conventional crude oil, and

- (iii) synthetic crude oil; and
- (d) the dollar amounts expended on
 - (i) property acquisition,
 - (ii) exploration, including drilling, and
 - (iii) development, including facilities.

9. Future Commitments - A description of the issuer's future material commitments to buy, sell, exchange or transport oil or gas, stating for each commitment separately

- (a) the aggregate price;
 - (b) the price per unit;
 - (c) the volume to be purchased, sold, exchanged or transported; and
 - (d) the term of the commitment.

10. Exploration and Development - A description of the issuer's current and contemplated exploration or development activities, to the extent they are material.

Item 5: Selected Consolidated Financial Information

5.1 Annual Information - Provide the following financial data for the issuer in summary form for each of the three most recently completed financial years, accompanied by a discussion of the factors affecting the comparability of the data, including discontinued operations, changes in accounting policies, significant acquisitions or material dispositions and major changes in the direction of the business:

1. Net sales or total revenues.

2. Income from continuing operations, in total and on a per share and fully diluted per share basis, calculated in accordance with the Handbook.
3. Net income or loss, in total and on a per share and fully diluted per share basis, calculated in accordance with the Handbook.
4. Total assets.
5. Total long-term financial liabilities as defined in the Handbook.
6. Cash dividends declared per share for each class of share.
7. Such other information as the issuer believes would enhance an understanding of and would highlight trends in financial condition and results of operations.

5.2 Dividends

- (1) Describe any restriction that could prevent the issuer from paying dividends.
- (2) Disclose the issuer's dividend policy and if a decision has been made to change the dividend policy, disclose the intended change in dividend policy.

5.3 Foreign GAAP - An issuer may present the selected consolidated financial information required in this Item 5 on the basis of foreign GAAP if

- (a) the issuer's primary financial statements have been prepared using foreign GAAP; and
- (b) if the issuer is required under securities legislation to have reconciled its financial statements to Canadian GAAP at the time of filing its financial statements or the issuer has otherwise done so at that time, a cross-reference to the notes to the financial statements containing the reconciliation is included.

Item 6: Management's Discussion and Analysis

6.1 Schedule 1 Disclosure

- (1) Provide the disclosure required under Schedule 1 to this Form.
- (2) If an issuer has securities registered under the 1934 Act, the issuer may satisfy the requirement in paragraph (1) by including disclosure that is required under the item requirements applicable to it under the 1934 Act for management's discussion and analysis.

6.2 Foreign GAAP - If an issuer's primary financial statements have been prepared using foreign GAAP and the issuer is required under securities legislation to have reconciled its financial statements to Canadian GAAP at the time of filing its financial statements, or has otherwise done so at that time, then provide a cross-reference in the MD&A to the notes to the financial statements containing the reconciliation.

Item 7: Market for Securities

7.1 Market for Securities - Identify the exchange(s) and quotation system(s) on which the issuer's securities are listed and posted for trading or quoted.

Item 8: Directors and Officers

8.1 Name, Address, Occupation and Security Holding

- (1) List the name and municipality of residence of each director and executive officer of the issuer and indicate their respective positions and offices held with the issuer and their respective principal occupations within the five preceding years.
- (2) State the period or periods during which each director has served as a director and when his or her term of office will expire.

- (3) State the number and percentage of securities of each class of voting securities of the issuer 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 issuer as a group.

INSTRUCTION

Securities of subsidiaries that are beneficially owned, directly or indirectly, or over which control or direction is exercised by directors or executive officers through ownership or control or direction over securities of the issuer do not need to be included.

- (4) Disclose the board committees of the issuer and identify the members of each committee.
- (5) If the principal occupation of a director or officer of the issuer is acting as an officer of a person or company other than the issuer, disclose the fact and state the principal business of the person or company.

8.2

Corporate Cease Trade Orders or Bankruptcies - If a director or officer of the issuer, or a shareholder holding a sufficient number of securities of the issuer to affect materially the control of the issuer, is, or within the 10 years before the date of the AIF has been, a director or officer of any other issuer 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 other issuer access to any exemptions under Canadian 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
- (b) 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.

8.3

Penalties or Sanctions

- (1) 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 director or officer of the issuer, or a shareholder holding a sufficient number of securities of the issuer to affect materially the control of the issuer, has
 - (a) been subject to any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority or has entered into a settlement agreement with a Canadian securities regulatory authority; or
 - (b) been subject to any other penalties or sanctions imposed by a court or regulatory body that would likely be considered important to a reasonable investor in making an investment decision.
- (2) Despite paragraph (1), no disclosure is required of a settlement agreement entered into before the date National Instrument 44-101 came into force unless the disclosure would likely be considered important to a reasonable investor in making an investment decision.

8.4 Personal Bankruptcies - If a director or officer of the issuer, or a shareholder holding a sufficient number of securities of the issuer to affect materially the control of the issuer has, within the 10 years before the date of the AIF, 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 or officer, state the fact.

8.5 Conflicts of Interest - 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.

Item 9: Additional Information

9.1 Additional Information

- (1) Include a statement to the effect that the issuer, upon request to the secretary of the issuer, will provide to any person or company
 - (a) when the securities of the issuer are in the course of a distribution under a preliminary short form prospectus or a short form prospectus,
 - (i) one copy of the AIF of the issuer, together with one copy of any document, or the pertinent pages of any document, incorporated by reference in the AIF,
 - (ii) one copy of the comparative financial statements of the issuer for its most recently completed financial year for which financial statements have been filed together with the accompanying report of the auditor and one copy of the most recent interim financial statements of the issuer that have been filed, if any, for any period after the end of its most recently completed financial year,
 - (iii) one copy of the information circular of the issuer in respect of its most recent annual meeting of shareholders that involved the election of directors or one copy of any annual filing prepared instead of that information circular, as appropriate, and
 - (iv) one copy of any other documents that are incorporated by reference into the preliminary short form prospectus or the short form prospectus and are not required to be provided under clauses (i), (ii) or (iii); or
 - (b) at any other time, one copy of any documents referred to in clauses (a)(i), (ii) and (iii), provided that the issuer may require the payment of a reasonable charge if the request is made by a person or company who is not a securityholder of the issuer.
- (2) Include a statement to the effect that additional information including directors' and officers' remuneration and indebtedness, principal holders of the issuer's securities, options to purchase securities and interests of

insiders in material transactions, if applicable, is contained in the issuer's information circular for its most recent annual meeting of shareholders that involved the election of directors, and that additional financial information is provided in the issuer's comparative financial statements for its most recently completed financial year.

NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS
SCHEDULE 1 TO FORM 44-101F1
MD&A

INSTRUCTION

- (1) *MD&A is supplemental analysis and explanation that accompanies, but does not form part of, an issuer's financial statements. MD&A provides management with the opportunity to discuss an issuer's current financial results, position and future prospects. MD&A is intended to give a reader the ability to look at the issuer through the eyes of management by providing both a historical and prospective analysis of the business of the issuer. MD&A requires that management discuss the dynamics of the business and analyze the financial statements. Coupled with the financial statements, this information should enable readers to better assess the issuer's performance, position and future prospects.*
- (2) *Focus the MD&A on material information about the financial condition of the issuer, as well as its operations, with particular emphasis on liquidity, capital resources and known material trends, commitments, events, risks or uncertainties that are reasonably expected to have a material effect on the issuer's business, financial condition or results of operations.*
- (3) *In this Schedule, "capital resources" means indebtedness, share capital and any other financial arrangement, whether or not it is reflected on the balance sheet of an issuer, that can reasonably be considered to provide financial resources to the issuer.*
- (4) *Issuers are not required to disclose information described in this Schedule if the information is not material.*
- (5) *If information required under this Schedule is disclosed in a note to an issuer's financial statements, the issuer may comply with the disclosure requirement by providing a cross-reference to the note in which the information appears.*

- (6) *Focus the MD&A on the primary financial statements, even if the primary financial statements have been prepared using foreign GAAP.*
- (7) *The nature of the disclosure required under this Schedule is intentionally general. This Schedule contains a minimum of specific instructions in order to allow, as well as encourage, issuers to discuss their businesses in the most appropriate manner and to tailor their comments to their individual circumstances. Issuers should avoid boilerplate.*

Item 1: General

- (1) Provide an analysis of the issuer's financial condition, cash flows and results of operations in the most recently completed financial year, including a comparison against the previously completed financial year. Provide all information necessary to understand the analysis and comparison. Include
 - (a) an analysis and comparison over a period longer than two financial years if necessary to describe a trend;
 - (b) an analysis and comparison on the basis of each reportable operating segment or other part of the business, as well as on the issuer as a whole, if necessary to understand the analysis and comparison;

INSTRUCTION

In making the determination whether an analysis and comparison on the basis of a reportable operating segment or other part of the business is required, give consideration to whether any part of the business has a disproportionate effect on revenues, profitability or cash needs; whether there are any legal or other restrictions on the free flow of funds from one part of the issuer's business to another; and whether known trends, demands, commitments, events or uncertainties within a part of the business are reasonably likely to have a material effect on the business as a whole.

- (c) factors internal to the issuer as well as external economic and industry factors affecting the issuer;
- (d) an explanation of why changes have or have not occurred in the financial condition and results of operations of the issuer;

INSTRUCTION *In providing an explanation of causes affecting more than one item, an overall analysis is sufficient.*

- (e) the effect of discontinued operations; and
- (f) major changes in the direction of the business.

INSTRUCTION *Issuers need only include information that is reasonably available to the issuer and that does not clearly appear in the issuer's financial statements. Numerical data included in, or readily calculable from, the financial statements need not be repeated in the analysis and comparison. For example, if it is clear from the comparative financial statements what the amount of increase or decrease in revenues or the respective percentage change would be from the prior year, it is not necessary to include this information in the discussion since it is readily calculable. Nonetheless, showing these increases and decreases immediately before the discussion is often useful to readers.*

- (2) Describe and quantify any events or items that have had a material impact on the issuer's financial condition, cash flows or results of operations during the issuer's fourth quarter of its most recently completed financial year, including extraordinary or infrequently occurring items, year-end and other adjustments and disposals of business segments.

INSTRUCTION *Infrequently occurring items are those which do not have all of the characteristics of extraordinary items, as that term is defined by the Handbook, but result from transactions or events that are not expected to occur frequently over several years or are not typical of the issuer's normal business activities.*

- (3) Disclose information on risks and uncertainties facing the issuer necessary to understand the issuer's financial condition, changes in financial condition and results of operations.
- (4) Provide an analysis of the risks, events and uncertainties that could cause reported financial information to not necessarily be indicative of future operating results or of future financial position. Include both qualitative and quantitative descriptions of factors that
 - (a) could have an effect on future operations or financial position and have not had an effect in the past; and
 - (b) have had an effect on reported operations or financial position, and are not expected to have an effect in the future.
- (5) Describe any changes in the accounting policies of the issuer adopted subsequent to its most recent financial year end or any changes in its accounting policies that are expected to be adopted by the issuer, including those resulting from a change in an accounting standard, or the issuance of a new accounting standard, that does not require adoption until some future date. Disclose the estimated effect on the financial statements of the implementation of any changes in the accounting policies described.
- (6) If not already disclosed in the issuer's financial statements, provide
 - (a) a discussion of the nature and extent of the issuer's use of financial instruments and the business purposes that they serve;

INSTRUCTION

The discussion should be designed to enhance a reader's understanding of the significance of recognized and unrecognized financial instruments on the issuer's financial position, results and cash flows. The information should also be designed to assist a reader in assessing the amounts, timing, and certainty of future cash flows associated with those instruments.

- (b) an analysis of the risks associated with the issuer's financial instruments;

- (c) an analysis of management's policies for controlling the risks associated with the issuer's financial instruments, including an analysis of, if applicable, the issuer's policies for the hedging of risk exposures, the avoidance of undue concentrations of risk and any requirements for collateral to mitigate credit risks, and, if the issuer has no policies for controlling the risks associated with the issuer's financial instruments, a statement indicating that the issuer does not have any such policies;

INSTRUCTION

If the issuer is exposed to significant price, credit or liquidity risks, consideration should be given to providing a sensitivity analysis or tabular information that assists readers in assessing the degree of exposure. For example, an analysis of the effect of a hypothetical change in the prevailing level of interest or currency rates on the fair value of financial instruments and future earnings and cash flows may be useful in describing the issuer's exposure to price risk.

- (d) a discussion of the relationships between financial instruments and the components of individual financial instruments that may affect the amount, timing or certainty of cash flows;

INSTRUCTION

For example, a discussion of the existence and terms of master netting agreements and the relationship between liability and equity components of convertible debt instruments would be appropriate.

- (e) disclosure of significant accounting policies for financial instruments, including a description of how each class of financial instrument is reported in the financial statements, the policies for recognition and measurement of financial instruments, and the financial statement classification of gains and losses; and
- (f) significant assumptions made in determining the fair value of financial instruments, the total amount of the change in fair value of financial instruments recognized in income for the period, and the total amount of deferred or unrecognized gains and losses on financial instruments.

- (7) If a decision to proceed with a transaction has been made by an issuer's board of directors, or by senior management with the expectation of concurrence from the board of directors, and the transaction involves an asset acquisition or disposition or an acquisition or disposition of a business, whether structured as an asset or share transaction, discuss the transaction and its anticipated effect as part of MD&A. Disclosure is not required if the issuer has made a confidential filing under the continuous disclosure provisions of securities legislation.

Item 2: Quarterly Information

- (1) Subject to paragraphs (2) and (3), for each of the eight most recently completed quarters ending at the end of the most recently completed financial year, provide the information required in paragraphs 1, 2 and 3 of Item 5.1 of the AIF.
- (2) For an issuer that has not been a reporting issuer for the eight most recently completed quarters ending at the end of the most recently completed financial year, provide the information required in paragraphs 1, 2 and 3 of Item 5.1 of the AIF for the period that the issuer was not a reporting issuer only if the issuer has prepared quarterly financial statements for that period.
- (3) If the issuer is only required to file six month interim financial statements, the information required under paragraph (1) may instead be provided for each of the four most recently completed six month periods ended at the end of the most recently completed financial year.

Item 3: Liquidity and Capital Resources

- (1) With respect to the issuer's liquidity,
 - (a) discuss the ability of the issuer to generate adequate amounts of cash and cash equivalents, in the short term and the long term, when needed and to maintain capacity to provide for planned growth;

- (b) identify any known trends or expected fluctuations in the issuer's liquidity, taking into account known demands, commitments, events or uncertainties; if a deficiency is identified, indicate the course of action that has been taken or is proposed to be taken to remedy the deficiency;
- (c) describe those balance sheet conditions or income or cash flow items that the issuer believes may be indicators of its liquidity;
- (d) describe generally the requirements relating to working capital;

INSTRUCTION

Examples of the disclosure required under this paragraph include situations where significant quantities of inventory are required to be carried to meet rapid delivery requirements of customers or where extended payment terms have been provided to customers or furnished by suppliers.

- (e) disclose the nature and extent of legal or practical restrictions on the ability of subsidiaries to transfer funds to the issuer and the effect that these restrictions have had or are expected to have on the ability of the issuer to meet its obligations; and
- (f) if the issuer is in arrears in the payment of dividends, interest or principal payment on borrowings, disclose this fact and provide details; if the issuer is in default on any debt covenants or was in default during the most recently completed financial year, disclose information concerning the default and the method or anticipated method of curing the default; if the issuer is unable to make required redemptions or retractions or sinking fund payments, disclose this information and provide details; and if the issuer anticipates being, in the current financial year, in any of the circumstances described in this paragraph, disclose this information and provide details.

- (2) With respect to the issuer's capital resources,
 - (a) describe and quantify commitments for capital expenditures as of the end of the most recently completed financial year, indicate the general purpose of these commitments and the anticipated source of funds needed to fulfil these commitments, and quantify expenditures that are necessary but not yet committed to meet plans discussed under MD&A or elsewhere in the AIF;
 - (b) describe any known trends, favourable or unfavourable, in the issuer's capital resources, indicating any expected changes in the mix and relative cost of these resources; and
 - (c) briefly discuss sources of financing that have been arranged but not yet utilized.

INSTRUCTION *Discussions of liquidity and capital resources may be combined if this facilitates the discussion.*

Item 4: Results of Operations

- (1) Describe any unusual or infrequent events or transactions and any significant economic changes that in each case materially affect income or loss from continuing operations and the extent to which income or loss from continuing operations is affected. Also disclose any other significant components of revenue or expense necessary to understand the results of operations.
- (2) Describe any known trends or uncertainties that have had or that the issuer reasonably expects will have a favourable or unfavourable effect on net sales or revenues or income or loss from continuing operations. If the issuer knows of factors that are expected to cause a change in the relationship between costs and revenues, disclose the expected change in the relationship and the cause.

INSTRUCTION *Examples of such events include known future changes in costs of labour or materials or price changes or inventory adjustments.*

- (3) Provide a discussion of the extent to which any changes in net sales or revenues are attributable to changes in selling prices, to changes in the volume or quantity of goods or services being sold, or to the introduction of new products or services.
- (4) Discuss briefly any effect of inflation and specific price changes on the issuer's net sales and revenues and on income or loss from continuing operations. For purposes of the discussion, no specific numerical financial data need be presented.

**NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS
FORM 44-101F1 AIF
- and -
SCHEDULE 1 TO FORM 44-101F1 MD&A
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NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS
FORM 44-101F2
SHORT FORM PROSPECTUS

INSTRUCTIONS

- (1) *The objective of the short form prospectus is to provide information concerning the issuer that an investor needs in order to make an informed investment decision. This Form 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.*
- (2) *Terms used and not defined in this Form that are defined or interpreted in National Instrument 44-101 Short Form Prospectus Distributions shall bear that definition or interpretation.*
- (3) *Unless an item specifically requires disclosure only in the preliminary short form prospectus, the disclosure requirements set out in this Form apply to both the preliminary short form prospectus and the short form 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 short form prospectus, along with specifics concerning the plan of distribution, to the extent that these matters have not been decided.*
- (4) *Any information required in a short form prospectus may be incorporated by reference in the short form prospectus, other than confidential material change reports. Clearly identify in a short form prospectus any document incorporated by reference. If an excerpt of a document is incorporated by reference, clearly identify the excerpt in the short form prospectus by caption and paragraph of the document. Any material incorporated by reference in a short form prospectus is required under sections 8.1 and 8.2 of National Instrument 44-101 to be filed with the short form prospectus unless it has been previously filed.*

- (5) *The disclosure must be understandable to readers and presented in any easy to read format. The presentation information should comply with the plain language principles listed in section 8.2 of Companion Policy 44-101CP Short Form Prospectus Distributions. The use of jargon should be avoided and all technical terms should be defined.*
- (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 "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.*
- (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 the term "class" is used in any item to describe securities, the term includes a series of a class.*

Item 1: Cover Page Disclosure

1.1 Required Language - 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."

- 1.2 Preliminary Short Form Prospectus Disclosure** - Print in red ink on the left hand side of the cover page the following, with the bracketed information completed:

"A copy of this preliminary short form 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 a distribution. Information contained in this preliminary short form prospectus may not be complete and may have to be amended. The securities may not be distributed until a receipt for the short form prospectus is obtained from the securities regulatory [authority(ies)]."

