

ONTARIO SECURITIES COMMISSION RULE 41-501

GENERAL PROSPECTUS REQUIREMENTS

SOURCE FROM EXISTING INSTRUMENT

COMMENTS

GENERAL PROSPECTUS REQUIREMENTS

PART 1 APPLICATION

- 1.1 Application - Except as otherwise specifically provided in the regulations, a prospectus shall be prepared in accordance with Form 41-501F1 and this Rule and shall be certified, filed and receipted in accordance with this Rule.**

Source: New

Comments:

- (1) This Rule is based upon Part III of the Regulation, OSC Policy 5.1 and OSC Policy 5.7. Other rules of specific application that deal with the preparation, certification, filing or receipting of prospectuses may override or supplement the requirements of this Rule.**
- (2) A proposed general definition rule has been published. It contains definitions of certain terms used in more than one rule. That rule also provides, among other things, that terms used in a rule and defined in section 1 of the *Securities Act* or subsection 1(2) of the Regulation will have the respective meaning given to them in the *Securities Act* or the Regulation, as appropriate. The proposed general definition rule also incorporates terms defined in National Instrument 14-101 Definitions. National Instrument 14-101 contains, among other things, definitions for terms used in more than one national instrument.**
- (3) Throughout this Rule, no reference is made to preliminary prospectuses unless it is intended to make a distinction between a preliminary prospectus and a prospectus. See subsection 54(1) of the Act.**

Source: Reg. s. 52(1)

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1.2 *Pro Forma* Prospectus - Except as otherwise specifically provided in the regulations, a *pro forma* prospectus shall comply with Form 41-501F1 and this Rule.

Subject to subsection (2), every *pro forma* prospectus shall substantially comply with the requirements of the Act and this Regulation relating to the form and content of a prospectus.

PART 2 GENERAL REQUIREMENTS

2.1 **Effective Date** - A prospectus shall be prepared in accordance with Ontario securities law as at the date of issuance of a receipt for the preliminary prospectus or, if a *pro forma* prospectus is filed under section 62 of the Act, the date of the *pro forma* prospectus.

Source: New

2.2 **Style of Prospectus**

(1) Except as otherwise provided in a prospectus form or the regulations, the information contained in a prospectus

Source: Reg. s. 49(1)

(1) The information contained in a prospectus shall be presented in narrative form.

(a) shall be in narrative form;

(b) may be in any order; and

(c) may be expressed in a condensed or summarized manner if the resulting disclosure does not obscure the required information or result in the information being incomplete and misleading.

Source: Reg. s. 49(2)

(2) The information contained in a prospectus need not follow the order of the items contained in the forms and may be expressed in a condensed or summarized manner if it does not obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading.

(2) A prospectus shall include headings that are descriptive of the information under such headings.

Source: Reg. s. 49(4)

(4) All information contained in a prospectus shall be set out under appropriate headings or captions reasonably indicative of the principal subject matter set out thereunder.

Comment: The lead-in language was added as some disclosure items (eg., front page disclosure to be required by National Instrument 41-101 Prospectus Disclosure Requirements, which will combine National Policy Nos. 12, 13 and 32 in one instrument, and certain disclosure relating to simplified prospectuses) must follow a specific order or be included in a specific part of a prospectus.

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(3) A prospectus shall contain a table of contents.

Source: Reg. s. 49(5)

(5) Every prospectus shall contain a reasonably detailed table of contents.

(4) Information required by more than one item of a prospectus form need not be repeated.

Source: Reg. s. 49(6)

(6) Information required by more than one applicable item of a prospectus form need not be repeated.

(5) Despite subsection (1), a prospectus may contain a graph, photograph, map or artwork if it is relevant to the business of the issuer and not misleading.

Source: Reg. s. 46(c)

Unless the Director otherwise permits or requires and unless the Director determines that to permit the inclusion of specific graphs, photographs or maps would be misleading or detract from the readability of the prospectus, the prospectus may contain,

- (i) graphs that are relevant to matters dealt with in the text of the prospectus,
- (ii) photographs, if they include only the product of the issuer, and
- (iii) maps for the purpose of indicating the locations of property or operations, present and proposed, of the issuer.

Comment: The reference to a determination by the Director in paragraph 46(c) of the Regulation has been deleted to reflect the current practice of not requiring graphs, photographs, maps or artwork to be approved prior to inclusion in a preliminary prospectus or prospectus. The scope of permitted material has been expanded to reflect current Commission practice in this area.

2.3 Reports

(1) If a person or company whose profession or business gives authority to a statement made by the person or company is named as having prepared or certified any part of a prospectus or is named as having prepared or certified a report or valuation

Sources: (1) Reg. s. 34(1)

Except as otherwise provided in the Rules entitled In the Matter of Rules for Shelf Prospectus Offerings and for Pricing Offerings After the Prospectus is Received (1991), 14 OSCB 1825, National Policy Statement No. 44 (1991), 14 OSCB 1844, In the Matter of the Prompt Offering Qualification System (1993), 16 OSCB 732, 16 OSCB 949 and National Policy Statement No. 47 (1993), 16 OSCB 765, where

Comment: Subsections 34(1) and (4) of the Regulation have been combined. The obligation to file consents of experts is contained in section 6.6 of this Rule. The exceptions at the beginning of subsection 34(1) of the Regulation are now included in the Rules dealing with the matters referred to in the exceptions. References to summary statements and related documents have been deleted as these are no longer used. The words "or business" have been added as the

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described or included in a prospectus, and the person or company

any solicitor, auditor, accountant, engineer, appraiser or any other person or company whose profession gives authority to a statement made by the person is named as having prepared or certified any part of a prospectus, summary statement or documents prepared in connection with a summary statement, or is named as having prepared or certified a report or valuation used in or in connection with a prospectus or summary statement, the written consent of the person or company to being so named and to such use of the report or valuation shall be filed not later than the time the prospectus is filed.

existing reference to "profession" is too narrow. The phrase "used in or in connection with" has been replaced by "described or included in" to parallel subsection (1) and because of the uncertain scope of the current language.

- (a) has received or expects to receive a direct or indirect interest in the property of the issuer or of an associate or affiliate of the issuer; or
- (b) beneficially owns, directly or indirectly, a security of the issuer or of an associate or affiliate of the issuer,

Source: (2) Reg. s. 34(4)

Where a solicitor, auditor, accountant, engineer, appraiser or other person or company referred to in subsection (1),

- (a) has received or expects to receive any interest, whether direct or indirect, in the property of the issuer or any associate or affiliate of the issuer; or
- (b) beneficially owns, directly or indirectly, any securities of the issuer or any associate or affiliate of the issuer,

the interest or ownership shall be disclosed in the prospectus.

the interest or ownership shall be disclosed in the prospectus.

Comment: Reference to "a company" in the first line of subsection 34(5) of the Regulation deleted as a company cannot be a director, officer or employee. The words "or employed by a person or company referred to in subsection (1)" were added to expand scope to employees of persons or companies referred to in subsection (1).

