

Chapter 5

Rules and Policies

5.1.1 CSA Notice - Replacement of NI 44-101 Short Form Prospectus Distributions, Form 44-101F3 Short Form Prospectus and Companion Policy 44-101CP Short Form Prospectus Distributions

NOTICE

REPLACEMENT OF
NATIONAL INSTRUMENT 44-101 *SHORT FORM PROSPECTUS DISTRIBUTIONS*,
FORM 44-101F3 *SHORT FORM PROSPECTUS*
AND
COMPANION POLICY 44-101CP *SHORT FORM PROSPECTUS DISTRIBUTIONS*

October 21, 2005

Introduction

We, the Canadian Securities Administrators (CSA), are replacing the following instruments, which came into effect in December 2000:

- National Instrument 44-101 *Short Form Prospectus Distributions* (Former NI 44-101) and
- Form 44-101F3 *Short Form Prospectus*,

with the following instruments, respectively:

- National Instrument 44-101 *Short Form Prospectus Distributions* (New NI 44-101), and
- Form 44-101F1 *Short Form Prospectus* (New Form).

(In this Notice, New NI 44-101 and the New Form are collectively referred to as the "Instrument".)

The Companion Policy 44-101CP *Short Form Prospectus Distributions* (the Policy), which includes explanations, discussion and examples on how the CSA will interpret and apply the Instrument, is also being replaced.

Concurrently with the publication of this Notice, we are also publishing another CSA Notice that sets out related amendments (the Consequential Amendments) required to conform the following instruments to the Instrument:

- National Instrument 44-102 *Shelf Distributions*
- National Instrument 44-103 *Post-Receipt Pricing*
- National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* and
- Form 51-102F2 *Annual Information Form* of National Instrument 51-102 *Continuous Disclosure Obligations*.

Members of the CSA in the following jurisdictions have made, or expect to make, the Instrument

- a rule in each of British Columbia, Alberta, Manitoba, Ontario, Nova Scotia, Prince Edward Island, New Brunswick and Newfoundland and Labrador;
- a commission regulation in Saskatchewan and a regulation in Québec; and
- a policy in the Northwest Territories, Yukon and Nunavut.

The Policy has been, or is expected to be, adopted in all jurisdictions.

In British Columbia and Ontario, the implementation of the Instrument is subject to ministerial approval.

In Ontario, the Instrument and the other materials required to be delivered to the minister responsible for the oversight of the Ontario Securities Commission were delivered on **October 14, 2005**.

In Québec, the Instrument is a regulation made under section 331.1 of *The Securities Act* (Québec) and must be approved, with or without amendment, by the Minister of Finance. The Instrument will come into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation.

Provided all necessary ministerial approvals are obtained, the Instrument and Consequential Amendments will come into force on **December 30, 2005**.

Substance and Purpose

The Instrument modifies the qualification, disclosure and other requirements of the short form prospectus system so that this prospectus system can build on and be more consistent with recent developments and initiatives of the CSA. For example, the Instrument

- permits more reporting issuers to use the short form prospectus system by eliminating the minimum market capitalization requirement and the requirement that an issuer be a reporting issuer for a certain length of time before it can use the short form prospectus system;
- eliminates duplication and inconsistencies between the short form prospectus system and both National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) and National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) (together, the "CD Rules"), thereby better integrating the disclosure regimes for the primary and secondary markets;
- further streamlines the short form prospectus system by, for example, eliminating the requirement for regulatory review of an issuer's initial annual information form before the issuer could file a short form prospectus; and
- addresses deficiencies or ambiguities in Former NI 44-101 that the CSA had identified over the past four years.

Summary of Written Comments

On January 7, 2005, we published the Instrument and Policy for comment. The comment period ended in April 2005. During the comment period, we received submissions from 14 commenters. Appendix A lists the names of the commenters and Appendix B summarizes their comments and our responses.

When we published the Instrument and Policy for comment, we also requested comments on possible further changes in prospectus regulation; namely, whether we should permit certain eligible issuers to access public capital solely by filing a final prospectus without regulatory review. Appendix C summarizes the comments that we received in response to those proposed changes. We will keep those comments in mind when we return to deliberating whether such changes to the prospectus system ought to be made. We will also continue with the CSA project to harmonize and nationalize the general prospectus requirements, including the disclosure requirements of a long form prospectus. For now, the CSA has decided to proceed with the changes to, and expansion of, the short form prospectus system included in the Instrument.

We would like to thank everyone for taking the time to provide us with comments.

Summary of Changes to the Instrument and Policy

After considering the comments, we made some changes to the Instrument and the Policy that were published for comment in January 2005. We do not believe these changes are material and are not republishing the Instrument or the Policy for a further comment period. The changes are summarized in Appendix D.

Questions

Please refer your questions to any of the following:

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Rules and Policies

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Appendix A

List of Commenters

	COMMENTER	DATE
1.	Shawn Allen	January 31, 2005
2.	Aur Resources Inc.	March 8, 2005
3.	Canadian Trading and Quotation System Inc.	March 29, 2005
4.	Macleod Dixon	April 7, 2005
5.	Canaccord Capital Corporation	April 8, 2005
6.	Investment Dealers Association of Canada	April 8, 2005
7.	Ontario Bar Association - Securities Law Subcommittee of the Business Law Section	April 8, 2005
8.	Torys LLP	April 8 and 26, 2005
9.	TSX Group	April 8, 2005
10.	Ernst & Young	April 11, 2005
11.	Osler, Hoskin & Harcourt LLP	April 11, 2005
12.	Stikeman Elliott LLP	April 11, 2005
13.	KPMG LLP	April 12, 2005
14.	Borden Ladner Gervais LLP	April 13, 2005

Appendix B

Summary of Comments
on Instrument and Policy

<i>Item</i>	<i>Reference</i>	<i>Summarized Comment</i>	<i>CSA Response</i>
Part A: Comments in Response to Questions in CSA Notice dated January 7, 2005			
1. Question 1 - Alternative A vs. B²			
1.1	Preference for Alternative B	<p>None of the commenters expressed a preference for Alternative A. Eleven out of fourteen commenters expressed their preference for Alternative B.</p> <p>Some of the comments supporting Alternative B were:</p> <ul style="list-style-type: none"> • Investors are now receiving timely, comprehensive information from reporting issuers through continuous disclosure (CD) filings and there is no reason to discriminate against issuers based on their market capitalization or the length of time the issuer has been a reporting issuer. • Alternative B will significantly improve the ability of junior issuers, in particular, to access equity markets on a more timely and cost efficient basis. This proposal will benefit the junior market as a whole. • The preference for Alternative B is significantly influenced by the qualification requirement that issuers have a Canadian listing. 	The commenters overwhelmingly supported Alternative B. We will proceed with Alternative B, which will broaden access to the short form prospectus system.
1.2	Qualification criteria – review of annual information forms (AIF)	One commenter urged the CSA to review the first AIF filed by a new reporting issuer that did not file a long-form initial public offering prospectus with the same rigour used to review an initial public offering prospectus.	All reporting issuers are subject to the CSA's CD review program, which CSA Staff Notice 51-312 <i>Harmonized Continuous Disclosure Review Program</i> describes in greater detail. We believe our CD review program adequately addresses the commenter's concerns because we review AIFs as well as issuers' other CD documents. We also note that, whether we review a document or not, the onus remains with the issuer to ensure it complies with prescribed disclosure requirements.

² Question 1: The changes reflected in Alternative A of Part 2 of Proposed NI 44-101 are necessary to update and harmonize Current NI 44-101 with the CD Rules and other regulatory developments. Alternative B, however, represents a significant broadening of access to the short form prospectus system. Do you believe this broadening of access is appropriate? What are your views on the proposed qualification criteria set out as Alternative B?

Item	Reference	Summarized Comment	CSA Response
1.3	Qualification criteria – definition of AIF	One commenter recommended that the proposed definition of AIF be changed so that it would be consistent with the definition of AIF in proposed National Instrument 45-106 <i>Prospectus and Registration Exemptions</i> , which definition takes into account alternative forms of an “acceptable” AIF other than an AIF under the CD Rules.	We have not changed the definition of AIF. We believe that section 2.7 of NI 44-101, which exempts new reporting issuers and successor issuers from the requirement to have a current AIF, is sufficient.
1.4	Qualification criteria – novel securities	One commenter questioned whether, absent pre-filing consultations, any issuer that proposes to distribute novel securities should be qualified to use a short-form prospectus.	<p>We believe that current procedures adequately address the commenter’s concerns. National Policy 43-201 <i>Mutual Reliance Review System for Prospectuses</i> encourages pre-filing consultations and enables the regulator to take more time to review a preliminary prospectus if the regulator requires the additional time.</p> <p>If we adopt further changes to our offering system (such as eliminating preliminary prospectus and prospectus review and receipt) the commenter’s concerns regarding novel securities will be reconsidered in that context.</p>
1.5	Qualification criteria – reference to NI 51-102 <i>Continuous Disclosure Obligations</i>	One commenter suggested replacing, in sections 2.2, 2.3 and 2.4 of NI 44-101, “applicable securities legislation” with “NI 51-102” in the phrase “periodic and timely disclosure documents that the issuer is required to have filed in that jurisdiction under <u>applicable securities legislation</u> ”.	We cannot limit this criterion to NI 51-102. For example, certain investment funds can use the short form prospectus system, but their CD filing obligations arise out of NI 81-106 not NI 51-102. We also believe that disclosure documents under all applicable securities legislation should be filed in order for an issuer to be qualified to use the short form prospectus system.
1.6	Qualification criteria – venture issuers	<p>Two commenters suggested that venture issuers be required to comply with the disclosure and governance obligations of non-venture issuers to be qualified to use the short form prospectus system.</p> <p>One commenter suggested that a venture issuer choosing to access the short form distribution system be required to file its annual financial statements, annual MD&A and AIF within 90 days of its financial year end.</p>	NI 44-101 harmonizes and integrates the short form prospectus regime with the CD regime. Other than the requirement to have a current AIF (which is a base disclosure document for a short form prospectus), we do not think it is necessary to change the CD and corporate governance obligations of venture issuers to permit them to use the short form prospectus system.
1.7	Qualification criteria – issuers whose operations have ceased or whose principal asset is cash or exchange listing	One commenter suggested changing the qualification criteria in 2.2(e). There may be circumstances where an issuer has operations but whose principal asset is cash or cash equivalents. Nevertheless, the issuer should be qualified to file a short form prospectus.	We disagree. We generally believe that an issuer whose principal asset is cash or cash equivalents will not have significant operations and should not be qualified to file a short form prospectus. If there are exceptional circumstances and such an issuer would like to be qualified to file a short form prospectus, the issuer may apply for exemptive relief from this qualification criterion.

<i>Item</i>	<i>Reference</i>	<i>Summarized Comment</i>	<i>CSA Response</i>
1.8	Qualification criteria - short form eligible exchange	<p>Two commenters suggested that the Canadian Trading and Quotation System Inc. be included in the definition of “short form eligible exchange”.</p> <p>Both commenters also noted that the definition will make it difficult to accommodate new exchanges. They suggested changing the definition so that any exchanges recognized by a CSA jurisdiction in the future would automatically also become a “short form eligible exchange”.</p>	<p>We agree with the commenters’ first suggestion. We have added the Canadian Trading and Quotation System Inc. to the definition of “short form eligible exchange”.</p> <p>We have not, however, made the second change to the definition suggested by the commenters. We believe that the criteria to be recognized as an exchange are different from the criteria to be recognized as a short form eligible exchange. There may be exchanges that we recognize in the future which should not be “short form eligible exchanges”.</p>
2. Question 2 - Credit Supporter Disclosure Undertaking (Subparagraph 4.2(b)(ii) of NI 44-101)³			
2.1	Supportive	Four commenters expressed general support for the requirement to deliver an undertaking in respect of credit supporter disclosure under subparagraph 4.2(b)(ii)	We acknowledge these comments.
2.2	Not supportive	One commenter did not agree with the requirement to deliver an undertaking in respect of credit supporter disclosure. The commenter’s view was that the issue is satisfactorily addressed in NI 51-102 where the issuer does not have to file CD if the credit supporter does so. Also, the indenture between the issuer and the credit supporter will contain covenants to ensure the credit supporter is in compliance with applicable rules. Therefore, the risk of the credit supporter not providing the required disclosure is minimal.	<p>NI 51-102 does not currently require any credit supporter disclosure by the issuer though there is an exemption in section 13.4 of NI 51-102 from providing issuer disclosure if appropriate credit supporter disclosure is provided instead.</p> <p>We note that the indenture is a private agreement and compliance with it does not necessarily ensure public disclosure.</p>
2.3	From either issuer or credit supporter	One commenter suggested that the undertaking in respect of credit supporter disclosure could come from either the issuer or the credit supporter.	<p>We believe the undertaking should come from the issuer because:</p> <ul style="list-style-type: none"> • the periodic and timely disclosure of the credit supporter will be filed on the issuer’s SEDAR profile; and • issuers and credit supporters can structure their agreements so that the issuer can meet its obligations pursuant to the undertaking.
2.4	Type of disclosure	Three commenters asked for clarification of the type of timely and periodic disclosure of the credit supporter that would have to be filed pursuant to the undertaking delivered. One commenter	We have clarified in subparagraph 4.2(b)(ii) that the undertaking will be to file the credit supporter’s periodic and timely disclosure that is similar to the disclosure required in section 12.1 of Form 44-

³ Question 2: Is the requirement to deliver an undertaking of the issuer to file the periodic and timely disclosure of applicable credit supporters under paragraph 4.3(b)2 of Proposed NI 44-101 an appropriate response to our concern about the lack of adequate credit supporter disclosure in the secondary market? If not, why not? Please also suggest alternatives to this requirement.

Item	Reference	Summarized Comment	CSA Response
		<p>asked whether the undertaking could be limited to periodic and timely disclosure required by applicable home jurisdiction corporate/securities laws.</p> <p>One commenter asked for clarification particularly in regard to foreign public companies that are not reporting issuers in Canada.</p> <p>One commenter noted that if neither subsection 12.1(1) nor subsection 12.1(2) of Form 44-101F1 applies to the credit supporter, it may be difficult for the issuer on an on-going basis to undertake that certain credit supporter information will be filed.</p>	<p>101F1. We have also added guidance in Companion Policy 44-101CP.</p>
2.5	Best efforts	<p>One commenter suggested that, rather than undertaking to file credit supporter disclosure, the issuer undertake to use its “best efforts” to adhere to the credit supporter disclosure requirements in section 12.1 on a CD basis.</p>	<p>We believe that an issuer can structure its agreements with a credit supporter to ensure that the periodic and timely disclosure of the credit supporter is available for the issuer to file on its SEDAR profile. Accordingly, we believe that a “best efforts” standard is inappropriate.</p>
3. Question 3 - Credit Supporter Exemption (Item 13 of Form 44-101F1) ⁴			
3.1	General - supportive	<p>One commenter expressed general support for the exemptions for certain issues of guaranteed securities contained in Item 13 of Form 44-101F1.</p>	<p>We acknowledge the comment.</p>
3.2	General - not supportive	<p>One commenter stated that the exemptions in Item 13 of Form 44-101F1 are inappropriate. NI 71-102 <i>Continuous Disclosure and Other Exemptions Relating to Foreign Issuers</i> and NI 52-107 <i>Acceptable Accounting Principles, Auditing Standards and Reporting Currency</i> already facilitate the direct offering of securities in Canada by foreign issuers. Investors should be provided with financial statements of the subsidiary entities because the consolidating summary financial information described in Item 13 is too sparse to allow any meaningful financial analysis.</p>	<p>The exemptions in Item 13 are consistent with exemptive relief that has been granted to date. The basis for granting relief and the principle supporting the exemptions is that full financial disclosure regarding both an issuer and any credit supporters is not required in all cases. We believe investors are primarily interested in the financial position and results of operations of the parent entity (whether that is the issuer or the guarantor). The consolidating summary financial information described in Item 13 is intended to address regulatory concerns regarding the disclosure of structural subordination (as discussed below) when only parent entity financial information is provided.</p>
3.3	Auditor’s report	<p>One commenter expressed several concerns about the form and content of the auditor’s report on the proposed</p>	<p>We acknowledge the comment. We have deleted instructions 1(b) and 1(c) from Item 13 of Form 44-101F1 and we have</p>

⁴ Question 3: Is each of the exemptions in Item 13 of Proposed Form 1 appropriate? If not, why not? Are there any other exemptions we should include? If so, why? Is each of the conditions to the exemptions in Item 13 of Proposed Form 1 necessary to ensure that investors have all the information they need to make informed investment decisions? If not, why not? Are there any other conditions we should include? If so, why?

Item	Reference	Summarized Comment	CSA Response
		<p>consolidating summary financial information.</p> <ul style="list-style-type: none"> • A U.S. auditor of a U.S. credit supporter may not be able to opine that the consolidating summary financial information is “fairly stated”. • In the case of a Canadian credit supporter: (i) there are no Canadian professional standards for preparing consolidating summary financial information; and (ii) the type of opinion that would be expressed is not covered under Canadian GAAS. • Instruction 1(c) to Item 13 requires the summary financial information of the subsidiary entities to be derived from financial statements of the subsidiary that are audited for the same periods that the parent company’s financial statements have been audited. Such an audit requirement will render the exemption useless to most multinational issuers. 	<p>replaced them with an instruction stating that an entity’s annual or interim financial information must be derived from the entity’s financial information underlying the corresponding consolidated financial statements of the issuer or parent credit supporter included in the short form prospectus.</p>
3.4	Recent acquisitions	<p>One commenter noted that paragraph (g) of Rule 3-10 of Regulation S-X provides guidance as to when the financial statements of recently acquired subsidiary issuers or subsidiary guarantors is required. We should consider whether comparable guidance for the exemptions in Item 13 is necessary.</p>	<p>We do not believe that guidance comparable to the guidance in Rule 3-10 paragraph (g) is necessary because the exemptions in Rule 3-10 are structured differently than the exemptions in Item 13.</p> <p>Paragraph (g) ensures that the financial statements of a significant recently acquired issuer or guarantor are included in a registration statement filed with the SEC. In contrast, the financial statements of a significant recently acquired issuer or guarantor must be included in a short form prospectus as a part of a business acquisition report (of the parent issuer or guarantor) regardless of whether one of the exemptions in Item 13 applies.</p>
3.5	Subsection 13.1(e)	<p>One commenter believes that the condition in subsection 13.1(e) is redundant given that under subsection 13.1(a), the credit support provider must have provided full and unconditional credit support for the securities being offered.</p>	<p>We disagree. Subsection 13.1(e) is not redundant. The purpose of subsection 13.1(e) is to ensure that issuers with one or more subsidiary credit supporters look to the exemption in section 13.2 rather than the exemption in section 13.1.</p>
3.6	Subsection 13.1(f)	<p>One commenter expressed the view that the consolidating summary financial information contemplated by sections 13.1(f)(ii), 13.2(f)(ii) and 13.3(f)(ii) would not add meaningful disclosure for an</p>	<p>Including consolidating summary financial information will alleviate regulatory concerns relating to the disclosure of “structural subordination”.</p>

Item	Reference	Summarized Comment	CSA Response
		investor and therefore should be deleted.	<p>Structural subordination occurs, for example, when an issuer is a subsidiary of a credit supporter and the credit supporter has other subsidiaries that are not themselves credit supporters. Upon the insolvency of the credit supporter, investors relying on its full and unconditional guarantee would not have direct claims against the assets of the non-issuer subsidiaries. Instead, investors would only have claims against the equity of these subsidiaries. Moreover, these claims would be subordinate to the claims of the subsidiaries' creditors.</p> <p>Paragraphs 13.1(f)(ii), 13.2(f)(ii) and 13.3(f)(ii) require disclosure of consolidating summary financial information for the issuer, the credit supporters, and any non-credit supporter subsidiaries. The disclosure of this information will enable investors to generally identify those assets against which they would only have indirect and subordinated claims in the event of insolvency.</p>
4. Question 4 - Disclosure of Interests of Experts (Item 15 of Form 44-101F1) ⁵			
4.1	Supportive	<p>Three commenters expressly agreed with the disclosure requirements contained in Item 15.</p> <p>Some commenters suggested conforming changes be made to Form 51-102F2 <i>Annual Information Form</i>.</p>	We acknowledge these comments and have made conforming changes to section 16.2 of Form 51-102F2 <i>Annual Information Form</i> (see CSA Notice of Consequential Amendments).
4.2	Not supportive	One commenter strongly objected to including Canadian auditors within the scope of this provision. The CSA should work with the Auditing and Assurance Standards Board of the CICA to effect appropriate amendments to the professional standards in Section 5751 and/or Section 7110 if the CSA believes it is desirable for an auditor to confirm independence every time a reporting issuer files a prospectus.	We have considered the comment and continue to believe that the disclosure requirement is not overly onerous. Therefore, we have retained the current requirement, in which the independence disclosure requirement for Canadian auditors is based on their compliance with applicable rules of professional conduct in their jurisdiction.
4.3	Alternative	One commenter suggested that, instead of the disclosure required by section 15.2 of Form 44-101F1, that section require disclosure affirming that the board of directors, or similar body, has determined whether each person or company described in paragraphs 15.1(a) and (b) is	We have not made the suggested change because we believe that disclosure of the expert's actual interest in the issuer is relevant to investors.