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

[PRELIMINARY] SHORT FORM 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 short form prospectus, including any options or warrants, and the price per security]

INSTRUCTIONS

- (1) *The description of the number and type of securities being distributed shall include the restricted share terms, if any, prescribed by securities legislation.*
- (2) *If the offering price is in a currency other than the Canadian dollar or the U.S. dollar, comply with the exchange rate disclosure requirements of National Instrument 52-102 Use of Currencies, once in force. Until National Instrument 52-102 is in force, issuers should*

refer to National Policy No. 14 Acceptability of Currencies in Material Filed with Securities Regulatory Authorities.

1.4 Distribution

- (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	Underwriting discounts or commissions	Proceeds to issuer or selling securityholders
	(a)	(b)	(c)
Per security			
Total			

- (2) If there is an over-allotment option, describe the terms of the option and the fact that the short form prospectus qualifies both the grant of the option and the issuance or transfer of securities that will be issued or transferred if the option is exercised.
- (3) If the distribution of the securities is to be on a best efforts basis, provide totals for both the minimum and maximum subscriptions, if applicable.
- (4) If debt securities are distributed at a premium or a discount, state in **bold type** the effective yield if held to maturity.
- (5) 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.
- (6) In column (b) of the table, disclose only commissions paid or payable in cash by the issuer or selling securityholder 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 securityholder;
 - (b) consideration other than discounts granted and cash paid or payable by the issuer or selling securityholder, including warrants and options; and
 - (c) any finder's fees or similar required payment.
- (7) If a security is being distributed for the account of a selling securityholder, state the name of the selling securityholder and a cross-reference to the applicable section in the short form prospectus where further information about the selling securityholder is provided. State the portion of expenses of the distribution to be borne by the selling securityholder and, if none of the expenses of the distribution are being borne by the selling securityholder, include a statement to that effect and discuss the reasons why this is the case.
- (8) If the underwriter has been granted a compensation option, state whether the short form prospectus qualifies the grant of all or part of the compensation option and provide a cross-reference to the applicable section in the short form prospectus where further information about the compensation option is provided.

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, express the information as a percentage.*

1.5 Non-Fixed Price Distributions - 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 securityholder;
- (c) that the securities to be distributed under the short form 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 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 securityholder.

1.6 Reduced Price Distributions - If an issuer, underwriter or selling securityholder wishes to be able to decrease the price at which securities are distributed for cash from the initial offering price disclosed in the short form prospectus, include in **bold type** a cross-reference to the section in the short form prospectus where disclosure concerning the possible price decrease is provided.

1.7 Market for Securities

- (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 and provide a cross-reference to the section in the short form prospectus where further information about market stabilization is provided.
- (3) If no market for the securities being distributed under the short form prospectus exists or is to exist after the distribution, state the following in **bold type** :

"There is no market through which these securities may be sold and purchasers may not be able to resell securities purchased under the short form prospectus."

1.8 Underwriter(s)

- (1) State the name of each underwriter.
- (2) If applicable,
 - (a) ~~until~~ Multilateral Instrument 33-105 Underwriting Conflicts comes into force, provide the disclosure required by Item 15 of Appendix B of National Policy Statement No. 47 Prompt Offering Qualification System as that National Policy read immediately before it was revoked; and
 - (b) after Multilateral Instrument 33-105 comes into force, comply with the requirements of Multilateral Instrument 33-105 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 the 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 short form 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 short form prospectus or performed any review of the contents of the short form prospectus.

1.9

International Issuers - If the issuer, a selling securityholder, a credit supporter of the securities being distributed under the short form prospectus or a promoter of the issuer is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada, state that 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 securityholder, credit supporter and/or promoter] is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada. Although [the issuer, selling securityholder, credit supporter and/or promoter] has appointed [name(s) and address(es) of agent(s) for service] as its agent(s) for service of process in [list jurisdictions] it may not be possible for investors to collect from the issuer, selling securityholder, credit supporter or promoter, judgments obtained in Canadian courts predicated on the civil liability provisions of securities legislation."

Item 2: Name of Issuer

2.1 Name of Issuer - State the full corporate name of the issuer or, if the issuer is an unincorporated entity, the full name under which the entity exists and carries on business and the address(es) of the issuer's head and registered office.

Item 3: Summary Description of Business

3.1 Summary of Description of Business - Provide a brief summary on a consolidated basis of the business carried on and intended to be carried on by the issuer.

Item 4: Consolidated Capitalization

4.1 Consolidated Capitalization - 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 comparative financial statements for the issuer's most recently completed financial year filed with the securities regulatory authority.

Item 5: Use of Proceeds

5.1 Proceeds - State the estimated net proceeds to be received by the issuer or selling securityholder 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 securityholder from the sale of the securities distributed. 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.

5.2 Principal Purposes - 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.

Item 6: Plan of Distribution

6.1 Disclosure of Market Out - 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, 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 securityholder] and [insert name(s) of underwriter(s)], as underwriter[s], [insert name of issuer or selling securityholder] 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 securityholder] 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."

6.2 Best Efforts Offering - Outline briefly the plan of distribution of any securities being distributed other than on the basis described in Item 6.1.

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

6.4 Over-Allotments - If the issuer, a selling securityholder 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, disclose this information.

6.5 Minimum Distribution - If a minimum amount of funds is required under the issue and the securities are to be distributed on a best efforts basis, state the minimum amount required to be raised and the maximum that could be raised. Also indicate that the distribution will not continue for a period of more than 90 days after the date of the 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.

- 6.6 Reduced Price Distributions** - If an issuer, underwriter or selling securityholder wishes to be able to decrease the price at which securities are distributed for cash from the initial public offering price disclosed in the short form prospectus and thereafter change, from time to time, the price at which securities are distributed under the short form prospectus in accordance with the procedures permitted by National Instrument 44-101, disclose that, after the underwriter has made a reasonable effort to sell all of the securities at the initial public offering price disclosed in the short form 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 short form 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 issuer or selling securityholder.
- 6.7 Listing Application** - 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 short form 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]."
- 6.8 Conditional Listing Approval** - If application has been made to list or quote the securities being distributed and conditional listing approval has been received, include a statement in substantially the following form, with the bracketed information completed:
- "[name of exchange or other market] has conditionally approved the [listing/quotation] of these securities. [Listing/Quotation] is subject to the [name of the issuer] fulfilling all of the requirements of the [name of exchange or market] on or before [date], [including distribution of these securities to a minimum number of public securityholders.]"

Item 7: Earnings Coverage Ratios

7.1 Earnings Coverage Ratios

- (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 paragraph (2):
 1. The earnings coverage ratio based on the 12 month period ended on the last day of the most recently completed period for which audited annual financial statements of the issuer have been, or are required to have been, filed with any Canadian securities regulatory authority.
 2. 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, or are required to have been, filed with any Canadian securities regulatory authority, if the period is subsequent to the last day of the most recently completed period for which audited annual financial statements of the issuer have been, or are required to have been, filed with any Canadian securities regulatory authority.
- (2) Adjust the ratios referred to in paragraph (1) to reflect
 - (a) the issuance of the securities being distributed under the short form 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) all preferred shares issued since the date of the annual or interim financial statements, and
 - (ii) all preferred shares repurchased, redeemed, or otherwise retired since the date of the annual or interim financial statements and all preferred shares to be repurchased,

redeemed, or otherwise retired from the proceeds to be realized from the sale of securities under the short form prospectus;

- (c) the issuance of all long-term financial liabilities, as defined in the Handbook;
 - (d) the repayment, redemption or other retirement of all long-term financial liabilities, as defined in the Handbook, 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 short form 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 under Canadian GAAP, disclose in notes to the ratios required under paragraph (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 paragraph (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 paragraph (1), calculated as though those securities had been accounted for as debt.⁶⁰

⁶⁰

This subsection is new and has been added to address compound instruments.

INSTRUCTIONS

- (1) *Cash flow coverage may be disclosed but only as a supplement to earnings coverage and only if the method of calculation is fully disclosed. Earnings coverage is calculated by dividing an entity's earnings (the numerator) by its interest and dividend obligations (the denominator).*
- (2) *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 generally accepted accounting principles, 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 obligations,

(ii) the coverage calculation should gross up dividends to a before-tax equivalent (the "prior deduction method") using the issuer's effective income tax rate (the rate that is reconciled to the basic income tax rate in the issuer's financial statement notes), and

(iii) the combined interest and dividend method (the "combined method"), and not the prior deduction method, should be used to calculate earnings coverage; 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 short form prospectus.

(3) The prior deduction method referred to in Instruction 2(e)(ii) reflects the net coverage for preferred dividends after meeting interest obligations and results in a higher ratio than the combined method. As investors may falsely interpret the higher ratio as indicating less risk, without appreciating the fact that debtholders rank before preferred shareholders, the combined method should be used, although disclosure of a supplementary coverage ratio calculated using the prior deduction method is permitted.

(4) 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 short form 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 short form 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 short form prospectus; and*
 - (d) *the servicing costs that were incurred, or will be incurred, in relation to the above adjustments.*
- (5) *If meaningful in the circumstances, the earnings coverage ratio must be calculated and disclosed based on a pro forma income statement that is included in a short form prospectus.⁶¹*
- (6) *For debt securities, disclosure of earnings coverage shall include language similar to the following:*

⁶¹

This instruction has been revised to delete the part of the instruction that provided if paragraph 3 of Item 12.1 required the inclusion of interim financial statements in the short form prospectus, earnings coverage had to be calculated based on the updated financial statements.

"The Company's interest requirements, after giving effect to the issue of [the debt securities to be distributed under the short form prospectus], amounted to \$! for the 12 months ended !. The Company's earnings before interest and income tax for the 12 months then ended was \$!, which is ! times the Company's interest requirements for this period."

- (7) *For preferred share issues, disclosure of earnings coverage shall include language similar to the following:*

"The Company's dividend requirements on all of its preferred shares, after giving effect to the issue of [the preferred shares to be distributed under the short form prospectus], and adjusted to a before-tax equivalent using an effective income tax rate of !%, amounted to \$! for the 12 months ended !. The Company's interest requirements for the 12 months then ended amounted to \$!. The Company's earnings before interest and income tax for the 12 months ended ! was \$!, which is ! times the Company's aggregate dividend and interest requirements for this period."

- (8) *If the issuer is a wholly-owned subsidiary of a credit supporter, has no operations or only minimal operations, that are independent of the credit supporter and is an entity that functions essentially as a special purpose vehicle, disclose the earnings coverage of the credit supporter. If this disclosure is included, the earnings coverage of the issuer may not be material and, if not material, may be omitted. If the issuer is a wholly-owned subsidiary of the credit supporter but has more than minimal operations that are independent of the credit supporter, or if the issuer is not a wholly-owned subsidiary of the credit supporter, the earnings coverage of both the credit supporter and the issuer shall be disclosed.*

- (9) *If the earnings coverage is less than one-to-one, disclose this fact in bold-face on the cover page of the short form prospectus. While the actual coverage ratio should not be disclosed in these circumstances, the dollar amount of the coverage deficiency (i.e., the dollar amount of earnings required to attain a ratio of one-to-one) should be disclosed in the body of the short form prospectus.*
- (10) *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 8: Description of Securities Being Distributed

8.1 Shares - If shares are being distributed, state the description or the designation of the class of the shares 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; and
- (h) provisions permitting or restricting the issuance of additional securities and any other material restrictions.

8.2 Debt Securities - 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.

8.3 Asset-backed Securities - 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 are dependant or based on the economic performance of the underlying pool of financial assets and that may impact on the timing or amount of payments or distributions to be made under the asset-backed securities;
- (b) information on the underlying pool of financial assets, for the period from the date as at which the following information was presented in the issuer's current AIF to a date not more than 90 days before the date of the issuance of a receipt for the preliminary short form prospectus, relating to
- (i) the composition of the pool as of the end of the period,
 - (ii) income and losses from the pool for the period, on at least a quarterly basis, and

- (iii) the payment, prepayment and collection experience of the pool for the period on at least a quarterly basis;

INSTRUCTIONS

(1) *Present the information required under paragraph (b) in a manner that will enable a reader to easily determine if, 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 on the underlying pool of financial assets, but is compiled on 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.*

(c) the type or types of the 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.

INSTRUCTION

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.

8.4

Specified Derivatives - If specified derivatives are being distributed, describe fully the material attributes and characteristics of the specified 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.

- 8.5 Other Securities** - If securities other than shares, debt securities, asset-backed securities or specified derivatives are being distributed, describe fully the material attributes and characteristics of those securities.
- 8.6 Modification of Terms** - Describe provisions as to modification, amendment or variation of any rights or other terms attached to the securities being distributed. 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.
- 8.7 Ratings** - If one or more ratings, including provisional 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, 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 overall 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 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.

Item 9: Selling Securityholder

9.1 Selling Securityholder - If any of the securities being distributed are to be distributed for the account of a securityholder, state the following:

1. The name of the securityholder.
2. The number or amount of securities owned by the securityholder of the class being distributed.
3. The number or amount of securities of the class being distributed for the account of the securityholder.
4. The number or amount of securities of the issuer of any class to be owned by the securityholder after the distribution, and the percentage that number or amount represents of the total outstanding.
5. Whether the securities referred to in paragraph 2, 3 or 4 are owned both of record and beneficially, of record only, or beneficially only.
6. The date or dates the securityholder acquired the securities.
7. If the securityholder in the 12 months preceding the date of the preliminary short form prospectus acquired any securities of the same class as the securities being distributed, the cost to the securityholder in the aggregate and on a per security basis.

Item 10: Resource Property

10.1 Resource Property - If a material part of the proceeds of a distribution is to be expended on a particular resource property and if the current AIF does not contain the disclosure required under Item 4.3 or 4.4, as appropriate, of Form 44-101F1 for the property or that disclosure is inadequate or incorrect due to changes, disclose the information required under Item 4.3 or 4.4, as appropriate.

Item 11: Acquisitions and Dispositions

11.1 Acquisitions and Dispositions

- (1) Disclose
 - (a) any acquisition completed by the issuer or probable acquisition proposed by the issuer, for which financial statement disclosure is required under Parts 4 or 5 of the National Instrument; and
 - (b) any significant disposition completed by the issuer during the most recently completed financial year or the current financial year or any significant probable disposition proposed by the issuer.⁶²
- (2) Include particulars of
 - (a) the nature of the assets acquired or disposed of or to be acquired or disposed of;
 - (b) the actual or proposed date of each acquisition or disposition;
 - (c) the consideration, both monetary and non-monetary, paid or to be paid to or by the issuer;
 - (d) any material obligations that must be complied with to keep any acquisition or disposition agreement in good standing;

⁶²

See sections 1.1 through 1.6 of National Instrument 44-101 for definitions and interpretation of "significant" acquisitions and dispositions as well as "probable" acquisitions and dispositions.

- (e) the impact of the acquisition or disposition on the operating results and financial position of the issuer;
 - (f) any valuation opinion obtained within the last 12 months required under Canadian securities legislation or Canadian securities directions of a Canadian securities regulatory authority or a requirement of a Canadian stock exchange to support the value of the consideration received or paid by the issuer or any of its subsidiaries for the assets, including the name of the author, the date of the opinion, the assets to which the opinion relates and the value attributed to the assets; and
 - (g) whether the transaction is at arm's-length and, if not, the identity of the other parties and the relationship of the other parties to the issuer.
- (3) Include the financial statements required under Part 4 of National Instrument 44-101.

Item 12: Documents Incorporated by Reference

12.1 Mandatory Incorporation by Reference

- (1) In addition to any other document that an issuer may choose to incorporate by reference, specifically incorporate by reference in the short form prospectus, by means of a statement in the short form prospectus to that effect, the documents set forth below:
1. The issuer's current AIF, if it has one.
 2. Material change reports, except confidential material change reports, filed after the commencement of the issuer's current financial year.
 3. The comparative interim financial statements for the issuer's most recently completed financial period for which the issuer prepares interim financial statements that have been

- (a) filed;
 - (b) approved by the board of directors of the issuer; or
 - (c) released to the public, as a whole or as selected information from those statements.⁶³
4. The comparative financial statements, together with the accompanying report of the auditor, for the issuer's most recently completed financial year for which annual financial statements have been
- (a) filed;
 - (b) approved by the board of directors of the issuer; or
 - (c) released to the public, as a whole or as selected information from those statements.
5. Except as provided in Item 12.5, information circulars or, if the issuer is not required under securities legislation to prepare information circulars, annual filings that, in each case, have been filed after the commencement of the issuer's current financial year.

INSTRUCTION

Paragraph 3 requires issuers to include interim financial statements for only the most recently completed three, six or nine month period. (See definition of "interim period" in National Instrument 44-101.) Issuers that choose to incorporate additional interim financial statements are reminded that paragraph 8.2(1)(a) of National Instrument 44-101 requires a comfort letter from an auditor to be filed, commenting on any unaudited financial statement included in the short form prospectus.

- (2) In the statement incorporating the documents listed in paragraph (1) by reference in a short form prospectus, clarify that the documents are not incorporated by reference to the extent their contents are modified or

⁶³

The reference to selected information is new. It parallels the standard in Rule 41-501.

superseded by a statement contained in the short form prospectus or in any other subsequently filed document that is also incorporated by reference in the short form prospectus.

INSTRUCTION *Any material incorporated by reference in a short form prospectus is required under sections 8.1 and 8.2 of National Instrument 44-101 to be filed with the short form prospectus unless it has been previously filed.*

12.2 **Mandatory Incorporation by Reference of Future Documents** - State that the following documents, if filed by the issuer after the date of the short form prospectus and before the termination of the distribution, are deemed to be incorporated by reference in the short form prospectus:

1. Material change reports, except confidential material change reports.
2. Comparative interim financial statements.
3. Comparative financial statements for the issuer's most recently completed financial year, together with the accompanying report of the auditor.
4. Except as provided in Item 12.5, information circulars or, if the issuer is not required under securities legislation to prepare information circulars, annual filings.

12.3 **Exception for Guaranteed Securities** - Despite Items 12.1 and 12.2, paragraphs 3 and 4 of Item 12.1 do not apply to an issuer to which paragraph 1 or 2 of Item 13.1 applies.

12.4 **Required Language** - State the following, with the first sentence in **bold type** and the bracketed information completed:

"Information has been incorporated by reference in this prospectus from documents filed with securities commissions or similar authorities in Canada. Copies of the documents incorporated herein by reference may be obtained on request without charge from the secretary of the issuer at [insert

complete address and telephone number]. [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 from the secretary of the issuer at the above-mentioned address and telephone number"]."