- (2) If an individual referred to in subsection (1) or employed by a person or company referred to in subsection (1) is or is expected to be elected, appointed or employed as a director, officer or employee of the issuer or of an associate or affiliate

Source: Reg. s. 34(5)

Where a person or company referred to in subsection (1) is or is expected to be elected, appointed or employed as a director, officer or employee of the issuer or any associate or affiliate of the issuer, the fact or expectation shall be disclosed in the prospectus.

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of the issuer, the fact or expectation shall be disclosed in the prospectus.

- (3) If a person or company referred to in subsection (1) owns securities of the issuer or of an associate or affiliate of the issuer that constitute 1 percent or less of the class of securities of the issuer, associate or affiliate, as applicable, the subsection may be complied with by including a statement to that effect in the prospectus.

Source: New

Comment: This subsection reflects recent practice in disclosing de minimus holdings.

2.4 Requirements as to Printing and Legibility

- (1) The body of a prospectus shall be in type at least as large as 10-point modern type.
- (2) Despite subsection (1), financial statements and other statistical or tabular data and the notes to the statements or data shall be in type at least as large as 8-point modern type.

Source: Reg. s. 46

Unless the Director otherwise permits or requires,

- (a) the body of a printed prospectus shall be in roman type at least as large as 10-point modern type, except that, to the extent necessary for convenient presentation, financial statements and other statistical or tabular data and the notes thereto may be in roman type at least as large as 8-point modern type;
- (b) the type in a printed prospectus shall be leaded at least 2 points; and

Comment: Leaded type is no longer used and the requirement to use roman type has been deleted.

PART 3 FINANCIAL MATTERS

3.1 Financial Statements

- (1) A prospectus of an issuer shall contain
- (a) an income statement of the issuer for

Source: Reg. s. 53(1)

- (1) Every prospectus of an issuer, other than a mutual fund, shall contain,

- (a) an income statement of the issuer for,

Comment: The requirement to provide financial statements for each of the last five years has been reduced to three years. The reference to the right of the Director to permit other than the minimum historical financial statements has been deleted, as has the discretion of the Director in clause 53(1)(a)(i) of the Regulation to require less than the minimum disclosure. As reformulated, the requirement does allow for less than minimum disclosure where the issuer has been in

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- (i) each of its last three financial years or such shorter period as the issuer has been in existence, and
 - (ii) the part of a subsequent financial year from the end of the last financial year of the issuer to the date at which the balance sheet required by subparagraph (d)(i) is made up;
- (b) a statement of retained earnings of the issuer for each of the financial years and any part of a subsequent financial year covered by the income statement referred to in paragraph (a);
- (c) a statement of changes in financial position of the issuer for each of the financial years and the part of a subsequent financial year covered by the income statement referred to in paragraph (a); and
- (d) a balance sheet of the issuer
- (i) as at a date not more than 120 days before the date of the preliminary prospectus or the date of a new prospectus referred to in section 62 of the Act, and
 - (ii) subject to subsection (2), as at the corresponding date of the previous financial year of the issuer.

- (i) each of the last five financial years or such shorter period as the Director permits or requires, and
 - (ii) any part of a subsequent financial year to the date at which the balance sheet required by clause (d) is made up;
- (b) a statement of surplus of the issuer for each of the financial years or shorter period and any part of a subsequent financial year covered by the income statement referred to in clause (a);
- (c) subject to subsection (3), a statement of changes in financial position of the issuer for each of the financial years or shorter period and any part of a subsequent financial year covered by the income statement referred to in clause (a); and
- (d) a balance sheet of the issuer,
- (i) as at a date not more than 120 days prior to the date of the issuance of a receipt for the preliminary prospectus or the date of a new prospectus referred to in section 62 of the Act, as the case may be, or as at such other date as the Director may permit or require, and
 - (ii) subject to subsection (2), as at the corresponding date of the previous financial year.

existence for less than three years. A similar deletion has been made in paragraph 3.1(1)(d). The general exempting power of the Director contained in Part 8 covers these and other exempting provisions. The current exception in the first line of subsection 53(1) of the Regulation for mutual funds has been deleted as this will be covered in Rule 41-502 Prospectus Requirements For Mutual Funds.

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(2) If the balance sheet included under subparagraph (1)(d)(i) is as at a date other than a financial year end of the issuer, the balance sheet referred to in subparagraph (1)(d)(ii) may be omitted if the prospectus contains a balance sheet of the issuer as at the most recent financial year end of the issuer and as at the immediately preceding financial year end.

Source: Reg. s. 53(2)

(2) Where the balance sheet included under subclause (1)(d)(i) is as at a date other than a financial year end, the balance sheet referred to in subclause (1)(d)(ii) may be omitted if the prospectus contains a balance sheet as at the most recent financial year end and as at the immediately preceding financial year end.

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- (3) In addition to the financial statements referred to in subsection (1), annual or interim financial statements of an issuer for a period after the periods covered by the financial statements in a preliminary prospectus of the issuer shall be included in the prospectus of the issuer if
- (a) the board of directors of the issuer has approved the statements;
 - (b) the statements have been filed with the Commission; or
 - (c) the statements or a summary of the statements have been released to the public.
- (4) Despite paragraph (1)(c), a prospectus of an issuer engaged primarily in the business of investing shall include a statement of changes in net assets instead of a statement of changes in financial position.
- (5) If the securities to which a prospectus relates are guaranteed, the prospectus shall contain the financial statements referred to in subsections (1) and (3) for the guarantor, in addition to the financial statements of the issuer.
- (6) If a balance sheet required by paragraph (1)(d) relates to part of a financial year, the prospectus

Source: Policy 5.7, s. A.7
Final Material

Annual or interim financial statements that have been placed before the board of directors of the issuer for approval for release to the public prior to filing final material must be included in the prospectus, or in the case of interim financial statements, summarized if appropriate.

Source: Reg. s. 53(3)

(3) Every prospectus of an issuer engaged primarily in the business of investing shall include a statement of changes in net assets in lieu of a statement of changes in financial position.

Source: Reg. s. 53(4)

(4) Where the securities to which a prospectus relates are debt securities and the payment of principal or interest is guaranteed, the prospectus shall contain, with respect to the guarantor, the financial statements referred to in subsection (1).

Source: Reg. s. 53(5)

(5) Where the financial statements required by subsection (1) relate to part of a financial year, the prospectus shall contain an

Comment: The requirement has been expanded so that financial statements must be included if they have been approved by the board or are otherwise in the public domain. The possibility of including a summary of interim statements has been eliminated.

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shall contain an income statement, a statement of retained earnings and a statement of changes in financial position or a statement of changes in net assets for the comparable period in the preceding financial year.

income statement, a statement of surplus, and a statement of changes in financial position for the comparable period in the preceding financial year.