⁵ Question 4: Does Item 15 of Proposed Form 1 accomplish its objective, which is to ensure disclosure of any ownership interests that would be perceived as creating a potential conflict of interest on the part of an expert? If not, what changes should be made to the parameters?

<i>Item</i>	<i>Reference</i>	<i>Summarized Comment</i>	<i>CSA Response</i>
		independent of the issuer and its management.	
Part B: Comments on Other NI 44-101 Matters			
5. General			
5.1	Multijurisdictional Disclosure System (MJDS)	Two commenters urged us to ensure that the proposed rule would not adversely affect MJDS.	We have confirmed with staff of the SEC that the proposed rule will not adversely affect MJDS.
5.2	U.S. proposal for new prospectus system for well known seasoned issuers	One commenter urged the CSA to introduce amendments to the prospectus system to ensure that issuers who are interlisted in Canada and the United States can take advantage of a proposed prospectus system that the SEC has not yet implemented for "well-known seasoned issuers".	We have not yet made any changes to the short form system to accommodate interlisted issuers as a result of the SEC changes to the U.S. offering regime. We will consider further changes to our offering systems in response to the SEC proposals as appropriate.
5.3	Extending period for filing preliminary to 4 business days	One commenter agreed with our proposal to add two more business days to the period that an issuer has to file and obtain a receipt for a preliminary short form prospectus after it has entered into an underwriting agreement. This change should assist with due diligence and the preparation of the preliminary prospectus in more complex transactions.	We acknowledge this comment.
5.4	Requirement to restate financial statements	One commenter stated that there are no regulatory requirements for a reporting issuer to file restated annual financial statements for certain subsequent events such as retroactive changes in accounting principles and discontinued operations ("Type A" subsequent events in the CICA Handbook).	We will consider this comment in a broader context than NI 44-101 amendments because any decision on this issue is not limited to prospectus situations.
5.5	Review of unaudited financial statements	One commenter noted that, depending on the local generally accepted auditing standards, foreign auditors may not have a professional responsibility to review of interim financial statements included in the prospectus. In the absence of this review of unaudited interim financial statements, it may be difficult to determine whether the prospectus contains full, true and plain disclosure.	We acknowledge the comment. We have included a requirement in section 4.3 of NI 44-101 that any unaudited financial statements included in or incorporated by reference into the short form prospectus must have been reviewed in accordance with the relevant standards set out in the CICA Handbook for a review of financial statements by an entity's auditor or a public accountant's review of financial statements, or other acceptable foreign review standards. Although NI 44-101 retains the review requirement, the comfort letter addressed to the regulators evidencing that review is no longer required.
6. Significant Acquisitions and Business Acquisition Reports			
6.1	Reliance on business acquisition reports (BARS)	Two commenters endorsed the CSA's decision to rely on the business acquisition reports for significant acquisition	We acknowledge the comment.

Item	Reference	Summarized Comment	CSA Response
		disclosure. In particular, the elimination of the requirement to include financial statements where there have been multiple insignificant acquisitions is a great improvement.	
6.2	Transition	One commenter noted that there may be some acquisitions that have taken place in the last three completed financial years for which disclosure is currently required but for which a BAR was not required to have been filed. For example, a BAR was not required because the acquisition closed before March 30, 2004. The CSA should consider whether any transitional rules are required to fill the gap until the BAR requirements have been in place for three years.	We acknowledge the comment but believe that transitional rules are not necessary. Although no BAR will be filed for significant acquisitions completed prior to March 30, 2004, we are satisfied that, in respect of such acquisitions, an issuer's consolidated financial statements incorporated by reference would include adequate disclosure about the acquired business. For example, a December 31 financial year-end issuer will include at least nine months of operations of the acquired business in its consolidated annual audited financial statements. We also note that under NI 44-101, a BAR will require inclusion of financial statements for only the two most recently completed financial years of an acquired business and that only BARs filed since the beginning of the most recently completed financial year must be incorporated by reference into a short form prospectus.
6.3	Exemption from NI 51-102 BAR requirement	One commenter suggested that NI 51-102 be amended to provide an exemption from the requirement to file a BAR where a prospectus contains the information and financial statements that would otherwise be required in a BAR. This exemption would parallel the present exemption when disclosure is contained in an information circular.	We will consider this comment in the context of amendments to NI 51-102.
6.4	Pro forma statements for multiple acquisitions in BARs	One commenter suggested amending the pro forma financial statements requirements in NI 51-102 to require them to reflect, in addition to the acquisition that is the subject of the BAR, all significant acquisitions made during the periods covered by the audited and unaudited pro forma income statements of the issuer included in the BAR, to the extent not already reflected in the underlying historical statements.	We will consider this comment in the context of amendments to NI 51-102.
6.5	Auditor's compilation report on pro forma financial statements	One commenter would prefer that the CSA eliminate requirements for a compilation report on pro forma financial statements and rely on the enhanced professional standards in section 7110 of the CICA Handbook instead.	We will consider this comment in the context of amendments to NI 51-102 because the pro forma financial statements requirements in NI 44-101 were deleted in reliance on the business acquisition report requirements in NI 51-102.

Item	Reference	Summarized Comment	CSA Response
7. NI 44-101 - Specific Sections			
7.1	Part 2 - notice declaring intention to qualify for short form prospectus system	One commenter questioned whether this notice would be made available on SEDAR to the public, and whether the notice expired after a period of time. The rule was not clear whether any procedures are required to be taken by the issuer if the issuer subsequently decides not to file a prospectus.	<p>The purpose of the notice is merely to announce that the issuer intends to be qualified to use the short form prospectus system. We have moved this qualification criteria to section 2.8. In that section, we have clarified what the notice should state (see new Appendix A), when it must be filed, and to which regulator.</p> <p>Issuers must file the notice on SEDAR and it will be publicly available. The notice will not have an expiry date and will remain in effect until the issuer withdraws it. There should not be any market implications resulting from this notice since it is not tied to a pending offering or transaction.</p>
7.2	Subsection 2.7(1) - new reporting issuers	One commenter suggested that an IPO prospectus of a new reporting issuer under subsection 2.7(1) be deemed to be a "current AIF" so that it can be incorporated by reference into the short form prospectus under section 11.1 of Form 44-101F1.	An IPO prospectus does not need to be deemed to be a "current AIF". For a new reporting issuer relying on the subsection 2.7(1) qualification exemption in NI 44-101, section 11.3 of Form 44-101F1 requires disclosure that would have otherwise been in a current AIF to be included in a short form prospectus. The issuer may satisfy the section 11.3 disclosure requirement by incorporating by reference its IPO prospectus (see also General Instruction 5 of Form 44-101F1).
7.3	Section 4.4 - consent of experts	One commenter suggested that section 4.4 of proposed NI 44-101 be amended to accept the inclusion in the short form prospectus of the form of auditor's consent in CICA Handbook Section 7110 as satisfying the consent requirements that would otherwise apply under section 4.4.	We believe that the Handbook's auditor's consent is not sufficient for purposes of the short form prospectus. It does not include the statement that the auditor has read the short form prospectus and has no reason to believe that there are any misrepresentations in information derived from the following: the report, financial statements on which the auditor reported, knowledge of the auditor as a result of the services performed, or knowledge as a result of the audit of the financial statements. We believe these statements are an integral part of the auditor's consent.
7.4	Subsection 4.5(3) - translation into French	One commenter noted that, under current practice, if an issuer is not able to complete the translation of all documents to be incorporated by reference before the issuer files its preliminary prospectus, the issuer can apply for exemptive relief directly from the Autorité des Marchés Financiers (AMF). The commenter asked if subsection 4.5(3) would require an issuer to apply to the principal regulator for exemptive relief (either through the MRRS system or in the cover letter for the	The issuer must apply directly to the AMF for this relief, which would be evidenced by a decision document of the AMF, if granted. We have amended subsection 8.2(1) of NI 44-101 to add a reference to subsection 4.5(3) in the phrase "...other than an exemption, in whole or in part, from Part 2". This makes it clearer that exemptive relief from subsection 4.5(3) must be evidenced by a decision document and not the issuance of a receipt.

Item	Reference	Summarized Comment	CSA Response
		preliminary prospectus) rather than directly to the AMF.	
7.5	Section 7.1(c) - news release to be issued and filed	This section requires a news release be issued and filed prior to dealers being permitted to solicit expressions of interest. One commenter suggested that this section be amended so that the news release would only have to be issued, and not filed, before dealers could commence soliciting. The issuance of the press release is the more important of the two steps in this process and that, although the distinction may seem like a minor one, the practical implications in the context of "bought deal" financings can be significant.	We acknowledge the comment but have not made the suggested change. SEDAR is the central repository for regulatory filings and we believe news releases should be on SEDAR.
8. Form 44-101F1 - Specific Sections			
8.1	Item 3 - consolidated capitalization	<p>One commenter suggested deleting the requirement for Item 3 (Consolidated Capitalization) in Form 44-101F1 because:</p> <ul style="list-style-type: none"> • the short form prospectus disclosure should not focus on share and loan capital • a material change report disclosing any change in this information would be incorporated by reference. 	We have not made the suggested change because we believe the prospectus should have a summary of all changes to the issuer's share and loan capital, including the changes that will occur from the distribution. We believe this information is easier to understand if it is presented, on a consolidated basis, in one place in the prospectus.
8.2	Section 6.1 - earnings coverage ratio less than one	One commenter suggested that the disclosure of earnings coverage ratios of less than one continue to be on the cover page disclosure.	We agree and have added this requirement back in as section 1.13 of Form 44-101F1.
8.3	Section 6.1 - earnings coverage ratio calculation	One commenter suggested that all interest, whether accrued on current or long-term debt, should be used as the sole basis for the calculation of earnings coverage ratios. The commenter noted that the ability of an issuer to meet its interest requirements should not be impacted by the classification of debt as current or non-current.	To facilitate historical comparability, we have retained the requirement that issuers disclose an earnings coverage ratio that, as calculated, excludes interest on current debt. However, under instruction (5) to section 6.1 of Form 44-101F1 issuers are also required to disclose an earnings coverage ratio that is calculated as though all debt outstanding was classified as long term.
8.4	Section 9.1 - resource property	One commenter noted that, if a material part of the proceeds of the distribution is to be expended on a particular resource property, section 9.1 requires an issuer to disclose, for that property, information required under section 5.5 of Form 51-102F2 that, in turn, refers to disclosure requirements of NI 51-101 <i>Standards of Disclosure for Oil and Gas Activities</i> . This section is unclear whether an issuer would be required to include in its prospectus reports in the form of Form 51-101F2 <i>Report on Reserves Data by Independent</i>	This comment highlighted for us an unintended result of the reference to section 5.5 of Form 51-102F2 in section 9.1. The disclosure required by section 9.1 is intended to be property-specific, yet the disclosure that section 5.5 refers to is company-wide. We have deleted section 9.1's reference to section 5.5 of Form 51-102F2. Section 9.1 will continue to apply to mining properties.

Item	Reference	Summarized Comment	CSA Response
		<p><i>Qualified Reserves Evaluator or Auditor and Form 51-101F3 Management and Directors on Oil and Gas Disclosure</i> for that property.</p>	
8.5	Item 10 - significant acquisition (acceleration of financial statements)	<p>One commenter noted that subsection 10.1(3) of Form 44-101F1 appeared to accelerate the inclusion in a prospectus of annual and quarterly financial statements for certain significant acquisitions. This acceleration seemed to be more onerous than significant acquisition filing requirements under existing prospectus rules.</p>	<p>We did not intend to accelerate the inclusion of financial statements of certain significant acquisitions. We have amended section 10.1 of Form 44-101F1 and added subsection 4.10(2) to the Companion Policy to clarify which financial statements of a significant acquisition should be included in a short form prospectus.</p>
8.6	Item 10 - significant acquisition (type of disclosure)	<p>One commenter was not clear on whether disclosure of the impact of a significant proposed acquisition, as required under paragraph 10.1(2)(d) of Form 44-101F1 should be quantitative or qualitative. Quantitative disclosure is probably not going to be very accurate in these situations since audited results of the acquired business would not yet be available.</p>	<p>We have replaced subsection 10.1(2) of Form 44-101F1 that was published for comment with an instruction that requires the issuer to provide the information required by sections 2.1 through 2.6 of Form 51-102F4 <i>Business Acquisition Reports</i>. This change, in effect, substitutes old paragraph 10.1(2)(d) with section 2.4 of Form 51-102F4.</p> <p>Section 2.4 requires issuers to describe any plans or proposals for material changes in the issuer's business affairs or the affairs of the acquired business which may have a significant effect on the results of the operations and financial position of the issuer. From our reviews of business acquisition reports, we have noted that, in response to section 2.4, issuers disclose both quantitative and qualitative information and that the disclosure varies to the extent the information is known and how specific the issuer can be.</p>
8.7	<p>Item 10 - significant acquisitions: (materiality test for full, true and plain disclosure)</p> <p>(See also section 4.10 of Companion Policy)</p>	<p>One commenter recommended that there be a hard and fast rule that financial statements are only required at and above the 40% level. In light of the requirement to file a BAR including financial statements at the 20% level, which presumably reflects a regulatory view on materiality, issuers may feel bound to include financial statements at the 20% threshold anyway.</p> <p>In the alternative, paragraph 4.10(c) of the Companion Policy should be clarified to explain when to provide evidence rebutting the presumption regarding the requirement for financial statement disclosure if the significance tests are satisfied at the 40% level. Paragraph 4.10(c) should also clarify to whom to provide such evidence and whether an exemption is required. Furthermore, if a formal process is to be followed, that process should be spelled</p>	<p>We do not believe that a bright line test is appropriate. We have amended section 4.10 of the Companion Policy to state that we presume that the inclusion of financial statements or other information is required for all acquisitions that are, or would be, significant under Part 8 of NI 51-102 instead of referring to significant acquisitions at the 40% level. Issuers can rebut this presumption if they can provide evidence that the financial statements or other information required by Part 8 of NI 51-102 are not required for the prospectus to contain full, true and plain disclosure.</p> <p>We encourage issuers to utilize the pre-filing procedures in National Policy 43-201 <i>Mutual Reliance Review System for Prospectuses</i> if the issuer intends to omit from its short form prospectus the financial statements or other information</p>

Rules and Policies

<i>Item</i>	<i>Reference</i>	<i>Summarized Comment</i>	<i>CSA Response</i>
		out. Note that if financial statements are required to be included in a short form prospectus pursuant to a regulatory review, they could be very difficult and costly to obtain on a timely basis.	required by Part 8 of NI 51-102.
8.8	Section 11.1 - mandatory incorporation by reference	Two commenters noted that the term "disclosure document", in paragraph 11.1(8) of Form 44-101F1, seemed to refer to all filed documents, not just those documents filed, or required to be filed, pursuant to an undertaking.	We did not intend to capture all disclosure documents filed. We only intended to capture those documents that the issuer filed pursuant to an undertaking. We have made appropriate changes to this section.
9. Companion Policy 44-101CP - Specific Sections			
9.1	Subsections 1.8(7) and 2.6(4) - successor issuer	One commenter suggested that we consider expanding the examples to cover a "reverse spin-off" where, in accordance with the substance of the transaction, the entity legally spun-off should be considered to be the successor issuer.	We do not believe that a "reverse spin - off" is a frequently occurring transaction. We would consider granting exemptive relief for this kind of transaction on a case-by-case basis.

Appendix C

**Summary of Comments on
Possible Further Changes in Prospectus Regulation**

Following is a summary of the comments we received in response to questions 5 to 7 in CSA Notice dated January 7, 2005 concerning whether further changes to the securities offering systems should be made. We will keep this comments in mind when we return to deliberating whether further changes to the securities offering systems ought to be made.

1. Question 5 - Eliminating preliminary prospectuses and prospectus review⁶		
1.1	Supportive	<p>Five commenters supported the elimination of preliminary prospectuses and prospectus review. Reasons cited included the following:</p> <ul style="list-style-type: none"> • Eliminating these requirements will result in more timely and certain market access for issuers. • Eliminating these requirements will result in lower costs of raising capital. • In light of anticipated adoption in Ontario and possibly other jurisdictions of secondary market civil liability there does not appear to be a valid policy rationale to support these requirements other than in the context of an initial public offering.
1.2	Not Supportive	<p>Three commenters did not support the elimination of preliminary prospectuses and prospectus review. Reasons cited include the following:</p> <ul style="list-style-type: none"> • Eliminating these requirements may have adverse implications for MJDS. • Eliminating these requirements may create a situation where an issuer who is (unknown to it) the subject of a pending investigation or continuous disclosure review that raises serious concerns sells securities without buyers being made aware of the possible problems. • If Alternative B is adopted, the advantages of a system with no preliminary prospectus and prospectus review will be provided by the shelf prospectus system. • A preliminary prospectus is a very important document in the marketing of a prospective distribution of securities. As a document filed on SEDAR it also contains information relevant to the secondary market trading of the securities of an existing reporting issuer. • The harmonized continuous disclosure reviews described in CSA Notice 51-312 warrant a reduction in, but not elimination of, the regulatory review of prospectus filings. • Certain required disclosure is no less onerous than the disclosure required in a long form prospectus and there is no reason to reduce regulatory oversight from what is currently imposed.
1.3	Delivery versus filing of preliminary prospectus	<p>One commenter suggested that delivery of preliminary prospectuses should be eliminated but filing a preliminary prospectus is not particularly onerous. The CSA should implement a system similar to the rights offering system in which there is a period for staff to object.</p>
1.4	Effect on due diligence process	<p>One commenter suggested that a "final prospectus only" regime might add significantly to the pressure and strain already placed on the role of the underwriter and the director due diligence process. The same commenter was also of the view that the elimination of the</p>

⁶ Question 5: *General* Do you believe that issuers, investors or other market participants would benefit from the elimination of preliminary prospectuses and prospectus review? What are the principal benefits of such a system? Are there any potential drawbacks? Are you concerned about a lack of regulatory review in the context of a prospectus offering? Are you concerned that expediting the prospectus filing would put undue pressure on the due diligence process?

		preliminary prospectus requirement may “forfeit some of the long-standing market integrity created by the preliminary and final prospectus receipt regime”.
2. Question 6 - Additional qualification criteria and restrictions ⁷		
2.1	Seasoning	<p>Two commenters supported a seasoning requirement. One of these commenters believed that the need for adequate information about an issuer to be available and accessible for a period of time dictates such an eligibility requirement.</p> <p>Three commenters did not support a seasoning requirement. One of these commenters noted that rather than restrict new, but potentially compliant issuers, from using the system for a seasoning period, the objective may be better achieved by penalizing non-compliant issuers.</p>
2.2	Unresolved issues in CD	<p>Four commenters supported a prohibition from offering securities if the regulator has identified significant unresolved issues relating to the issuer’s CD. One of these commenters supports such a prohibition only if the unresolved issue would result in a cease trade order.</p> <p>One commenter did not support a blanket prohibition from offering securities if the regulator has identified significant unresolved issues relating to the issuer’s CD. The facts and circumstances need to be assessed on a case-by-case basis, taking into consideration the nature and complexity of the issues.</p>
2.3	Types of securities	Four commenters supported a restriction on types of eligible securities to disallow securities that may not be supported by the issuer’s CD.
2.4	Regulatory review	One commenter noted that it is critical that regulatory review of CD occur on a regular basis. Though this review may not take place at the time of an offering, issuers must be motivated to ensure that their CD as well as any supplementary disclosure included in a prospectus meets the full, true and plain disclosure standard. If an issuer’s disclosure is found to be inadequate, the penalties must be significant enough to motivate them to comply in the future.
2.5	Minimum market capitalization	Two commenters suggested that consideration be given to an eligibility requirement based on a minimum market cap threshold.
3. Question 7 - Marketing Regime Triggered by Press Release⁸		
3.1		<p>One commenter supported a marketing regime that is triggered on the issuance of a press release or other public notice announcing a proposed offering. While the suggested trigger is somewhat subjective, it may prevent premature disclosure that could occur if the trigger is based on more objective measures and may also prevent illegal insider trading in advance of a public announcement. That notice should be provided to the market in the event that the transaction is not completed within a reasonable period of time.</p> <p>One commenter noted that given the opportunity issuers would use this alternative, depending on the issuer and the securities being marketed.</p>

⁷ Question 6: *Qualification Criteria* If we eliminate the preliminary prospectus and prospectus review as contemplated above, do you think we should impose more onerous restrictions on this offering system, given the lack of regulatory review at the time of the offering? Such restrictions could include additional qualification criteria and restrictions, such as the following:

- a one year seasoning requirement to ensure eligible issuers have filed required CD for a minimum period and to allow for regulators to review such CD;
- a prohibition from offering securities if the regulator has identified significant unresolved issues relating to the issuer’s CD; and
- a restriction on types of eligible securities to disallow securities which may not be supported by the issuer’s CD.