12.5 Exception for Certain Filings

- (1) An issuer is not required to incorporate by reference in a short form prospectus the disclosure required under securities legislation in an information circular or annual filing of
 - (a) the repricing downward of options or freestanding stock appreciation rights;
 - (b) the composition of the compensation committee of the board of directors of an issuer and its report on executive compensation; and
 - (c) a graph comparing the yearly percentage change in the issuer's cumulative total shareholder return on publicly traded securities with the cumulative total return of a broad equity market index or a published industry or line-of-business index or other issuers.
- (2) An issuer is not required to incorporate by reference in a short form prospectus disclosure in an information circular of an issuer's corporate governance practices, if that disclosure is in the information circular in order to comply with disclosure requirements of an exchange or other market on which the issuer's securities trade.

12.6 List of Material Change Reports - List the material change reports filed by the issuer since the commencement of the issuer's current financial year. In each case, provide the date of filing and a brief description of the material change.

Item 13: Issues of Guaranteed Securities

13.1 Issuer Disclosure

- (1) If a credit supporter has provided a guarantee or alternative credit support to the issuer for all or substantially all of the payments to be made under the securities to be distributed, provide the following disclosure about the issuer:
 1. If the issuer is a wholly owned subsidiary of the credit supporter, has no operations or only minimal operations that are independent of the credit supporter and is an entity that functions essentially as a special purpose division of the credit supporter, a statement that the financial results of the issuer are included in the consolidated financial results of the credit supporter.
 2. If the issuer is a wholly owned subsidiary of the credit supporter but has more than minimal operations that are independent of the credit supporter, a summary of financial information relating to the issuer's operations in a note to the most recent audited annual financial statements of the credit supporter included in the short form prospectus.
 3. If the issuer is not a wholly owned subsidiary of the credit supporter, a full narrative description of the business of the issuer.
- (2) If paragraph 3 of paragraph (1) applies to an issuer and the issuer does not have a current AIF that is incorporated by reference into the short form prospectus, include the required description either
 - (a) directly, or
 - (b) by incorporating by reference
 - (i) if the issuer is a reporting issuer and has an annual information form that has been prepared in compliance with and filed under Canadian securities legislation of a jurisdiction and would be a current AIF if that annual

information form had been filed under National Instrument 44-101, the issuer's annual information form and all other documents required to be incorporated by reference in a short form prospectus under Item 12, or

- (ii) if clause (i) is not applicable and the issuer has a class of securities registered under section 12(b) or 12(g) of the 1934 Act or is required to file reports under section 15(d) of the 1934 Act, the issuer's latest annual report on Form 10-K or Form 20-F filed with the SEC under the 1934 Act or any other document that would be required to be incorporated by reference in a Form S-3 or Form F-3 registration statement filed under the 1933 Act if the issuer were registering on Form S-3 or Form F-3 the securities distributed under the short form prospectus.⁶⁴

INSTRUCTION *For purposes of Item 13.1, an issuer is considered to be a wholly owned subsidiary of the credit supporter, if the credit supporter owns voting securities representing 96 percent or more of the votes attached to the outstanding voting securities of the issuer.*

13.2 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 by complying with the following:

1. If the credit supporter is a reporting issuer and has a current AIF or an annual information form that has been prepared in compliance with and filed under Canadian securities legislation of a jurisdiction and would be a current AIF if that annual information form had been filed under National Instrument 44-101, incorporating by reference into the short form prospectus the credit supporter's annual information form and all other documents that would be required to be incorporated by reference under Item 12 if the credit supporter were the issuer of the securities.

⁶⁴

"SEC" is defined in National Instrument 14-101 Definitions as "the Securities and Exchange Commission of the United States of America".

2. If paragraph 1 is not applicable and the credit supporter has a class of securities registered under section 12(b) or 12(g) of the 1934 Act or is required to file reports under section 15(d) of the 1934 Act, incorporating by reference into the short form prospectus all documents that would be required to be incorporated by reference in a Form S-3 or Form F-3 registration statement filed under the 1933 Act if the securities distributed under the short form prospectus were being registered on Form S-3 or Form F-3.
3. If neither paragraph 1 nor paragraph 2 applies to the credit supporter, providing directly in the short form prospectus the same disclosure that would be contained in the short form prospectus through the incorporation by reference of the documents referred to in Item 12.1 if the credit supporter were the issuer of the securities and those documents had been prepared by the credit supporter.
4. Providing 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.

INSTRUCTION *Documents incorporated by reference are required under sections 8.1 and 8.2 of National Instrument 44-101 to be filed with the short form prospectus unless they have been previously filed.*

Item 14: Relationship between Issuer or Selling Securityholder and Underwriter

14.1 Relationship between Issuer or Selling Securityholder and Underwriter -
If the issuer or selling securityholder is a connected issuer of an underwriter of the distribution, or if the issuer or selling securityholder is also an underwriter,

- (a) until Multilateral Instrument 33-105 Underwriting Conflicts comes into force, provide the disclosure required by Item 15 of Appendix B of National Policy Statement No. 47 Prompt Offering Qualification System as that National Policy read immediately before it was revoked; and

- (b) after Multilateral Instrument 33-105 comes into force, comply with the requirements of that Multilateral Instrument.

Item 15: Interest of Experts

15.1 Interest of Experts

- (1) Disclose all direct or indirect interests in the property of the issuer or of an associated party or affiliate of the issuer 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 in a short form prospectus or a document specifically incorporated by reference in a short form prospectus as having prepared or certified a part of that document or a report or valuation described in a short form prospectus or in a document specifically incorporated by reference into a short form prospectus.
- (2) Disclose the beneficial ownership, direct or indirect, by a person or company referred to in paragraph (1) of any securities of the issuer or any associated party or affiliate of the issuer.
- (3) For the purposes of paragraph (2), if ownership is less than one percent, a general statement to that effect shall be sufficient.
- (4) 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 issuer or of any associated party or affiliate of the issuer, disclose the fact or expectation.

Item 16: Promoters

16.1 Promoters

- (1) For a person or company that is, or has been within the two years immediately preceding the date of the preliminary short form prospectus, a promoter of the issuer or of a subsidiary of the issuer state

- (a) the person or company's name;
 - (b) the number and percentage of each class of voting 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 a subsidiary of the promoter, 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 therefor received or to be received by the issuer or a subsidiary of the issuer; and
 - (d) for an asset acquired within the two years before the date of the preliminary short form prospectus or thereafter, or to be acquired, by the issuer or by a subsidiary of the issuer from a promoter or a subsidiary of 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 issuer, the promoter, or an affiliate of the issuer 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 or past promoter referred to in paragraph (1) has been a director, officer or promoter of any person or company during the 10 years ending on the date of the preliminary short form prospectus that
- (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

Canadian 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

- (b) 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 or past promoter referred to in paragraph (1) has
- (a) been subject to any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority or has entered into a settlement agreement with a Canadian securities regulatory authority; or
 - (b) been subject to 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 the date National Instrument 44-101 came into force unless the disclosure would likely be considered important to a reasonable investor in making an investment decision.
- (5) If a promoter or past promoter referred to in paragraph (1) has, within the 10 years before the date of the preliminary 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, state the fact.

Item 17: Other Material Facts

17.1 Other Material Facts - Give particulars of any material facts about the securities being distributed that are not disclosed under the preceding items or in the documents incorporated by reference into the short form prospectus and are necessary in order for the short form prospectus to contain full, true and plain disclosure of all material facts relating to the securities to be distributed.

Item 18: Statutory Rights of Withdrawal and Rescission

18.1 General - 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 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."

18.2 Non-fixed Price Offerings - In the case of a non-fixed price offering, replace, if applicable in the jurisdiction in which the short form prospectus is filed, the second sentence in the legend in Item 18.1 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 19: Reconciliation to Canadian GAAP

19.1 Reconciliation to Canadian GAAP - If financial statements prepared in accordance with foreign GAAP are included in the short form prospectus and a reconciliation to Canadian GAAP has not been incorporated by reference in the short form prospectus, include the reconciliation to Canadian GAAP required under paragraph (b) of subsection 6.1(2) of the National Instrument.

Item 20: Certificates

20.1 Officers, Directors and Promoters - Include a certificate in the following form signed by

- (a) 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 that of a chief financial officer;
- (b) on behalf of the board of directors of the issuer, any two directors of the issuer duly authorized to sign, other than the persons referred to in paragraph (a), and
- (c) any person or company who is a promoter of the issuer:

"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 prospectus as required by the securities laws of [insert name of each jurisdiction in which qualified]. [Insert if offering

made in Quebec - "For the purpose of the Province of Quebec, this simplified prospectus, as supplemented by the permanent information record, contains no misrepresentation that is likely to affect the value or the market price of the securities to be distributed.""]"

20.2 Underwriters - If there is an underwriter, include a certificate in the following form signed by the underwriter or underwriters who, with respect to the securities being distributed, are in a contractual relationship with the issuer or selling securityholders:

"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 prospectus as required by the securities laws of [insert name of each jurisdiction in which qualified]. [Insert if offering made in Quebec - "For the purpose of the Province of Quebec, to our knowledge, this simplified prospectus, as supplemented by the permanent information record, contains no misrepresentation that is likely to affect the value or the market price of the securities to be distributed.""]"

20.3 Credit Supporters - If disclosure concerning a credit supporter is prescribed by Item 13.2 and the credit supporter is an affiliate of the issuer, include a certificate of the credit supporter in the form required in Item 20.1 signed by

- (a) the chief executive officer and the chief financial officer or, if no such officers have been appointed, a person acting on behalf of the credit supporter in a capacity similar to a chief executive officer and a person acting on behalf of the credit supporter in a capacity similar to that of a chief financial officer; and
- (b) on behalf of the board of directors of the credit supporter, any two directors of the credit supporter duly authorized to sign, other than the persons referred to in paragraph (a).

20.4 Amendments

- (1) Include in an amendment to a short form prospectus that does not restate the short form prospectus the certificates required under Items 20.1, 20.2 and, if applicable, Item 20.3 with the reference in each certificate to "this short form prospectus" omitted and replaced by "the short form prospectus dated [insert date] as amended by this amendment".
- (2) Include in an amended and restated short form prospectus the certificates required under Items 20.1, 20.2 and, if applicable, Item 20.3 with the reference in each certificate to "this short form prospectus" omitted and replaced by "this amended and restated short form prospectus".

NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS
FORM 44-101F2
SHORT FORM PROSPECTUS
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NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS
APPENDIX A
AUTHORIZATION OF
INDIRECT COLLECTION OF PERSONAL INFORMATION

The attached Schedule 1 contains information concerning the name, position with or relationship to issuer, name and address of employer, if other than the issuer, residential address, date and place of birth and citizenship of each director, executive officer, promoter, if any, and each director and executive officer of the promoter, if any, of the issuer named below (the "Issuer") as required by securities legislation, unless previously delivered to the regulator. The Issuer hereby confirms that each person or company listed on Schedule 1

- (a) has been notified by the Issuer
 - (i) of the Issuer's delivery to the regulator of the information pertaining to the person or company as set out in Schedule 1,
 - (ii) that such information is being collected indirectly by the regulator under the authority granted to it in securities legislation,
 - (iii) that such information is being collected for the purpose of enabling the regulator to discharge its obligations under the provisions of securities legislation that, among other things, 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 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 securityholders, and
 - (iv) of the title, business address and business telephone number of the public official in the local jurisdiction as set out in the attached Schedule 2, who can answer questions about the regulator's indirect collection of the information; and
- (b) has authorized the indirect collection of the information by the regulator.

Date: _____

Name of Issuer

Per: _____

Name

Official Capacity

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

**Schedule 1 Personal Information
to Appendix A Authorization of Indirect
Collection of Personal Information**

[Name of Issuer]

<u>Name and Position with or</u> <u>Relationship to Issuer</u>	<u>Name and Address of Employer,</u> <u>if other than Issuer</u>	<u>Residential Address</u>	<u>Date and Place of Birth</u>	<u>Citizenship</u>
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**Schedule 2 Public Official
to Appendix A Authorization of Indirect
Collection of Personal Information**

Local Jurisdiction

Public Official

Alberta

Executive Director
Alberta Securities Commission
Suite 400
300 - 5th Avenue S.W.
Calgary, Alberta T2P 3C4
Telephone: (403) 297-4228

British Columbia

Supervisor, Registration
British Columbia Securities Commission
Suite 200
865 Hornby Street
Vancouver, British Columbia V6Z 2H4
Telephone: (604) 899-5692
Toll Free within British Columbia: (800) 373-6393

Manitoba

Director
Manitoba Securities Commission
Consumer and Corporate Affairs
Administration
1034 - 405 Broadway
Winnipeg, Manitoba R3C 3L6
Telephone: (204) 945-2653

New Brunswick

Administrator
Department of Justice
Securities Branch
Harbour Building, 133 Prince William Street
Suite 606, P.O. Box 5001
Saint John, New Brunswick E2L 4Y9
Telephone: (506) 658-3060

Newfoundland

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

Northwest Territories

[!]
Government of the Northwest Territories
Securities Registries
Department of Justice
P.O. Box 1320,
Yellowknife, Northwest Territories X1A 2L9

Nova Scotia	Deputy Director, Compliance and Enforcement Nova Scotia Securities Commission P.O. Box 458 Halifax, Nova Scotia B3J 2P8 Telephone: (902)424-5354
Nunavut	[!] Nunavut Legal Registries Government of Nunavut BAG 9500 Yellowknife, Northwest Territories X1A 2R3
Ontario	[!] Ontario Securities Commission 18th Floor, 20 Queen Street West Toronto, Ontario M5H 2S8 [(416) 593-!]
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
Quebec	Secretary and Director Legal Department Commission d'accès à l'information Québec City (Head Office) 575, rue St-Amable Bureau 1.10 Québec, Québec G1R 2G4 Telephone: (418) 528-7741 Toll Free in Québec: (888) 628-7741
Saskatchewan	Director Saskatchewan Securities Commission 800-1920 Broad Street Regina, Saskatchewan S4P 3V7 Telephone: (306) 787-5842
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

NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS
APPENDIX B
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 short form prospectus (the "Short Form 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 Short Form 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 Short Form 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 Short Form 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

NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS
APPENDIX C
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 short form prospectus (the "Short Form 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 Short Form 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 Short Form 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 Short Form Prospectus.
14. Until six years after completion of the distribution of the Securities made under the Short Form 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 Short Form 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 the Agent is not an individual, the title of the person

**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 replaces National Policy Statement No. 47 Prompt Offering Qualification System ("NP47") and sets out the substantive test for an issuer to qualify to file a prospectus in the form of a short form prospectus. The purpose of National Instrument 44-101 is the same as NP47's: to shorten the time period in which, and streamline the procedures by which, qualified issuers and their selling securityholders can obtain access to the Canadian capital markets through a prospectus offering.

British Columbia, Alberta, Ontario, Manitoba and Nova Scotia have adopted National Instrument 44-101 by way of rule. Saskatchewan has adopted it by way of regulation. Quebec has adopted it by way of policy. All other jurisdictions have adopted National Instrument 44-101 by way of related blanket ruling or order. Each jurisdiction implements National Instrument 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 National Instrument 44-101 (also referred to as "this Policy") provides information relating to the manner in which the provisions of the National Instrument are intended to be interpreted or applied by the Canadian securities regulatory authorities, as well as the exercise of discretion under National Instrument 44-101. Terms used and not defined in the Companion Policy that are defined or interpreted in the National Instrument or a definition instrument in force in the jurisdiction should be read in accordance with the National Instrument or 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 National Instrument 44-101 in those jurisdictions that have adopted National Instrument 44-101 by way of related blanket ruling or order, the provisions of National Instrument 44-101 prevail over the provisions of this Policy.

1.2 Interrelationship With Local Securities Legislation - National Instrument 44-101, while being the primary instrument regulating short form prospectus

distributions, is 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 MRRS** - National Policy 43-201 Mutual Reliance Review System for Prospectuses and AIFs describes the practical application of the mutual reliance review system relating to the filing and review of prospectuses, including mutual fund and shelf prospectuses, amendments to prospectuses, annual information forms and related materials. While use of MRRS is optional, MRRS represents the only means by which an issuer can enjoy the benefits of co-ordinated review by the Canadian securities regulatory authorities in the various jurisdictions in which the issuer has filed a short form prospectus or an AIF. Under the MRRS, one Canadian securities regulatory authority or regulator as defined in National Instrument 14-101 Definitions, as applicable, acts as the principal regulator for all materials relating to a filer.

The provisions of this Policy relating to clearance of a short form prospectus apply only to filings in a single jurisdiction and filings for which the issuer has not elected to use MRRS.

- 1.4 Interrelationship with Selective Review** - The Canadian securities regulatory authorities in Ontario, British Columbia and Alberta have adopted a system of selective review of certain documents, including initial AIFs, renewal AIFs, short form prospectuses and amendments to short form prospectuses. Under the selective review system, these documents are 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 initial AIFs, renewal AIFs, short form prospectuses and amendments to short form prospectuses not being reviewed.

- 1.5 Interrelationship With Shelf Distributions (National Instrument 44-102)** - Issuers qualified under National Instrument 44-101 to file a prospectus in the form of a short form prospectus and their securityholders can distribute securities under a short form prospectus using the shelf distribution procedures under National Instrument 44-102 Shelf Distributions. The Companion Policy to National Instrument 44-102 Shelf Distributions explains that the distribution of securities

under the shelf system is governed by the requirements and procedures of National Instrument 44-101 and securities legislation, except as supplemented or varied by National Instrument 44-102. Therefore, issuers qualified to file a prospectus in the form of a short form prospectus and selling securityholders of those issuers that wish to distribute securities under the shelf system should have regard to National Instrument 44-101 and this Policy first, and then refer to National Instrument 44-102 and the accompanying policy for any additional requirements.

- 1.6 Interrelationship With PREP Procedures (National Instrument 44-103) -** National Instrument 44-103 Post-Receipt Pricing contains the post receipt pricing procedures (the "PREP procedures"). All issuers and selling securityholders can use the PREP procedures of National Instrument 44-103 to distribute securities. Issuers and selling securityholders that wish to distribute securities under a prospectus in the form of a short form prospectus using the PREP procedures should have regard to National Instrument 44-101 and this Policy first, and then refer to National Instrument 44-103 and the accompanying policy for any additional requirements.

1.7 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 National Instrument 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 National Instrument 44-101.

- (2) **Asset-backed security** - The definition of "asset-backed security" is virtually identical to the definition adopted in the October, 1992 amendments to Form S-3 of the 1933 Act, permitting issuers of "investment grade" asset-backed securities access to the U.S. short-form registration statement and related procedures.