3.2 Generally Accepted Accounting Principles

- (1) The financial statements contained in a prospectus of a person or company incorporated or organized in Canada or a province or territory of Canada shall be prepared in accordance with Canadian GAAP.
- (2) If a person or company is incorporated or organized in a jurisdiction other than Canada or a province or territory of Canada, the financial statements of the person or company included in the prospectus may be prepared in accordance with
 - (a) Canadian GAAP; or
 - (b) generally accepted accounting principles of a jurisdiction other than Canada or a province or territory of Canada if the notes to the financial statements explain and quantify any significant differences between the principles applied and Canadian GAAP.

Source: New

Source: Reg. s. 57

Where a prospectus contains financial statements of an issuer incorporated or organized other than in Canada or a province or territory thereof and prepared in accordance with generally accepted accounting principles as permitted by subsection 1(4), the notes to the financial statements shall explain and quantify any significant differences between the principles applied and the principles referred to in subsection 1(3).

Comments:

- (1) The combined effect of subsection 1(4) and sections 57 and 58 of the Regulation is to permit a person or company incorporated or organized in a jurisdiction other than Canada to include financial statements prepared under non-Canadian GAAP in a prospectus only if there is a reconciliation to Canadian GAAP and only then with the consent of the Director. Section 3.2 of the Rule now permits non-Canadian issuers to use foreign GAAP and a reconciliation without obtaining the consent of the Director, subject to the overriding obligation on the Director to refuse to issue a receipt if the resulting financial statements are misleading as to the financial condition or prospects of the issuer. See section 3.3 of Policy 41-501CP General Prospectus Requirements.
- (2) The term "Canadian GAAP" is defined in National Instrument 14-101 Definitions. The definition is "generally accepted accounting principles determined with reference to

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3.3 Acquisitions

- (1) If the issuer has made an acquisition or intends to make an acquisition as disclosed in the prospectus of a business and in each case if the acquisition is or is expected to be material to the issuer, the prospectus shall contain
- (a) an income statement of the acquired business for,
- (i) each of its last three financial years or such shorter period as the acquired business has been in existence, and
- (ii) the part of a subsequent financial year from the end of the last financial year of the acquired business to the date that the balance sheet required by paragraph (d)(i) is made up;
- (b) a statement of retained earnings of the acquired business for each of the financial years and any part of a subsequent financial year covered by the income statement referred to in paragraph (a);

Sources: (1) Reg. s. 56(1)

Where the proceeds of the securities offered by a prospectus are to be applied in whole or in part, directly or indirectly, to finance the acquisition of a business, by a purchase of assets or shares, the Director may permit or require the inclusion in the prospectus of,

- (a) financial statements of the acquired business which shall be one or more of the financial statements referred to in clauses 53(1)(a), (b) and (c) and subclause 53(1)(d)(i) and for the periods or as at the date therein referred to and the financial statements referred to in subsection 53(5) for the period referred to therein;
- (b) a *pro forma* balance sheet combining the assets and liabilities of the issuer and the business as shown by their respective balance sheets each as at the date referred to in subclause 53(1)(d)(i) or at such other date as the Director may permit or require,

and, where the Director is satisfied that to do so would be meaningful to investors and that the information is necessary for full, true and plain disclosure of the material facts relating to the securities, he or she shall require for a period not more than one year immediately preceding the date referred to in subclause 53(1)(d)(i) and may permit for a period not greater than five years immediately preceding such date the inclusion in the prospectus of *pro forma* statements combining, year by year,

- (c) the income or losses of the business with the income or losses of the issuer; and

the Handbook". The term "Handbook" is defined in the same instrument as "the Handbook of the Canadian Institute of Chartered Accountants, as amended from time to time".

Comment: The requirement to include historical financial statements for material recently completed and pending acquisitions is similar to the requirements of the SEC in this regard. The SEC has a "significance" or materiality test however, which determines whether the financial statements of the acquired business are required to cover a one, two or three year period. As is described in the Companion Policy, the Commission's interpretation of material for the purpose, sets a high threshold relative to the SEC requirements and for that reason the three year period has been determined to be the relevant disclosure period for this Rule. The Companion Policy includes some guidance as to the interpretation of the term "business" for this purpose.

SOURCE FROM EXISTING INSTRUMENT

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- (c) a statement of changes in financial position of the acquired business for each of the financial years and any part of a subsequent financial year covered by the income statement referred to in paragraph (a);
- (d) a balance sheet of the acquired business
 - (i) as at a date not more than 120 days before the date of the preliminary prospectus; and
 - (ii) subject to subsection (3), as at the corresponding date of the previous financial year of the acquired business;

- (d) the changes in financial position of the business with the changes in financial position of the issuer.
- (2) *Policy 5.1, s. 23*
- (c) The Director also has determined that historical financial statements constitute meaningful information that is necessary for full, true and plain disclosure of the material facts relating to the issue of securities under a prospectus (other than a prospectus filed under OSC Policy Statement 5.6) where 40% or more of the proceeds of the issue are to be applied, directly or indirectly, to finance the acquisition of a business, by purchase of assets or shares, whether or not such acquisition is material to the issuer.
- (d) Accordingly, in the circumstances specified in paragraphs (b) and (c), there shall be included in the prospectus:
 - (i) a balance sheet of the acquired business:
 - (A) as at the end of the last financial year of the acquired business and as at the corresponding date of the immediately preceding financial year; and
 - (B) if such last financial year end date is more than 120 days prior to the date of the prospectus, as at a date that is not more than 120 days prior to the date of the prospectus; and

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- (ii) an income statement, a statement of retained earnings and a statement of changes in financial position (or where the acquired business is primarily engaged in the business of investing, a statement of changes in net assets) of the acquired business;
 - (A) or each of the last three financial years of the acquired business; and
 - (B) for any part of a subsequent financial year of the acquired business to the date at which the balance sheet required by paragraph (d)(i)(B) is made up and for the comparative period in the immediately preceding financial year.

- (e) a *pro forma* balance sheet combining the assets and liabilities of the issuer and of the acquired business as shown by their respective balance sheets, each as at the date of their respective last financial year ends, giving effect to the underlying assumptions and events referred to in paragraph (h);
- (f) *pro forma* statements that, after giving effect to the underlying assumptions and events referred to in paragraph (h), combine, for the last financial year of each of the acquired business and the issuer,

Source: Policy 5.1, s. 23(e)

Accordingly, in the circumstances specified in paragraph (b), there shall also be included in the prospectus:

- (i) a *pro forma* balance sheet combining the assets and liabilities of the issuer with the assets and liabilities of the acquired business as shown by their respective balance sheets, each as at the date of their respective last financial year ends; and
- (ii) *pro forma* financial statements combining, in respect of the last financial year of each of the acquired business and the issuer:

Comment: The reformulated version of subsection 56(2) of the Regulation has been moved to subsection 3.4(3).