Do you think these are appropriate?

⁸ Question 7: Do you believe that a marketing regime triggered on the issuance of a press release or other public notice announcing a proposed offering is workable and would be utilized by issuers and dealers? If so, should the press release or public notice be required on “the issuer forming a reasonable expectation that an offering will proceed” or on some other event?

		<p>Three commenters expressed concerns regarding the suggested marketing regime:</p> <ul style="list-style-type: none"> • One commenter believes the approach suggested does not go far enough. Issuers will be reluctant to issue the type of press release that is suggested and, if the offering does not proceed, there will be market consequences and possibly some embarrassment on the part of the issuer. Furthermore, the same commenter was critical of the fact that, under the new Instrument, pre-filing marketing will continue to be permitted only in the case of bought deals. A prohibition on pre-filing marketing outside of the bought deal context unjustifiably prohibits underwriters from gauging market interest prior to making an underwriting commitment. • One commenter believes that a marketing regime involving public notification of a forthcoming offering through a media release or term sheet, in tandem with reliance on the continuous disclosure regime, still leaves potential for abuse in the offering process. • One commenter believed that the obligation of an issuer to issue a press release upon having determined to proceed with a public offering is a timely disclosure matter that should not be separately regulated by NI 44-101. Issuers and underwriters should not be permitted to trade securities with knowledge of undisclosed material information regarding the issuer but issuers should not be subject to a requirement that requires premature disclosure of an issuer's consideration of its capital requirements thereby inhibiting an issuer's ability to access the capital markets on an efficient basis.
<p>4. Other Ideas</p>		
<p>4.1</p>	<p>Eliminate prospectus requirement for seasoned issuers</p>	<p>One commenter suggested removing the prospectus requirement for certain secondary market offerings made by seasoned issuers.</p>

Appendix D

Summary of Changes

The following summarizes the changes to the Instrument and the Policy from the version published for comment in January 2005.

NI 44-101

Qualification to File a Short Form Prospectus – In January 2005, we sought comment on two alternative versions for the Instrument's qualification requirements: Alternative A, which retained the same qualification requirements that were in Former NI 44-101; and Alternative B, which eliminated the seasoning and minimum market capitalization requirements thereby permitting more reporting issuers to use the short form prospectus system. The commenters widely favoured Alternative B. We have decided to proceed with implementing that version of the Instrument's qualification requirements.

Definition of Short Form Eligible Exchange – We have added the Canadian Trading and Quotation System Inc. to the definition of "short form eligible exchange".

Notice Declaring Intention to be Qualified – The version of New NI 44-101 published in January 2005 had, as one of the qualification criteria, a requirement that issuers file a notice declaring they intend to be qualified to use the short form prospectus system. We have moved this qualification criteria to section 2.8 and have clarified in section 2.8 what the notice should state (see new Appendix A) as well as where and when it must be filed. Issuers will only be required to file the notice with one regulator, but will be able to use the short form prospectus system in all jurisdictions provided the issuer meets the other qualification criteria.

Alternative Disclosure for Successor Issuers – We have added, in section 2.7(2)(b)(ii) of NI 44-101 and section 11.3(2) of Form 44-101F1, reference to Item 14.5 of Form 51-102 F5 *Information Circular*. This change adds TSXV capital pool company information circulars to the types of disclosure that a successor issuer could have for it to be exempt from the current annual information form qualification criterion.

New Transition Section - We have added subsection 2.8(5) of NI 44-101 to address a transition issue that would have otherwise affected those issuers or credit supporters not yet required to file an AIF under the CD Rules, but who had filed, after their previously completed financial year, an AIF in the form of former Form 44-101F1 *Annual Information Form*.

This new section conclusively deems issuers and credit supporters that had an AIF in the form of Form 44-101F1 as it was on May 18, 2005 (Form 44-101F1 was revoked on May 19, 2005) to have a current AIF so that the issuer or credit supporter will still be qualified to file a short form prospectus even if its AIF is in the form of former Form 44-101F1. Issuers will no longer need to rely on this transition section once they have filed their AIF in the form of AIF required by the applicable CD Rule.

Review of Unaudited Financial Statements – We have added section 4.3 to require any unaudited financial statements included in or incorporated by reference into a short form prospectus to be reviewed in accordance with the relevant standards set out in the CICA Handbook for a review of financial statements by an entity's auditor or a public accountant's review of financial statements. This review requirement is consistent with the former comfort letter requirement that was in subparagraph 10.3(b)1(i) of Former NI 44-101. In effect, New NI 44-101 retains the review requirement, but no longer requires the comfort letter addressed to the regulator evidencing that review.

Because National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* permits certain issuers to include in a prospectus financial statements that have been audited in accordance with certain foreign auditing standards, section 4.3 permits issuers who have included financial statements audited in accordance with foreign auditing standards in a short form prospectus to use certain foreign review standards for the review of unaudited financial statements.

Evidence of Exemption – We have added into section 8.2 a reference to subsection 4.5(3) so that it is clearer that relief from the French translation requirement must be evidenced by a decision document from the AMF and not by a receipt for the short form prospectus.

Form 44-101F1

Earnings Coverage Ratio – New section 1.13 retains the requirement, formerly in Form 44-101F3 *Short Form Prospectus*, that any earnings coverage ratio of less than one be disclosed on the cover page.

Resource Property Disclosure – In section 9.1 we have deleted the reference to section 5.5 of Form 51-102F2 *Annual Information Form*. The disclosure required by section 9.1 is intended to be property-specific yet the disclosure required by

section 5.5 (which is the annual summary of reserves data and other information for an oil and gas reporting issuer) is company-wide. Section 9.1 will continue to apply to issuers with mining properties.

Significant Acquisitions – In section 10.1, we deleted subsection (2), which had previously listed the type of disclosure issuers were to provide for probable acquisitions and, instead, added Instruction (1), which requires issuers to provide the disclosure required by sections 2.1 through 2.6 of Form 51-102F4 *Business Acquisition Reports*. In substance, the disclosure requirement has not changed from what we had published for comment because the disclosure requirements previously listed in subsection (2) were similar to the disclosure requirements in sections 2.1 through 2.6 of Form 51-102F4. We have also added Instruction (2), which states that the financial statements or other information required to be included under subsection 10.1(3) must be either: (i) the financial statements or other information required by Part 8 of NI 51-102; or (ii) satisfactory alternative financial statements or other information. Subsection 4.10(2) of Companion Policy 44-101CP provides further guidance on what we believe would be “satisfactory alternative financial statements or other information”.

Mandatory Incorporation by Reference – We have added paragraph 9 to subsection 11.1(1). Disclosure documents of the type listed in paragraphs 1 through 7 of subsection 11.1(1) that are filed by an issuer under an exemption in lieu of the documents actually listed must be incorporated by reference into a short form prospectus.

Exemptions for Certain Issues of Guaranteed Securities – We have deleted instructions 1(b) and (c) of Item 13 of the version of Form 44-101F1 published for comment and replaced them with instruction 1(c) of Item 13 of Form 44-101F1. Instructions 1(b) and (c) of Item 13 of the version of Form 44-101F1 published for comment would have required an entity's annual summary financial information to be derived from the entity's comparative audited annual financial statements for the corresponding period. This would impose a stand-alone audit requirement on every subsidiary of the issuer, parent credit supporter, or subsidiary credit supporter, even if the subsidiary would not otherwise be audited on a stand-alone basis. We did not intend to impose such a requirement.

Interests of Experts – In response to the commenters, we have conformed the requirement for disclosure about interests of experts in section 16.2 of Form 51-102F2 *Annual Information Form* so that it is the same as what we had published for comment in section 15.2 of Form 44-101F1. Because the interests of experts disclosure requirements are now in section 16.2 of Form 51-102F2, section 15.2 has been changed so as to only require an issuer to update, in its short form prospectus, the information about interests of experts previously disclosed in its current AIF.

List of Exemptions – We have added a requirement for issuers to list all exemptions from the provisions of NI 44-101 or Form 44-101F1 granted to the issuer applicable to the distribution or the short form prospectus, including all exemptions to be evidenced by the issuance of a receipt for the short form prospectus pursuant to section 8.2 of NI 44-101. We have added this requirement to ensure issuers provide adequate disclosure about such exemptions.

Companion Policy 44-101CP

Timely and Periodic Disclosure Documents – We have added section 2.5 to clarify that the qualification criterion that the issuer have filed all timely and periodic disclosure documents also applies to those documents that an issuer has undertaken to file, must file as a condition of any exemptive relief granted, or has represented that it will file in a representation made to obtain exemptive relief.

Undertaking in Respect of Credit Support Disclosure – We have added section 3.5 to provide guidance about the types of disclosure documents to which the undertaking would relate, depending on whether the credit supporter is a reporting issuer, an SEC registrant or otherwise.

Recent and Proposed Acquisitions – We have amended section 4.10 of 44-101CP to state that we presume that financial statements or other information would be required for all acquisitions that are, or would be, significant under Part 8 of NI 51-102 instead of referring to acquisitions at the 40% level. Issuers can still rebut this presumption if they can provide evidence that the financial statements or other information required by Part 8 of NI 51-102 are not necessary for the prospectus to contain full, true and plain disclosure. This section also states that we encourage issuers to utilize the pre-filing procedures in National Policy 43-201 *Mutual Reliance Review System for Prospectuses* if the issuer intends to omit from its short form prospectus the financial statements or other information required by Part 8 of NI 51-102.

In addition, new subsection 4.10(2) provides guidance about when we would consider it acceptable for an issuer to provide financial statements or other information for periods other than what Part 8 of NI 51-102 requires.

NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS

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NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS

PART 1 DEFINITIONS AND INTERPRETATIONS

1.1 Definitions - In this Instrument

“AIF” has the same meaning as in NI 51-102 for a reporting issuer other than an investment fund, and for an investment fund means an annual information form as such term is used in NI 81-106;

“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 rights of, or granting rights to, 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, from the person or company providing the support, payment if the issuer fails to make a stipulated payment;

“applicable CD rule” means, for a reporting issuer other than an investment fund, NI 51-102 and, for an investment fund, NI 81-106;

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

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

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

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

“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 of Canada,
- (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 institution, 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 that have received an approved rating from any approved rating organization;

“cash settled derivative” means a 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 derivative;

“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 who 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 rights of, or granting rights to, holders of the securities;

“current AIF” means,

- (a) if the issuer has filed an AIF for its most recently completed financial year, that AIF, or
- (b) the issuer’s AIF filed for the financial year immediately preceding its most recently completed financial year if

- (i) the issuer has not filed an AIF for its most recently completed financial year, and
- (ii) the issuer is not yet required under the applicable CD rule to have filed its annual financial statements for its most recently completed financial year,

“current annual financial statements” means,

- (a) if the issuer has filed its comparative annual financial statements in accordance with the applicable CD rule for its most recently completed financial year, those financial statements together with the auditor’s report accompanying the financial statements and, if there has been a change of auditors since the comparative period, an auditor’s report on the financial statements for the comparative period, or
- (b) the issuer’s comparative annual financial statements filed for the financial year immediately preceding its most recently completed financial year, together with the auditor’s report accompanying the financial statements and, if there has been a change of auditors since the comparative period, an auditor’s report on the financial statements for the comparative period if
 - (i) the issuer has not filed its comparative annual financial statements for its most recently completed financial year, and
 - (ii) the issuer is not yet required under the applicable CD rule to have filed its annual financial statements for its most recently completed financial year;

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

“designated foreign jurisdiction” has the same meaning as in NI 52-107;

“equity securities” means securities of an issuer that carry 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” has the same meaning as in NI 51-102;

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

“Form 44-101F1” means Form 44-101F1 *Short Form Prospectus* of this Instrument;

“Form 51-102F2” means Form 51-102F2 *Annual Information Form* of NI 51-102;

“Form 51-102F3” means Form 51-102F3 *Material Change Report* of NI 51-102;

“Form 51-102F4” means Form 51-102F4 *Business Acquisition Report* of NI 51-102;

“Form 51-102F5” means Form 51-102F5 *Information Circular* of NI 51-102;

“full and unconditional credit support” means

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

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

“interim period” has the same meaning as in the applicable CD rule;

“investment fund” has the same meaning as in NI 81-106;

“material change report” means, for a reporting issuer other than an investment fund, a completed Form 51-102F3, and for an investment fund, a completed Form 51-102F3 adjusted as directed by NI 81-106;

“MD&A” has the same meaning as in NI 51-102 in relation to a reporting issuer other than an investment fund, and in relation to an investment fund means an annual or interim management report of fund performance as defined in NI 81-106;

“mineral project” has the same meaning as in NI 43-101;

“NI 13-101” means National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*;

“NI 43-101” means National Instrument 43-101 *Standards of Disclosure for Mineral Projects*;

“NI 44-102” means National Instrument 44-102 *Shelf Distributions*;

“NI 51-102” means National Instrument 51-102 *Continuous Disclosure Obligations*;

“NI 52-107” means National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*;

“NI 81-106” means National Instrument 81-106 *Investment Fund Continuous Disclosure*;

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

“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;

“reorganization” means

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

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

“short form eligible exchange” means each of the Toronto Stock Exchange, Tier 1 and Tier 2 of the TSX Venture Exchange and the Canadian Trading and Quotation System Inc.;

“special warrant” means a security that, by its terms or the terms of an accompanying contractual obligation, entitles or requires the holder to acquire another security without payment of material additional consideration and obliges the issuer of either security to undertake efforts to file a prospectus to qualify the distribution of the other security;

“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 an issuer’s business, an issuer that succeeded to or otherwise acquired the portion of the business divested;

“underlying interest” means, for a 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 derivative is derived, referenced or based; and

“U.S. credit supporter” means a credit supporter that

- (a) is incorporated or organized under the laws of the United States of America or any state or territory of the United States of America or the District of Columbia,
- (b) either
 - (i) has a class of securities registered under section 12(b) or section 12(g) of the 1934 Act, or
 - (ii) is required to file reports under section 15(d) of the 1934 Act,
- (c) has filed with the SEC all 1934 Act filings for a period of 12 calendar months immediately before the filing of the preliminary short form prospectus,
- (d) is not registered or required to be registered as an investment company under the *Investment Company Act of 1940* of the United States of America, and
- (e) is not a commodity pool issuer;

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

- 1.2 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.
- 1.3 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 issuer either to insert the information directly in the document or to incorporate the information in the document by reference.
- 1.4 Interpretation of “short form prospectus”** - In this Instrument, other than in Parts 4 through 8 or unless otherwise stated, a reference to a short form prospectus includes a preliminary short form prospectus.
- 1.5 Interpretation of “payments to be made”** - For the purposes of the definition of “full and unconditional credit support”, payments to be made by an issuer of securities as stipulated in the terms of the securities include any amounts to be paid as dividends in accordance with, and on the dividend payment dates stipulated in, the provisions of the securities, whether or not the dividends have been declared.

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 44-101F1 unless the issuer is qualified under any of sections 2.2 through 2.6 to file a prospectus in the form of a short form prospectus.
- (2) An issuer that is qualified under any of sections 2.2 through 2.6 to file a prospectus in the form of a short form prospectus for a distribution may file, for that distribution,
 - (a) a preliminary prospectus, prepared and certified in the form of Form 44-101F1; and
 - (b) a prospectus, prepared and certified in the form of Form 44-101F1.

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 the following criteria are satisfied:

- (a) the issuer is an electronic filer under NI 13-101;
- (b) the issuer is a reporting issuer in at least one jurisdiction of Canada;
- (c) the issuer has filed with the securities regulatory authority in each jurisdiction in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction
 - (i) under applicable securities legislation,
 - (ii) pursuant to an order issued by the securities regulatory authority, or

- (iii) pursuant to an undertaking to the securities regulatory authority;
- (d) the issuer has, in at least one jurisdiction in which it is a reporting issuer,
 - (i) current annual financial statements, and
 - (ii) a current AIF;
- (e) the issuer's equity securities are listed and posted for trading on a short form eligible exchange and the issuer is not an issuer
 - (i) whose operations have ceased, or
 - (ii) whose principal asset is cash, cash equivalents, or its exchange listing.

2.3 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 the following criteria are satisfied:
 - (a) the issuer is an electronic filer under NI 13-101;
 - (b) the issuer is a reporting issuer in at least one jurisdiction of Canada;
 - (c) the issuer has filed with the securities regulatory authority in each jurisdiction in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction
 - (i) under applicable securities legislation,
 - (ii) pursuant to an order issued by the securities regulatory authority, or
 - (iii) pursuant to an undertaking to the securities regulatory authority;
 - (d) the issuer has, in at least one jurisdiction in which it is a reporting issuer,
 - (i) current annual financial statements, and
 - (ii) a current AIF;
 - (e) the securities to be distributed
 - (i) have received an approved rating on a provisional basis,
 - (ii) 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
 - (iii) have not received a provisional or final rating lower than an approved rating from any approved rating organization.
- (2) Paragraph (1)(e) does not apply to an issuer filing a short form prospectus that is a base shelf prospectus under NI 44-102.

2.4 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 the following criteria are satisfied:
 - (a) a credit supporter has provided full and unconditional credit support for the securities being distributed,

- (b) at least one of the following is true:
 - (i) the credit supporter satisfies the criteria in paragraphs 2.2(a), (b), (c) and (d) if the word “issuer” is replaced with “credit supporter” wherever it occurs;
 - (ii) the credit supporter is a U.S. credit supporter and the issuer is incorporated or organized under the laws of Canada or a jurisdiction of Canada;
- (c) unless the credit supporter satisfies the criteria in paragraph 2.2(e) if the word “issuer” is replaced with “credit supporter” wherever it occurs, at the time the preliminary short form prospectus is filed
 - (i) the credit supporter has outstanding non-convertible securities that
 - (A) have received an approved rating,
 - (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 rating lower than an approved rating from any approved rating organization, and
 - (ii) the securities to be issued by the issuer
 - (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.
- (2) Subparagraph (1)(c)(ii) does not apply to an issuer filing a short form prospectus that is a base shelf prospectus under NI 44-102.

2.5 Alternative Qualification Criteria for Issuers of Guaranteed Convertible Debt Securities or Preferred Shares - 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 the following criteria are satisfied:

- (a) the debt securities or the preferred shares are convertible into securities of a credit supporter that has provided full and unconditional credit support for the securities being distributed;
- (b) the credit supporter satisfies the criteria in section 2.2 if the word “issuer” is replaced with “credit supporter” wherever it occurs.