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) **Principal Obligor** - The term "principal obligor" is defined to mean, for an asset-backed security, a person or company that is obligated to make

payments, has guaranteed payments, or has provided alternative credit support for payments, on financial assets that represent a third or more of the aggregate amount owing on all of the financial assets underlying the asset-backed security. This term applies to a person or company that is obligated by the terms of the asset, eg. a receivable, to make payments. It does not include a person or company acting as "servicer" that collects payments from an obligor and remits payments to the issuer. Nor does the term include a seller, ie. a person or company that has sold the financial assets comprising the pool to the issuer. Sellers of financial assets have assigned to the issuer the right to receive payments on the financial assets; they are not the ones contractually obligated to make payments on the financial assets.

- (4) **Probable Acquisition of a Business and Probable Acquisition of Related Business** - See section 4.3.
- (5) **Regulator**- The regulator for each jurisdiction is listed in Appendix D to National Instrument 14-101 Definitions. In practice, that person has often delegated his or her powers to act under National Instrument 44-101 to another staff member of the same Canadian 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 National Instrument 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 (except for applications for exemptions from Part 2 of National Instrument 44-101, for which the regulator is the Director, Exemptions and Orders)
Manitoba	Director, Corporate Finance
New Brunswick	Administrator of Securities
Newfoundland	Director of Securities
Northwest Territories	Deputy Registrar of Securities
Nova Scotia	Director of Securities

Nunavut	Registrar of Securities
Ontario	Manager, Corporate Finance
Prince Edward Island	Registrar of Securities
Quebec	Commission des valeurs mobilières du Québec
Saskatchewan	Deputy Director, Corporate Finance (except for applications for exemptions from Part 2 of National Instrument 44-101, for which the regulator is the Saskatchewan Securities 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 reorganization". In the case of an amalgamation, the amalgamated corporation is regarded by the Canadian securities regulatory authorities as existing "as a result of" the amalgamation. Also, if a corporation is incorporated for the sole purpose of facilitating a reorganization, the Canadian securities regulatory authorities regard the new corporation as "existing as a result of a reorganization" despite the fact that the corporation may have been incorporated before the reorganization. The definition of "successor issuer" also contains an exclusion applicable to divestitures. For example, an issuer may carry out a reorganization that results in the distribution to securityholders 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

- (1) **Reporting Issuers in Local Jurisdiction that have been Reporting Issuers for 12 Months in a Jurisdiction other than the Local Jurisdiction (Clause 1(a)(ii) of section 2.2 of National Instrument 44-101)** - Clause 1(a)(ii) of section 2.2 of National Instrument 44-101 provides that a reporting issuer in the local jurisdiction that is, and has been for the 12 calendar months preceding the date of the filing of its most recent AIF, a reporting issuer under Canadian securities legislation in at least one jurisdiction, other than the local jurisdiction, satisfies the reporting issuer criterion for being qualified to file a prospectus in the form of a short form prospectus if it has filed in the local jurisdiction all continuous disclosure documents that it was required to file during the 12 calendar months preceding the date of the filing of its most recent AIF under the Canadian securities legislation of any jurisdiction in which it has been a reporting issuer. An issuer that has already filed with the Canadian securities regulatory authority of the local jurisdiction some or all of the continuous disclosure documents contemplated in this clause is not required to file those documents again.
- (2) **Issuers not Reporting Issuers in Local Jurisdiction that are and have been Reporting Issuers for 12 Months in a Jurisdiction other than the Local Jurisdiction (Subparagraph 1(b) of section 2.2 of National Instrument 44-101)** - Subparagraph 1(b) of section 2.2 of National Instrument 44-101 provides that an issuer that is not a reporting issuer in the local jurisdiction may be qualified to file a prospectus in the form of a short form prospectus if the issuer is, and has been for the 12 calendar months preceding the date of the filing of its most recent AIF, a reporting issuer under Canadian securities legislation in at least one jurisdiction, other than the local jurisdiction, and if (i) the securities regulatory authority is unable to deem the issuer to be, or designate the issuer as, a reporting issuer, (ii) the issuer has filed in the local jurisdiction all continuous disclosure documents that it was required to file during the 12 calendar months preceding the date of the filing of its most recent AIF under the Canadian securities legislation of any jurisdiction in which it has been a reporting issuer, and (iii) the issuer has provided an undertaking to the securities regulatory authority that it will file all continuous disclosure documents that it would be required to file under securities legislation if it were a reporting issuer from the time of the filing of its most recent AIF until the issuer becomes a reporting issuer. As of the coming into force

date of this Policy, only the provinces of Alberta, British Columbia, Quebec, Nova Scotia and Saskatchewan have the statutory power to deem an issuer to be, or to designate an issuer as, a reporting issuer.

2.2 Alternative Eligibility Criteria: Issuers that have not been Reporting Issuers for 12 Months in any Jurisdiction (Sections 2.3, 2.5, 2.6, 2.7, and 2.8 of National Instrument 44-101) - Issuers that have not been reporting issuers for 12 months in any jurisdiction may nonetheless be qualified to file a prospectus in the form of a short form prospectus under the following alternative qualification criteria of National Instrument 44-101:

1. Section 2.3, which applies to issuers with a public float of \$300,000,000 or more.
2. Section 2.5, which applies to issuers of non-convertible debt securities, non-convertible preferred shares or cash settled derivatives, if another person or company that satisfies prescribed criteria fully and unconditionally guarantees or provides alternative credit support for the payments to be made by the issuer of the securities as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities.
3. Section 2.6, 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 fully and unconditionally guarantees or provides alternative credit support for the payments to be made by the issuer of the securities as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities.
4. Section 2.7, which applies to issuers of asset-backed securities.
5. Section 2.8, which applies to successor issuers following reorganizations.

Under sections 2.5, 2.6 and 2.7 of National Instrument 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. Under section 2.8 of National Instrument 44-101, a successor issuer must be a reporting issuer in at least one

jurisdiction. However, it is not necessary for it to have been one for 12 months, as the successor issuer may rely on the reporting history of one of the participants in the reorganization. Paragraph 1 of section 2.3 requires the issuer to be a reporting issuer or, if the issuer is not a reporting issuer in the local jurisdiction, it must be a reporting issuer under Canadian securities legislation in a jurisdiction other than the local jurisdiction, and satisfy the criterion in subparagraph 5 of paragraph 1(b) of section 2.2 of National Instrument 44-101.

2.3 Calculation of the Aggregate Market Value of an Issuer's Equity Securities (Section 2.9 of National Instrument 44-101)

- (1) Section 2.9 of National Instrument 44-101 sets out how to determine whether an issuer satisfies the market value criteria contained in Part 2 of National Instrument 44-101. Subsection 2.9(2) requires certain securities to be excluded when calculating the total number of equity securities outstanding, and subsection 2.9(3) requires a subset of those excluded securities to be included nonetheless, despite subsection 2.9(2). The following examples are provided to assist issuers and their advisers in determining which securities are to be excluded in accordance with subsections 2.9(2) and (3):

Example (1):

A portfolio manager manages a pension fund. The pension fund holds 11% of the equity securities of the issuer.

Result: These equity securities must be excluded in calculating the market value of the issuer's equity securities.

Example (2):

A portfolio manager (not an affiliate of the issuer) manages three mutual funds each of which holds 3% of the equity securities of the issuer. An affiliate of the portfolio manager (not an affiliate of the issuer) manages two mutual funds each of which holds 3% of the equity securities of the issuer.

Result: The aggregated equity securities (15%) do not have to be excluded in calculating the market value of the issuer's equity securities.

Example (3):

The facts are the same as in Example (2) above, except that the portfolio manager is an affiliate of the issuer.

Result: The aggregated equity securities must be excluded in calculating the market value of the issuer's equity securities.

Example (4):

A portfolio manager (not an affiliate of the issuer) manages three non-redeemable investment funds (A, B and C). A holds 12% of the equity securities of the issuer. B and C each hold 6% of the equity securities of the issuer.

Result: The equity securities of the issuer held by A must be excluded in calculating the market value of the issuer's equity securities but the equity securities held by B and C (12% in the aggregate) need not be excluded in calculating the market value of the issuer's equity securities.

- (2) Instalment receipts that evidence the beneficial ownership of outstanding equity securities (subject to an encumbrance to secure the obligation of the instalment receipt holder to pay future instalments) and other similar receipts that evidence beneficial ownership of outstanding equity securities are not, themselves, equity securities. Consequently, the market value of such a receipt may not be included in the market value calculation of an issuer's outstanding equity securities (subject to the exception in paragraph 2.9(1)(b) of the National Instrument). The market value of the equity securities evidenced by the receipt, may however, be included, subject to subsections 2.9(2) and 2.9(3) of National Instrument 44-101.

The exclusions set out in subsection 2.9(2) of National Instrument 44-101 refer to equity securities of an issuer that are beneficially owned, or over which control or direction is exercised by persons or companies that, alone or together with their respective affiliates and associated parties, beneficially own or exercise control or direction over more than 10 percent of the outstanding equity securities of the issuer. Instalment receipt transactions typically involve a custodian holding a security interest

in the securities the beneficial ownership of which is evidenced by instalment receipts. The Canadian securities regulatory authorities do not regard the custodian, by virtue of holding a security interest, as exercising "control or direction" over the securities for the purposes of subsection 2.9(2) of National Instrument 44-101 if the custodian is not entitled to exercise any voting rights attached to the securities or dispose of the securities without the beneficial owner's consent.

- 2.4 Alternative Qualification Criteria for Substantial Issuers (Section 2.3 of National Instrument 44-101)** - Subparagraph 1(b) of section 2.3 of National Instrument 44-101 requires substantial issuers, that are not reporting issuers in the local jurisdiction, to be reporting issuers under Canadian securities legislation in a jurisdiction, other than the local jurisdiction, and to satisfy the criterion in subparagraph 5 of paragraph 1(b) of section 2.2. That criterion requires the issuer to have provided an undertaking to the securities regulatory authority that it will file all continuous disclosure documents that it would be required to file under securities legislation if it were a reporting issuer from the time of the filing of its most recent AIF until the issuer becomes a reporting issuer.
- 2.5 Alternative Qualification Criteria for Issuers of Guaranteed Debt Securities, Preferred Shares and Cash Settled Derivatives (Sections 2.5 and 2.6 of National Instrument 44-101)** - Sections 2.5 and 2.6 of National Instrument 44-101 allow an issuer to qualify to file a prospectus in the form of a short form prospectus based on a full and unconditional guarantee or alternative credit support. The Canadian 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.
- 2.6 Alternative Qualification Criteria for Asset-Backed Securities (Section 2.7 of National Instrument 44-101)**
- (1) In order to be qualified to file a prospectus in the form of a short form prospectus under section 2.7 of National Instrument 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 dependant 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 this section 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 2.7 of National Instrument 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.

2.7 Reorganizations (Section 2.8 of National Instrument 44-101)

- (1) Section 2.8 of National Instrument 44-101 provides alternative qualification criteria for a successor issuer to qualify to file a prospectus in

the form of a short form prospectus even though it has not been a reporting issuer in any jurisdiction for 12 months. It may qualify if, among other things, it is a reporting issuer under Canadian securities legislation and, at the time of the reorganization, at least one of the participants in the reorganization satisfied the 12 month reporting issuer criterion in paragraph 1 of section 2.2 of National Instrument 44-101.

- (2) An issuer that was previously qualified to file a prospectus in the form of a short form prospectus under the basic qualification criteria set out in section 2.2 of National Instrument 44-101, including the \$75,000,000 market value requirement, and is the subject of a reorganization that results in that issuer becoming a wholly-owned subsidiary of another entity, will not be qualified to file a prospectus in the form of a short form prospectus under section 2.2. This is because it cannot satisfy the \$75,000,000 market value requirement. It may continue to be qualified to file a prospectus in the form of a short form prospectus under section 2.4 or section 2.5 of National Instrument 44-101 (approved rating or guaranteed securities) or section 2.7 of National Instrument 44-101 (asset-backed securities).
- (3) An entity that carries on the portion of the business that was "spun-off" is not a successor issuer within the meaning of the definition. The Canadian securities regulatory authorities have, from time to time, granted relief allowing the "spun-off" entity to file a prospectus in the form of a short form prospectus even though it may not otherwise satisfy certain of the qualification criteria. In those situations where the Canadian securities regulatory authorities have granted relief, there has been substantial audited segmented disclosure of the "spun-off" entity in the market place for at least one year before the reorganization. In addition, the Canadian securities regulatory authorities will generally look at whether the spun-off entity is described in the AIF and MD&A of the parent company. Applications for relief will be considered on a case by case basis.
- (4) Market participants are also reminded that if an issuer files a prospectus or other offering document following a material reorganization, take-over bid or acquisition of assets, the prospectus or offering document is required to contain, either directly or, if permitted, through incorporation by reference, appropriate disclosure concerning the reorganization, take-

over bid or acquisition of assets and its effect on the issuer in order for the prospectus or other offering document to contain full, true and plain disclosure of all material facts.

2.8 Adoption by Successor Issuer of a Participant's AIF Following a Reorganization (Section 2.10 of National Instrument 44-101) - Section 2.10 of National Instrument 44-101 enables a successor issuer to adopt as its own AIF the AIF of a participant in the reorganization, if the AIF was a current AIF of the participant at the time of the reorganization. By adopting the AIF of a participant, the successor issuer is deemed under section 2.10 to have a current AIF for the purposes of securities legislation. It is not relevant whether the participant that filed the AIF continues to exist after the reorganization. If the participant continues to exist after the reorganization, the adoption by the successor issuer of the current AIF of the participant does not preclude the participant from having the AIF in order to, itself, qualify to file a prospectus in the form of a short form prospectus. Under section 2.10 of National Instrument 44-101, a successor issuer may choose to adopt the current AIF of more than one participant in the reorganization that gave rise to the successor issuer. This may be appropriate in circumstances where the successor issuer succeeded to the businesses of two participants where each participant had a current AIF. A successor issuer may always file its own AIF in order to have a current AIF. The first AIF filed by a successor issuer will be an initial AIF.

PART 3 AIF

3.1 Initial AIF Review Procedures (Section 3.1 of National Instrument 44-101)

- (1) An AIF filed by either an issuer that has not previously had an AIF accepted for filing in the local jurisdiction or an issuer that previously had a current AIF in the local jurisdiction and no longer has one is treated as an initial AIF for the purpose of review by the POP regulator.
- (2) An initial AIF and supporting documents will be reviewed by the Canadian securities regulatory authorities, including the CVMQ, in accordance with the procedures described in MRRS if the issuer has elected to use MRRS. Compliance by issuers with the MRRS procedures, although not mandatory, will generally result in the most expeditious treatment of initial

AIFs on a national basis. If an issuer does not elect MRRS, the review of the initial AIF will not be co-ordinated among the various jurisdictions in which the issuer has filed the AIF, nor is the review subject to any particular timeframe.

- (3) An issuer filing in more than one jurisdiction should file the initial AIF, together with any supporting materials, as nearly as may be practicable, contemporaneously in each of the jurisdictions in which the issuer wishes to become qualified to file a prospectus in the form of a short form prospectus. Contemporaneous filing is automatic for issuers using SEDAR. An issuer should file the AIF in each jurisdiction identical in form and content, including the date, except that French language documents filed in Quebec need not be filed in the other jurisdictions, except as required under subsections 3.1(3) and (4) of National Instrument 44-101. The review of documents filed in Quebec in the French language, apart from substantive comments applying to both English and French language versions, will ordinarily be dealt with between Quebec and the issuer or the issuer's agent in Quebec directly.

3.2 Renewal AIF Filing and Review Procedures (Section 3.2 of National Instrument 44-101)

- (1) An issuer that has a current AIF for its second most recently completed financial year and wishes to have a current AIF for its most recently completed financial year must file a renewal AIF in accordance with section 3.2 of National Instrument 44-101.
- (2) An issuer that does not have a current AIF in the local jurisdiction, yet has a current AIF in another jurisdiction, and wishes to file a short form prospectus in the local jurisdiction may file, as an initial AIF under section 3.1 of National Instrument 44-101 in the local jurisdiction, either (i) the new AIF that it is filing as a renewal AIF in the other jurisdiction, or (ii) the AIF that is a current AIF in the other jurisdiction. The issuer should notify all the other jurisdictions in which it already has a current AIF that it is filing an initial AIF in a new jurisdiction.
- (3) An issuer filing in more than one jurisdiction should file a renewal AIF, together with any supporting materials, as nearly as may be practicable,

contemporaneously in each of the jurisdictions in which the issuer wishes to remain qualified to file a prospectus in the form of a short form prospectus. Contemporaneous filing is automatic for issuers using SEDAR. An issuer should file an AIF in each jurisdiction identical in form and content, including the date, except that French language documents filed in Quebec need not be filed in the other jurisdictions, except as otherwise provided in subsections 3.2(6) and (7) of National Instrument 44-101.

- (4) A renewal AIF, if selected for review, will be reviewed by the Canadian securities regulatory authorities in accordance with section 3.2 of National Instrument 44-101 and the procedures described in MRRS, if the issuer has elected to use MRRS.
- (5) This subsection applies to an issuer that files a renewal AIF in multiple jurisdictions and has not elected to use MRRS and to an issuer that files a renewal AIF in only one jurisdiction. If an issuer's renewal AIF has been selected for review and the issuer files a preliminary short form prospectus, both the issuer's preliminary short form prospectus and its renewal AIF will be reviewed at the same time. In these circumstances, comments arising in the course of the review of the renewal AIF will be taken into account during the review of the preliminary short form prospectus. The notice that the review of the renewal AIF has been completed will be issued before, or concurrently with, the issuance of the receipt for the short form prospectus. A receipt for the short form prospectus will not be issued until the review of the renewal AIF has been completed. No particular timeframe applies to this review.

3.3 Supporting Documents (Section 3.3 of National Instrument 44-101)

- (1) Any material incorporated by reference in an AIF is required under paragraph 3.3(1)(a) of National Instrument 44-101 to be filed with the AIF unless it has been previously filed. When an issuer using SEDAR files a previously unfiled document with its AIF, the issuer should ensure that the document is filed under the appropriate SEDAR filing type and document type specifically applicable to the document, rather than generic type "Documents Incorporated by Reference". For example, an issuer that has incorporated by reference an information circular in its AIF and

has not previously filed the circular should file the circular under the "Management Proxy Materials" filing subtype and the "Management proxy/information circular" document type.

- (2) There is no regulatory requirement for auditor involvement with respect to the preparation of an AIF. No solicitor's, auditor's, accountant's, engineer's, appraiser's or other consent is required to be filed with an AIF. However, reporting issuers may choose to involve their auditors. The auditing profession's standards may require limited auditor involvement in certain circumstances. Section 8.3 of National Instrument 44-101 requires the filing of consents of experts with a short form prospectus. In order to be able to provide the necessary consent letter on a short form prospectus, an auditor will be obliged to comply with applicable requirements of the Handbook and of Canadian securities legislation of the jurisdictions in which the AIF is filed.