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- (i) the income or losses of the issuer with the income or losses of the acquired business, and
 - (ii) the changes in financial position of the issuer with the changes in financial position of the acquired business;
 - (g) the *pro forma* basic and *pro forma* fully diluted earnings per share based on the *pro forma* combined financial statements and calculated in accordance with the Handbook; and
 - (h) a description of the underlying assumptions and the events on which the *pro forma* combined financial statements are predicated.
- (2) Despite subsection (1), the prospectus is not required to contain the financial statements of an acquired business if the audited financial statements for the last financial year of the issuer included in the prospectus include at least six months of results for the acquired business.
- (3) If the balance sheet included under subparagraph (1)(d)(i) is as at a date other than a financial year end of the acquired business, the balance sheet in subparagraph (1)(d)(ii) may be omitted if the prospectus contains a balance sheet of the acquired business as at the most recent financial year end of the acquired business and as at the immediately preceding financial year end.

- (A) the income or losses of the issuer with the income or losses of the acquired business; and
- (B) the changes in financial position of the issuer with the changes in financial position of the acquired business.

Source: New

SOURCE FROM EXISTING INSTRUMENT

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- (4) Despite paragraph (1)(c), the financial statements of an acquired business engaged primarily in the business of investing shall include a statement of changes in net assets instead of a statement of changes in financial position.
- (5) If a balance sheet required by paragraph (1)(d) relates to part of a financial year, the prospectus shall contain an income statement, a statement of retained earnings and a statement of changes in financial position or a statement of change in net assets for the comparable period in the preceding financial year.

3.4 Report of Auditor

- (1) Every financial statement included in a prospectus shall contain a Canadian auditor's report.
- (2) Subsection (1) does not apply to a financial statement of an issuer or an acquired business included in a prospectus for a part of a financial year after the most recent audited financial year of the issuer or the acquired business, as applicable, or to a financial statement for the comparable period in the previous financial year of the issuer or the acquired business, if
 - (a) the part of the financial year ended not more than 90 days before the date of the preliminary prospectus and not more than one year after the end of the most recent audited financial year of the issuer or the acquired business, as applicable; and

Source: New

Source: (1) Reg. s. 65(1)

Any financial statement included in a prospectus that relates to any part of a financial year subsequent to the last audited financial year of the issuer need not be reported on by an auditor where,

- (a) such part of a financial year ended not more than ninety days before the date of the issuance of a receipt for the preliminary prospectus or such longer time as the Director may permit and not more than one year after the last audited financial year or such longer time as the Director may permit; and

Comment : The term "Canadian auditor's report" is defined in National Instrument 14-101 Definitions. The definition is "an auditor's report prepared in accordance with Canadian GAAS". The term "Canadian GAAS" is defined in the same instrument as "generally accepted auditing standards determined with reference to the Handbook".

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(b) a balance sheet of the issuer or the acquired business, as applicable, as at the end of the most recent audited financial year of the issuer or the acquired business, as applicable, is included in the prospectus.

(b) a balance sheet of the issuer as at the end of the latest audited financial year of the issuer is included in the prospectus.

Source: (2) Reg. s. 65(2)

Every balance sheet referred to in subclause 53(1)(d)(ii) and every income statement, statement of surplus and statement of changes in financial position required by subsection 53(5) and those for the same period for an acquired business referred to in section 56, may, but need not, be reported on by an auditor.

Source: Reg. s. 56(2)

An auditor's report prepared in connection with the *pro forma* financial statements referred to in clauses (1)(b), (c) and (d) need only be concerned with the manner in which the statements have been compiled.

Source: Reg. s. 52(2)

Any certificate required by section 58 or 59 of the Act and any report of an auditor otherwise required by this Regulation may be omitted from a *pro forma* prospectus.

Comment: The disclosure requirements contained in s. 22 of Policy 5.1 are included in Items 1.5 and 19.7 of Form 41-501F1 in the same way that the disclosure obligations for short-form prospectuses are set forth in Item 7(4) of Appendix B of NP 47. Similar provisions are proposed to be contained in National Instrument 44-101 Prompt Offering Qualification System.

(3) Subsection (1) does not apply to the *pro forma* financial statements referred to in paragraphs 3.3 (1)(e) and (f) if the auditors of the issuer report on the manner in which the statements have been compiled.

(4) Subsection (1) does not apply to a *pro forma* prospectus.

PART 4 MATTERS RELATING TO PRICING AND COSTS

4.1 Non-Fixed Price and Reduced Price Offerings

(1) In this Part

"approved rating" means a rating from an approved rating organization that falls within one of the following generic rating categories of the approved rating organization or a rating category that replaces a category listed below:

Sources (1): Policy 5.1, s. 22(a)

Subject to the limitation contained in paragraph (b), non-convertible debt securities and non-convertible preferred shares may be offered for cash at non-fixed prices, provided that:

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Approved Rating Organization	Long Term	Short Term	Preferred Shares
CBRS Inc.	A++, A+, A or B++	A-1+, A-1, A-1 (Low) A-2	P-1+, P-1, P-2 or P-3
Dominion Bond Rating Service Limited	AAA, AA, A or BBB	R-1 or R-2	Pfd-1, Pfd-2 or Pfd-3
Moody's Investors Service, Inc.	Aaa, Aa, A or Baaa	Prime-1, Prime-2 or Prime-3	"aaa", "aa", "a" or "baa"
Standard & Poor's Corporation	AAA, AA, A or BBB	!	AAA, AA, A or BBB

"approved rating organization" means each of CBRS Inc., Dominion Bond Rating Service Limited, Moody's Investors Service, Inc. and Standard & Poor's Corporation.

"convertible", if used to describe debt securities or preferred shares means that the rights and attributes attaching to those 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.

"non-convertible", if used to describe debt securities or preferred shares, means securities that are not convertible.

(2) Every security distributed under a prospectus shall be offered at a fixed price.

(i) the securities have received, at the time the receipt for the prospectus is issued, an Approved Rating, on a provisional basis, by at least one Rating Organization;

(2) NP 47, s. 6.1(7)

(7) Subject to section 6.1(9), Non-Convertible debt or Non-Convertible preferred shares may be offered for cash at non-fixed prices provided, at the time of the filing of the preliminary short form prospectus, the securities

(a) have received an Approved Rating, on a provisional basis, from at least one Approved Rating Organization; and

(b) have not received a provisional or final rating lower than an Approved Rating from any Approved Rating Organization.