2.6 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 the following criteria are satisfied:
 - (a) the issuer is an electronic filer under NI 13-101;
 - (b) the issuer has, in at least one jurisdiction of Canada,
 - (i) current annual financial statements, and
 - (ii) a current AIF;
 - (c) the asset-backed securities to be distributed

- (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.
- (2) Paragraph (1)(c) does not apply to an issuer filing a short form prospectus that is a base shelf prospectus under NI 44-102.

2.7 Exemptions for New Reporting Issuers and Successor Issuers

- (1) Paragraph 2.2(d), paragraph 2.3(1)(d) and paragraph 2.6(1)(b) do not apply to an issuer if
- (a) the issuer is not exempt from the requirement in the applicable CD rule to file annual financial statements within a prescribed period after its financial year end, but the issuer has not yet been required under the applicable CD rule to file annual financial statements, and
 - (b) unless the issuer is seeking qualification under section 2.6, the issuer has filed and obtained a receipt for a final prospectus that included the issuer's comparative annual financial statements for its most recently completed financial year or the financial year immediately preceding its most recently completed financial year, together with the auditor's report accompanying those financial statements and, if there has been a change of auditors since the comparative period, an auditor's report on the financial statements for the comparative period.
- (2) Paragraph 2.2(d), paragraph 2.3(1)(d) and paragraph 2.6(1)(b) do not apply to an issuer if
- (a) the successor issuer is not exempt from the requirement in the applicable CD rule to file annual financial statements within a prescribed period after its financial year end, but the issuer has not yet, since the completion of the reorganization which resulted in the successor issuer, been required under the applicable CD rule to file annual financial statements, and
 - (b) an information circular relating to the reorganization that resulted in the successor issuer was filed by the successor issuer or an issuer that was a party to the reorganization, and such information circular
 - (i) complied with applicable securities legislation, and
 - (ii) included disclosure in accordance with Item 14.2 or 14.5 of Form 51-102F5 for the successor issuer.

2.8 Notice of Intention and Transition

- (1) An issuer is not qualified to file a short form prospectus under this Part unless it has filed a notice declaring its intention to be qualified to file a short form prospectus at least 10 business days prior to the issuer filing its first preliminary short form prospectus after the notice
- (a) with its notice regulator, and
 - (b) in substantially the form of Appendix A.
- (2) The notice under subsection (1) is effective until withdrawn.
- (3) For the purposes of subsection (1), "notice regulator" means, as determined on the date the notice is filed, the securities regulatory authority or regulator of the jurisdiction of Canada
- (a) in which the issuer's head office is located, if the issuer is not an investment fund and the issuer is a reporting issuer in that jurisdiction,
 - (b) in which the investment fund manager's head office is located, if the issuer is an investment fund and the issuer is a reporting issuer in that jurisdiction, or

- (c) with which the issuer has determined that it has the most significant connection, if paragraphs (a) and (b) do not apply to the issuer.
- (4) For the purposes of this section, if, on December 29, 2005, an issuer had a current AIF under National Instrument 44-101 *Short Form Prospectus Distributions* that was in force on December 29, 2005, the issuer is deemed to have filed a notice on December 14, 2005 declaring its intention to be qualified to file a short form prospectus.
- (5) For the purposes of this Part, if, on December 29, 2005, an issuer or a credit supporter had an annual information form in Form 44-101F1 *AIF*, prior to its repeal on May 18, 2005, that was a current AIF under National Instrument 44-101 *Short Form Prospectus Distributions* that was in force on December 29, 2005, the issuer or credit supporter is deemed to have a current AIF under this Part until the date it is first required under the applicable CD rule to file its annual financial statements.

PART 3 DEEMED INCORPORATION BY REFERENCE

- 3.1 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 section 11.1 or 12.1 of Form 44-101F1, 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.
- 3.2 Deemed Incorporation by Reference of Subsequently Filed Documents** - If an issuer does not incorporate by reference in its short form prospectus a subsequently filed document required to be incorporated by reference under section 11.2 or 12.1 of Form 44-101F1, 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.
- 3.3 Incorporation by Reference** - A document deemed by this Instrument to be incorporated by reference in another document is deemed for purposes of securities legislation to be incorporated by reference in the other document.

PART 4 FILING REQUIREMENTS FOR A SHORT FORM PROSPECTUS

- 4.1 Required Documents for Filing a Preliminary Short Form Prospectus** - An issuer that files a preliminary short form prospectus shall
 - (a) file the following with the preliminary short form prospectus:
 - (i) **Signed Copy** - a signed copy of the preliminary short form prospectus;
 - (ii) **Qualification Certificate** - a certificate, dated as of the date of the preliminary short form prospectus, executed on behalf of the issuer by one of its executive officers
 - (A) specifying which of the qualification criteria set out in Part 2 the issuer is relying on in order to be qualified to file a prospectus in the form of a short form prospectus, and
 - (B) certifying that
 - (I) all of those qualification criteria have been satisfied, and
 - (II) all of the material incorporated by reference in the preliminary short form prospectus and not previously filed is being filed with the preliminary short form prospectus;
 - (iii) **Material Incorporated by Reference** - copies of all material incorporated by reference in the preliminary short form prospectus and not previously filed;
 - (iv) **Material Documents** - copies of all documents referred to in subsection 12.1(1) or 12.2(1) of NI 51-102 or section 16.4 of NI 81-106, as applicable, that relate to the securities being distributed, and that have not previously been filed;

- (v) **Mining Reports** - if the issuer has a mineral project, the technical reports required to be filed with a preliminary short form prospectus under NI 43-101;
- (vi) **Reports and Valuations** - 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 4.4 and that has not previously been filed, other than a technical report that
 - (A) deals with a mineral project or oil and gas activities, and
 - (B) is not otherwise required to be filed under paragraph (v); and
- (b) deliver to the regulator, concurrently with the filing of the preliminary short form prospectus, the following:
 - (i) **Authorization to Collect, Use and Disclose Personal Information** - an authorization in the form set out in Appendix B to the indirect collection, use and disclosure of personal information including, 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 information;
 - (ii) **Auditor's Comfort Letter regarding Audited Financial 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 audit report.

4.2 Required Documents for Filing a Short Form Prospectus - An issuer that files a short form prospectus shall

- (a) file the following with the short form prospectus:
 - (i) **Signed Copy** - a signed copy of the short form prospectus;
 - (ii) **Material Incorporated by Reference** - copies of all material incorporated by reference in the short form prospectus and not previously filed;
 - (iii) **Material Documents** - copies of all documents referred to in subsection 12.1(1) or 12.2(1) of NI 51-102 or section 16.4 of NI 81-106, as applicable, that relate to the securities being distributed, and that have not previously been filed;
 - (iv) **Other Reports and Valuations** - 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 4.4 and that has not previously been filed, other than a technical report that
 - (A) deals with a mineral project or oil and gas activities of the issuer, and
 - (B) is not otherwise required to be filed under subparagraph 4.1(a)(v);
 - (v) **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 C, if an issuer is incorporated or organized in a foreign jurisdiction and does not have an office in Canada;
 - (vi) **Non-Issuer's Submission to Jurisdiction** - a submission to jurisdiction and appointment of agent for service of process of the selling security holder, promoter or credit supporter, as applicable, in the form set out in Appendix D, if a selling security holder, promoter or credit supporter of an issuer is incorporated or organized under a foreign jurisdiction and does not have an office in Canada or is an individual who resides outside of Canada;
 - (vii) **Expert's Consents** - the consents required to be filed under section 4.4;
 - (viii) **Credit Supporter's Consent** - the written consent of the credit supporter to the inclusion of its financial statements in the short form prospectus, if financial statements of a credit supporter are required under section 12.1 of Form 44-101F1 to be included in a short form

prospectus and a certificate of the credit supporter is not required under section 21.3 of Form 44-101F1 to be included in the short form prospectus; and

- (b) deliver the following to the regulators, no later than the filing of the short form prospectus:
 - (i) **Blacklined Prospectus** - a copy of the short form prospectus, blacklined to show changes from the preliminary short form prospectus;
 - (ii) **Undertaking in Respect of Credit Supporter Disclosure** – if disclosure about a credit supporter is required to be included in the short form prospectus under section 12.1 of Form 44-101F1, an undertaking of the issuer, in a form acceptable to the regulators, to file the periodic and timely disclosure of the credit supporter similar to the disclosure required under section 12.1 of Form 44-101F1, for so long as the securities being distributed are issued and outstanding.

4.3 Review of Unaudited Financial Statements

- (1) Any unaudited financial statements of an issuer or an acquired business included in or incorporated by reference into a short form prospectus must have been reviewed in accordance with the relevant standards set out in the Handbook for a review of financial statements by an entity's auditor or a public accountant's review of financial statements.
- (2) Despite subsection (1),
 - (a) if the financial statements of the issuer or acquired business have been audited in accordance with U.S. GAAS, the unaudited financial statements may be reviewed in accordance with U.S. review standards,
 - (b) if the financial statements of the issuer or acquired business have been audited in accordance with International Standards on Auditing, the unaudited financial statements may be reviewed in accordance with international review standards, or
 - (c) if the financial statements of the issuer or acquired business have been audited in accordance with auditing standards that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the issuer is subject, the unaudited financial statements may be reviewed in accordance with review standards that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the issuer is subject.

4.4 Consents of Experts

- (1) If any solicitor, auditor, accountant, engineer or appraiser, or any other person or company whose profession or business 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,
 - (b) as having opined on financial statements from which selected information included in the short form prospectus has been derived and which audit opinion is referred to in the short form prospectus either directly or in a document incorporated by reference, or
 - (c) 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 the use of that report, valuation, statement or opinion.

- (2) The consent referred to in subsection (1) shall
 - (a) refer to the report, valuation, statement or opinion stating the date of the report, valuation, statement or opinion, and

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

4.5 Language of Documents

- (1) A person or company must file a document required to be filed under this Instrument in the French language or in the English language.
- (2) Despite subsection (1), if a person or company files a document only in the French language or only in the English language but delivers to an investor or prospective investor a version of the document in the other language, the person or company must file that other version not later than when it is first delivered to the investor or prospective investor.
- (3) In Québec, the preliminary short form prospectus, the short form prospectus, the permanent information record and any document incorporated by reference must be in the French language or in the French language and the English language.

PART 5 AMENDMENTS TO A SHORT FORM PROSPECTUS

5.1 Form of Amendment

- (1) 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.
- (2) An amendment to a preliminary short form prospectus or a short form prospectus shall contain the certificates required by securities legislation and, in the case of an amendment that does not fully restate the text of the preliminary short form prospectus or short form prospectus, shall be numbered and dated as follows:

“Amendment No. [insert amendment number] dated [insert date of amendment] to [Preliminary] Short Form Prospectus dated [insert date of preliminary short form prospectus or short form prospectus].”

5.2 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,
- (c) file or deliver any supporting documents required under this Instrument or other provisions of securities legislation to be filed or delivered with a preliminary short form prospectus or a short form prospectus, as the case may be, unless the documents originally filed or delivered 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, and
- (d) in case of an amendment to a short form prospectus, file any consent letter required under this Instrument to be filed with a short form prospectus, dated as of the date of the amendment.

5.3 Auditor's Comfort Letter - If an amendment to a preliminary short form prospectus materially affects, or relates to, an auditor's comfort letter delivered under section 4.1, the issuer shall deliver with the amendment a new auditor's comfort letter.

5.4 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.

5.5 Amendment to Preliminary Short Form Prospectus

- (1) 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.
- (2) Despite subsection (1), in British Columbia, the regulator shall issue a receipt for an amendment to a preliminary short form prospectus in accordance with the *Securities Act* (British Columbia).

5.6 Amendment to Short Form Prospectus

- (1) If, after a receipt is issued for a short form prospectus but prior to the completion of the distribution under such short form prospectus, securities in addition to the securities previously disclosed in the prospectus are to be distributed, the person or company making the distribution must file an amendment to the short form prospectus disclosing the additional securities, as soon as practical, and in any event no later than 10 days after the decision to increase the number of securities offered is made.
- (2) The regulator shall issue a receipt for an amendment to a short form prospectus required to be filed under this section or under securities legislation unless the regulator considers that it is not in the public interest to do so, or unless otherwise required by securities legislation.
- (3) The regulator shall not refuse to issue a receipt under subsection (2) without giving the person or company who filed the short form prospectus an opportunity to be heard.
- (4) A distribution or an additional distribution must not proceed until a receipt for an amendment to a short form prospectus that is required to be filed is issued by the regulator.

PART 6 NON-FIXED PRICE OFFERINGS AND REDUCTION OF OFFERING PRICE UNDER SHORT FORM PROSPECTUS

6.1 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 security holders or by the issuer and selling security holders 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 securities may be acquired on exercise of rights shall be fixed.

PART 7 SOLICITATIONS OF EXPRESSIONS OF INTEREST

7.1 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 from the regulator a receipt, dated as of a date that is not more than four business days after the date that the agreement is entered into, for the preliminary short form prospectus,
- (c) the issuer has issued and filed a news release announcing the agreement immediately upon entering into the agreement,
- (d) upon issuance of a receipt for the preliminary short form prospectus, a copy of the preliminary short form prospectus is sent to each person or company who has expressed an interest in acquiring the securities, and
- (e) except as provided in paragraph (a), no agreement of purchase and sale for the securities is entered into until the short form prospectus has been filed and a receipt obtained.

PART 8 EXEMPTION

8.1 Exemption

- (1) The regulator or the securities regulatory authority may grant an exemption from the provisions of this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.
- (3) 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.
- (4) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

8.2 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 or subsection 4.5(3), 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 8.1(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 8.1(3) after the date of the filing of the preliminary short form prospectus and received a written acknowledgement from the regulator that the exemption may be evidenced in the manner set out in subsection (1); and
- (b) the regulator has not before, or concurrently with, the issuance of the receipt sent notice to the person or company that sought the exemption, that the exemption sought may not be evidenced in the manner set out in subsection (1).

PART 9 TRANSITION, REPEAL AND EFFECTIVE DATE

- 9.1 Applicable Rules** - A short form prospectus may, 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.
- 9.2 Repeal** - National Instrument 44-101 *Short Form Prospectus Distributions* and Form 44-101F3 *Short Form Prospectus*, both of which came into force on December 31, 2000, are repealed on December 30, 2005.
- 9.3 Effective Date** - This Instrument comes into force on December 30, 2005.

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

**APPENDIX A
NOTICE DECLARING INTENTION
TO BE QUALIFIED UNDER
NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS
("NI 44-101")**

[date]

To: [the issuer's notice regulator (as defined in subsection 2.8(2) of NI 44-101), and any other securities regulatory authority or regulator of a jurisdiction of Canada with whom the issuer may voluntarily file this notice]

[name of issuer] (the "Issuer") intends to be qualified to file a short form prospectus under NI 44-101. The Issuer acknowledges that it must satisfy all applicable qualification criteria prior to filing a preliminary short form prospectus. This notice does not evidence the Issuer's intent to file a short form prospectus, to enter into any particular financing or transaction or to become a reporting issuer in any jurisdiction. This notice will remain in effect until withdrawn by the Issuer.

[signature of Issuer]

[name and title of duly authorized signing officer of Issuer]

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

**APPENDIX B
AUTHORIZATION OF INDIRECT COLLECTION,
USE AND DISCLOSURE OF PERSONAL INFORMATION**

The attached Schedule 1 contains information concerning the full name, position with or relationship to the issuer named below (the "Issuer"), name and address of employer, if other than the Issuer, full residential address, date and place of birth and citizenship (the "Information") of each director, executive officer, and any promoter of the issuer, and, in the case of a promoter, of each director and executive officer of the promoter. The Issuer is required by securities legislation to deliver the Information to the regulators listed in Schedule 2, unless the Information was previously delivered.

The Issuer confirms that each person or company listed in Schedule 1:

- (a) has been notified by the Issuer
 - (i) of the Issuer's delivery to the regulator of the Information in Schedule 1 pertaining to that person or company,
 - (ii) that the Information is being collected indirectly by the regulator under the authority granted to it in securities legislation,
 - (iii) that the Information is being collected and used for the purpose of enabling the regulator to administer and enforce securities legislation, including those obligations that require or permit the regulator to refuse to issue a receipt for a prospectus if it appears to the regulator that the past conduct of management 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 contact, business address and business telephone number of the regulator 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;
- (b) has read and understands and has signed the Notice of Collection, Use and Disclosure of Personal Information by Regulators attached hereto as Schedule 3; and
- (c) has, by signing the Notice, authorized the indirect collection, and use and disclosure of the Information by the regulator as described in Schedule 3.

Date: _____

Name of Issuer

Per: _____

Name

Official Capacity

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

**Schedule 1 to
Authorization of Indirect
Collection, Use and Disclosure of Personal Information**

Personal Information

[Name of Issuer]

Part 1

<u>Full Name (including previous name(s) if any)</u>	<u>Position with or Relationship to Issuer</u>	<u>Name and Address of Employer, if other than Issuer</u>	<u>Full Residential Address</u>	<u>Date and Place of Birth</u>	<u>Citizenship</u>
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Part 2

For any of the above noted individuals with a residential address outside of Canada, please provide the following additional information:

<u>Full Name</u>	<u>Previous Address(es) (5-year history)</u>	<u>Dates Residing in Foreign Country</u>	<u>Height and Weight</u>	<u>Eye Colour</u>	<u>Hair Colour</u>	<u>Passport Nationality and Number</u>
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**Schedule 2 to
Authorization of Indirect
Collection, Use and Disclosure of Personal Information**

Local Jurisdiction

Regulator

Alberta

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

British Columbia

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

Manitoba

Director, Corporate Finance
The Manitoba Securities Commission
1130 - 405 Broadway
Winnipeg, Manitoba R3C 3L6
Telephone: (204) 945-2548
E-mail: securities@gov.mb.ca
www.msc.gov.mb.ca

New Brunswick

Director Corporate Finance and Chief Financial Officer
New Brunswick Securities Commission
Suite 606, 133 Prince William Street
Saint John, New Brunswick E2L 4Y9
Telephone: (506) 658-3060
Fax: (506) 658-3059
E-mail: information@nbsc-cvmnb.ca

Newfoundland and Labrador

Director of Securities
Department of Government Services and Lands
P.O. Box 8700
West Block, 2nd Floor, Confederation Building
St. John's, Newfoundland A1B 4J6
Telephone: (709) 729-4189
www.gov.nf.ca/gsl/cca/s

Northwest Territories

Securities Registries
Department of Justice
Government of the Northwest Territories
P.O. Box 1320,
Yellowknife, Northwest Territories X1A 2L9
www.justice.gov.nt.ca/SecuritiesRegistry/SecuritiesRegistry.html

Nova Scotia

Deputy Director, Compliance and Enforcement
Nova Scotia Securities Commission
P.O. Box 458
Halifax, Nova Scotia B3J 2P8
Telephone: (902) 424-5354
www.gov.ns.ca/nssc

Rules and Policies

Nunavut	Government of Nunavut Legal Registries Division P.O. Box 1000 – Station 570 Iqaluit, Nunavut X0A 0H0 Telephone: (867) 975-6590
Ontario	Administrative Assistant to the Director of Corporate Finance Ontario Securities Commission 19th Floor, 20 Queen Street West Toronto, Ontario M5H 2S8 Telephone: (416) 597-0681 E-mail: Inquiries@osc.gov.on.ca www.osc.gov.on.ca
Prince Edward Island	Deputy Registrar, Securities Division Shaw Building 95 Rochford Street, P.O. Box 2000, 4th Floor Charlottetown, Prince Edward Island C1A 7N8 Telephone: (902) 368-4550 www.gov.pe.ca/securities
Québec	Autorité des marchés financiers Stock Exchange Tower P.O. Box 246, 22nd Floor 800 Victoria Square Montréal, Québec H4Z 1G3 Attention: Responsable de l'accès à l'information Telephone: (514) 395-0337 Toll Free in Québec: (877) 525-0337 www.lautorite.qc.ca
Saskatchewan	Director Saskatchewan Financial Services Commission 6 th Floor, 1919 Saskatchewan Drive Regina, Saskatchewan S4P 3V7 Telephone: (306) 787-5842 www.sfsc.gov.sk.ca
Yukon	Registrar of Securities Department of Justice Andrew A. Philipsen Law Centre 2130 - 2nd Avenue, 3rd Floor Whitehorse, Yukon Territory Y1A 5H6 Telephone: (867) 667-5005

**Schedule 3 to
Authorization of
Indirect Collection, Use and Disclosure of
Personal Information**

Notice of Collection, Use and Disclosure of Personal Information by Regulators

The regulators listed in Schedule 2 collect the personal information in Schedule 1 to the Authorization of Indirect Collection, Use and Disclosure of Personal Information under the authority granted to them under provincial and territorial securities legislation.