PART 4 DISCLOSURE IN A SHORT FORM PROSPECTUS OF FINANCIAL STATEMENTS FOR ACQUISITIONS AND MULTIPLE ACQUISITIONS⁶

4.1 Financial Statement Disclosure of Significant Acquisitions and Multiple Acquisitions - Attached as Appendix A to this Policy is a chart describing the obligations for financial statement disclosure of significant acquisitions and multiple acquisitions.

4.2 Acquisition of a Business - Part 4 of National Instrument 44-101 requires an issuer that has made a significant acquisition or is proposing to make a significant probable acquisition to include in its short form prospectus certain financial statements of each business acquired or to be acquired. Part 5 of National Instrument 44-101 has similar requirements for an issuer that has made or is proposing to make multiple acquisitions that are not otherwise significant. For this purpose, the term "business" should be evaluated in light of the facts and circumstances involved. The Canadian securities regulatory authorities consider that a separate entity, a subsidiary or a division will normally be a business and that

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This Part has been revised to refer expressly to the business acquisition financial statement disclosure requirements for multiple acquisitions in Part 5 of National Instrument 44-101.

in certain circumstances a lesser component of a person or company may also constitute a business, whether or not the subject of the acquisition previously had financial information. Continuity of business operations is considered in determining whether an acquisition constitutes the acquisition of a business. Other factors that will be considered include

- (a) whether the nature of the revenue producing activity or potential revenue producing activity will remain generally the same after the acquisition; and
- (b) whether any of the physical facilities, employees, marketing, systems, sales forces, customers, operating rights, production techniques or trade names are acquired by the issuer instead of remaining with the vendor after the acquisition.

4.3 Probable Acquisitions

- (1) The definitions of "probable acquisition of a business" and "probable acquisition of related businesses" in National Instrument 44-101 both include the phrase "where a reasonable person would believe that the likelihood of the acquisition being completed is high". The Canadian securities regulatory authorities will interpret this phrase having regard to section 3290 of the Handbook "Contingencies". It is the view of the Canadian securities regulatory authorities 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; and
 - (c) the nature of conditions to the completion of the acquisition including any material third party consents required.
- (2) The test of whether a proposed acquisition is a "probable acquisition of a business" or "probable acquisition of related businesses" 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 as to whether an acquisition is a probable acquisition, an objective test requires the 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 definition relied on 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 definition 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 definition in particular circumstances.

- 4.4** **Timing of Significance Tests** - Subsection 1.2(1) of the National Instrument sets out the three tests for whether an acquisition of a business by an issuer is a "significant acquisition". The first test measures the assets of the acquired business against the assets of the issuer. The second test measures the issuer's investments in and advances to the acquired business against the assets of the issuer. The third test measures the income from continuing operations of the acquired business against the income from continuing operations of the issuer. If any one of these three tests is satisfied at the 20 percent level, the acquisition is considered "significant" to the issuer. The three tests for significance of an acquisition are applied at two points in time: first, at the time of acquisition and, again, at the time of filing the preliminary short form prospectus. The earlier date is consistent with the timing of the application of the SEC's application of its test for significance of an acquisition and provides issuers with the certainty that if an acquisition is not significant at the time it is made it will not become significant for the purpose of the test. The three tests are applied again at a later date only if the acquisition was significant at the time of the earlier date. The second date is important, in the Commission's view, to recognize the potential growth of issuers between the date of acquisition and the date of a short form prospectus offering and the corresponding potential decline in significance of any acquisition made. In order

for an acquisition to be significant it must satisfy one of the three 20 percent tests on both dates.⁷

4.5 Application of Investment Test for Significance of an Acquisition - Subsection 1.2(1) of the National Instrument sets out when an acquisition of a business by an issuer is a "significant acquisition". One of the tests is whether the issuer's consolidated investments in and advances to the business or related businesses exceeds 20 percent of the consolidated total assets of the issuer as at the date of the most recent year end balance sheet of the issuer, before giving effect to the acquisition. In applying this test, the "investments in" the business should be determined using the total cost of the purchase, as determined by generally accepted accounting principles, which includes consideration paid and the costs of the acquisition. For the purposes of this test, any new debt incurred by the issuer in the acquisition should also be included as an investment by the issuer in the business.⁸

4.6 Application of Income Test for Significance of an Acquisition - The third test of an acquisition's significance is whether the issuer's proportionate share of consolidated income from continuing operations of the business exceeds 20 percent of the income of the issuer from continuing operations for the 12 months ended on the later of most recently completed financial year of the issuer or interim period of the issuer. The Canadian securities regulatory authorities are of the view that in applying this test, the income from continuing operations of the business should be determined using the generally accepted accounting principles applied by the issuer. Subsections 1.3(1) and 1.3(2) of National Instrument 44-101 permit the issuer to use the average income of its three most recently completed fiscal years or 12 months periods, respectively, if the income from continuing operations for the most recently completed fiscal year is positive and at least 20 percent lower than the average for the three most recently completed years. The averaging option is not available if the issuer has incurred a loss from continuing operations during its most recently completed year or more recent 12 month period. If the averaging option is available to the issuer but it incurred a loss from continuing operations in the second and/or third most recently completed fiscal

⁷ This section is new.

⁸ This section is new.

years or 12 month periods, subsection 1.3(3) of National Instrument 44-101 states that for purposes of calculating the average consolidated income from continuing operations for the three fiscal years or 12 month periods, the loss must be treated as zero in the numerator and as one in the denominator. If the issuer or the business has incurred a loss in the most recently completed fiscal year or 12 month period, the income test outlined in paragraph 1.2(1)3 of National Instrument 44-101 shall be applied using the absolute dollar amount of any income or loss.⁹

4.7 Exemptions from Parts 4 and 5 of National Instrument 44-101

- (1) The Canadian securities regulatory authorities are of the view that relief from the financial statement requirements of Parts 4 and 5 of National Instrument 44-101 should be granted only in unusual circumstances not related to cost or the time involved in preparing and auditing the financial statements.
- (2) If relief is granted from the requirements of Parts 4 and 5 of National Instrument 44-101, conditions will likely be imposed, such as a requirement to include audited divisional or partial income statements or divisional statements of cash flow, financial statements accompanied by audit reports containing a reservation of opinion or an audited statement of net operating income for a business.
- (3) Relief may be granted in appropriate circumstances to permit the auditor's report on financial statements of a business acquisition to contain a reservation relating to opening inventory if there is a subsequent audited period of at least six months on which the auditor's report contains no reservation and the business is not seasonal.
- (4) Considerations relevant to a request for exemption from the requirement to include interim financial statements for the comparable period in the immediately preceding financial year may include the fact that an acquired business was, before the filing of the short form prospectus, a private entity that did not prepare interim financial statements.

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This section is new.

- (5) Considerations relevant to a request for exemption from the requirement to include three years of financial statement disclosure may include the fact that the business has been bankrupt, has undergone a change in its management or has undergone a fundamental change in the nature of its business or operations affecting a majority of its operations within the last three years.

PART 5 OTHER FINANCIAL STATEMENT MATTERS¹⁰

5.1 Foreign GAAP

- (1) Subsection 6.1(2) of National Instrument 44-101 provides that if a person or company is incorporated or organized in a foreign jurisdiction, the financial statements of the person or company included in the prospectus shall be prepared in accordance with either Canadian GAAP or foreign GAAP. Foreign GAAP is defined in National Instrument 44-101 to mean a body of generally accepted accounting principles, other than Canadian GAAP, that are as comprehensive as Canadian GAAP.
- (2) The Canadian securities regulatory authorities are of the view that foreign GAAP will be as comprehensive as Canadian GAAP if it covers substantially the same core subject matter as Canadian GAAP, including recognition and measurement principles and disclosure requirements.
- (3) National Instrument 44-101 permits foreign GAAP to be used only if the notes to the financial statements explain and quantify the effect of material differences between the foreign GAAP and Canadian GAAP that relate to measurements and provide disclosure consistent with Canadian GAAP requirements. The Canadian securities regulatory authorities expect that in most cases the reconciliation will be adequate to ensure clear and understandable disclosure for investors in Canada, unless the differences are so pervasive as to render the financial statements misleading.

5.2 Foreign Auditors and Foreign GAAS

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This Part has been revised for greater ease of reference.

- (1) Section 6.2 of National Instrument 44-101 requires financial statements in a short form prospectus to be accompanied by an auditor's report without reservation of opinion, subject to exceptions provided in National Instrument 44-101. An auditor's report, by definition, is prepared in accordance with generally accepted auditing standards. National Instrument 44-101 provides foreign issuers with flexibility as to their choice of auditor for purposes of a short form prospectus filing in that the generally accepted auditing standards applied to their financial statements may be other than those applied in Canada, if those auditing standards are substantially equivalent to Canadian auditing standards.
- (2) Issuers should recognize that Canadian securities legislation in some jurisdictions requires the regulator not to issue a receipt for a prospectus if it appears to the regulator that a person or company who has prepared any part of the prospectus or is named as having prepared or certified a report used in or in connection with a prospectus is not acceptable to the regulator. Therefore, under section 6.3 of National Instrument 44-101, the foreign auditor's report must be accompanied by a statement that the auditing standards applied are substantially equivalent to Canadian GAAS. The statement must also disclose any material differences in the form and content of the foreign auditor's report.
- (3) The Canadian securities regulatory authorities are of the view that in order for auditing standards to be substantially equivalent to Canadian GAAS, they must require underlying work that is comparable in scope, nature and timing to the work required in connection with an audit in accordance with Canadian GAAS. For instance, auditing standards of foreign jurisdictions such as the United States are known to the Canadian securities regulatory authorities to be substantially equivalent to the standards of the CICA. Foreign issuers using auditors from foreign jurisdictions with audit standards and supervision that are less well known to the Canadian securities regulatory authorities are encouraged to consult with staff of the Canadian securities regulatory authorities in advance of filing a preliminary prospectus to resolve uncertainty as to whether the Canadian securities regulatory authorities will consider a particular auditor or auditing standards to be acceptable.

- (4) In making a determination whether the foreign auditing standards applied are substantially equivalent to Canadian GAAS, auditors are referred, in particular to the general standard of Canadian GAAS as set out in section 5100 of the Handbook and its reference to an auditor's "objective state of mind". This standard, when read together with the objectivity standard for auditors contained in the standards of professional conduct applicable to Canadian auditors in each jurisdiction, emphasizes the importance of the independence of the auditor. In the view of the Canadian securities regulatory authorities, auditor independence is an essential element of Canadian GAAS which would need to be reflected, among other things, in the foreign GAAS applied in order for the foreign GAAS applied and Canadian GAAS to be considered substantially equivalent.¹¹
- (5) Subparagraph 4 of paragraph 8.2(1)(a) of National Instrument 44-101 requires an issuer, if a financial statement included in a prospectus has been prepared in accordance with foreign GAAP or includes a foreign auditor's report, to file a letter from the auditor that discusses the auditor's expertise to audit the reconciliation of foreign GAAP to Canadian GAAP and, in the case of foreign GAAS other than U.S. GAAS, to make the determination that the auditing standards applied are substantially equivalent to Canadian GAAS. While this provision requires that this comfort letter be filed no later than the time the short form prospectus is filed, issuers are strongly encouraged to file this letter before filing the final short form prospectus to minimize any delay in issuing a receipt for the final prospectus.¹²

5.3 Third Quarter Financial Statements (Section 6.5 of National Instrument 44-101) - In the case where an issuer files a short form prospectus before its directors have approved the comparative audited annual financial statements for its most recently completed financial year and before the time period for filing the statements under securities legislation has expired, section 6.5 of National Instrument 44-101 permits an issuer to include the interim financial statements for the third quarter of the most recently completed financial year, instead of the financial statements for the entire most recently completed financial year. The

¹¹ This subsection is new.

¹² This section has been modified to reflect the amendments made to the requirement in the National Instrument for a comfort letter regarding a foreign auditor's report.

Canadian securities regulatory authorities are of the view that directors of issuers should endeavour to consider and approve financial statements in a timely manner and should not delay the approval and release of the statements for the purpose of avoiding their inclusion in a prospectus. Issuers are also reminded of their obligation to disclose all material facts relating to the securities to be distributed. For example, if the fourth quarter results are or are expected by the issuer to be materially different from the results of the fourth quarter in previous years, or would have a material impact on the results for the financial year as a whole, or are otherwise materially different from the market's expectations, the issuer is expected to discuss the fourth quarter results in its short form prospectus.

PART 6 FILING AND RECEIPTING OF SHORT FORM PROSPECTUS

6.1 Confidential Material Change Reports - Confidential material change reports cannot be incorporated by reference into a short form prospectus. Accordingly, an issuer may not file a confidential material change report during a distribution. However, 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

- (a) the material change is generally disclosed and an amendment to the short form 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.

6.2 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 section 7.1 and 7.2 of National Instrument 44-101 to be filed with the preliminary short form prospectus or short form prospectus unless previously filed. When an issuer using SEDAR 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.

6.3 Experts' Consent - Issuers are reminded that securities legislation in Alberta prescribes a form of consent for experts.

6.4 Material Contracts

- (1) Section 8.6 of National Instrument 44-101 requires an issuer to make available all material contracts referred to in a short form prospectus. The Canadian securities regulatory authorities recognize that certain material contracts or portions thereof may contain sensitive operational or financial information, disclosure of which would be competitively disadvantageous or otherwise detrimental to the issuer. The regulator will consider granting relief from the requirement to make these contracts available for public inspection if disclosure would be unduly detrimental to the issuer and the disclosure would not be necessary in the public interest.
- (2) Under subsections 8.1(2) and 8.2(3) of National Instrument 44-101, issuers are not required to file or deliver all material contracts in Ontario, but are only required to deliver to the regulator those that create or materially affect the rights or obligations of the holders of the securities being distributed. However, issuers are reminded that in connection with the prospectus review process, the regulator in Ontario may request an issuer to deliver to it copies of other material contracts.

6.5 Amendments and Incorporation by Reference of Subsequently Filed Material Change Reports - The requirement in 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.

- 6.6 Short Form Prospectus Review** - No timeframe applies to the review of a short form prospectus of an issuer filed in multiple jurisdictions, if the issuer has not elected to use MRRS. Nor does a timeframe apply to a review of a short form prospectus filed in only one jurisdiction.
- 6.7 "Waiting Period"** - 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 National Instrument 44-101.
- 6.8 Refusal to Issue Prospectus Receipt** - The regulator has the discretion under securities legislation to refuse, in the public interest, to issue a receipt for a prospectus. Despite acceptance by a regulator of an issuer's AIF, if, at the time the issuer files a preliminary short form prospectus, a regulator has concerns about the adequacy or timeliness of the disclosure in the AIF and the disclosure is not supplemented in the short form prospectus, the regulator may refuse to issue a receipt for the short form prospectus.
- 6.9 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 Canadian securities legislation in each jurisdiction in which syndicate members are participating in the distribution of securities under short form prospectus.

PART 7 CONTENT OF AIF

7.1 Issuers of Asset-backed Securities

- (1) Item 4.2 of Form 44-101F1 AIF specifies additional disclosure applicable to issuers of asset-backed securities that were distributed under a

prospectus. Form 44-101F1 leaves to issuer of asset-backed securities the determination of which other prescribed disclosure is applicable and ought to be included in the AIF. 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 nature and extent of required disclosure may vary depending on the type and attributes of the underlying pool.

The following factors should be considered by an issuer of asset-backed securities in preparing its AIF:

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 securityholders; 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. Financial information respecting the pool of assets to be described and analyzed in the AIF will consist of information commonly set out in servicing reports prepared to describe the performance of the pool and the specific allocations of income, loss and cash flows applicable to outstanding asset-backed securities made during the relevant period.
- (2) Item 4.2(b)(i) of Form 44-101F1 AIF requires issuers of asset-backed securities that were distributed by way of prospectus to include information relating to the composition of the underlying pool of financial assets, the cash flows from which service the asset-backed securities. Disclosure respecting the composition of the pool will vary depending upon the nature and number of the underlying financial assets. For example, in a geographically dispersed pool of financial assets, it may be appropriate to provide summary disclosure based on the location of obligors. In the context of a revolving pool, it may be appropriate to

provide details relating to aggregate outstanding balances during a year in order to illustrate historical fluctuations in asset origination due, for example, to seasonality. In pools of consumer debt obligations, it may be appropriate to provide a breakdown within ranges of amounts owing by obligors in order to illustrate limits on available credit extended.

- 7.2 Non-corporate Issuers** - Item 8 of Form 44-101F1 AIF requires disclosure concerning the directors and officers of an issuer. An issuer that is not a corporation must refer to the definitions in securities legislation of "director" and "officer". The definition of "officer" may include any individual acting in a capacity similar to that of an officer of a company. Similarly, the definition of "director" typically includes a person acting in a capacity similar to that of a director of a company. Therefore, non-corporate issuers must make a determination in light of the particular circumstances which individuals or persons are acting in such capacities for the purposes of complying with Item 8 of Form 44-101F1.

PART 8 CONTENT OF SHORT FORM PROSPECTUS

- 8.1 Prospectus Liability** - Nothing in the short form prospectus regime established by National Instrument 44-101 is intended to provide relief from liability arising under the provisions of Canadian 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.

- 8.2 Style of Prospectus** - Canadian securities legislation requires that a prospectus contain "full, true and plain" disclosure. To that end, issuers and their advisors are reminded that they should ensure that disclosure documents are easy to read, and encourage issuers to adopt the following plain language principles in preparing a prospectus in the form of a short form prospectus:

- ! use short sentences
- ! use definite, concrete, everyday language
- ! use the active voice
- ! avoid superfluous words

- ! organize the document into clear, concise sections, paragraphs and sentences
- ! avoid legal or business jargon
- ! use strong verbs
- ! use personal pronouns to speak directly to the reader
- ! avoid reliance on glossaries and defined terms unless it facilitates understanding of the disclosure
- ! avoid vague boilerplate wording
- ! avoid abstractions by using more concrete terms or examples
- ! avoid excessive detail
- ! avoid multiple negatives.

If technical or business terms are required, clear and concise explanations should be used. The Canadian securities regulatory authorities are of the view that question and answer and bullet point formats are consistent with the disclosure requirements of National Instrument 44-101.

8.3 Firm Commitment Underwritings - If an underwriter has agreed to purchase a specified number or principal amount of the securities to be distributed at a specified price, Item 1.8(4) of Form 44-101F2 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 Canadian 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 National Instrument 44-101, the implementing law of a jurisdiction exempts issuers from that requirement if they comply with National Instrument 44-101.

8.4 Minimum Distribution - If a minimum amount of funds is required by an issuer and the securities are proposed to be distributed on a best efforts basis, Item 6.5 of Form 44-101F2 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 Canadian 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 National Instrument 44-101, the implementing law of a jurisdiction exempts issuers from that requirement if they comply with National Instrument 44-101.