Source: New

Comment: This has been conformed to Item 6.1(7) of NP 47 with the

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- (3) Despite subsection (2), non-convertible debt securities and non-convertible preferred shares may be offered for cash at non-fixed prices under a prospectus if, at the time of the filing of the prospectus, the securities
- (a) have received an approved rating, on a provisional basis or on a final basis, from at least one approved rating organization; and
 - (b) have not received a provisional rating or a final rating lower than an approved rating from another approved rating organization.
- (4) Despite subsection (2), if securities are offered for cash under a prospectus, the price at which the securities may be distributed may be decreased from the initial offering price fixed in the prospectus and changed after that time and from time to time, to an amount not greater than the initial offering price, without the filing of an amendment to the prospectus to reflect the change, if
- (a) the securities are distributed through one or more underwriters that have agreed to purchase all of the securities at a specified price;
 - (b) the proceeds to be received by the issuer or a selling securityholder or the issuer and a selling securityholder are fixed in the prospectus; and
 - (c) the underwriters have made a good faith effort to sell all of the securities at the initial offering price fixed in the prospectus.

Source: NP 47, s. 6.1(8)

- (3) Subject to section 6.1(9), where securities are offered for cash under a short form prospectus, the price at which these securities may be distributed may be decreased from the initial public offering price fixed in the short form prospectus and thereafter changed, from time to time, to an amount not greater than the initial public offering price, without the filing of an amendment to the short form prospectus to reflect the change, provided
- (d) the securities to be distributed under the short form prospectus are distributed through an underwriter or underwriters that have agreed to underwrite the distribution of the securities on a firm commitment basis;
 - (e) the proceeds to be received by the issuer and/or any Selling Security Holder are fixed in the short form prospectus; and
 - (f) the underwriters have made a bona fide effort to sell all of the securities distributed under the short form prospectus at the initial public offering price fixed in the short form prospectus.

reference to preliminary prospectus changed to prospectus. Paragraph (b) is a more stringent test than what is currently contained in Policy 5.1.

Comment: The reference to "firm commitment basis" in NP 47 has been changed to more descriptive language in paragraph 4.1(4)(a). References elsewhere to "best efforts offerings" have not been changed.

SOURCE FROM EXISTING INSTRUMENT

COMMENTS

- (5) The methods of distribution referred to in subsections (3) and (4) may not be used for rights offerings.

Source: Policy 5.1, s. 22(b)

The procedures set out in paragraph 22(a) may not be used for rights offerings.

PART 5 CERTIFICATION

5.1 Financial Statement Approval

- (1) The approval by a board of directors of an issuer of every financial statement of the issuer contained in a prospectus shall be evidenced by the signatures on the balance sheet of two directors of the issuer authorized to signify approval.

Source: Reg. s. 64

Every financial statement of a person or company contained in a prospectus shall be submitted for review to the audit committee of its board of directors, where it has or is required to have such a committee, prior to its approval by the board of directors, which approval shall be evidenced by the manual signatures of two directors duly authorized to signify approval.

Comment: The requirement in section 64 of the Regulation to obtain audit committee review has been deleted as financial statement approval is a matter that relates primarily to corporate governance.

- (2) Despite subsection (1), if an issuer is not a company, the approval of the issuer's financial statements shall be evidenced by the signatures on the balance sheet of two persons authorized to signify approval.

Source: New

Comment: Subsection (2) added to deal with non-corporate issuers.

- (3) Subsections (1) and (2) do not apply to a financial statement included in a *pro forma* prospectus.

- 5.2 Certificate of Guarantor - If disclosure for a guarantor is required by a prospectus form, the preliminary prospectus and prospectus shall contain a certificate of the guarantor in the form set out in subsection 58(1) of the Act, in addition to the other certificates required by the subsection.

Source: NP 47, Appendix B, Item 20(3)

Where the disclosure in item 14 of this Appendix is required to be included, the preliminary short form prospectus and short form prospectus shall contain a certificate of the guarantor and a certificate of the issuer, in each case, in the form required in paragraph (1) above.

Source: Policy 5.7, s. A.6

SOURCE FROM EXISTING INSTRUMENT

COMMENTS

5.3 Date of Certificates - The date of the certificates on a preliminary prospectus, a prospectus or an amendment to a preliminary prospectus or prospectus shall be on or within three business days after the date of filing the preliminary prospectus, prospectus or amendment, as applicable.

The date of the certificates on the preliminary or final prospectus should be on or within three business days of the date of filing the prospectus.

5.4 Pro Forma Prospectus - A certificate required by section 58 or section 59 of the Act or section 5.2 of this Rule may be omitted from a pro forma prospectus.

Source: Reg. s. 52(2)

Any certificate required by section 58 or 59 of the Act and any report of an auditor otherwise required by this Regulation may be omitted from a pro forma prospectus.

PART 6 GENERAL REQUIREMENTS AS TO FILING

6.1 Documents to be Delivered with Preliminary Prospectus - An issuer shall deliver to the Commission the following documents and information at the time of filing a preliminary prospectus or pro forma a prospectus:

Sources: Policy 5.1, section 15(a)

The following types and numbers of documents and additional information should be filed with the Commission with a preliminary prospectus:

Document	Number
Preliminary prospectus---signed	1
Preliminary prospectus---signed or unsigned	4
Auditors' comfort letter	1
Directors' resolution (certified)	1
Technical reports, consents and certificates of qualification, etc.	2

Information with respect to the identification number of the issuer must also be filed with the preliminary prospectus. Where the issuer has been assigned a CUSIP/CDS identification number, that portion of such number which identifies the issuer, being the first six characters of such number (hereinafter referred to as the CUSIP/CDS Issuer Number) must be filed. Where the issuer does not yet have CUSIP/CDS Issuer Number, but intends to obtain one, a

Comment: Documents that are "delivered" to the Commission are not required to be placed in the public file. Pursuant to section 140(1) of the Act, documents that are required to be "filed" with the Commission will be made available for public inspection.

SOURCE FROM EXISTING INSTRUMENT

COMMENTS

letter from the issuer must be filed confirming that the issuer intends to obtain a CUSIP/CDS identification number and undertaking to provide the O.S.C. with its CUSIP/CDS Issuer Number immediately upon the issuer's receipt of same. Where the issuer does not have nor intend to obtain a CUSIP/CDS identification number, a letter from the issuer advising the O.S.C. of this fact must be filed.

Date of financial year end of the issuer.
Postal code for head office of the issuer.

1. An unsigned copy of the preliminary prospectus or *pro forma* prospectus, as the case may be, and, if section 6.3 applies, an unsigned copy of the preliminary prospectus or *pro forma* prospectus in French.
2. For each director and executive officer of an issuer that is not a reporting issuer or that has not previously filed a prospectus with the Commission, for each director and executive officer of an issuer that is a reporting issuer but who was not a director or executive officer on the date of the most recent prospectus of the reporting issuer, and for each promoter of the issuer or, if the promoter is not an individual, for each director and executive officer of the promoter, a statement containing that individual's
 - (a) full name,
 - (b) birth date,
 - (c) full residential address, and

Source: Policy 5.7, s. 1(a)

For each director and senior officer of the issuer and for each promoter of the issuer (or in the case where the promoter is not an individual, for each director and senior officer of the promoter), for security check purposes (in the case of new or reactivated reporting issuers only):

- (i) name,
- (ii) birth date,
- (iii) full residential address, and
- (iv) present place of employment.