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

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

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

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

Questions

If you have any questions about the collection, use, and disclosure of the information you provide to the regulators, you may contact the regulator in the jurisdiction in which the required information is filed, at the address or telephone number listed in Schedule 2.

I have read and understand the foregoing and consent to the indirect collection, use and disclosure of the personal information pertaining to me that is set out in the Authorization.

Date: _____

Signature

Name

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

**APPENDIX C
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 D
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.

Rules and Policies

- 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 Agent is not an individual, the title of the person

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

**FORM 44-101F1
SHORT FORM PROSPECTUS**

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

**FORM 44-101F1
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, and, in Québec, not to make any misrepresentation likely to affect the value or market price of, 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 the Instrument shall bear that definition or interpretation. Other definitions are set out in National Instrument 14-101 Definitions.*
- (3) *In determining the degree of detail required, a standard of materiality should be applied. Materiality is a matter of judgement in the particular circumstance, and should generally be determined in relation to an item's significance to investors, analysts and other users of information. An item of information, or an aggregate of items, is considered material if it is probable that its omission or misstatement would influence or change an investment decision with respect to the issuer's securities. In determining whether information is material, take into account both quantitative and qualitative factors. The potential significance of items should be considered individually rather than on a net basis, if the items have an offsetting effect. This concept of materiality is consistent with the financial reporting notion of materiality contained in the Handbook.*
- (4) *Unless an item specifically requires disclosure only in the preliminary 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.*
- (5) *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 4.1 and 4.2 of the Instrument to be filed with the short form prospectus unless it has been previously filed.*
- (6) *The disclosure must be understandable to readers and presented in an easy to read format. The presentation of information should comply with the plain language principles listed in section 4.2 of Companion Policy 44-101CP Short Form Prospectus Distributions. If technical terms are required, clear and concise explanations should be included.*
- (7) *No reference need be made to inapplicable items and, unless otherwise required in this Form, negative answers to items may be omitted.*
- (8) *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, and in Québec, disclosure of all material facts likely to affect the value or the market price of the securities to be distributed, 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.*
- (9) *An issuer that is a special purpose entity may have to modify the disclosure items to reflect the special purpose nature of its business.*
- (10) *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.*
- (11) *If the term "class" is used in any item to describe securities, the term includes a series of a class.*

- (12) *Disclosure in a preliminary short form prospectus or short form prospectus must be consistent with National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities (NI 51-101) if the issuer is engaged in oil and gas activities (as defined in NI 51-101).*

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 - Every preliminary short form prospectus shall have printed in red ink and italics on the top 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 the sale of securities. Information contained in this preliminary short form prospectus may not be complete and may have to be amended. The securities may not be sold until a receipt for the short form prospectus is obtained from the securities regulatory authority[ies].”

INSTRUCTION

Issuers shall complete the bracketed information by

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

1.3 Disclosure Concerning Documents Incorporated by Reference - State the following in italics on the cover page, 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], and are also available electronically at www.sedar.com. [Insert if the offering is made in Québec - “For the purpose of the Province of Québec, this simplified prospectus contains information to be completed by consulting the permanent information record. A copy of the permanent information record may be obtained without charge from the secretary of the issuer at the above-mentioned address and telephone number and is also available electronically at www.sedar.com.”]

1.4 Basic Disclosure about the Distribution - State the following, immediately below the disclosure required under sections 1.1, 1.2 and 1.3, 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]

1.5 Name and Address 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.

1.6 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 (a)	Underwriting discounts or commissions (b)	Proceeds to issuer or selling security holders (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 security holder and discounts granted. Set out in a note to the table
- (a) commissions or other consideration paid or payable by persons or companies other than the issuer or selling security holder;
 - (b) consideration other than discounts granted and cash paid or payable by the issuer or selling security holder, other than securities described in section 1.10 below; and
 - (c) any finder's fees or similar required payment.
- (7) If a security is being distributed for the account of a selling security holder, state the name of the selling security holder and a cross-reference to the applicable section in the short form prospectus where further information about the selling security holder is provided. State the portion of expenses of the distribution to be borne by the selling security holder and, if none of the expenses of the distribution are being borne by the selling security holder, include a statement to that effect and discuss the reasons why this is the case.

1.7 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 security holder;
- (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 security holder.

1.8 Reduced Price Distributions - If an underwriter 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.

1.9 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. This may affect the pricing of the securities in the secondary market, the transparency and availability of trading prices, the liquidity of the securities, and the extent of issuer regulation. See Risk Factors.”

1.10 Underwriter(s)

- (1) State the name of each underwriter.
- (2) If applicable, comply with the requirements of National Instrument 33-105 *Underwriting Conflicts* for cover page prospectus disclosure.
- (3) If an underwriter has agreed to purchase all of the securities being distributed at a specified price and the underwriter's obligations are subject to conditions, state the following, with 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.

(6) Provide the following tabular information:

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

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.*

1.11 International Issuers - If the issuer, a selling security holder, 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 the following on the cover page or under a separate heading elsewhere in the short form prospectus, with the bracketed information completed:

“The [issuer, selling security holder, 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 security holder, 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 security holder, credit supporter or promoter] judgments obtained in Canadian courts predicated on the civil liability provisions of securities legislation.”

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

1.13 Earnings Coverage Ratios – If any of the earnings coverage ratios required to be disclosed under section 6.1 is less than one-to-one, disclose this fact in bold type.

Item 2 Summary Description of Business

2.1 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 3 Consolidated Capitalization

3.1 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 issuer’s financial statements most recently filed in accordance with the applicable CD rule, including any material change that will result from the issuance of the securities being distributed under the short form prospectus.

Item 4 Use of Proceeds

4.1 Proceeds - State the estimated net proceeds to be received by the issuer or selling security holder or, in the case of a non-fixed price distribution or a distribution to be made on a best efforts basis, the minimum amount, if any, of net proceeds to be received by the issuer or selling security holder from the sale of the securities distributed. If the short form prospectus is used for a special warrant or similar transaction, state the amount that has been received by the issuer of the special warrants or similar securities on the sale of the special warrants or similar securities.

4.2 Principal Purposes

- (1) Describe in reasonable detail and, if appropriate, using tabular form, each of the principal purposes, with approximate amounts, for which the net proceeds will be used by the issuer. If the closing of the distribution is subject to a minimum subscription, provide disclosure of the use of proceeds for the minimum and maximum subscriptions.
- (2) If more than 10 percent of the net proceeds will be used to reduce or retire indebtedness and the indebtedness was incurred within the two preceding years, describe the principal purposes for which the proceeds of the indebtedness were used and, if the creditor is an insider, associate or affiliate of the issuer, identify the creditor and the nature of the relationship to the issuer and the outstanding amount owed.

Item 5 Plan of Distribution

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

- 5.2 Best Efforts Offering** - Outline briefly the plan of distribution of any securities being distributed other than on the basis described in section 5.1.
- 5.3 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.
- 5.4 Over-Allotments** - If the issuer, a selling security holder or an underwriter knows or has reason to believe that there is an intention to over-allot or that the price of any security may be stabilized to facilitate the distribution of the securities, disclose this information.
- 5.5 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. State that during that period funds received from subscriptions will be held by a depository who is a registrant, bank or trust company and if the minimum amount of funds is not raised, the funds will be returned to the subscribers unless the subscribers have otherwise instructed the depository.
- 5.6 Reduced Price Distributions** - If an underwriter 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 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 the Instrument, disclose that, after the underwriter has made a reasonable effort to sell all of the securities at the initial offering price disclosed in the 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 security holder.
- 5.7 Listing Application** - If application has been made to list or quote the securities being distributed, include a statement in substantially the following form with the 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]."

- 5.8 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 security holders.]”

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

Item 6 Earnings Coverage Ratios

6.1 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 subsection (2):
 1. The earnings coverage ratio based on the most recent 12 month period included in the issuer's current annual financial statements. If there has been a change in year end and the issuer's most recent financial year is less than nine months in length, also disclose the earnings coverage calculation for its old financial year. If the issuer's financial year is less than 12 months in length, the earnings coverage should be calculated on an annualized basis.
 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, incorporated by reference into the short form prospectus.
- (2) Adjust the ratios referred to in subsection (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) the issuance of all preferred shares issued since the date of the annual or interim financial statements, and
 - (ii) the repurchase, redemption or other retirement of all preferred shares repurchased, redeemed, or otherwise retired since the date of the annual or interim financial statements and of all preferred shares to be repurchased, redeemed, or otherwise retired from the proceeds to be realized from the sale of securities under the short form prospectus;
 - (c) the issuance of all long-term financial liabilities, as defined in accordance with the issuer's GAAP;
 - (d) the repayment, redemption or other retirement of all long-term financial liabilities, as defined in accordance with the issuer's GAAP, since the date of the annual or interim financial statements and all long-term financial liabilities to be repaid or redeemed from the proceeds to be realized from the sale of securities distributed under the 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, disclose in notes to the ratios required under subsection (1)
 - (a) that the ratios have been calculated excluding the carrying charges for those securities that have been reflected in equity in the calculation of the issuer's interest and dividend obligations;
 - (b) that if those securities had been accounted for in their entirety as debt for the purpose of calculating the ratios required under subsection (1), the entire amount of the annual carrying charges for those

- securities would have been reflected in the calculation of the issuer's interest and dividend obligations; and
- (c) the earnings coverage ratios for the periods referred to in subsection (1), calculated as though those securities had been accounted for as debt.
- (4) If the earnings coverage ratio is less than one-to-one, disclose in the prospectus the dollar amount of the earnings required to achieve a ratio of one-to-one.
 - (5) If the short form prospectus includes a pro forma income statement, calculate the pro forma earnings coverage ratio and disclose it in the prospectus.

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.*
- (2) *Earnings coverage is calculated by dividing an entity's earnings (the numerator) by its interest and dividend obligations (the denominator).*
- (3) *For the earnings coverage calculation*
 - (a) *the numerator should be calculated using consolidated net income before interest and income taxes;*
 - (b) *imputed interest income from the proceeds of a distribution should not be added to the numerator;*
 - (c) *an issuer may also present, as supplementary disclosure, a coverage calculation based on earnings before discontinued operations and extraordinary items;*
 - (d) *for distributions of debt securities, the appropriate denominator is interest expense determined in accordance with the issuer's GAAP, after giving effect to the new debt issue and any retirement of obligations, plus the amount of interest that has been capitalized during the period;*
 - (e) *for distributions of preferred shares*
 - (i) *the appropriate denominator is dividends declared during the period, together with undeclared dividends on cumulative preferred shares, after giving effect to the new preferred share issue, plus the issuer's annual interest requirements, including the amount of interest that has been capitalized during the period, less any retirement of obligations, and*
 - (ii) *dividends should be grossed-up to a before-tax equivalent using the issuer's effective income tax rate; and*
 - (f) *for distributions of both debt securities and preferred shares, the appropriate denominator is the same as for a preferred share issue, except that the denominator should also reflect the effect of the debt being offered pursuant to the short form prospectus.*
- (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) *In certain circumstances, debt obligations may be classified as current liabilities because such obligations, by their terms, are due on demand, are due within one year, or are callable by the creditor. If the issuer is distributing, or has outstanding, debt securities that are classified as current liabilities, disclose*
 - (a) *in the notes to the ratios required under subsection 6.1(1) that the ratios have been calculated excluding the carrying charges for those debt securities reflected as current liabilities;*
 - (b) *that if those debt securities had been classified in their entirety as long term debt for the purposes of calculating the ratios under subsection 6.1(1), the entire amount of the annual carrying charges for such debt securities would have been reflected in the calculation of the issuer's interest and dividend obligations; and*
 - (c) *the earnings coverage ratios for the periods referred to in subsection 6.1(1), calculated as though those debt securities had been classified as long term debt.*
- (6) *For debt securities, disclosure of earnings coverage shall include language similar to the following:*

"[Name of the issuer]'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 •. [Name of the issuer]'s earnings before interest and income tax for the 12 months then ended was \$•, which is • times [name of the issuer]'s interest requirements for this period."
- (7) *For preferred share issues, disclosure of earnings coverage shall include language similar to the following:*

"[Name of the issuer]'s dividend requirements on all of its preferred shares, after giving effect to the issue of [the preferred shares to be distributed under the short form prospectus], and adjusted to a before-tax equivalent using an effective income tax rate of •%, amounted to \$• for the 12 months ended •. [Name of the issuer]'s interest requirements for the 12 months then ended amounted to \$•. [Name of the issuer]'s earnings before interest and income tax for the 12 months ended • was \$•, which is • times [name of the issuer]'s aggregate dividend and interest requirements for this period."
- (8) *If the earnings coverage ratio is less than one-to-one, disclose the dollar amount of the coverage deficiency (i.e. the dollar amount of earnings required to attain a ratio of one-to-one).*
- (9) *Other earnings coverage calculations may be included as supplementary disclosure to the required earnings coverage calculations outlined above as long as their derivation is disclosed and they are not given greater prominence than the required earnings coverage calculations.*

Item 7 Description of Securities Being Distributed

7.1 Equity Securities - If equity securities are being distributed, state the description or the designation of the class of the equity securities and describe all material attributes and characteristics that are not described elsewhere in a document incorporated by reference in the short form prospectus including, as applicable,

- (a) dividend rights;
- (b) voting rights;
- (c) rights upon dissolution or winding up;
- (d) pre-emptive rights;
- (e) conversion or exchange rights;
- (f) redemption, retraction, purchase for cancellation or surrender provisions;
- (g) sinking or purchase fund provisions;

- (h) provisions permitting or restricting the issuance of additional securities and any other material restrictions; and
- (i) provisions requiring a securityholder to contribute additional capital.

7.2 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 that are not described elsewhere in a document incorporated by reference in the short form prospectus, 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.

7.3 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 may reasonably be expected to affect the timing or amount of payments or distributions to be made under the asset-backed securities, including those that are dependent or based on the economic performance of the underlying pool of financial assets;
- (b) information on the underlying pool of financial assets, for 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, of
 - (i) the composition of the pool as of the end of the period,

- (ii) income and losses from the pool for the period, presented on at least an annual basis or such shorter period as is reasonable given the nature of the underlying pool of assets, and
 - (iii) the payment, prepayment and collection experience of the pool for the period on at least an annual basis or such shorter period as is reasonable given the nature of the underlying pool of assets;
- (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.

INSTRUCTIONS

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

7.4 Derivatives - If derivatives are being distributed, describe fully the material attributes and characteristics of the derivatives, including

- (a) the calculation of the value or payment obligations under the derivatives;
- (b) the exercise of the derivatives;
- (c) the settlement of exercises of the derivatives;
- (d) the underlying interest of the derivatives;
- (e) the role of a calculation expert in connection with the derivatives;
- (f) the role of any credit supporter of the derivatives; and
- (g) the risk factors associated with the derivatives.

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

7.6 Special Warrants, etc. – If the short form prospectus is used to qualify the distribution of securities issued upon the exercise of Special Warrants or other securities acquired on a prospectus-exempt basis, disclose that holders of such securities have been provided with a contractual right of rescission and provide the following disclosure in the prospectus:

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

INSTRUCTION

If the short form prospectus is qualifying the distribution of securities issued upon the exercise of securities other than Special Warrants, replace the term “Special Warrant” with the type of the security being distributed.

7.7 Restricted Securities

- (1) If the issuer has outstanding, or proposes to distribute under the short form prospectus, restricted securities, or securities that are directly or indirectly convertible into or exercisable or exchangeable for restricted securities or subject securities, provide a detailed description of:
 - (a) the voting rights attached to the restricted securities and the voting rights, if any, attached to the securities of any other class of securities of the issuer that are the same or greater on a per security basis than those attached to the restricted securities;
 - (b) any significant provisions under applicable corporate and securities law that do not apply to the holders of the restricted securities but do apply to the holders of another class of equity securities, and the extent of any rights provided in the constating documents or otherwise for the protection of holders of restricted securities; and
 - (c) any rights under applicable corporate law, in the constating documents or otherwise, of holders of restricted securities to attend, in person or by proxy, meetings of holders of equity securities of the issuer and to speak at the meetings to the same extent that holders of equity securities are entitled.
- (2) If holders of restricted securities do not have all of the rights referred to in subsection (1) the detailed description referred to in that subsection shall include, in bold type, a statement of the rights the holders do not have.
- (3) If the issuer is required to include the disclosure referred to in subsection (1), state the percentage of the aggregate voting rights attached to the issuer's securities that will be represented by restricted securities after giving effect to the issuance of the securities being offered.

7.8 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.

7.9 Ratings - If one or more ratings, including provisional ratings or stability ratings, have been received from one or more approved rating organizations for the securities being distributed and the rating or ratings continue in effect, disclose

- (a) each security rating, including a provisional rating or stability rating, received from an approved rating organization;
- (b) the name of each approved rating organization that has assigned a rating for the securities to be distributed;
- (c) a definition or description of the category in which each approved rating organization rated the securities to be distributed and the relative rank of each rating within the organization's classification system;
- (d) an explanation of what the rating addresses and what attributes, if any, of the securities to be distributed are not addressed by the rating;
- (e) any factors or considerations identified by the approved rating organization as giving rise to unusual risks associated with the securities to be distributed;
- (f) a statement that a security rating or a stability rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time by the rating organization; and
- (g) any announcement made by, or any proposed announcement known to the 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.

7.10 Other Attributes

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

distributed, include information about the other securities that will enable investors to understand the rights attaching to the securities being distributed.

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

INSTRUCTION

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

Item 8 Selling Security Holder

8.1 Selling Security Holder - If any of the securities being distributed are to be distributed for the account of a security holder, state the following:

1. The name of the security holder.
2. The number or amount of securities owned by the security holder of the class being distributed.
3. The number or amount of securities of the class being distributed for the account of the security holder.
4. The number or amount of securities of the issuer of any class to be owned by the security holder 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.

Item 9 Mineral Property

9.1 Mineral Property – If a material part of the proceeds of the distribution is to be expended on a particular mineral property and if the current AIF does not contain the disclosure required under section 5.4 of Form 51-102F2 for the property or that disclosure is inadequate or incorrect due to changes, disclose the information required under section 5.4 of Form 51-102F2.

Item 10 Significant Acquisitions

10.1 Significant Acquisitions

- (1) Describe any acquisition
 - (a) that the issuer has completed within 75 days prior to the date of the short form prospectus;
 - (b) that is a significant acquisition for the purposes of Part 8 of NI 51-102; and
 - (c) for which the issuer has not yet filed a business acquisition report under NI 51-102.
- (2) Describe any proposed acquisition that
 - (a) has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high; and
 - (b) would be a significant acquisition for the purposes of Part 8 of NI 51-102 if completed as of the date of the short form prospectus.
- (3) If disclosure about an acquisition or proposed acquisition is required under subsection (1) or (2), include financial statements or other information of the acquisition or proposed acquisition if
 - (a) the acquisition or proposed acquisition is a reverse takeover; or
 - (b) the acquisition or proposed acquisition is not a reverse takeover but the inclusion of the financial statements is necessary for the short form prospectus to contain full, true and plain disclosure of all

material facts relating to, and in Québec disclosure of all material facts likely to affect the value or the market price of, the securities being distributed.