8.5 Distribution of Asset-backed Securities

- (1) Item 8.3 of Form 44-101F2 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 securityholders; 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) Item 8.3(d)(i) of Form 44-101F2 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 Canadian securities regulatory authorities consider 33~~a~~% of dollar value of the financial assets comprising the pool to be a material portion in this context.

8.6 **Distribution of Specified Derivatives** - Item 8.4 of Form 44-101F2 specifies additional disclosure applicable to distributions of specified derivatives. This prescribed disclosure is formulated in general terms for issuers to customize appropriately in particular circumstances.

8.7 **Underlying Securities** - Issuers are reminded that if securities being distributed are convertible into or exchangeable for other securities, a description of the material attributes of the underlying securities may be necessary to meet the requirement of securities legislation that a prospectus contain full, true and plain disclosure of all material facts relating to the securities.

8.8 Financial Statements

- (1) Item 12.1 of Form 44-101F2 specifies which financial statements of an issuer are required to be incorporated by reference into an issuer's short form prospectus. The issuer's most recent comparative interim financial statements and the most recent comparative year end financial statements, together with the accompanying report of the auditor, if they have been approved by the board of directors of the issuer, are required to be incorporated by reference under subparagraphs 3(b) and 4(b) of Item 12.1, even if they have not yet been filed. The Canadian securities regulatory authorities are of the view that directors of issuers should endeavour to consider and approve financial statements in a timely manner and should not delay the approval and release of the statements for the purpose of avoiding their inclusion in a short form prospectus. Issuers are also reminded of their obligation to disclose all material facts relating to the securities to be distributed. For example, if there have been significant variations in an issuer's financial results, the issuer is expected to discuss the variations in its short form prospectus.
- (2) Documents incorporated by reference in a preliminary short form prospectus are required under section 7.1 of National Instrument 44-101 to be filed with the preliminary short form prospectus if they have not previously been filed. Section 7.2 of National Instrument 44-101 contains a similar provision for a short form prospectus. This may result in financial statements that have been incorporated by reference under Item 12.1 of Form 44-101F2 being filed earlier than would otherwise be the case under the continuous disclosure requirements of securities legislation. The implementing law of each jurisdiction provides relief, if necessary, from the requirement of securities legislation to send these statements concurrently to securityholders and, in British Columbia, to file written confirmation of having sent these statements. The conditions to the relief require the issuer to send the financial statements to securityholders within the time periods and in accordance with the other provisions of continuous disclosure requirements of securities legislation and, in British Columbia, to file written confirmation of sending to securityholders.

PART 9 CIRCULARS

9.1 Fee for Documents - The CSA are of the view that issuers that charge non-securityholders that request copies of the documents referred to in paragraph (a) of section 11.3 of National Instrument 44-101 should not charge an amount more than the issuer's reasonable cost of sending the documents. If the issuer's practice is to charge non-securityholders for the documents, a statement to that effect should be included in the information circular.

PART 10 CERTIFICATES

10.1 Non-corporate Issuers

(1) Item 20.1(a) of Form 44-101F2 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) Item 20.1(b) of Form 44-101F2 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 Item 20.1(a), duly authorized to sign. Issuers that are not companies are directed to the definition of "director" in securities legislation to determine the appropriate signatories to the certificate. The definition of "director" in securities

legislation typically includes a person acting in a capacity similar to that of a director of a company. Issuers that are not companies are also directed to the definition of "person" in securities legislation.

10.2 Promoters of Issuers of Asset-backed Securities

- (1) Canadian securities legislation 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 Canadian 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 Canadian 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 Canadian 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.

**COMPANION POLICY
TO NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS
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TO NOTICE OF PROPOSED CHANGES
TO PROPOSED NATIONAL INSTRUMENT 44-101
SUMMARY OF COMMENTS RECEIVED ON
1999 PROPOSED INSTRUMENTS
AND
RESPONSES OF THE CANADIAN SECURITIES ADMINISTRATORS**

A. DEADLINE FOR ISSUERS' ANNUAL FINANCIAL STATEMENTS

Comment (i):

One commentator recommended that, until securities legislation regarding continuous disclosure is changed, the short form prospectus rule contain a qualification criterion that the reporting issuer must have filed its annual financial statements within 90 days of its fiscal year end. Alternatively, the commentator suggested that the qualification criterion could be more narrowly construed to apply only in those circumstances in which the reporting issuer wishes to file a short form prospectus after 90 days after its year end; in which case the requirement would be that the issuer must include its annual financial statements in the prospectus.

Response:

The CSA agree with this comment and have introduced an additional qualification criterion which requires issuers doing short form prospectus distributions more than 90 days after year end to have filed their annual financial statements and incorporate them into the prospectus. This change in the filing deadline for annual financial statements is only within the context of a short form prospectus offering and does not represent a change in the continuous disclosure regime which requires the annual financial statements to be filed within 140 days of year end. Any changes to the continuous disclosure regime will be addressed through a separate initiative.

Comment (ii):

The commentator also believed that the short form prospectus rule should discuss the situation where an issuer has included annual financial statements in its short form prospectus in accordance with paragraph 4.4 (1), (a) or (c) of the 1999 proposed National Instrument but has not "concurrently" sent these financial statements to shareholders as required by securities legislation in some provinces. The requirement to include the financial statements in the short form prospectus would appear to cause the reporting issuer to be in violation of the legislation. The commentator suggested that some accommodation, such as issuing a press release with summarized financial statements, may be reasonable in such circumstances.

Response:

This issue is addressed in subsection 2.2(4) of Rule 44-801 Implementing National Instrument 44-101 Short Form Prospectus Distributions.

B. FINANCIAL STATEMENT DISCLOSURE FOR SIGNIFICANT ACQUISITIONS

(1) General

Comment:

Three commentators were of the view that the proposed requirements for disclosure relating to significant acquisitions would seriously impede the operation of the short form prospectus system. The commentators noted that the operation of the system is largely dependent on incorporation by reference of information that is already in the public domain, on the premise that adequate information is available through the continuous disclosure system. However, requirements such as those relating to proposed acquisitions (e.g., the audited acquisition equation for a significant acquisition subsequent to year end) would require re-issuance of audited annual financial statements already filed and distributed to shareholders. As well, the commentators believed that the need to determine the reporting requirements at the time the prospectus is prepared, and secure audited financial statements of an acquired company, would create significant delays and unnecessary uncertainty. In any case, the commentators favoured the SEC approach to making the determination.

Response:

The CSA consider financial statement disclosure for significant acquisitions to be highly relevant to investors. The CSA do not believe that this requirement will seriously impede the operation of the short form prospectus system and are of the view that the benefits of the enhanced disclosure outweigh any costs or other impediments to issuers. The proposed National Instrument does not require the re-issuance of audited financial statements. See response B(2).

(2) *Disclosure of "Purchase Equation" for Probable Acquisitions*

Comment:

Three commentators believed that the requirement for disclosure of the acquisition equation is unworkable in the context of a short form prospectus, and should be omitted. This requirement would necessitate the re-issuance of audited financial statements to shareholders. The commentators suggested that the *pro forma* financial statements required under section 4.2 should provide all of the information called for in section 4.5 (section 4.8 of the proposed National Instrument) and the accompanying compilation report should provide an appropriate level of "comfort" on the information.

Response:

The CSA are of the view that an audited purchase equation is important information. In order to address difficulties expressed, the proposed National Instrument has been revised to give an issuer the choice of including the information required by subsection 4.8(2) of the proposed National Instrument either in a subsequent event note in its financial statements included in the short form prospectus or elsewhere in a short form prospectus. Accordingly, the issuer is not compelled to re-issue the audited financial statements to the shareholders.

C. INTERACTION WITH MJDS

Comment:

Two commentators were concerned about current practice under the Multijurisdictional Disclosure System ("MJDS"). At present, a Canadian issuer eligible to issue a short form prospectus can file its AIF with Canadian regulatory authorities, and later register securities with the SEC on the basis of its filings under Canadian securities laws. The commentator noted that, in many cases, the AIF is not subjected to review by the regulatory authorities. In addition, any United States GAAP information provided receives little, if any, attention. The commentators expressed concern with the result that the company's securities are registered in the United States without the benefit of a regulatory review of much of the information incorporated by reference into the short form prospectus. The commentators regarded it as a matter of some urgency, especially in light of the SEC Aircraft Carrier proposals, that Canadian regulators take action to strengthen their surveillance over the filings of Canadian issuers eligible to use the short form prospectus system.

Response:

Documents filed under MJDS are selected for review using the same risk criteria applied to the selection of other offering documents. All AIFs are currently subjected to a basic level of review. The Commission has recently established a Continuous Disclosure Team which will focus on reviewing the continuous disclosure filings of all issuers. AIF's will be included in this review process. The Commission issued a Staff Notice on the Multijurisdictional Disclosure System. Please refer to September 17, 1999 OSC Bulletin (22 OSCB).

D. AUDITOR'S COMFORT LETTER REGARDING UNAUDITED STATEMENTS

Comment:

One commentator has found that in today's practice, for an issuer that has filed three quarterly reports, that short form prospectuses incorporate by reference each of the issued quarterly reports and that securities regulatory authorities require the auditor's comfort letter to cover each of the comparative three, six and nine months periods (notwithstanding the OSC's position taken in Chapter 13 of the Corporate Finance Accountants Practice Manual). The commentator believed that this matter was partially addressed in paragraph 3 of Item 12.1 of the 1999 proposed Prospectus Form by incorporating only the "comparative interim financial statements for the issuer's most recently completed financial period", which in the above case would not incorporate the first and second quarter reports. However, it is common for issuers to present the comparative results for both the nine month period and for the last three month period. The wording in paragraph 3 of Item 12.1 could be interpreted as encompassing both the three and nine month periods in the third quarter report. The commentator does not believe this is intended and suggests the modifier "cumulative" be used to ensure that only the most recent cumulative interim statement (be it six or nine months) be incorporated by reference.

Response:

An instruction has been added to Item 12.1(1) of the proposed Prospectus Form reminding issuers of the definition of "interim period" in the proposed National Instrument, which is cumulative. Issuers that choose to incorporate additional interim financial statements are also reminded in the instruction that subsection 8.2(1) of the proposed National Instrument requires a comfort letter from an auditor to be filed.

APPENDIX C
TO NOTICE OF PROPOSED CHANGES
TO PROPOSED NATIONAL INSTRUMENT 44-101
LIST OF COMMENTATORS
ON PROPOSED ONTARIO RULE 41-501
GENERAL PROSPECTUS REQUIREMENTS

Commentators on proposed Rule 41-501, whose comment letters were also considered in the context of proposed National Instrument 44-101:

1. Canadian Bond Rating Service by letter dated September 2, 1999.
2. McLeod & Company by letter dated September 22, 1999.
3. TD Bank Mutual Fund Services by letter dated September 22, 1999.
4. Grant Thornton by letter dated September 23, 1999.
5. BDO Dunwoody by letter dated September 23, 1999.
6. McManus Thomson by letter dated September 23, 1999.
7. Burstall Ward by letter dated September 23, 1999.
8. The Canadian Institute of Chartered Accountants Task Force (Prospectuses and Other Offering Documents) by letter dated September 23, 1999.
9. KPMG by letter dated September 23, 1999 and by supplementary letter dated September 24, 1999.
10. Deloitte & Touche by letter dated September 24, 1999.

**APPENDIX D
TO NOTICE OF PROPOSED CHANGES
TO PROPOSED NATIONAL INSTRUMENT 44-101
SUMMARY OF COMMENTS RECEIVED ON
PROPOSED ONTARIO RULE 41-501
GENERAL PROSPECTUS REQUIREMENTS
AND
RESPONSES OF THE ONTARIO SECURITIES COMMISSION**

The OSC received 10 submissions on proposed Ontario Rule 41-501 General Prospectus Requirements, Form 41-501 Information Required in a Prospectus and Companion Policy 41-501CP, which were published for comment on July 23, 1999 at (1999), 22 OSCB (LF Supp). The July 1999 versions of these Instruments are referred to, collectively, in this Appendix as the "1999 proposed Instruments".

The OSC considered the submissions received and thanks all commentators for providing their comments.

The following is a summary of the comments received, together with the OSC's responses, organized by topic. The summary begins with topics concerning which comment was specifically requested in the accompanying Notice (the "1999 Notice") and then addresses topics covered by submissions received in response to the general request for comment on the 1999 proposed Instruments. Unless otherwise provided, section references in this Appendix are references to 1999 proposed Instruments.

PART I. SPECIFIC REQUEST FOR COMMENT

A. Relief for Junior Issuers

1. Relief From Financial Statement Disclosure Requirements

(a) *Threshold for Junior Issuers*

Comment (i):

Five commentators commented on the proposed \$5 million limit on revenue, assets, equity and market capitalization as a measure of junior issuer eligibility for relief from financial disclosure requirements. All submitted that it is too low. One commentator suggested that the limits imposed by the SEC might be an appropriate benchmark. The other four commentators recommended a threshold of \$10 million as that threshold would encompass a sufficient number of junior issuers without allowing too much latitude.

Response:

The OSC agrees that a \$10 million threshold provides an appropriate test for granting relief to junior issuers. The OSC has reflected this threshold in the proposed Rule in the definition of "junior issuer" and the corresponding relief in sections 4.11 and 6.13 of the proposed Rule.

Comment (ii):

Three commentators suggested a market capitalization test should be omitted from the definition of "junior issuer" because it is an inappropriate measure for junior issuers. Two of the commentators cited junior market volatility as the reason for their objection.

Response:

The OSC disagrees with these comments and believes that market capitalization provides a useful measure as to whether an issuer is "junior". In recognition of market volatility, the OSC has adopted a \$10 million threshold for market capitalization, rather than a \$5 million threshold, in the proposed Rule.

(b) *Deadline for Junior Issuer Financial Statements*

Comment:

Four commentators commented on the requirement to include financial statements in a prospectus for the previous year if the prospectus is being filed more than 90 days after year-end.

Three of the four urged that the requirement be relaxed in the case of junior issuers. Two of these specifically recommended a deadline of 120 days for junior issuers. One of these commentators expressed particular concern for issuers conducting initial public offerings or reverse take-overs or major transactions where disclosure is based on prospectus requirements. Another commentator noted that junior issuers generally do not command the financial resources that would enable them to meet the requirements in a timely manner. The tightening of timing may leave junior issuers scrambling to match financial statement disclosure to the dating of a final prospectus which may be critically close to an issuer's year-end period.

The fourth commentator on this issue supported the 90 day deadline for all issuers when filing a prospectus, but, in the case of continuous disclosure requirements, the commentator advocated a longer period for junior issuers. In the context of filing a prospectus, the commentator believed it would be reasonable to expect management and the auditors to accelerate the completion of the annual audited financial statements.

Response:

The OSC remains of the opinion that the public interest is best served by requiring prospectuses to contain reasonably current financial statements of the issuer. Therefore, the proposed Rule includes the requirement to include financial statements in a prospectus for the previous year if the prospectus is being filed more than 90 days after year-end.

(c) *Audit Requirement*

Comment:

Three commentators supported the proposal to furnish relief to junior issuers by permitting the annual financial statements, other than those for the latest completed financial year, to be unaudited, provided they are reviewed by an independent public accountant and supported by a comfort letter.

A fourth commentator opposed the relief, fearing that it would provide an undue incentive for any emerging business to defer the engagement of professional auditors until just prior to their initial public offering. The commentator believed that issuers who find it a hardship to comply with the audit requirements should continue to have to apply for relief on a case by case basis.

Response:

The OSC agrees with the three commentators that relief for junior issuers from the audit requirement is acceptable for all but the most recent financial year for which statements are required to be included in a prospectus.

2. *Relief For Significant Acquisitions of Natural Resource Assets*

Comment:

Four commentators suggested that the acquisition of natural resource assets requires special consideration and exemptions. The commentators noted that it is often very difficult, if not impossible, for an issuer in these circumstances to obtain the required information from the vendor of the assets, particularly if it is not a sale of all or substantially all of the vendor's assets.

Response:

The CSA recognize the concern expressed and have asked the Chief Accountants' Committee of the CSA to consider the basis on which exemptions may be granted or modifications made to the requirements regarding financial statement disclosure for certain types of acquisitions, including acquisitions of natural resource assets.

B. Deadline for Issuer's Annual Financial Statements

1. General Deadline

Comment:

Four commentators agreed with the proposal to reduce to 90 from 120 days the timing requirement for annual financial statements to be included in a prospectus. A fifth commentator surmised that the specific request for comment in the 1999 Notice regarding the deadline for financial statements in a prospectus was effectively an announcement of a proposed change to the continuous disclosure regime for all issuers. The commentator raised several concerns regarding the anticipated effect of such a change on mutual funds.

Response:

The OSC has retained this prospectus-related change. The OSC is reviewing the comments received in response to the request for comment in the 1999 Notice on the proposal to reduce the filing deadline for annual financial statements from 140 to 90 days. Any changes to the continuous disclosure regime will be addressed through a separate initiative.

2. Additional Statements Approved, Filed or Released

Comment (i):

Two commentators suggested that, in sections 4.3 and 5.4 of the 1999 proposed Rule (sections 4.7 and 6.5 of the proposed Rule), it would be more reasonable to require inclusion only of information that has been published. The commentators recommended deleting the reference to selected information from the financial statements. This would bring the general prospectus requirements into line with the short form prospectus requirements.

Response:

The OSC disagrees with the commentators that the reference to selected information would make the test in sections 4.3 and 5.4 of the 1999 proposed Rule too onerous. The CSA have considered this comment in the context of the short form prospectus requirements and have revised the requirements in the proposed form of short form prospectus to parallel the standard in the proposed Rule, namely, financial statement disclosure is required if financial statements for a more recent period than otherwise required, or selected information from those statements, have been released to the public.

Comment (ii):

Another commentator had difficulty with the proposed inclusion of annual financial statements of an issuer where the auditor's report has not yet been released. The commentator believed that this would severely challenge auditors if subsequent disagreements were to arise over information already released.

Response:

The OSC has made no change in response to this comment as it believes the public interest in having the most recent financial statement information available outweighs the potential difficulty that the auditors and issuers may have if subsequent disagreements arise.

3. Automatic Extension

Comment (i):

One commentator suggested that there should be a 15 day extension permitted similar to that available in the United States.

Response:

The OSC is satisfied with the deadline and has no plans to consider an automatic extension.

Comment (ii):

Another commentator suggested that there should be an automatic extension in situations where comments are not provided on the preliminary prospectus in a timely manner.

Response:

The OSC disagrees with this comment as the public interest in having the most recent financial statements available for an issuer included in a prospectus is paramount.

C. Financial Statement Disclosure for Credit Supporters

Comment:

Two commentators agreed with the proposed requirements for disclosure of financial statements of credit supporters. While in most cases the requirement for summarized financial information is adequate, the commentators believed that in complex situations condensed consolidated information is helpful and should be required.