Comment: The phrase for security check purposes deleted as it is entirely descriptive. Lead-in changed to clarify application of the provision.

SOURCE FROM EXISTING INSTRUMENT

COMMENTS

(d) name and address of employer.

This information may be requested by Commission staff in other circumstances where appropriate;

3. A completed Form 41-501F2 required by the *Freedom of Information and Protection of Privacy Act* for the collection of the personal information referred to in paragraphs 2(a) to 2(d).

Source: Policy 5.7, s. 1b

In addition to the information referred to in Items A1 and A1a above, the notice and consent form required by the *Freedom of Information and Protection of Privacy Act, 1987*, in respect of the collection of the personal information referred to in the above items, a copy of which is attached to this Policy as Schedule A, should be provided to Commission staff with or prior to the provision of that personal information.

4. If the issuer is not a reporting issuer or has not previously filed a prospectus with the Commission, a statement containing the issuer's CUSIP/CDS identification number or a statement that either the issuer intends to acquire a CUSIP/CDS identification number and an undertaking to provide the number to the Commission immediately upon receipt or that the issuer does not intend to obtain a CUSIP/CDS identification number.

Source: Policy 5.1, s. 15

[See s. 6.1 above.]

5. A copy of each report or valuation referred to in subsection 6.6(1).

Source: Policy 5.1, s. 15

[See s. 6.1 above.]

6. A statement containing

Source: Policy 5.1, s. 15

[See s. 6.1 above.]

(a) the date of the financial year end of the issuer and of any proposed change in the financial year end of the issuer, and

(b) the addresses of the head office and registered office of the issuer.

Comment: Reference to "consents" deleted as these are required to be filed at the time of filing the prospectus. See comment in relation to subsection 6.2.

SOURCE FROM EXISTING INSTRUMENT

COMMENTS

7. If applicable, a letter indicating the method by which the statement of earnings coverage for the securities offered under the preliminary prospectus has been calculated.

8. If the issuer has natural resource operations, one or more reports prepared in accordance with either National Instrument 43-101 Guide for Engineers, Geologists and Prospectors or National Instrument 43-102 Guide for Engineers or Geologists Submitting Oil and Gas Reports, as applicable, for

- (a) each property of the issuer on which more than 10 percent of the net proceeds of the distribution will be expended; and
- (b) each property of the issuer that contributed at least 10 percent of the gross revenues of the issuer in the most recent financial year of the issuer.

accompanied by a certificate on the report which certificate shall state,

- (a) the address and occupation of the individual;
- (b) the qualifications of the individual;
- (c) whether or not the report is based on personal examination;
- (d) the date of any such examination;
- (e) where the report is not based on personal examination, the source of the information contained in the report; and
- (f) whether or not the individual has, directly or indirectly, received or expects to receive

Source: Reg. 36

There shall be filed at the time of the filing of a preliminary prospectus for a natural resource company or at the time of the filing of a prospectus for a natural resource company under section 62 of the Act, as the case may be, a full and up-to-date report on the property of the natural resource company referred to in paragraph (b) or (c) of item 9 in Form 14 and the development thereof, made by an individual who is a mining engineer, geologist or other qualified individual acceptable to the Director, accompanied by a certificate on the report which certificate shall state,

- (a) the address and occupation of the individual;
- (b) the qualifications of the individual;
- (c) whether or not the report is based on personal examination;
- (d) the date of any such examination;
- (e) where the report is not based on personal examination, the source of the information contained in the report; and
- (f) whether or not the individual has, directly or indirectly, received or expects to receive any interest, direct or indirect, in the property of the person or company or any associate or affiliate of the person or company, or beneficially owns, directly or indirectly, any securities of the person or company or any associate or affiliate of the person or company and, if so, the particulars of the interest or beneficial ownership.

Comments:

- (1) The requirement has been amended to stipulate what is meant by the terms "major producing properties" and "important properties" currently in paragraphs (b) and (c) of Form 14.
- (2) National Instruments 43-101 and 43-102 will be the successor instruments to National Policy Nos. 2-A and 2-B, respectively, and will be published at a later date.

SOURCE FROM EXISTING INSTRUMENT

COMMENTS

any interest, direct or indirect, in the property of the person or company or any associate or affiliate of the person or company, or beneficially owns, directly or indirectly, any securities of the person or company or any associate or affiliate of the person or company and, if so, the particulars of the interest or beneficial ownership.

6.2 Documents or Information to be Delivered With Prospectus -
An issuer shall deliver to the Commission the following documents and information at the time of filing a prospectus:

Source: Policy 5.1, s. 15(b)

The following types and numbers of documents should be filed with the Commission with a final prospectus:

Document	Number
Prospectus---signed	1
Prospectus---signed or unsigned	4
Prospectus---red or black lined	2
Auditors' consent letter	1
Auditors' comfort letter, if necessary	1
Counsels' consent	1
Consents of other experts	1
Directors' resolution (certified)	1
Copies of the underwriting or agency agreement and any other material contract requested by Commission staff	2
Estimate of proceeds to be realized in Ontario and appropriate filing fee	1
Certificate under section 68 [80] of the Regulations, if required	1
Submission to jurisdiction and appointment of agent for service of process, if required	1

Comment: The consents, comfort letter, and submission to jurisdiction/appointment of agent are omitted from this section as they are addressed in sections 6.6, 6.7 and 6.8, respectively.

CUSIP/CDS Issuer Number, if not already filed, unless the issuer does not have one and does not intend to obtain one.

SOURCE FROM EXISTING INSTRUMENT

COMMENTS

1. An unsigned copy of the prospectus and, if section 6.3 applies, an unsigned copy of the prospectus in French.
 2. An unsigned copy of the prospectus marked to show changes from the preliminary prospectus.
 3. A signed copy of the underwriting or agency agreement.
 4. If not previously filed, notice of a CUSIP/CDS Issuer Number unless the issuer does not intend to acquire a CUSIP/CDS Issuer Number.
- 6.3 French Version - If there is a French version of a preliminary prospectus or a prospectus that will be used in connection with the distribution in Ontario of the securities to which the preliminary prospectus and prospectus relate, the issuer shall file a signed copy of the French version before it is delivered to a purchaser in Ontario.
- 6.4 Filing of Material Contracts - An issuer shall make available all material contracts referred to in the prospectus for inspection at a reasonable time and place during the distribution of the securities being offered under the prospectus. An issuer shall file, on or before the time the issuer files a prospectus, a copy of any material contract of an issuer referred to in the prospectus requested by the Director.

Source: Policy 5.1, s. 15(b)

Source: Policy 5.1, s. 15(b)

Source: Policy 5.1, s. 15(b)

Source: New

Source: Policy 5.1, s.15(b)

SOURCE FROM EXISTING INSTRUMENT

COMMENTS

6.5 Filing of Advertising and Sales Literature - An issuer shall at the request of the Director, file, on or before the time the issuer files a prospectus a copy of all advertising and sales literature which has been used in connection with the distribution in Ontario of the securities distributed under the prospectus.