INSTRUCTIONS

- (1) *For the description of the acquisition or proposed acquisition, include the information required by sections 2.1 through 2.6 of Form 51-102F4. For a proposed acquisition, modify this information as necessary to convey that the acquisition is not yet completed.*
- (2) *The requirement of subsection (3) must be satisfied by including either (i) the financial statements or other information required by Part 8 of NI 51-102, or (ii) satisfactory alternative financial statements or other information.*

Item 11 Documents Incorporated by Reference

11.1 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. The issuer's current annual financial statements, if any, and related MD&A.
 3. The issuer's interim financial statements most recently filed or required to have been filed under the applicable CD rule in respect of an interim period, if any, subsequent to the financial year in respect of which the issuer has filed its current annual financial statements or has included annual financial statements in the short form prospectus, and the related interim MD&A.
 4. If, before the prospectus is filed, financial information about the issuer for a financial period more recent than the period for which financial statements are required under paragraphs 2 and 3 is publicly disseminated by, or on behalf of, the issuer through news release or otherwise, the content of the news release or public communication.
 5. Any material change report, except a confidential material change report, filed under Part 7 of NI 51-102 or Part 11 of NI 81-106 since the end of the financial year in respect of which the issuer's current AIF is filed.
 6. Any business acquisition report filed by the issuer under Part 8 of NI 51-102 for acquisitions completed since the end of the financial year in respect of which the issuer's current AIF is filed.
 7. Any information circular filed by the issuer under Part 9 of NI 51-102 or Part 12 of NI 81-106 since the end of the financial year in respect of which the issuer's current AIF is filed.
 8. Any other disclosure document which the issuer has filed pursuant to an undertaking to a provincial or territorial securities regulatory authority since the beginning of the financial year in respect of which the issuer's current AIF is filed.
 9. Any other disclosure document of the type listed in paragraphs 1 through 7 which the issuer has filed pursuant to an exemption from any requirement under the applicable CD rule since the beginning of the financial year in respect of which the issuer's current AIF is filed.
- (2) In the statement incorporating the documents listed in subsection (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 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.

INSTRUCTIONS

- (1) *Paragraph 4 of subsection (1) requires issuers to incorporate only the news release or other public communication through which more recent financial information is released to the public. However, if the financial statements from which the information in the news release has been derived have been filed, then the financial statements must be incorporated by reference.*

- (2) Issuers must provide a list of the material change reports and business acquisition reports required under paragraphs 5 and 6 of subsection (1), giving the date of filing and briefly describing the material change or acquisition, as the case may be, in respect of which the report was filed.
- (3) Any material incorporated by reference in a short form prospectus is required under sections 4.1 and 4.2 of the Instrument to be filed with the short form prospectus unless it has been previously filed.

11.2 Mandatory Incorporation by Reference of Future Documents - State that any documents, of the type described in section 11.1, 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.

11.3 Issuers without a Current AIF or Current Annual Financial Statements

- (1) If the issuer does not have a current AIF or current annual financial statements and is relying on the exemption in subsection 2.7(1) of the Instrument, include the disclosure, including financial statements, that would otherwise have been required to have been included in a current AIF and current annual financial statements under section 11.1.
- (2) If the issuer does not have a current AIF or current annual financial statements and is relying on the exemption in subsection 2.7(2) of the Instrument, include the disclosure, including financial statements, provided in accordance with Item 14.2 or 14.5 of Form 51-102F5 in the information circular referred to in paragraph 2.7(2)(b) of the Instrument.

INSTRUCTION

If an issuer is required to include disclosure under subsection (2), it must include the historical financial statements of any issuer that was a party to the reorganization and any other information contained in the information circular that was used to construct financial statements for the issuer.

11.4 Significant Acquisition for Which No Business Acquisition Report is Filed

- (1) If the issuer has,
 - (a) since the beginning of the most recently completed financial year in respect of which annual financial statements are included in the short form prospectus; and
 - (b) more than 75 days prior to the date of filing the preliminary short form prospectus;
completed a transaction that would have been a significant acquisition for the purposes of Part 8 of NI 51-102 if the issuer had been a reporting issuer at the time of the transaction, and the issuer has not filed a business acquisition report in respect of the transaction, include the financial statements and other information in respect of the transaction that is prescribed by Form 51-102F4.
- (2) If the issuer was exempt from the requirement to file a business acquisition report in respect of a transaction because the disclosure that would normally be included in a business acquisition report was included in another document, include that disclosure in the short form prospectus.

INSTRUCTION

Disclosure required by section 11.3 or 11.4 to be included in the short form prospectus may be incorporated by reference from another document or included directly in the short form prospectus.

Item 12 Additional Disclosure for Issues of Guaranteed Securities

12.1 Credit Supporter Disclosure - Provide disclosure about each credit supporter, if any, that has provided a guarantee or alternative credit support for all or substantially all of the payments to be made under the securities to be distributed, by complying with the following:

1. If the credit supporter is a reporting issuer and has a current AIF, incorporating by reference into the short form prospectus all documents that would be required to be incorporated by reference under Item 11 if the credit supporter were the issuer of the securities.

2. If the credit supporter is not a reporting issuer and 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 1934 Act filings 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 11 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, and in Québec, disclosure of all material facts likely to affect the value or the market price, of the securities to be distributed, including the credit supporter's earnings coverage ratios under Item 6 as if the credit supporter were the issuer of the securities.

Item 13 Exemptions for Certain Issues of Guaranteed Securities

13.1 The Issuer is a Wholly Owned Subsidiary of the Credit Supporter - Despite Items 6 and 11, an issuer is not required to incorporate by reference into the short form prospectus any of its documents under paragraphs 1 through 4, 6 and 7 of subsection 11.1(1) or include in the short form prospectus its earnings coverage ratios under section 6.1, if

- (a) a credit supporter has provided full and unconditional credit support for the securities being distributed;
- (b) the credit supporter satisfies the criterion in paragraph 2.4(1)(b) of the Instrument;
- (c) the securities being distributed are non-convertible debt securities, non-convertible preferred shares, or convertible debt securities or convertible preferred shares that are convertible, in each case, into securities of the credit supporter;
- (d) the issuer is a direct or indirect wholly owned subsidiary of the credit supporter;
- (e) no other subsidiary of the credit supporter has provided a guarantee or alternative credit support for all or substantially all of the payments to be made under the securities being distributed; and
- (f) the issuer includes the following information in the short form prospectus:
 - (i) if
 - (A) the issuer has no operations or only minimal operations that are independent of the credit supporter, and
 - (B) the impact of any subsidiaries of the credit supporter on a combined basis, excluding the issuer, on the consolidated financial results of the credit supporter is minor,

a statement that the financial results of the issuer are included in the consolidated financial results of the credit supporter, or
 - (ii) for the periods covered by the credit supporter's financial statements included in the short form prospectus under section 12.1, consolidating summary financial information for the credit supporter presented with a separate column for each of the following:
 - (A) the credit supporter,
 - (B) the issuer,
 - (C) any other subsidiaries of the credit supporter on a combined basis,
 - (D) consolidating adjustments, and
 - (E) the total consolidated amounts.

13.2 The Issuer and One or More Subsidiary Credit Supporters are Wholly Owned Subsidiaries of the Parent Credit Supporter - Despite Items 6, 11 and 12, an issuer is not required to incorporate by reference into the short form prospectus any of its documents under paragraphs 1 through 4, 6 and 7 of subsection 11.1(1), include in the short form prospectus its earnings coverage ratios under section 6.1, or include in the short form prospectus the disclosure of one or more subsidiary credit supporters required by section 12.1, if

- (a) a parent credit supporter and one or more subsidiary credit supporters have each provided full and unconditional credit support for the securities being distributed;
- (b) the parent credit supporter satisfies the criterion in paragraph 2.4(1)(b) of the Instrument;
- (c) the guarantees or alternative credit supports are joint and several;
- (d) the securities being distributed are non-convertible debt securities, non-convertible preferred shares, or convertible debt securities or convertible preferred shares that are convertible, in each case, into securities of the parent credit supporter;
- (e) the issuer and each subsidiary credit supporter is a direct or indirect wholly owned subsidiary of the parent credit supporter; and
- (f) the issuer includes the following information in the short form prospectus:
 - (i) if
 - (A) each of the issuer and each subsidiary credit supporter has no operations or only minimal operations that are independent of the parent credit supporter, and
 - (B) the impact of any subsidiaries of the parent credit supporter on a combined basis, excluding the issuer and all subsidiary credit supporters, on the consolidated financial results of the parent credit supporter is minor,

a statement that the financial results of the issuer and all subsidiary credit supporters are included in the consolidated financial results of the parent credit supporter, or
 - (ii) for the periods covered by the parent credit supporter's financial statements included in the short form prospectus under section 12.1, consolidating summary financial information for the parent credit supporter presented with a separate column for each of the following:
 - (A) the parent credit supporter,
 - (B) the issuer,
 - (C) each subsidiary credit supporter on a combined basis,
 - (D) any other subsidiaries of the parent credit supporter on a combined basis,
 - (E) consolidating adjustments, and
 - (F) the total consolidated amounts.

13.3 One or More Credit Supporters are Wholly Owned Subsidiaries of the Issuer - Despite Item 12, an issuer is not required to include in the short form prospectus the disclosure required by section 12.1 for one or more credit supporters if

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

- (d) each credit supporter is a direct or indirect wholly owned subsidiary of the issuer; and
- (e) the issuer includes the following information in the short form prospectus:
 - (i) if
 - (A) the issuer has no operations or only minimal operations that are independent of the credit supporter(s), and
 - (B) the impact of any subsidiaries of the issuer on a combined basis, excluding the credit supporter(s) but including any subsidiaries of the credit supporter(s) that are not themselves credit supporters, on the consolidated financial results of the issuer is minor,

a statement that the financial results of the credit supporter(s) are included in the consolidated financial results of the issuer, or
 - (ii) for the periods covered by the issuer's financial statements included in the short form prospectus under Item 11, consolidating summary financial information for the issuer, presented with a separate column for each of the following:
 - (A) the issuer,
 - (B) the credit supporters on a combined basis,
 - (C) any other subsidiaries of the issuer on a combined basis,
 - (D) consolidating adjustments, and
 - (E) the total consolidated amounts.

INSTRUCTIONS

(1) *Summary Financial Information*

- (a) *Summary financial information includes the following line items:*
 - (i) *sales or revenues;*
 - (ii) *income from continuing operations before extraordinary items;*
 - (iii) *net earnings;*
 - (iv) *current assets;*
 - (v) *non-current assets;*
 - (vi) *current liabilities; and*
 - (vii) *non-current liabilities.*
- (b) *Despite instruction (1)(a), if GAAP permits the preparation of an entity's balance sheet without classifying assets and liabilities between current and non-current then the following items may be omitted from the entity's summary financial information if alternative meaningful financial information is provided which is more appropriate to the industry:*
 - (i) *current assets;*
 - (ii) *non-current assets;*
 - (iii) *current liabilities; and*
 - (iv) *non-current liabilities.*

- (c) *An entity's annual or interim summary financial information must be derived from the entity's financial information underlying the corresponding consolidated financial statements of the issuer or parent credit supporter included in the short form prospectus.*
 - (d) *The parent entity column should account for investments in all subsidiaries under the equity method.*
 - (e) *All subsidiary entity columns should account for investments in non-credit supporter subsidiaries under the equity method.*
- (2) *For the purposes of Item 13, an entity is considered to be a wholly owned subsidiary if the parent entity owns voting securities representing 100 per cent of the votes attached to the outstanding voting securities of the subsidiary.*
 - (3) *For the purposes of Item 13, the impact of subsidiaries, on a combined basis, on the financial results of the parent is minor if each item of the summary financial information of the subsidiaries, on a combined basis, represents less than 3% of the total consolidated amounts.*
 - (4) *For the purposes of Item 13, "parent credit supporter" means a credit supporter of which the issuer is a subsidiary and "subsidiary credit supporter" means a credit supporter that is a subsidiary of the parent credit supporter.*

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 security holder is a connected issuer or related issuer of an underwriter of the distribution, or if the issuer or selling security holder is also an underwriter, comply with the requirements of National Instrument 33-105 *Underwriting Conflicts*.

INSTRUCTION

For the purposes of section 14.1, "connected issuer" and "related issuer" have the same meanings as in National Instrument 33-105 Underwriting Conflicts.

Item 15 Interest of Experts

- 15.1 Names of Experts** – Name each person or company

- (a) who is named as having prepared or certified a statement, report or valuation in the short form prospectus or an amendment to the short form prospectus, either directly or in a document incorporated by reference; and
- (b) whose profession or business gives authority to the statement, report or valuation made by the person or company.

- 15.2 Interest of Experts** – For each person or company referred to in section 15.1, provide the disclosure that would be required under section 16.2 of Form 51-102F2, as of the date of the short form prospectus, as if that person or company were a person or company referred to in section 16.1 of Form 51-102F2.

- 15.3 Exemption** – Sections 15.1 and 15.2 do not apply to a person or company if the disclosure regarding that person or company required under section 15.2 is already disclosed in the issuer's current AIF.

Item 16 Promoters

16.1 Promoters

- (1) For a person or company that is, or has been within the three years immediately preceding the date of the preliminary short form prospectus, a promoter of the issuer or of a subsidiary of the issuer state, to the extent not disclosed elsewhere in a document incorporated by reference in the short form prospectus,
 - (a) the person or company's name;
 - (b) the number and percentage of each class of voting securities and equity securities of the issuer or any of its subsidiaries beneficially owned, directly or indirectly, or over which control is exercised by the person or company;

- (c) the nature and amount of anything of value, including money, property, contracts, options or rights of any kind received or to be received by the promoter, directly or indirectly, from the issuer or from a subsidiary of the issuer, and the nature and amount of any assets, services or other consideration received or to be received by the issuer or a subsidiary of the issuer in return; and
- (d) for an asset acquired within the three years before the date of the preliminary short form prospectus, or to be acquired, by the issuer or by a subsidiary of the issuer from a promoter
 - (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 of the issuer has been a director, executive officer or promoter of any person or company during the 10 years ending on the date of the preliminary short form prospectus, that while that person was acting in that capacity,
 - (a) was the subject of a cease trade or similar order, or an order that denied the person or company access to any exemptions under provincial or territorial securities legislation, for a period of more than 30 consecutive days, state the fact and describe the basis on which the order was made and whether the order is still in effect;
 - (b) was subject to an event that resulted, after the director, executive officer or promoter ceased to be a director, executive officer or promoter, in the company or person being subject to a cease trade or similar order or an order that denied the relevant company or person access to any exemption under securities legislation, for a period of more than 30 consecutive days, state the fact and describe the basis on which the order was made and whether the order is still in effect; or
 - (c) within a year of that person ceasing to act in that capacity, became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or been subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets, state the fact.
- (3) Describe the penalties or sanctions imposed and the grounds on which they were imposed or the terms of the settlement agreement and the circumstances that gave rise to the settlement agreement, if a promoter has been subject to
 - (a) any penalties or sanctions imposed by a court relating to provincial or territorial securities legislation or by a provincial or territorial securities regulatory authority or has entered into a settlement agreement with a provincial or territorial securities regulatory authority; or
 - (b) any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor in making an investment decision.
- (4) Despite subsection (3), no disclosure is required of a settlement agreement entered into before December 31, 2000 unless the disclosure would likely be considered important to a reasonable investor in making an investment decision.
- (5) If a promoter of the issuer 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 Risk Factors

- 17.1 Risk Factors** - Describe the factors material to the issuer that a reasonable investor would consider relevant to an investment in the securities being distributed.

INSTRUCTION

Issuers may cross-reference to specific risk factors relevant to the securities being distributed that are discussed in their current AIF.

Item 18 Other Material Facts

- 18.1 Other Material Facts** - Give particulars of any material facts about the securities being distributed that are not disclosed under any other 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, and in Québec not to make any misrepresentation likely to affect the value or market price of, the securities to be distributed.

Item 19 Exemptions from the Instrument

- 19.1 Exemptions from the Instrument** - List all exemptions from the provisions of the Instrument, including this Form, granted to the issuer applicable to the distribution or the short form prospectus, including all exemptions to be evidenced by the issuance of a receipt for the short form prospectus pursuant to section 8.2 of the Instrument.

Item 20 Statutory Rights of Withdrawal and Rescission

- 20.1 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.”

- 20.2 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 section 20.1 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 21 Certificates

- 21.1 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 legislation of [insert name of each jurisdiction in which qualified]. [Insert if offering made in Québec - “For the purpose of the Province of Québec, this simplified prospectus, together with documents incorporated herein by reference and 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.”]”

21.2 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 security holders:

“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 legislation of [insert name of each jurisdiction in which qualified]. [Insert if offering made in Québec - “For the purpose of the Province of Québec, to our knowledge, this simplified prospectus, together with documents incorporated herein by reference and 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.”]”

21.3 Related Credit Supporters - If disclosure concerning a credit supporter is prescribed by section 12.1, including if a credit supporter is exempt from the requirements of section 12.1 under section 13.2 or 13.3, and the credit supporter is a related credit supporter, an issuer shall include a certificate of the related credit supporter in the form required in section 21.1 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 related credit supporter in a capacity similar to a chief executive officer and a person acting on behalf of the related credit supporter in a capacity similar to that of a chief financial officer; and
- (b) on behalf of the board of directors of the related credit supporter, any two directors of the related credit supporter duly authorized to sign, other than the persons referred to in paragraph (a).

INSTRUCTION

For the purposes of section 21.3, “related credit supporter” means a credit supporter of the issuer that is an affiliate of the issuer.

21.4 Amendments

- (1) Include in an amendment to a short form prospectus that does not restate the short form prospectus the certificates required under sections 21.1, 21.2 and, if applicable, section 21.3 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 sections 21.1, 21.2 and, if applicable, section 21.3 with the reference in each certificate to “this short form prospectus” omitted and replaced by “this amended and restated short form prospectus”.

21.5 Date of Certificates – The date of certificates in a preliminary short form prospectus, a short form prospectus or an amendment to a preliminary short form prospectus or short form prospectus shall be within three business days before the date of filing the preliminary short form prospectus, short form prospectus or amendment, as applicable.

**COMPANION POLICY
TO NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS**

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**COMPANION POLICY 44-101CP
TO NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS**

PART 1 INTRODUCTION AND DEFINITIONS

- 1.1 Introduction and Purpose** - National Instrument 44-101 *Short Form Prospectus Distributions* ("NI 44-101") sets out the substantive tests for an issuer to qualify to file a prospectus in the form of a short form prospectus. The purpose of NI 44-101 is to shorten the time period in which, and streamline the procedures by which, qualified issuers and their selling security holders can obtain access to the Canadian capital markets through a prospectus offering.

British Columbia, Alberta, Ontario, Manitoba, Nova Scotia and New Brunswick have adopted NI 44-101 by way of rule. Saskatchewan and Québec have adopted it by way of regulation. All other jurisdictions have adopted NI 44-101 by way of related blanket ruling or order. Each jurisdiction implements NI 44-101 by one or more instruments forming part of the law of that jurisdiction (referred to as the "implementing law of the jurisdiction"). Depending on the jurisdiction, the implementing law of the jurisdiction can take the form of regulation, rule, ruling or order.

This Companion Policy to NI 44-101 (also referred to as "this Companion Policy" or this "Policy") provides information relating to the manner in which the provisions of NI 44-101 are intended to be interpreted or applied by the provincial and territorial securities regulatory authorities, as well as the exercise of discretion under NI 44-101. Terms used and not defined in this Companion Policy that are defined or interpreted in NI 44-101 or a definition instrument in force in the jurisdiction should be read in accordance with NI 44-101 or the definition instrument, unless the context otherwise requires.

To the extent that any provision of this Policy is inconsistent or conflicts with the applicable provisions of NI 44-101 in those jurisdictions that have adopted NI 44-101 by way of related blanket ruling or order, the provisions of NI 44-101 prevail over the provisions of this Policy.