Response:

The OSC has considered the comment and has decided that even in complex situations, summarized financial information is preferable to condensed consolidated information. The OSC will keep abreast of developments in the United States and may consider future changes.

D. Financial Statement Disclosure for Significant Acquisitions

1. General

Comment:

Two commentators believed that the proposed Rule's provisions concerning significant acquisition disclosure are an attempt to rectify through the prospectus rule what is essentially a shortcoming of the continuous disclosure system. The commentators suggested that the continuous disclosure regime in Ontario be revised to deal with timely disclosure of business combinations.

Response:

The OSC recognizes the interaction between prospectus disclosure and continuous disclosure. Changes to the continuous disclosure regime will be addressed through a separate initiative.

2. Differences from the SEC

(a) General

Comment:

Four commentators expressed significant concerns regarding the differences between the 1999 proposed Rule's requirements and the SEC's requirements for significant acquisition disclosure. The commentators were of the view that the differences in basic disclosure provisions and numerous inconsistencies in detail would increase the complexity and cost of cross-border issues, and would represent a significant deterrent to Canadian companies registered or registering with the SEC from offering securities in Canadian markets. The commentators suggested that the OSC should adopt the SEC's provisions.

Response:

The OSC recognizes the value in harmonization with the requirements of the SEC where those requirements are appropriate for Canadian capital markets and has made changes to the 1999 proposal to this end. However, the OSC disagrees with the proposition that the SEC's regulatory regime, in its entirety, is appropriate for the Canadian markets. Instead, the OSC has moved towards greater harmonization in the formulation of the significance tests. In many instances, the differences between the proposed Rule and the SEC requirements result in requirements that the OSC believes are better suited to the Canadian market.

(b) "Significance" Test

Comment (i):

Four commentators recommended that the proposed revenue test for significant acquisitions, which is not used by the SEC, be deleted. One commentator specifically recommended that the proposed revenue test be replaced with the SEC's investment test in order to capture acquisitions in the fields of information technology, internet, media and communications, and biomedical industries that might not otherwise be caught by the revenue test.

Response:

The OSC agrees and has deleted the revenue test from the proposed Rule and added an investment test.

Comment (ii):

Two commentators questioned whether the application of the revenue and income tests for the later of the last financial year and the twelve months ended on a recent quarter end provides sufficient benefits to outweigh the disadvantages of this departure from the tests applied by the SEC.

Response:

The OSC agrees, in principle, with this comment and has revised the timing of the application of the significance test so that it is to be applied at two dates: first, the time of acquisition and, second, at the time of filing the preliminary prospectus. The earlier date has been added to the proposed Rule in order to provide issuers with greater certainty that if an acquisition is not significant at the time it is made, it will not subsequently become significant for the purposes of the test. The second date has been retained because it is important, in the OSC's view, to recognize the potential growth of issuers between the date of acquisition and the date of a prospectus offering and the corresponding decline in the significance of any acquisitions made.

Comment (iii):

One commentator did not appreciate any pressing public policy need to depart from the SEC 80% hurdle for significant acquisitions and instead use a 100% threshold.

Response:

The OSC increased the SEC's 80 percent threshold to 100 percent in order to provide a more flexible regime for issuers in the Canadian market.

Comment (iv):

One commentator suggested that the OSC should consider providing alternative tests of significance for issuers making an initial public offering, similar to the SEC's rules in this area.

Response:

The OSC is concerned about the overall complexity of the business acquisition disclosure requirements and has decided not to increase the complexity of the proposed Rule by modifying the test for issuers making an initial public offering.

Comment (vi):

Two commentators suggested that guidance should be provided as to the treatment of losses and what, if any, adjustments may be made to historical data in applying the income test.

Response:

Treatment of losses has been clarified in the proposed Policy. No adjustments may be made to historical data in applying the income test.

3. Timing of Application of Significance Test for Completed Acquisitions

Comment:

One commentator recommended that the OSC adopt the SEC's approach to the timing of the application of the significance tests. The commentator suggested that a significance calculation be done based on the most recent financial statements of the issuer and the acquired business at the time of an acquisition. If the acquisition is found not to be significant at that time, then that determination should be final. The commentator suggested that the issuer should also have the option, at the time it files a preliminary prospectus, of recalculating the significance at that time using a *pro forma* balance sheet and income statement of the issuer, if any, filed with securities regulatory authorities subsequent to the acquisition, as permitted by the SEC's rules.

Response:

Please see the response to comment D 2(b)(ii) above.

4. Financial Statement Disclosure Required for Completed Acquisitions

(a) *Periods Required*

Comment:

Three commentators questioned whether the significant acquisition disclosure requirements may require financial statements of an acquired business to be provided for periods following the acquisition.

Response:

The proposed Rule has been revised to clarify the requirement that separate financial statements of an acquired business are required only for periods before the acquisition.

(b) Pro Forma Requirements

Comment (i):

One commentator noted that paragraphs 5.2(1)6 and 7 (paragraphs 6.2(1)6 and 7 of the proposed Rule) appeared to require that *pro forma* balance sheets and income statements of the issuer be prepared for both the audited year and the interim period. The commentator sought confirmation that the interim *pro forma* statements would only be required where an acquisition was effective after the interim period and therefore was not included in the historical interim statements.

Response:

The proposed Rule requires a *pro forma* balance sheet only if the acquisition occurred after the date of the issuer's most recent balance sheet included in the prospectus. If an acquisition occurred during the issuer's most recent interim period, then a *pro forma* income statement will be required for the interim period and the issuer's most recently completed financial year. If the acquisition occurred during the issuer's most recently completed financial year, a *pro forma* income statement will be required for that year but not the most recent interim period since the results of the acquired business will be consolidated with the results of the issuer for that period.

Comment (ii):

The commentator believed that where *pro forma* annual financial statements of the issuer have been provided, the further requirement for a full set of financial statements of the acquired business is onerous. The commentator suggested that the requirement be that an updated *pro forma* interim balance sheet be included where changes in key ratios from the year-end date to the acquisition date are significant or material for either the acquiror or the acquired business.

Response:

The OSC disagrees with this comment. The OSC is of the opinion that, if an acquisition is significant to an issuer, separate financial statements of the acquired business ought to be included in a prospectus where the results of the business have not been included in the financial statements of the issuer for a complete financial year.

Comment (iii):

Another commentator supported the requirement to prepare a *pro forma* balance sheet as at the date of the most recent financial statements of the issuer included in the prospectus and the requirement for financial year and, where applicable, interim period *pro forma* income statements. This brings the Canadian *pro forma* requirements more in line with those of the SEC.

Response:

The OSC agrees with this comment.

Comment (iv):

Three commentators noted the structure of the wording of subparagraph 5.2(1)7(b) (subparagraph 6.2(1)7(b) of the proposed Rule) requires adjustment. Subparagraph (b) made reference to the acquisitions referred to in subparagraph (a), one of which is a significant acquisition completed during the most recently completed financial year. *Pro forma* interim financial statements are not necessary because the results of the acquisition are included in the issuer's historical interim period financial statements for the entire interim period.

Response:

The OSC agrees with this comment and has revised the proposed Rule.

Comment (v):

When interim financial statements of an acquired business are required to be included in a prospectus, one commentator believed the Rule should permit the filing of financial statements covering the stub period from the beginning of the acquired business's last financial year to the date of acquisition by the acquiring company, with comparatives for a period of approximately the same length (e.g., nearest month or quarter end) This stub period information would facilitate the preparation of the issuer's *pro forma* income statement.

Response:

An issuer may at its option include additional financial statements for a stub period. The issuer is nonetheless required to include the interim financial statements for the acquired business's most recently completed interim period.

Comment (vi):

Two commentators were of the view that separate disclosure in the notes (subparagraphs 5.2(1)6(c) and 7(d) of the 1999 proposed Rule) should be unnecessary if a clear columnar presentation is used.

Response:

The proposed Rule has been revised to delete this additional requirement because it essentially duplicated the disclosure required in subsection 6.2(3) of the proposed Rule, which requires a description of the underlying assumptions on which the *pro forma* financial statements are prepared, cross-referenced to each *pro forma* adjustment.

Comment (vii):

One commentator recommended that income statements and cash flows only be provided where meaningful. In many circumstances, *pro forma* income statements can be misleading as the acquiror may not be able to achieve the same results as the vendor due to various factors such as economies of scale, integration with other operations and/or locations, internal management abilities, etc.

Response:

The OSC believes that readers of *pro forma* income statements included in the prospectus understand the purpose and limitations of *pro forma* statements and that, on balance, it is preferable to require them in all cases of significant acquisitions, rather than leaving it to an issuer's discretion. *Pro forma* cash flow statements are not required under the proposed Rule.

(c) *Statement of Retained Earnings*

Comment:

Two commentators suggested that the financial statement requirements for significant acquisitions should include reference to a statement of retained earnings.

Response:

The OSC has added, for greater clarification, a reference to statements of retained earnings in paragraph 6.2(1)2 of the proposed Rule.

(d) Disclosure for Acquisition of a Division, Group of Similar Assets

Comment:

One commentator believed that the proposed Rule should deal with specific issues related to the acquisition of assets that were part of a group of similar assets, and the acquisition of a division from a corporation where the division was an integral part of the corporation's business. The commentator suggested that it is imperative to bring to the reader's attention that the historical financial statements may not be reflective of what can be achieved in the future. The commentator further noted that it is difficult to become comfortable with the balance sheet in such instances. If the vendor did not segregate the working capital or use separate credit facilities, the statement of cash flows becomes meaningless. In these instances, the commentator suggested that only the operations should have to be audited, exclusive of the balance sheet and statement of cash flows, or that some other concessions should be allowed.

Response:

The OSC recognizes the challenges to which the commentator refers. The CSA's Corporate Finance Accountants Manual Committee ("CSA Manual Committee") is addressing the topic.

5. Disclosure Required for Probable Acquisitions

(a) Definition of "Probable Acquisition"

Comment (i):

Three commentators believed that the determination of a "probable acquisition" should require the existence of a written agreement setting out all of the essential features of the acquisition.

Response:

The OSC disagrees with this comment and believes that it is undesirable to include such a bright line test in the definition of a "probable acquisition" as it can, in some circumstances, be easily avoided by deferring

formal signing of an agreement to a point in time well after the time at which the OSC believes an issuer that is proceeding with the prospectus offering should be making disclosure concerning the acquisition.

Comment (ii):

Two commentators suggested that the disclosure required regarding probable acquisitions should be limited to a "subsequent events" note to the financial statements unless the 100% test in section 5.6 (section 6.3 of the proposed Rule) is met.

Response:

The OSC disagrees with this comment and believes separate financial statements are important to investors if the issuer is proceeding with a prospectus offering while at the same time proposing to proceed with a probable acquisition that is significant to its business.

Comment (iii):

Three commentators suggested that the probable acquisition disclosure requirements be linked to the timely disclosure policy as set out in National Policy Statement No. 40 Timely Disclosure ("NP 40").

Response:

The OSC believes that the circumstances in which disclosure of a probable acquisition is required are consistent with the principles underlying the timely disclosure policy as set out in NP 40. NP 40 defines material information as any information relating to the business and affairs of an issuer that results or would reasonably be expected to result in a significant change in the market price or value of any of the issuer's securities. The OSC believes that, if an issuer is pursuing a significant acquisition and the likelihood of that acquisition being completed is high (as that concept is used in the CICA Handbook), then disclosure of that probable acquisition is material.

Comment (iv):

One commentator was of the view that the "reasonable person" test would be unworkable in practice, and would only serve to cause endless debate, after the fact, between issuers and the staff of the OSC.

Response:

The OSC disagrees. The "reasonable person" test is a well known concept used to express an objective standard, rather than a subjective standard. Greater explanation on this point has been added to the proposed Policy.

(b) Disclosure of Target's Historical Financial Statements

Comment:

One commentator did not agree that financial statements should be provided for "probable" significant acquisitions. The commentator, along with two other commentators, noted that it may be detrimental for the acquiree to needlessly disclose its financial statements to the public in the event that the transaction is not completed.

Response:

Given that the disclosure is required only in those circumstances where the likelihood of the acquisition is high, the OSC believes that the public interest in material disclosure is paramount in this circumstance.

(c) Disclosure of "Purchase Equation"

Comment (i):

Four commentators expressed objection to the requirements in section 5.5 of the 1999 proposed Rule (section 6.8 of the proposed Rule) regarding significant acquisitions accounted for using the purchase method.

Two commentators in particular, expressed the view, that the proposal was unnecessary for acquisitions completed during the current year because most material information is provided in accordance with the Handbook in financial statements covered either by an auditor's report or comfort letter, as appropriate, while the estimated allocation of the cost of the purchase is evident from the *pro forma* financial statements covered by a compilation report. These commentators expressly suggested that section 5.5 should be deleted.

Response:

The Handbook distinguishes between mandatory requirements and practices that are encouraged. Therefore, it is sometimes necessary for the proposed Rule to overlap with subject matter of the Handbook

in circumstances where the OSC believes that it is imperative that the disclosure be included in a prospectus and should not be left to the discretion of an issuer and its auditors.

Comment (ii):

Three commentators believed that certain requirements in subsection 5.5(2) of the proposed Rule (subsection 6.8 of the proposed Rule) were not feasible. One commentator was of the view that the proposed requirements would create undue time pressures on issuers and auditors. The commentator believed that it would be unreasonable to compel management of the acquiring company to guesstimate the details required by subsection 5.5(2) at such an early stage. The two other commentators noted that in many cases, particularly those involving a hostile take-over, it would not be possible for an acquiror to make a reasonable estimate of the purchase price allocation until sometime after the closing of the transaction. Even in cases where some estimate can be made, the commentators were of the view that such information is unlikely to be auditable.

Response:

Disclosure of the acquisition equation is required only in circumstances where the likelihood of the acquisition being completed is high. If the acquisition meets this test, the OSC is of the view that it is reasonable to require issuers to estimate the purchase equation, if they have not already determined it. In exceptional circumstances, the estimate may be incapable of being audited, in which case an exemption may be appropriate.

Comment (iii):

Three commentators noted that under present practice, the information contemplated by subsection 5.5(2) of the 1999 proposed Rule is unaudited and that there is a note to the financial statements to the effect that any allocation that has been made is tentative and is subject to revision. The commentators suggested that this treatment, which is permitted under GAAP, would in effect undo the requirement that the information be audited.

Response:

Based on reviews by CSA staff of information filed with securities regulatory authorities, the OSC is satisfied that this is not present practice. The OSC has been and will continue to accept preliminary estimates as permitted under Canadian GAAP.

6. Exception for Equity Accounted Acquisitions

Comment (i):

Two commentators questioned the reason for the exception from the requirement to include financial statements of an acquired business for acquisitions that are to be accounted for on an equity basis. The commentators believed that this exception would create an unwarranted difference from SEC requirements and further noted that it would be inconsistent with the treatment required for a joint venture interest that is accounted for by proportionate consolidation. The commentators recommended that the exemption be dropped.

Response:

The exception for significant acquisitions accounted for using the equity method is conditional upon the disclosure encouraged by the Handbook. Irrespective of the SEC practice, the OSC is satisfied with the sufficiency of this disclosure. To require additional disclosure for significant acquisitions accounted for on an equity basis would represent a significant departure from current practice, which the OSC believes is unwarranted.

Comment (ii):

Another commentator noted that the exception for acquisitions accounted for using the equity method presumed the availability of audited financial statements of the investee. The commentator suggested that if this exclusion is retained in the proposed Rule, the OSC accept reference to a review engagement report, if any, on the financial statements from which the information was obtained or, alternatively, require a comfort letter from the investee's accountants that a section 7100 review had been performed on such financial statements.

Response:

The commentator is correct that the exception is conditional upon the availability of audited financial statements of the investee. This condition has been clarified in the proposed Rule. The OSC is not prepared at this time to make a change to this condition as it believes that it is important that the disclosure be based on audited financial statements.

7. Other Exceptions

Comment:

One commentator suggested that the OSC should consider adding a provision to permit financial statements covering a period of 9-12 months to satisfy the exemption requirement in paragraph 5.6(1)(a) of the 1999 proposed Rule.

Response:

The OSC has considered a provision along the lines suggested by the commentator and has rejected it as providing insufficient disclosure for the public.

8. Disclosure for Multiple Acquisitions that are not otherwise a Significant Acquisition

Comment (i):

Two commentators suggested that a provision should be added to section 5.7 of the 1999 proposed Rule (section 7.2 of the proposed Rule) to provide that if annual financial statements are required for a financial year ended less than 90 days before the date of the prospectus, an issuer may omit the financial statements for the most recently completed interim period for the prospectus, similar to such provisions in subsection 4.3(2) and subsection 5.4(2) of the 1999 proposed Rule.

Response:

The OSC agrees with the commentators and has added this provision.

Comment (ii):

Two commentators noted that the test for inclusion of financial statements for multiple acquisitions that are not a significant acquisition of related businesses (subsection 5.7(2) of the 1999 proposed Rule) is inconsistent with the basic tests for revenue and income, which apply only to the issuer's proportionate share (paragraphs 2.2(1)2&3).

Response:

The OSC acknowledges that there is a difference between the measure of what is significant (eg., based on the issuer's *proportionate* share of the acquiree's income) and the threshold for disclosure required for multiple acquisitions (eg., disclose financial statements for companies representing a majority of the income). The OSC believes that this difference in formulation is appropriate.

PART II. GENERAL REQUEST FOR COMMENT

A. Harmonization Across Canada

1. Harmonization of Long Form Rules

Comment:

Five commentators strongly expressed concerns over the practical problems for securities issuers and their professional advisors if the proposed Rule becomes effective without corresponding changes in other Canadian provinces and territories. In lieu of a uniform national rule, which would be preferable, the commentators requested, at a minimum, administrative policy guidance from the various commissions concerning the need for exemptions when filing a prospectus prepared under the proposed Rule.

Response:

The OSC understands the commentators' concerns and will continue to diligently work with the CSA to provide greater guidance to issuers on this point. Please refer to the Notice for further information.

2. Harmonization of Financial Statement Requirements in a National Instrument

Comment:

Three commentators suggested that the CSA consider consolidating certain requirements into one or more separate National Instruments. Some of the topical suggestions for a National Instrument included: financial statement requirements of the issuer and acquired businesses; management's discussion and analysis; and selected financial data.

Response:

The OSC recognizes the merits of consolidating certain requirements, such as the financial statement requirements for issuers and acquired companies, into one or more separate National Instruments. Given the statutory time periods required to make a rule and the time available to the OSC before the deemed Rule replacing National Policy Statement No. 47 Prompt Offering Qualification System is to expire, it would not have been possible to prepare a new National Instrument, publish it for comment and finalize it. The OSC will consider the commentators' suggestion in the future.