Source: New

Comment: There is no longer a requirement to pre-file greensheets with the Commission; however, the Director can require delivery of advertising and sales literature which has been used in connection with the distribution. This requirement is based upon a similar requirement which the Commission may impose upon registered dealers under section 50 of the Act. Pursuant to the general definition rule, the terms "advertising" and "sales literature" shall have the meanings ascribed thereto in subsection 50(2) of the Act.

6.6 Consent of Experts

(1) If a person or company whose profession or business gives authority to a statement made by the person or company is named as having prepared or certified a part of a prospectus or is named as having prepared or certified a report or valuation used or referred to in a prospectus, the written consent of the person or company to being named and to the use of the report or valuation shall be filed at the time the prospectus is filed.

Source: Reg. s. 34(1)

Where any solicitor, auditor, accountant, engineer, appraiser or any other person or company whose profession gives authority to a statement made by the person is named as having prepared or certified any part of a prospectus, summary statement or documents prepared in connection with a summary statement, or is named as having prepared or certified a report or valuation used in or in connection with a prospectus or summary statement, the written consent of the person or company to being so named and to such use of the report or valuation shall be filed not later than the time the prospectus is filed.

Comments:

(1) References to summary statements and related documents have been deleted as these are no longer used.

(2) Currently, section 15 of Policy 5.1 requires that the consents in relation to technical reports be filed with the preliminary prospectus, whereas subsection 34(1) of the Regulation requires that consents of experts be filed with the prospectus. This inconsistency has been eliminated by requiring (in item 5 of section 6.1) that only the report be filed with the preliminary prospectus.

(2) The consent of an auditor or accountant required by subsection (1) for a report on financial statements shall refer to the report stating its date and the dates of the financial statements on which the report is made and shall contain a statement that the auditor or accountant has read the prospectus and has no reason to believe that there are any misrepresentations in the information in the prospectus that is derived from the financial statements or that is within the auditor's or accountant's knowledge as a result of the audit of the financial statements.

Source: Reg. s. 34(3)

The consent of the auditor or accountant referred to in subsection (1) shall refer to the report stating the date thereof and the dates of the financial statements on which the reports are made, and shall contain a statement that the auditor or accountant has read the prospectus and has no reason to believe that there are any misrepresentations in the information contained therein that is derived from the financial statements upon which the auditor or accountant reported or that is within the auditor's or accountant's knowledge as a result of the audit of such financial statements.

SOURCE FROM EXISTING INSTRUMENT

COMMENTS

6.7 Auditors' Communications

- (1) If a financial statement for a financial year of an issuer included in a preliminary prospectus is not reported on by the auditor of the issuer, the issuer shall file, at the time the preliminary prospectus is filed, a signed copy of a letter to the Commission from the auditor containing statements about an examination of the issuer as may be appropriate in the circumstances.
- (2) The letter referred to in subsection (1) shall contain
 - (a) a statement that on the basis of the information then available to the auditor, the auditor has no reason to believe that the financial statements included in the preliminary prospectus that are being audited do not provide a fair representation of the financial position and earnings of the issuer; and
 - (b) a statement of the dates and years or periods covered by the examination.
- (3) If, in accordance with section 3.4, a financial statement for a part of a financial year of an issuer included in a prospectus is not reported on by an auditor, the issuer shall file a signed statement containing the advice from the auditor that is suggested for this circumstance by the Handbook.

Source: Reg. s.66(1)

Subject to subsection (2), where a preliminary prospectus does not contain a report of the auditor of the issuer, there shall be filed, at the time the preliminary prospectus is filed, a letter addressed to the Commission and signed by the auditor of the issuer in which the auditor shall make such statement with respect to an examination as may be appropriate in the circumstances and the letter shall include a statement that, on the basis of the information then available to the auditor, the auditor has no reason to believe that the financial statements included in the preliminary prospectus that are being audited do not provide a fair representation of the financial position and earnings of the issuer and which shall specify dates and years or periods.

Source: Reg. s. 65(3)

Where, pursuant to this section and except as otherwise provided in the Rules entitled In the Matter of Regulation 910, R.R.O. 1980, as amended and In the Matter of the Multijurisdictional Disclosure System (1991), 14 OSCB 2863 and National Policy Statement No. 45 (1991), 14 OSCB 2889, as amended, a financial statement contained in a prospectus is not reported on by the auditor, there shall be filed with the Commission such advice from the auditor as is suggested for these circumstances by the Handbook of The Canadian Institute of Chartered Accountants, or such other advice as may reasonably be required by the Director, the purpose of which shall be to assist the

SOURCE FROM EXISTING INSTRUMENT

COMMENTS

Commission in discharging its responsibilities and the advice may include a statement to that effect.

Source: Policy 5.1, s. 25(a)

A duly executed Submission to Jurisdiction and Appointment of Agent for Service of Process, in the Form set forth in Appendix A should, in respect of an issuer and a guarantor that is incorporated or organized outside Canada and does not have an office in Canada, be filed with the Commission with the prospectus.

Source: New

Source: New

Comments:

- (1) The term "foreign jurisdiction" is defined in National Instrument 14-101 Definitions. The definition is "a country other than Canada or political subdivision of a country other than Canada".
- (2) The scope of this requirement has been changed to include the issuer, a selling securityholder, a promoter and a guarantor. Item 1.10 of Form 41-501F1 requires certain disclosure in the event that the issuer, selling securityholder, promoter or guarantor in a distribution are non-residents.

Comment: Subsection 6.9(1) has been added to eliminate confusion between "amendments" and "amended prospectuses". See section 4.5 of Companion Policy 41-501CP.

6.8 International Offerings

- (1) If an issuer is incorporated or organized under a foreign jurisdiction and does not have an office in Canada, a submission to jurisdiction and appointment of agent for service of process of the issuer in Form 41-501F3 shall be filed at the time a prospectus of the issuer is filed.

- (2) If a selling securityholder, promoter or guarantor of an issuer is incorporated or organized under a foreign jurisdiction and does not have an office in Canada, a submission to jurisdiction and appointment of agent for service of process of the selling securityholder, promoter or guarantor, as applicable, in Form 41-501F4 shall be filed at the time a prospectus of the issuer is filed.

6.9 Amendments

- (1) An amendment to a preliminary prospectus or a prospectus may consist of either a separate amending document or an amended and restated preliminary prospectus or prospectus.

SOURCE FROM EXISTING INSTRUMENT

COMMENTS

(2) An amendment to a preliminary prospectus or a prospectus shall contain the certificates required by section 5.2 and by sections 58 and 59 of the Act, and

Source: New

Comment: Currently, it is not made explicit in the Act that an amendment to a prospectus or a prospectus must include a certificate.