- 1.2 Interrelationship with Local Securities Legislation** - NI 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 Continuous Disclosure (NI 51-102 and NI 81-106)** - The short form prospectus distribution system established under NI 44-101 is based on the continuous disclosure filings of reporting issuers pursuant to NI 51-102 or, in the case of an investment fund, NI 81-106. Issuers who wish to use the system should be mindful of their ongoing disclosure and filing obligations under the applicable CD rule. Issues raised in the context of a continuous disclosure review may be taken into consideration by the regulator when determining whether it is in the public interest to refuse to issue a receipt for a short form prospectus. Consequently, unresolved issues may delay or prevent the issuance of a receipt.
- 1.4 Interrelationship with MRRS** - National Policy 43-201 *Mutual Reliance Review System for Prospectuses* and, in Québec, *Notice 43-201 relating to the Mutual Reliance Review System for Prospectuses* ("NP 43-201") describes the practical application of the mutual reliance review system relating to the filing and review of prospectuses, including investment fund and shelf prospectuses, amendments to prospectuses and related materials. While use of NP 43-201 is optional, NP 43-201 represents the only means by which an issuer can enjoy the benefits of co-ordinated review by the securities regulatory authorities in the various jurisdictions in which the issuer has filed a short form prospectus. Under NP 43-201, one securities regulatory authority or regulator as defined in NI 14-101 *Definitions* ("NI 14-101"), as applicable, acts as the principal regulator for all materials relating to a filer.
- 1.5 Interrelationship with Selective Review** - The securities regulatory authorities in some jurisdictions have, formally or informally, adopted a system of selective review of certain documents, including short form prospectuses and amendments to short form prospectuses. Under the selective review system, these documents may be subject to an initial screening to determine whether they will be reviewed and, if reviewed, whether they will be subject to a full review, an issue-oriented review or an issuer review. Application of the selective review system, taken together with MRRS, may result in certain short form prospectuses and amendments to short form prospectuses not being reviewed beyond the initial screening.
- 1.6 Interrelationship with Shelf Distributions (NI 44-102)** - Issuers qualified under NI 44-101 to file a prospectus in the form of a short form prospectus and their security holders can distribute securities under a short form prospectus using the shelf distribution procedures under NI 44-102. The Companion Policy to NI 44-102 explains that the distribution of securities under the shelf system is governed by the requirements and procedures of NI 44-101 and securities

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

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

1.8 Definitions

(1) **Approved rating** - Cash settled derivatives are covenant-based instruments that may be rated on a similar basis to debt securities. In addition to the creditworthiness of the issuer, other factors such as the continued subsistence of the underlying interest or the volatility of the price, value or level of the underlying interest may be reflected in the rating analysis for cash settled derivatives. These additional factors may be described by a rating agency by way of a superscript or other notation to a rating. The inclusion of such notations for covenant-based instruments that otherwise fall within one of the categories of an approved rating does not detract from the rating being considered to be an approved rating for the purposes of NI 44-101.

A rating agency may also restrict its rating to securities of an issuer that are denominated in local currency. This restriction may be denoted, for example, by the designation "LC". The inclusion of such a designation in a rating that would otherwise fall within one of the categories of an approved rating does not detract from the rating being considered to be an approved rating for the purposes of NI 44-101.

(2) **Asset-backed security** - The definition of "asset-backed security" is the same definition used in NI 51-102.

The definition is designed to be flexible to accommodate future developments in asset-backed securities. For example, it does not include a list of "eligible" assets that can be securitized. Instead, the definition is broad, referring to "receivables or other financial assets" that by their terms convert into cash within a finite time period. These would include, among other things, notes, leases, instalment contracts and interest rate swaps, as well as other financial assets, such as loans, credit card receivables, accounts receivable and franchise or servicing arrangements. The reference to "and any rights or other assets..." in the definition is sufficiently broad to include "ancillary" or "incidental" assets, such as guarantees, letters of credit, financial insurance or other instruments provided as a credit enhancement for the securities of the issuer or which support the underlying assets in the pool, as well as cash arising upon collection of the underlying assets that may be reinvested in short-term debt obligations.

The term, a "discrete pool" of assets, can refer to a single group of assets as a "pool" or to multiple groups of assets as a "pool". For example, a group or pool of credit card receivables and a pool of mortgage receivables can, together, constitute a "discrete pool" of assets. The reference to a "discrete pool" of assets is qualified by the phrase "fixed or revolving" to clarify that the definition covers "revolving" credit arrangements, such as credit card and short-term trade receivables, where balances owing revolve due to periodic payments and write-offs.

While typically a pool of securitized assets will consist of financial assets owed by more than one obligor, the definition does not currently include a limit on the percentage of the pool of securitized assets that can be represented by one or more financial assets owing by the same or related obligors (sometimes referred to as an "asset concentration test").

(3) **Current AIF** - An issuer's AIF filed under the applicable CD rule is a "current AIF" until the issuer files an AIF for the next financial year, or is required by the applicable CD rule to have filed its annual financial statements for the next financial year. If an issuer fails to file a new AIF by the filing deadline under the applicable CD rule for its annual financial statements, it will not have a current AIF and will not qualify under NI 44-101 to file a prospectus in the form of a short form prospectus. If an issuer files a revised or amended AIF for the same financial year as an AIF that has previously been filed, the most recently filed AIF will be the issuer's current AIF.

An issuer that is a venture issuer for the purpose of NI 51-102, and certain investment funds, may have no obligation under the applicable CD rule to file an AIF. However, to qualify under NI 44-101 to file a prospectus in the form of a short form prospectus, that issuer will be required to file an AIF in accordance with the applicable CD rule so as to have a "current AIF". A current AIF filed by an issuer that is a venture issuer for

the purposes of NI 51-102 can be expected to expire later than a non-venture issuer's AIF, due to the fact that the deadlines for filing annual financial statements under NI 51-102 are later for venture issuers than for other issuers.

- (4) **Current annual financial statements** - An issuer's comparative annual financial statements filed under the applicable CD rule, together with the accompanying auditor's report, are "current annual financial statements" until the issuer files, or is required under the applicable CD rule to have filed, its comparative annual financial statements for the next financial year. If an issuer fails to file its comparative annual financial statements by the filing deadline under the applicable CD rule, it will not have current annual financial statements and will not be qualified under NI 44-101 to file a prospectus in the form of a short form prospectus.

Where there has been a change of auditor and the new auditor has not audited the comparative period, the report of the former auditor on the comparative period must be included in the prospectus. The issuer may file the report of the former auditor on the comparative period with the annual financial statements that are being incorporated by reference into the short form prospectus, and clearly incorporate by reference the former auditor's report in addition to the new auditor's report. Alternatively, the issuer can incorporate by reference into the short form prospectus its comparative financial statements filed for the previous year, including the audit reports thereon.

- (5) **Regulator** - The regulator for each jurisdiction is listed in Appendix D to NI 14-101. In practice, that person has often delegated his or her powers to act under NI 44-101 to another staff member of the same securities regulatory authority or, under the relevant statutory framework, another person is permitted to exercise those powers. Generally, the person exercising the powers of the regulator for the purposes of NI 44-101 holds, as of the date of this Policy, the following position in each jurisdiction:

Jurisdiction	Position
Alberta	Director, Capital Markets
British Columbia	Director, Corporate Finance
Manitoba	Director, Corporate Finance
New Brunswick	Executive Director
Newfoundland and Labrador	Director of Securities
Northwest Territories	Deputy Registrar of Securities
Nova Scotia	Director of Securities
Nunavut	Registrar of Securities
Ontario	Manager, Corporate Finance or, in the case of an investment fund, Manager, Investment Funds
Prince Edward Island	Registrar of Securities
Québec	Manager, Corporate Finance
Saskatchewan	Deputy Director, Corporate Finance (except for applications for exemptions from Part 2 of NI 44-101, for which the regulator is the Saskatchewan Financial Services Commission)
Yukon Territory	Registrar of Securities

Further delegation may take place among staff or under securities legislation.

- (6) **Successor Issuer** - The definition of "successor issuer" requires that the issuer exist "as a result of a reorganization". In the case of an amalgamation, the amalgamated corporation is regarded by the securities regulatory authorities as existing "as a result of a reorganization". Also, if a corporation is incorporated for the sole purpose of facilitating a reorganization, the 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 security holders of a portion of its business or the transfer of a portion of its business to another issuer. In that case, the entity that carries on the portion of the business that was "spun-off" is not a successor issuer within the meaning of the definition.

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

2.1 Basic Qualification Criteria - Reporting Issuers with Equity Securities Listed on a Short Form Eligible Exchange (Section 2.2 of NI 44-101)

- (1) Section 2.2 of NI 44-101 provides that an issuer with equity securities listed and posted for trading on a short form eligible exchange and that is up-to-date in its periodic and timely disclosure filings in all jurisdictions in which it is a reporting issuer satisfies the criteria for being qualified to file a prospectus in the form of a short form prospectus if it meets the other general qualification criteria. In addition to the listing requirement, the issuer may not be an issuer whose operations have ceased or whose principal asset is its exchange listing. The purpose of this requirement is to ensure that eligible issuers have an operating business in respect of which the issuer must provide current disclosure through application of the applicable CD rule.

The basic qualification criteria are structured to allow most Canadian listed issuers to participate in the expedited offering system created by this Instrument, provided their public disclosure record provides investors with satisfactory and sufficient information about the issuer and its business, operations or capital. The securities regulatory authorities believe that it is in the public interest to allow an issuer's public disclosure to be incorporated into a short form prospectus, provided that the resulting prospectus provides prospective investors with full, true and plain disclosure about the issuer and the securities being distributed. The securities regulatory authority may not be prepared to issue a receipt for a short form prospectus if the prospectus, together with the documents incorporated by reference, fails to provide such full, true and plain disclosure and, in Québec, disclosure of material facts likely to affect the value or the market price of the securities to be distributed. In such circumstances, the securities regulatory authority may require, in the public interest, that the issuer utilize the long form prospectus regime. In addition, the securities regulatory authorities may also require that the issuer utilize the long form prospectus regime if the offering is, in essence, an initial public offering by a business or if:

- (a) the offering is for the purpose of financing a dormant or inactive issuer whether or not the issuer intends to use the proceeds to reactivate the issuer or to acquire an active business; or
- (b) the offering is for the purpose of financing a material undertaking that would constitute a material departure from the business or operations of the issuer as at the date of its current annual financial statements and current AIF.
- (2) A new reporting issuer or a successor issuer may satisfy the criteria to have current annual financial statements or a current AIF by filing its comparative annual financial statements or an AIF, respectively, in accordance with NI 51-102 or NI 81-106, as applicable, for its most recently completed financial year. It is not necessary that the issuer be required by the applicable CD rule to have filed such documents. An issuer may voluntarily choose to file either of these documents in accordance with the applicable CD rule for the purposes of satisfying the eligibility criteria under NI 44-101.

Alternatively, an issuer may rely on the exemption from the requirement to file such documents in section 2.7 of NI 44-101. That section provides an exemption from the current AIF and current annual financial statement requirements for new reporting issuers and successor issuers who have not yet been required to file such documents and who have filed a prospectus or information circular containing disclosure which would have been included in such documents had they been filed under the applicable CD rule.

- (3) An issuer need not have filed all of its continuous disclosure filings in the local jurisdiction in order to be qualified to file a short form prospectus, but under sections 4.1 and 4.2 of NI 44-101 it will be required to file in the local jurisdiction all documents incorporated by reference into the short form prospectus no later than the date of filing the preliminary short form prospectus.

2.2 Alternative Qualification Criteria - Issuers that are Not Listed (Sections 2.3, 2.4, 2.5 and 2.6 of NI 44-101) - Issuers that do not have equity securities listed and posted for trading on a short form eligible exchange in Canada may nonetheless be qualified to file a prospectus in the form of a short form prospectus under the following alternative qualification criteria of NI 44-101:

1. Section 2.3, which applies to issuers which are reporting issuers in at least one jurisdiction, and who are intending to issue non-convertible securities with a provisional approved rating.
2. Section 2.4, which applies to issuers of non-convertible debt securities, non-convertible preferred shares or non-convertible cash settled derivatives, if another person or company that satisfies prescribed criteria provides full and unconditional credit support for the payments to be made by the issuer of the securities.

3. Section 2.5, which applies to issuers of convertible debt securities or convertible preferred shares, if the securities are convertible into securities of a credit supporter that satisfies prescribed criteria and provides full and unconditional credit support for the payments to be made by the issuer of the securities.
4. Section 2.6, which applies to issuers of asset-backed securities.

Under sections 2.4, 2.5 and 2.6 of NI 44-101, an issuer is not required to be a reporting issuer in any jurisdiction in order to qualify to file a prospectus in the form of a short form prospectus. Section 2.3 requires the issuer to be a reporting issuer in at least one jurisdiction of Canada.

2.3 Alternative Qualification Criteria - Issuers of Guaranteed Debt Securities, Preferred Shares and Cash Settled Derivatives (Sections 2.4 and 2.5 of NI 44-101) - Sections 2.4 and 2.5 of NI 44-101 allow an issuer to qualify to file a prospectus in the form of a short form prospectus based on full and unconditional credit support, which may take the form of a guarantee or alternative credit support. The securities regulatory authorities are of the view that a person or company that provides the full and unconditional guarantee or alternative credit support is not, simply by providing that guarantee or alternative credit support, issuing a security.

2.4 Alternative Qualification Criteria - Issuers of Asset-Backed Securities (Section 2.6 of NI 44-101)

- (1) In order to be qualified to file a prospectus in the form of a short form prospectus under section 2.6 of NI 44-101, an issuer must have been established in connection with a distribution of asset-backed securities. Ordinarily, asset-backed securities are issued by special purpose issuers established for the sole purpose of purchasing financial assets with the proceeds of one or more distributions of these securities. This ensures that the credit and performance attributes of the asset-backed securities are dependent on the underlying financial assets, rather than upon concerns relating to ancillary business activities and their attendant risks. Qualification to file a prospectus in the form of a short form prospectus under section 2.6 of NI 44-101 has been limited to special purpose issuers to avoid the possibility that an otherwise ineligible issuer would structure securities falling within the definition of "asset-backed security".
- (2) The qualification criteria for a distribution of asset-backed securities under a prospectus in the form of a short form prospectus are intended to provide sufficient flexibility to accommodate future developments. To qualify under section 2.6 of NI 44-101, the securities to be distributed must satisfy the following two criteria:
 1. First, the payment obligations on the securities must be serviced primarily by the cash flows of a pool of discrete liquidating assets such as accounts receivable, instalment sales contracts, leases or other assets that by their terms convert into cash within a specified or determinable period of time.
 2. Second, the securities must (i) receive an approved rating on a provisional basis, (ii) not have been the subject of an announcement regarding a downgrade to a rating that is not an approved rating, and (iii) not have received a provisional or final rating lower than an approved rating from any approved rating organization.

The qualification criteria do not distinguish between pass-through (i.e., equity) and pay-through (i.e., debt) asset-backed securities. Consequently, both pay-through and pass-through securities, as well as residual or subordinate interests, may be distributed under a prospectus in the form of a short form prospectus if all other applicable requirements are met.

2.5 Timely and Periodic Disclosure Documents - To be qualified to file a short form prospectus under sections 2.2 and 2.3 of NI 44-101, an issuer must file with the securities regulatory authority in each jurisdiction in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction under applicable securities legislation, pursuant to an order issued by the securities regulatory authority, or pursuant to an undertaking to the securities regulatory authority. Similarly, a credit supporter must satisfy this qualification criterion for an issuer to be qualified to file a short form prospectus under sections 2.4 and 2.5 of NI 44-101.

This qualification criterion applies to all disclosure documents including, if applicable, a disclosure document the issuer or credit supporter (i) has undertaken to file with a provincial or territorial securities regulatory authority, (ii) must file pursuant to a condition in a written order or decision granting exemptive relief to the issuer or credit supporter from a requirement to file periodic and timely disclosure documents, (iii) must file pursuant to a condition in securities legislation exempting the issuer or credit supporter from a requirement to file periodic and timely disclosure documents, and (iv) has represented that it will file pursuant to a representation in a written order or decision granting exemptive relief to the issuer or credit supporter from a requirement to file periodic and timely disclosure documents. These disclosure documents must be incorporated by reference into a short form prospectus pursuant to paragraph 8 or 9 of subsection 11.1(1) of Form 44-101F1.

- 2.6 Notice Declaring Intention** – Subsection 2.8(1) of NI 44-101 provides that an issuer is not qualified to file a short form prospectus under Part 2 of NI 44-101 unless it has filed, with its notice regulator, a notice declaring its intention to be qualified to file a short form prospectus under NI 44-101. This notice must be filed in substantially the form of Appendix A of NI 44-101 at least 10 business days prior to the issuer filing its first preliminary short form prospectus. This is a new requirement that came into effect on December 30, 2005. The securities regulatory authorities expect that this notice will be a one-time filing for issuers that intend to be participants in the short form prospectus distribution system established under NI 44-101. Subsection 2.8(2) provides that this notice is operative until withdrawn. Though the notice must be filed with the notice regulator, an issuer may voluntarily file the notice with any other securities regulatory authority or regulator of a jurisdiction of Canada.

Subsection 2.8(4) of NI 44-101 is a transitional provision that has the effect of deeming issuers that, as of December 29, 2005, have a current AIF under the pre-December 30, 2005 short form prospectus distribution system to have filed this notice and no additional filing is required to satisfy the notice requirements set out in subsection 2.8(1) of NI 44-101.

PART 3 FILING AND RECEIPTING OF SHORT FORM PROSPECTUS

- 3.1 Confidential Material Change Reports** - Confidential material change reports cannot be incorporated by reference into a short form prospectus. It is the view of the securities regulatory authorities that an issuer cannot meet the standard of “full, true and plain” disclosure and, in Québec, disclosure of all material facts likely to affect the value or the market price of the securities to be distributed, while a material change report has been filed but remains undisclosed publicly. Accordingly, an issuer who has filed a confidential material change report may not file a short form prospectus until the material change that is the subject of the report is generally disclosed, and an issuer may not file a confidential material change report during a distribution and continue with the distribution. If circumstances arise that cause an issuer to file a confidential material change report during the distribution period of securities under a short form prospectus, the issuer should cease all activities related to the distribution until

1. the material change is generally disclosed and an amendment to the short form prospectus is filed, if required; or
2. the decision to implement the material change has been rejected and the issuer has so notified the regulator of each jurisdiction where the confidential material change report was filed.

3.2 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 sections 4.1 and 4.2 of NI 44-101 to be filed with the preliminary short form prospectus or short form prospectus unless previously filed. When an issuer files a previously unfiled document with its short form prospectus, the issuer should ensure that the document is filed under the SEDAR category of filing and filing subtype specifically applicable to the document, rather than the generic type “Other”. For example, an issuer that has incorporated by reference an interim financial statement in its short form prospectus and has not previously filed the statement should file that statement under the “Continuous Disclosure” category of filing, and the “Interim Financial Statements” filing subtype.

- 3.3 Experts’ Consent** - Issuers are reminded that under section 4.4 of NI 44-101 an auditor’s consent is required to be filed for audited financial statements that are included as part of other continuous disclosure filings that are incorporated by reference into a short form prospectus. For example, a separate auditor’s consent is required for each set of audited financial statements that are included as part of a business acquisition report or an information circular incorporated by reference into a short form prospectus.

- 3.4 Undertaking in Respect of Credit Supporter Disclosure** - If disclosure about a credit supporter is required to be included in the short form prospectus under section 12.1 of Form 44-101F1, the issuer must undertake to file the credit supporter’s periodic and timely disclosure. This undertaking will likely be to file documents similar to the credit supporter’s disclosure required under section 12.1 of Form 44-101F1. For credit supporters that are reporting issuers with a current AIF, the undertaking will likely be to file the types of documents listed in subsection 11.1(1) of Form 44-

101F1. For credit supporters registered under the 1934 Act, the undertaking will likely be to file the types of documents that would be required to be incorporated by reference into a Form S-3 or Form F-3 registration statement. For other credit supporters, the types of documents to be filed pursuant to the undertaking will be determined through discussions with the regulators on a case-by-case basis.

- 3.5 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.
- 3.6 Short Form Prospectus Review** - No target time frame applies to the review of a short form prospectus of an issuer if the issuer has not elected to use MRRS.
- 3.7 "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 NI 44-101.
- 3.8 Registration Requirements** - Issuers filing a preliminary short form prospectus or short form prospectus and other market participants are reminded to ensure that members of underwriting syndicates are in compliance with registration requirements under provincial and territorial securities legislation in each jurisdiction in which syndicate members are participating in the distribution of securities under the short form prospectus.