B. Field Testing

Comment:

Two commentators recommended that the proposed Rule be more thoroughly field tested before it is put into effect.

Response:

The OSC encourages market participants to field test the proposed Rule during the comment period.

C. Continuous Disclosure Issues

Comment:

Three commentators expressed their great disappointment that an integrated continuous disclosure regime has not been developed coincident with the introduction of the proposed Rule.

Response:

The OSC recognizes that the prospectus disclosure regime would be clearly relevant to an integrated continuous disclosure regime. Staff of the OSC are actively participating in a separate CSA initiative to develop a proposal for an integrated disclosure system.

D. Special Warrant Offerings

Comment:

Two commentators suggested that the new general prospectus requirements would provide an opportunity to rationalize the present unsatisfactory treatment of special warrant offerings and the subsequent exercise of the warrant and distribution of securities. The commentators suggested that the OSC consider the benefits that might be achieved through designing a "fast-track" disclosure document that would be filed before an issue of special warrants.

Response:

In the context of the proposed Rule, the OSC has resolved not to provide different treatment for special warrant transactions. The OSC is of the view that the differences between special warrant offerings and other offerings are mainly with respect to timing. The significance of the prospectus to an issuer's continuous disclosure record is a key factor in the decision to make no distinction between, and therefore not establish a separate system for, special warrant and other offering documents.

E. Financial Statement Disclosure for Predecessor Entities

Comment:

Two commentators questioned how "material portion of business" is to be interpreted in the context of section 4.4 of the 1999 proposed Rule dealing with the obligation to file financial statements of predecessor entities. The commentators suggested that the guidance in section 2.1 of the 1999 proposed Policy be embodied in the proposed Rule.

Response:

Section 4.4 of the proposed Rule has been significantly revised to provide more detailed guidance as to when financial statements of the issuer's predecessor entity(ies) will be required. Section 4.5 of the proposed Rule now deals with reverse take-overs, which were previously addressed in section 2.1 of the 1999 proposed Policy.

F. Disclosure of Issuer's Financial Statements

Comment:

One commentator suggested that paragraph 4.1(1)2 of the 1999 proposed Rule should be amended to refer to "statements of surplus" to encompass a statement of retained earnings, unitholders' equity or partners' equity, as circumstances require.

Response:

The OSC has added a reference to a statement of retained earnings in the financial statement disclosure requirements of issuers and significant acquisitions. The OSC is satisfied with the current practice of

interpreting "statement of retained earnings" to include a statement of unitholders' equity or partners' equity, as the circumstances require.

G. Foreign GAAP

1. Definition of "Foreign GAAP"

Comment:

Two commentators suggested that the definition of "foreign GAAP" should be extended by adding the words "and form a basis for reconciliation to Canadian GAAP".

Response:

The OSC is of the opinion that a body of generally accepted accounting principles that are as comprehensive as Canadian GAAP would form the basis of a reconciliation to Canadian GAAP and therefore has not added the phrase proposed.

2. Standard for "Foreign GAAP"

Comment (i):

One commentator noted that the proposed standards of reporting for foreign issuers and significant foreign acquisitions exceed those of the SEC. The commentator suggested that this would make it more costly for foreign issuers to access Canadian capital markets and for Canadian issuers to make acquisitions of foreign businesses. The commentator did not appreciate any policy reason for such high standards of foreign reporting and recommended the deletion of subparagraph 6.1(2)(b)(ii) of the 1999 proposed Rule (subparagraph 8.1(2)(b)(ii) of the proposed Rule) to provide Canadian GAAP disclosures for all significant foreign acquisitions. The commentator suggested that the requirements of subparagraph 6.1(2)(b)(i) of the 1999 proposed Rule be applied only to foreign acquisitions significant at the greater than 30% level.

Response:

The OSC strongly believes in the importance to investors of reconciliation of foreign GAAP to Canadian GAAP and therefore has not made the change suggested.

Comment (ii):

One commentator suggested that where three years of audited annual financial statements of a foreign issuer are required to be included in a prospectus, the requirement of paragraph 6.1(2)(b) of the 1999 proposed Rule be applied only to the two most recent financial years. The commentator noted that this would be consistent with the accommodation the SEC affords to foreign issuers filing a prospectus in the United States.

Response:

The OSC considered such a provision and rejected it in view of its strong belief in the importance to investors of reconciliation to Canadian GAAP and comparability of statements for periods disclosed.

3. Foreign GAAP Comfort Letter

Comment (i):

One commentator disagreed with the requirements contained in subsection 9.9(3) of the 1999 proposed Rule (subsection 11.9(3) of the proposed Rule). The commentator was of the view that it would be inappropriate to single out this aspect of the audit of a set of financial statements and attempt to second guess the quality of the audit work in this area by reading a letter. The commentator believed that these concerns should continue to be addressed in the comment letter process on a case-by-case basis where judgment can be exercised. The commentator enumerated specific factors that could be considered in exercising this judgment.

Response:

Part of the rule-making process is to standardize requirements applicable to all issuers. On balance, the OSC continues to be of the view that this comfort letter discussing the auditor's expertise to audit the reconciliation of foreign GAAP to Canadian GAAP and to make the determination that foreign GAAS (other than U.S. GAAS) is substantially equivalent to Canadian GAAS is an appropriate filing in all cases.

Comment (ii):

Three commentators noted that responsibility for the preparation of the financial statements rests with the issuer, not the auditor. A letter from the issuer should outline steps they took in preparing the reconciliation. Any information concerning the audit procedures performed in connection with the reconciliation should come directly from the issuer's auditors.

Response:

This provision in the proposed Rule has been revised to require discussion of the auditor's expertise to audit the reconciliation rather than prepare the reconciliation.

Comment (iii):

Three commentators questioned how an auditor will be able to confirm that the foreign GAAS applied is "substantially equivalent" to Canadian GAAS. The commentators suggested that the OSC provide a list of foreign jurisdictions with auditing standards that are substantially equivalent to Canadian standards or, alternatively, clarify the definitions of "substantially equivalent to Canadian GAAS" and "comprehensive".

Response:

The OSC agrees that a list of foreign jurisdictions recognized as having auditing standards that are substantially equivalent to Canadian standards is a worthy objective. However, such a list does not exist at present and is beyond the scope of the proposed Rule. In the meantime, the responsibility for making a determination as to substantial equivalence and comprehensiveness appropriately lies with auditors with expertise in both of the jurisdictions in question.

Comment (iv):

One commentator was of the view that the SEC approach to dealing with foreign auditors represents a more practical means of ensuring their qualifications are adequate.

Response:

The OSC is satisfied that the approach adopted in the proposed Rule is practical.

Comment (v):

One commentator suggested that in cases where the foreign jurisdiction's auditing and accounting standards are not up to Canadian standards, the OSC should require Canadian GAAS reports from Canadian auditors on Canadian GAAP statements.

Response:

If a foreign auditor is unable to satisfy the OSC that the foreign accounting standards applied are substantially equivalent to Canadian GAAP and the foreign auditing standards are as comprehensive as Canadian GAAS, alternative auditing and reporting standards will be necessary.

H. Compilation Report Requirement

Comment:

Two commentators pointed out that the requirement for a compilation report will introduce a problem in cross-border filings in the United States because the SEC does not permit the use of such a report. The commentators suggested that under the MJDS, the auditor must, in effect, undo the report. The commentators also noted that, if the auditor believes a *pro forma* presentation is misleading, he or she will refuse to issue a consent.

Response:

The OSC acknowledges the differences in the regimes in this area. This had lead to difficulty for some time in this area. Discussion regarding compilation reports and consents are proceeding at this time. In the absence of viable alternatives no changes to the proposed Rule are appropriate at this time. In addition, the *Securities Act* (Ontario) requires that *pro forma* financial statements be accompanied by a compilation report.

I. Auditor's Consent

Comment:

Two commentators expressed concern about the requirements for the auditor's consent letter contained in paragraph 9.7(2)(b) of the 1999 proposed Rule (paragraph 11.7(2)(b) of the proposed Rule). The commentators also raised a number of objections to differences in the drafting between paragraph 9.7(2)(b) from the corresponding requirement in section 34 of the Regulation. The commentators' objections were: (1) the provision would apply only to the auditor of the issuer, and not to another reporting accountant; (2) the date of the auditor's report and the financial statements reported on by the auditor are not identified; and (3) the statement would appear to refer to information derived from any financial statements in the prospectus (including those that are unaudited or have been reported on by another accountant).

Response:

The OSC disagrees with the concerns described in (1) and (2) above as the proposed requirement in question addresses the concerns expressed. The OSC agrees with the third concern and has amended paragraph 11.7(2)(b) of the proposed Rule to limit the auditor's responsibility to those financial statements on which the auditor has opined.

J. Auditor's Comfort Letter Regarding Unaudited Statements

Comment:

Two commentators expressed concern about the auditor's comfort letter to the OSC relating to unaudited financial statements in a prospectus.

Response:

This area is being considered. At this time no change is being made.

K. Disclosure of Material Dispositions

Comment:

Three commentators suggested that any proposals for financial statement disclosure relating to material dispositions should include requirements analogous to those concerning acquisitions, as in the United States. The commentators were of the view that quantitative thresholds for determining when disclosures are required for dispositions are desirable.

Response:

The OSC agrees with the commentators. Standards for "significant" dispositions have been added to the proposed Form. The CSA Manual Committee plans to include in the next version of the Corporate Finance Accountants Manual guidelines with respect to the *pro forma* financial statement requirements and significant dispositions.

L. Approved Rating Organizations

Comment:

One commentator opposed including three United States rating agencies in the definitions of "approved rating organization" and "approved rating" until such time as the SEC agrees to recognize Canadian-based agencies as "Nationally Recognized Statistical Rating Organizations". The commentator noted that the objection to giving the rating agencies access to the Canadian markets is not a comment on their ability.

Response:

The OSC received submissions from each of the three United States rating agencies in question and believes, based on the submissions received, that the Canadian market is served by recognizing them.

M. Long Form Prospectus Form

1. Instructions to Form 41-501F1

Comment (i):

Instruction (6) of the initial instructions to the 1999 proposed Form uses a "more likely than not" criterion in connection with an evaluation as to whether a person or company will become a subsidiary or investee. Three commentators noted that this differs from the definition of "probable acquisition" and questioned whether it is intended to have two standards of disclosure, being one for the qualitative disclosures in the body of the prospectus and one for the financial disclosures in the prospectus.

Response:

The OSC believes that the difference is appropriate in the circumstances.

Comment (ii):

In paragraph (b) of the Instruction to Item 4.2 of the 1999 proposed Form dealing with intercorporate relationships, one commentator recommended the deletion of the modifiers "sales and operating" in front of the term "revenue".

Response:

The specific reference to sales and operating revenue is deliberate in order to exclude miscellaneous revenue, such as interest.

Comment (iii):

In Instruction (4) to Item 8.4 of the 1999 proposed Form, it was unclear to two commentators whether the reference to accounting recommendations and practices is intended to mean recommendations and practices in Canada and/or foreign jurisdictions. The commentators suggested that the instruction should refer to Canadian recommendations and practices.

Response:

The OSC agrees and has revised the instruction accordingly.

2. Form 41-501F1

(a) Distribution

The commentator noted that Item 1.4(7) of the 1999 proposed Form referred to expenses of the distribution, but that there was no requirement in this Item to disclose the amount of such expenses.

Response:

The OSC is of the view that disclosure of the portion of the expenses to be borne by the selling securityholder is more informative than disclosure of the amount of such expenses.

(b) Acquisitions and Dispositions

Comment (i):

Two commentators questioned whether the reference in Item 5.2(1)(a) of the 1999 proposed Form to any significant acquisition should include any significant probable acquisition.

Response:

The term "significant acquisition" does include significant probable acquisitions. An interpretation provision to this effect has been added to the proposed Rule.

Comment (ii):

The commentators suggested that, for purposes of Item 5.2(2)(e) of the proposed Form, *pro forma* financial statements or other *pro forma* presentation should be considered for acquisitions and dispositions.

Response:

The OSC encourages the use of *pro forma* financial statements in this area. The CSA Manual Committee plans to include in the next version of the Corporate Finance Accountants Manual guidelines with respect to the *pro forma* financial statement requirements and significant dispositions.

(c) *Issuers with Asset-backed Securities Outstanding*

Comment:

It was unclear to two commentators whether, in Item 6.2(e), payments of principal and interest are to be disclosed separately or in the aggregate.

Response:

A clarification has been added to the proposed Form.

(d) *Annual Information*

Comment:

With respect to Item 8.1 of the 1999 proposed Form, two commentators favoured disclosure of summarized annual financial information for at least five years.

Response:

The OSC has decided to move to a three year financial statement history requirement and, consequently, does not believe that it is appropriate or desirable to require issuers to include selected financial information for five years without the underlying financial statements being included in their entirety. Under the proposed Rule, the inclusion of selected financial information for earlier years is discretionary.

(e) Quarterly Information

Comment (i):

One commentator believed issuers making an initial public offering should be exempted from the requirement for quarterly information in Item 8.2 of the 1999 proposed Form. In the commentator's experience, most IPO issuers do not have quarterly financial information available and it would require a significant accounting effort on the part of management to prepare this information. There also would be significant additional costs to the issuer because the underwriters would want assurances on this financial information in the auditors' comfort letter.

Response:

The OSC recognizes the difficulties identified by the commentator and has modified Item 8.2 to require an issuer, that has not been a reporting issuer for the eight most recently completed quarters ending at the end of the most recently completed financial year, to provide the quarterly information for the period that the issuer was not a reporting issuer only if the issuer has otherwise prepared quarterly financial statements for that period.

Comment (ii):

Two commentators noted that the period to be covered in the disclosure under Item 8.5 of the 1999 proposed Form of the amount of preliminary expenses already expended and the estimated future expenditures is not clear. In the situation of a natural resource company in the exploratory stage, for example, it may not be possible to make a reasonable estimate of preliminary expenses remaining to be incurred in future.

Response:

On further consideration, this Item has been deleted and what was Item 8.6 in the 1999 proposed Form has been expanded [now Item 8.5] to deal with businesses still in the development stage.

(f) Management's Discussion and Analysis

Comment:

One commentator agreed that only two discussions are needed for MD&A relating to the last three financial years in Item 8.6 of the 1999 proposed Form. The commentator further suggested that there were a

significant number of situations where an integrated discussion of, eg., 1997 vs. 1996 vs. 1995 is preferable to discrete discussions of 1997 vs. 1996 and 1996 vs. 1995.

Response:

A clarification to this effect has been added to the Form.

(g) Earnings Coverage Ratios

Comment (i):

Four commentators expressed concern that the earnings coverage ratios, as calculated according to Item 9 of the 1999 proposed Form, could be misleading. Three of these commentators expressed concern regarding the effect of classification of financial instruments as "compound instruments" or "equity instruments".

Three of the commentators were of the view that making *pro forma* adjustments to the denominator, but not to the numerator of the ratio, could lead to the misleading results.

Response:

The OSC appreciates the limitations of the earnings coverage calculations, but has refrained from making changes that would represent a departure from GAAP. Instead, in response to the specific comment regarding "compound instruments", additional disclosure is required in the proposed Form, namely to recalculate and disclose the ratios as if the equity component had been accounted for as debt.

N. Long Form Companion Policy

1. Applications for Exemption from Requirement to Include Financial Statements of the Issuer

Comment (i):

Two commentators recommended that the matters discussed in section 2.2 of the 1999 proposed Policy regarding potential relief be identified only as factors to be considered when an exemption is requested, so as to avoid unduly raising the hopes of issuers who do not wish to comply with the requirements.

Response:

Clarification to this effect has been added to the proposed Policy.

Comment (ii):

The commentators noted that failure to provide comparative figures, as contemplated by subsection 2.2(5) of the 1999 proposed Policy, represents a departure from GAAP, unless the information is not reasonably determinable. The commentators suggested the issue should be not that the entity *did not* prepare interim financial statements, but that the entity *is unable* to prepare such statements.

Response:

The proposed Policy has been revised to reflect this comment.

2. Extension of Period for Issuance of Receipt

Comment:

Three commentators suggested that subsection 6.1(3) of the 1999 proposed Policy is no longer necessary because the proposals in Part 4 of the 1999 proposed Rule provide specific timing requirements for the issuer's financial statements included in the final prospectus.

Response:

The OSC agrees with this comment and has revised the proposed Policy accordingly.

3. Generally Accepted Auditing Standards

Comment:

The third sentence in section 4.2 of the 1999 proposed Policy states that the foreign auditor's report must be accompanied by a statement that the auditing standards applied are substantially equivalent to Canadian GAAS and include a comment disclosing any material differences in the form and content of the foreign auditor's report. The commentators suggested that the first statement should be included in the letter to be required by the OSC from the foreign auditor, whereas the latter statement should accompany the auditor's report.

Response:

The OSC considered the suggestion but decided to retain the requirement that a foreign auditor's report include a statement that the foreign auditing standards applied since this is important disclosure for investors.

4. Additional Guidance Regarding Identification of Audited and Unaudited Information

Comment:

Two commentators noted that in the text of a prospectus, issuers and their professional advisors often wish to use the captions "audited" and "unaudited" to indicate which information is derived from audited financial statements, and which from unaudited statements. The commentators considered this practice potentially misleading, since normally it is only financial statements that are audited, and the danger is that a reader will assume that any figures not identified as unaudited (and possibly other information as well) have been audited or derived from audited financial statements. The commentators suggested it would be helpful if guidance on this practice was incorporated in the proposed Policy.

Response:

The OSC has decided to rely on the judgment of issuers and their advisors as to the manner most appropriate for marking information derived from financial statements.

5. Business Acquisition Disclosure

Comment:

Two commentators believed that the decision chart attached as Appendix A to the Companion Policy relating to business acquisitions disclosure will be helpful to issuers and their advisers. The commentators pointed out that the first box on the right side of the page should refer to audited income statements for two, rather than three, years and the third box in the same vertical column should make reference to the requirement for a *pro forma* balance sheet and income statement.

Response:

The OSC agrees with this comment.

O. Drafting Style

1. Providing Examples and More Guidance

Comment:

Two commentators recommended the development of additional guidance in the proposed Policy as to the interpretation of the proposed Rule and the proposed Form in specific situations. They also strongly encouraged the OSC to include examples in the proposed Policy illustrating the application of the proposed Rule and proposed Policy.

Response:

The OSC has added some examples in the proposed Policy in response to this comment.

2. Obscure and Legalistic Drafting Style

Comment:

Three commentators expressed significant concern with the obscure and overly legalistic style of the text. Many of the detailed provisions require the reader to refer back and forth from paragraph to paragraph in order to decipher their intent. The commentators encouraged the re-drafting of the proposals in simpler form and language.

Response:

The OSC is sympathetic to this concern and hopes that the re-drafting in the proposed Instruments is responsive to this comment.