PART 4 CONTENT OF SHORT FORM PROSPECTUS

- 4.1 Prospectus Liability** - Nothing in the short form prospectus regime established by NI 44-101 is intended to provide relief from liability arising under the provisions of securities legislation of any jurisdiction in which a short form prospectus is filed if the short form prospectus contains an untrue statement of a material fact or omits to state a material fact that is required to be stated therein or that is necessary to make a statement not misleading in light of the circumstances in which it was made.
- 4.2 Style of Prospectus** - Provincial and territorial securities legislation requires that a prospectus contain "full, true and plain" disclosure and, in Québec, disclosure of all material facts likely to affect the value or the market price of the securities to be distributed. To that end, issuers and their advisors are reminded that they should ensure that disclosure documents are easy to read, and we encourage issuers to adopt the following plain language principles in preparing a prospectus in the form of a short form prospectus:
- 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 securities regulatory authorities are of the view that question and answer and bullet point formats are consistent with the disclosure requirements of NI 44-101.

4.3 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, subsection 1.10(4) of Form 44-101F1 requires the short form prospectus to contain a statement that the securities are to be taken up by the underwriter, if at all, on or before a date not later than 42 days after the date of the receipt for the short form prospectus. If the provincial and territorial securities legislation of a jurisdiction requires that a prospectus indicate that the securities must be taken up by the underwriter within a period that is different than the period provided under NI 44-101, the implementing law of a jurisdiction exempts issuers from that requirement if they comply with NI 44-101.

4.4 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, section 5.5 of Form 44-101F1 requires that the short form prospectus state that the distribution will not continue for a period of more than 90 days after the date of receipt for the short form prospectus if subscriptions representing the minimum amount of funds are not obtained within that period unless each of the persons and companies who subscribed within that period has consented to the continuation. If the provincial and territorial securities legislation of a jurisdiction requires that a distribution may not continue for more than a specified period if subscriptions representing the minimum amount of funds are not obtained within that period and the specified period is different than the period provided under NI 44-101, the implementing law of a jurisdiction exempts issuers from that requirement if they comply with NI 44-101.

4.5 Distribution of Asset-backed Securities

(1) Section 7.3 of Form 44-101F1 specifies additional disclosure applicable for distributions of asset-backed securities. Applicable disclosure for a special purpose issuer of asset-backed securities generally pertains to the nature, performance and servicing of the underlying pool of financial assets, the structure of the securities and dedicated cash flows and any third party or internal support arrangements established to protect holders of the asset-backed securities from losses associated with non-performance of the financial assets or disruptions in payment. The nature and extent of required disclosure may vary depending on the type and attributes of the underlying pool and the contractual arrangements through which holders of the asset-backed securities take their interest in such assets.

(2) The following factors should be considered by an issuer of asset-backed securities in preparing its short form prospectus:

1. The extent of disclosure respecting an issuer will depend on the extent of the issuer's on-going involvement in the conversion of the assets comprising the pool to cash and the distribution of cash to security holders; this involvement may, in turn, vary dramatically depending on the type, quality and attributes of the assets comprising the pool and on the overall structure of the transaction.
2. Requested disclosure respecting the business and affairs of the issuer should be interpreted to apply to the financial assets underlying the asset-backed securities.
3. Disclosure respecting the originator or the seller of the underlying financial assets will be relevant to investors in the asset-backed securities particularly in circumstances where the originator or seller has an on-going relationship with the financial assets comprising the pool. For example, if asset-backed securities are serviced with the cash flows from a revolving pool of receivables, an evaluation of the nature and reliability of the future origination or the future sales of underlying assets by the seller to or through the issuer may be a critical aspect of an investor's investment decision. To address this, the focus of disclosure respecting an originator or seller of the underlying financial assets should deal with whether there are current circumstances that indicate that the originator or seller will not generate adequate assets in the future to avoid an early liquidation of the pool and, correspondingly, an early payment of the asset-backed securities. Summary historical financial information respecting the originator or seller will ordinarily be adequate to satisfy the disclosure requirements applicable to the originator or seller in circumstances where the originator or seller has an ongoing relationship with the assets comprising the pool.

(3) Paragraph 7.3(d)(i) of Form 44-101F1 requires issuers of asset-backed securities to describe any person or company who originated, sold or deposited a material portion of the financial assets comprising the pool, irrespective of whether the person or company has an on-going relationship with the assets comprising the

pool. The securities regulatory authorities consider 33^{1/3} % of the dollar value of the financial assets comprising the pool to be a material portion in this context.

4.6 Distribution of Derivatives - Section 7.4 of Form 44-101F1 specifies additional disclosure applicable to distributions of derivatives. This prescribed disclosure is formulated in general terms for issuers to customize appropriately in particular circumstances.

4.7 Underlying Securities - Issuers are reminded that if securities being distributed are convertible into or exchangeable for other securities, or are a derivative of, or otherwise linked to, other securities, a description of the material attributes of the underlying securities would generally be necessary to meet the requirement of securities legislation that a prospectus contain full, true and plain disclosure of all material facts relating to, and, in Québec disclosure of all material facts likely to affect the value or the market price of, the securities.

4.8 Offerings of Convertible or Exchangeable Securities - Investor protection concerns may arise where the distribution of a convertible or exchangeable security is qualified under a prospectus and the subsequent exercise of the convertible or exchangeable security is made on a prospectus-exempt basis. Examples of such offerings include the issuance of instalment receipts, subscription receipts and stand-alone warrants or long-term warrants. Reference to stand-alone warrants or long-term warrants is intended to refer to warrants and other forms of exchangeable or convertible securities that are offered under a prospectus as a separate and independent form of investment. This would not apply to an offering of warrants where the warrants may reasonably be regarded as incidental to the offering as a whole.

The investor protection concern arises because the conversion or exchange feature of the security may operate to limit the remedies available to an investor for incomplete or inaccurate disclosure in a prospectus. For example, an investor may pay part of the purchase price at the time of the purchase of the convertible security and part of the purchase price at the time of the conversion. To the extent that an investor makes a further "investment decision" at the time of conversion, the investor should continue to enjoy the benefits of statutory rights or comparable contractual rights in relation to this further investment. In such circumstances, issuers should ensure that either:

- (a) the distribution of both the convertible or exchangeable securities and the underlying securities will be qualified by the prospectus; or
- (b) the statutory rights that an investor would have if he or she purchased the underlying security offered under a prospectus are otherwise provided to the investor by way of a contractual right of action.

4.9 Restricted Securities - Section 7.7 of Form 44-101F1 specifies additional disclosure applicable to restricted securities, including a detailed description of any significant provisions under applicable corporate and securities law that do not apply to the holders of the restricted securities but do apply to the holders of another class of equity securities. An example of such provisions would be rights under takeover bids.

4.10 Recent and Proposed Acquisitions

(1) Subsection 10.1(2) of Form 44-101F1 requires prescribed disclosure of a proposed acquisition that has progressed to a state "where a reasonable person would believe that the likelihood of the acquisition being completed is high" and that would, if completed on the date of the short form prospectus, be a significant acquisition for the purposes of Part 8 of NI 51-102. The securities regulatory authorities interpret the phrase "where a reasonable person would believe that the likelihood of the acquisition being completed is high" having regard to section 3290 of the Handbook "Contingencies". It is the view of the securities regulatory authorities that the following factors may be relevant in determining whether the likelihood of an acquisition being completed is high:

- 1. whether the acquisition has been publicly announced;
- 2. whether the acquisition is the subject of an executed agreement; and
- 3. the nature of conditions to the completion of the acquisition including any material third party consents required.

The test of whether a proposed acquisition "has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high" is an objective, rather than subjective, test in that the question turns on what a "reasonable person" would believe. It is not sufficient for an officer of

an issuer to determine that he or she personally believes that the likelihood of the acquisition being completed is or is not high. The officer must form an opinion as to what a reasonable person would believe in the circumstances. In the event of a dispute, an objective test requires an adjudicator to decide whether a reasonable person would believe in the circumstances that the likelihood of an acquisition being completed was high. By contrast, if the disclosure requirement involved a subjective test, the adjudicator would assess an individual's credibility and decide whether the personal opinion of the individual as to whether the likelihood of the acquisition being completed was high was an honestly held opinion. Formulating the disclosure requirement using an objective test rather than a subjective test strengthens the basis upon which the regulator may object to an issuer's application of the test in particular circumstances.

- (2) Subsection 10.1(3) of Form 44-101F1 requires inclusion of the financial statements or other information relating to certain acquisitions or proposed acquisitions if the acquisition or proposed acquisition is a reverse takeover or if the inclusion of the financial statements or other information is necessary in order for the short form prospectus to contain full, true and plain disclosure of all material facts relating to, and in Québec, disclosure of all material facts likely to affect the value or the market price of, the securities being distributed. The securities regulatory authorities generally presume that the inclusion of financial statements or other information is required for all acquisitions that are, or would be, significant under Part 8 of NI 51-102. Issuers can rebut this presumption if they can provide evidence that the financial statements or other information are not required for full, true and plain disclosure.

Instruction (2) of section 10.1 of Form 44-101F1 provides that issuers must satisfy the requirements of subsection 10.1(3) of Form 44-101F1 by including either: (i) the financial statements or other information that would be required by Part 8 of NI 51-102; or (ii) satisfactory alternative financial statements or other information. The securities regulatory authorities believe that satisfactory alternative financial statements or other information may be provided to satisfy the requirements of subsection 10.1(3) when the financial statements or other information that would be required by Part 8 of NI 51-102 relate to a financial year ended within 90 days before the date of the short form prospectus or an interim period ended within 60 days before the date of the short form prospectus. In these circumstances, the securities regulatory authorities believe that satisfactory alternative financial statements or other information would not have to include any financial statements or other information for the acquisition or proposed acquisition related to:

- (a) a financial year ended within 90 days before the date of the short form prospectus; or
- (b) an interim period ended within 60 days before the date of the short form prospectus.

The securities regulatory authorities believe that satisfactory alternative financial statements or other information would instead have to include, for the acquisition or proposed acquisition:

- (c) comparative annual financial statements or other information for at least the number of financial years as would be required under Part 8 of NI 51-102;
- (d) comparative interim financial statements or other information for any interim period ended subsequent to the latest annual financial statements included in the short form prospectus and more than 60 days before the date of the short form prospectus; and
- (e) pro forma financial statements or other information required under Part 8 of NI 51-102.

The securities regulatory authorities encourage issuers to utilize the pre-filing procedures in NP 43-201 if the issuer intends to omit from its short form prospectus, the financial statements or other information required under subsection 10.1(3) of Form 44-101F1 or intends to file satisfactory alternative financial statements or other information in lieu of the financial statements or other information required by Part 8 of NI 51-102.

- 4.11 General Financial Statement Requirements** - A reporting issuer is required under the applicable CD rule to file its annual financial statements and related MD&A 90 days after year end (or 120 days if the issuer is a venture issuer as defined in NI 51-102). Interim financial statements and related MD&A must be filed 45 days after the last day of an interim period (or 60 days for a venture issuer). The financial statement requirements in NI 44-101 are based on these continuous disclosure reporting time frames and do not impose accelerated filing deadlines for a reporting issuer's financial statements. However, to the extent an issuer has filed financial statements in advance of the deadline for doing so, those financial statements must be incorporated by reference in the short form prospectus. The securities regulatory authorities are of the view that directors of issuers should endeavor to review and approve financial statements in a timely manner and should not delay the approval and release of the financial statements in order to avoid their inclusion in a short form prospectus.

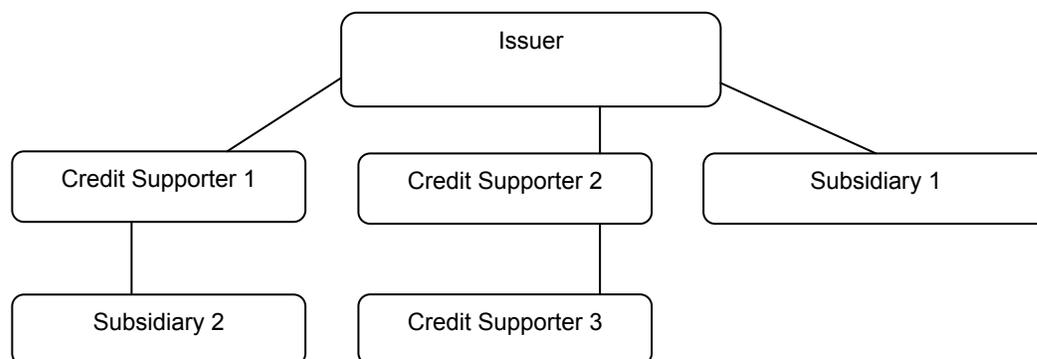
4.12 Credit Supporter Disclosure - In addition to the issuer's documents required to be incorporated by reference under sections 11.1 and 11.2 of Form 44-101F1 and the issuer's earnings coverage ratios required to be included under Item 6 of Form 44-101F1, a short form prospectus must include, under section 12.1 of Form 44-101F1, disclosure about any credit supporters that have provided a guarantee or alternative credit support for all or substantially all of the payments to be made under the securities being distributed. This type of guarantee or alternative credit support is not necessarily full and unconditional credit support as contemplated in sections 2.4 and 2.5 of NI 44-101. Accordingly, disclosure about a credit supporter may be required even if the credit supporter has not provided full and unconditional credit support.

Disclosure relating to all applicable credit supporters is generally required to ensure that the short form prospectus includes full, true and plain disclosure of all material facts concerning, and in Québec, disclosure of all material facts likely to affect the value or the market price of, the securities to be distributed. This is based on the principle that investors need both issuer and credit supporter disclosure to make an informed investment decision because both the issuer and the credit supporter are liable for payments to be made under the securities being distributed.

4.13 Exemptions for Certain Issues of Guaranteed Securities - Requiring disclosure about the issuer and any applicable credit supporters in a short form prospectus may result in unnecessary disclosure in some instances. Item 13 of Form 44-101F1 provides exemptions from the requirement to include both issuer and credit supporter disclosure where such disclosure is not necessary to ensure that the short form prospectus includes full, true and plain disclosure of all material facts concerning, and in Québec, disclosure of all material facts likely to affect the value or the market price of, the securities to be distributed.

The exemptions in Item 13 of Form 44-101F1 are based on the principle that, in these instances, investors will generally require either issuer disclosure or credit supporter disclosure to make an informed investment decision. The exemptions set out in Item 13 of Form 44-101F1 are not intended to be comprehensive and issuers may apply for exemptive relief from the requirement to provide both issuer and credit supporter disclosure, as appropriate.

The following example illustrates the application of the exemption in section 13.3 of Form 44-101F1.



Facts:

- Credit Supporter 1, Credit Supporter 2, and Credit Supporter 3 are credit supporters.
- Credit Supporter 1, Credit Supporter 2, and Credit Supporter 3 have each provided full and unconditional credit support for the securities being distributed.
- The guarantees or alternative credit supports of Credit Supporter 1, Credit Supporter 2, and Credit Supporter 3, are joint and several.
- The securities being distributed are non-convertible debt securities or non-convertible preferred shares.
- Credit Supporter 1, Credit Supporter 2, and Credit Supporter 3 are wholly owned subsidiaries of Issuer.
- Subsidiary 1 and Subsidiary 2 are not credit supporters.

Disclosure required in short form prospectus

- Issuer must incorporate by reference into the short form prospectus the documents required by Item 11 of Form 44-101F1.
- Under the exemption in section 13.3 of Form 44-101F1, Issuer is not required to include the disclosure of Credit Supporter 1, Credit Supporter 2, or Credit Supporter 3, as otherwise required by section 12.1 of Form 44-101F1.
- If Issuer has no operations or only minimal operations that are independent of Credit Supporter 1, Credit Supporter 2, and Credit Supporter 3, and each item of the summary financial information (as set out in Instruction (1) to Item 13 of Form 44-101F1) of Subsidiary 1 plus Subsidiary 2 is less than 3% of corresponding consolidated amounts of Issuer, the short form prospectus must state that the financial results of Credit Supporter 1 (less Subsidiary 2), Credit Supporter 2, and Credit Supporter 3 are included in the consolidated financial results of Issuer.
- If paragraph (e)(i) of section 13.3 of Form 44-101F1 does not apply, the short form prospectus must include consolidating summary financial information for Issuer with a separate column for each of:
 - Issuer (Issuer's investment in Credit Supporter 1, Credit Supporter 2, and Subsidiary 1 should be accounted for under the equity method);
 - Credit Supporter 1 plus Credit Supporter 2 (Credit Supporter 1's investment in Subsidiary 2 should be accounted for under the equity method but Credit Supporter 2 should consolidate Credit Supporter 3);
 - Subsidiary 1 plus Subsidiary 2;
 - consolidating adjustments; and
 - total consolidated amounts.

PART 5 CERTIFICATES

5.1 Non-corporate Issuers

- (1) Paragraph 21.1(a) of Form 44-101F1 requires an issuer to include a certificate in the prescribed form signed by the chief executive officer and the chief financial officer or, if no such officers have been appointed, a person acting on behalf of the issuer in a capacity similar to a chief executive officer and a person acting on behalf of the issuer in a capacity similar to a chief financial officer. For a non-corporate issuer that is a trust and has a trust company acting as its trustee, this officers' certificate is frequently signed by authorized signing officers of the trust company that perform functions on behalf of the trust similar to those of a chief executive officer and a chief financial officer. In some cases, these functions are delegated to and performed by other persons (e.g. employees of a management company). If the declaration of trust governing the issuer delegated the trustee's signing authority, the officers' certificate may be signed by the persons to whom authority is delegated under the declaration of trust to sign documents on behalf of the trustee or on behalf of the trust, provided that those persons are acting in a capacity similar to a chief executive officer or chief financial officer of the issuer.
- (2) Paragraph 21.1(b) of Form 44-101F1 requires an issuer to include a certificate in the prescribed form signed on behalf of the board of directors, by two directors of the issuer, other than the persons referred to in paragraph 21.1(a), duly authorized to sign. Issuers that are not companies are directed to the definition of "director" and, in Québec, the definition of "senior executive" in securities legislation to determine the appropriate signatories to the certificate. The definition of "director" or, in Québec, "senior executive" in securities legislation typically includes a person acting in a capacity similar to that of a director of a company.

5.2 Promoters of Issuers of Asset-backed Securities

- (1) Securities legislation in some jurisdictions in Canada contains definitions of "promoter" and requires, in certain circumstances, a promoter of an issuer to assume statutory liability for prospectus disclosure. Asset-backed securities are commonly issued by a "special purpose" entity, established for the sole purpose of facilitating one or more asset-backed offerings. The securities regulatory authorities are of the opinion that special

purpose issuers of asset-backed securities will have a promoter because someone will typically have taken the initiative in founding, organizing or substantially reorganizing the business of the issuer. The securities regulatory authorities interpret the business of such issuers to include the business of issuing asset-backed securities and entering into the supporting contractual arrangements.

- (2) For example, in the context of a securitization program under which assets of one or more related entities are financed by issuing asset-backed securities (sometimes called a “single seller program”), an entity transferring or originating a significant portion of such assets, an entity initially agreeing to provide on-going collection, administrative or similar services to the issuer, and the entity for whose primary economic benefit the asset-backed program is established, will each be a promoter of the issuer if it took the initiative in founding, organizing or substantially reorganizing the business of the issuer. Persons or companies contracting with the issuer to provide credit enhancements, liquidity facilities or hedging arrangements or to be a replacement servicer of assets, and investors who acquire subordinated investments issued by the issuer, will not typically be promoters of the issuer solely by virtue of such involvement.
- (3) In the context of a securitization program established to finance assets acquired from numerous unrelated entities (sometimes called a “multi-seller program”), the person or company (frequently a bank or an investment bank) establishing and administering the program in consideration for the payment of an on-going fee, for example, will be a promoter of the issuer if it took the initiative in founding, organizing or substantially reorganizing the business of the issuer. Individual sellers of the assets into a multi-seller program are not ordinarily considered to be promoters of the issuer, despite the economic benefits accruing to such persons or companies from utilizing the program. As with single-seller programs, other persons or companies contracting with the issuer to provide services or other benefits to the issuer of the asset-backed securities will not typically be promoters of the issuer solely by virtue of such involvement.
- (4) While the securities regulatory authorities have included this discussion of promoters as guidance to issuers of asset-backed securities, the question of whether a particular person or company is a “promoter” of an issuer is ultimately a question of fact to be determined in light of the particular circumstances.