(a) in the case of a separate amending document, shall be numbered and dated as follows:

"Amendment No. [insert amendment number] dated [insert date of amendment] to [Preliminary] Prospectus dated [insert date of preliminary prospectus or prospectus]."; and

(b) in the case of an amended and restated preliminary prospectus or prospectus, shall be dated as follows:

"Dated [insert date of original preliminary prospectus or prospectus], as amended on [insert date of amendment]."

(3) An issuer shall file a signed copy of an amendment to a preliminary prospectus or a prospectus and shall deliver to the Commission one unsigned copy of the amendment.

Source: New

(4) If a French version of a preliminary prospectus or a prospectus that has been filed with the Commission is the subject of an amendment, the issuer shall, before the French version is delivered to a purchaser in Ontario, file a signed copy of the French version of the amendment and deliver to the

Source: New

SOURCE FROM EXISTING INSTRUMENT

COMMENTS

Commission one unsigned copy of the French version.

(5) An amendment to a preliminary prospectus shall be forwarded to each recipient of the preliminary prospectus according to the record maintained under section 67 of the Act.

Source: New

(6) No document delivered to the Commission under section 6.1 or section 6.3 at the time of filing a preliminary prospectus or a prospectus need be delivered at the time an amendment to a preliminary prospectus or prospectus is filed unless the document has been amended since the original date of delivery.

Source: New

(7) If an amendment to a preliminary prospectus or a prospectus materially affects, or relates to the subject matter of, a consent letter delivered under subsection 6.5(1) or an auditor's letter delivered under subsection 6.6(1), the issuer shall deliver to the Commission, at the time of filing the amendment, a new consent letter or auditors' letter, as applicable.

Source: Reg. s.35

Where any change is proposed to be made in a preliminary prospectus or prospectus that in the opinion of the Director materially affects any consent required under section 34 the Director may require that a further consent be filed before an amendment to the preliminary prospectus or prospectus is accepted.

6.10 Deleting Warrants and Conversion Features - If a conversion feature or warrant is disclosed in a preliminary prospectus, the issuer may not delete the feature or warrant unless, before the prospectus is filed, an amendment to the preliminary prospectus has been filed and accepted and subsection 57(3) of the Act complied with.

Source: Policy 5.1, s. 10(B)

Where a conversion feature or warrant is disclosed in a preliminary prospectus, the issuer may not delete it in the final prospectus unless an amendment to the preliminary prospectus has been filed and approval of the amendment has been obtained from the Director prior to filing the final prospectus.

6.11 Receipt for Amendment to Preliminary Prospectus - The Director shall issue a receipt for an amendment to a

SOURCE FROM EXISTING INSTRUMENT

COMMENTS

preliminary prospectus as soon as possible after the amendment is filed.

6.12 Waiting Period - If the amendment has been filed

- (a) as a result of the occurrence of a material adverse change after the date of the preliminary prospectus, or
- (b) to add a class or series of security in addition to the class or series of security for which the preliminary prospectus was filed

there shall be an interval of at least ten days between the issuance by the Director of a receipt for the amendment to the preliminary prospectus and the issuance by the Director of a receipt for the prospectus.

Source: New

Comment: The provisions in section 6.11 are intended to eliminate uncertainty as to when an amendment to a preliminary prospectus restarts the ten day waiting period.

PART 7 PROCEDURES AND REQUIREMENTS FOR GRANTING RECEIPTS

7.1 General

- (1) An issuer shall not file a prospectus if the issuer is in default in filing or delivering a document required to be filed or delivered by the issuer under Ontario securities law.
- (2) An issuer shall not file a prospectus more than 75 days after the date of the receipt for the preliminary prospectus to which the prospectus relates if the primary reason for failing to file the

Source: Reg. s. 38(1)1

A receipt for a prospectus will not be issued if the Director is aware that the issuer is in default in filing any document required to be filed by it under the Act or this Regulation or under the statute under which it is incorporated or organized.

Source: Reg. s. 38(1)(2)

Where a receipt for a prospectus is not issued within seventy-five days after the date of a receipt for a preliminary prospectus due to the inaction of the person or company filing such preliminary prospectus, then no final receipt shall be issued for that prospectus.

Comment: Subsection 7.1(1) has been restricted to a default under Ontario securities law as compliance with filing requirements under the issuer's governing statute is more properly the subject of supervision by the applicable regulator.

SOURCE FROM EXISTING INSTRUMENT

COMMENTS

prospectus within the 75 day period is the inaction of the issuer.

(3) If a preliminary prospectus names an underwriter of the issuer that proposes to act as underwriter in Ontario and the underwriter is not registered or exempt from the requirements to be registered as an underwriter, or the distribution is to be effected by the issuer and the issuer is not registered or exempt from registration, then

- (a) the issuer shall not file the preliminary prospectus until the underwriter or issuer, as applicable, has delivered an application for registration with the Commission; and
- (b) the issuer shall not file the prospectus until the registration has been granted.

(4) An issuer shall not file a prospectus for a fixed number of securities that are to be distributed by one or more underwriters that have agreed to purchase the securities at a specified price unless the prospectus indicates that the securities are to be taken up by the underwriter or underwriters, if at all, on or before a date not later than 42 days after the date of the receipt for the prospectus.

(5) If a minimum amount of funds is to be raised by the non-continuous distribution of securities on a best efforts basis

Source: Reg. s. 38(1)4

Where a preliminary prospectus names an underwriter of the issuer who proposes to act as underwriter in Ontario and who is not a registrant or the distribution is to be effected by the issuer and the issuer is not a registrant then the receipt for the preliminary prospectus shall not issue until an application for registration has been received and the receipt for the prospectus shall only be issued concurrently with or after the granting of registration.

Source: Reg. s. 38(1)5

The receipt for a prospectus relating to securities underwritten on a firm commitment basis, other than securities to be distributed continuously, shall not be issued unless the prospectus indicates that the securities are to be taken up by the underwriter, if at all, on or before a date not later than six weeks after the date of the final receipt.

Source: Reg. s. 38(1)7

Except as otherwise provided in the Rules entitled In the Matter of the Prompt Offering Qualification System (1993), 16 OSCB 732, 16 OSCB 949 and National Policy Statement No. 47 (1993), 16 OSCB 765 where a minimum amount of funds are required by an issuer, the receipt for a prospectus relating to securities proposed to be

Comment: The relevant period has been changed from 60 to 90 days to conform with the periods in British Columbia and Alberta and NP 47.

SOURCE FROM EXISTING INSTRUMENT

COMMENTS

- (a) the prospectus shall state the minimum amount and that the distribution will not continue for more than 90 days; and

- (b) during the 90 day period referred to in paragraph (a), funds received from subscriptions shall be held by a Canadian chartered bank or trust company under an agreement that states that the depository may, if the minimum amount of funds is received within the time specified, transfer the funds to the issuer and shall, if the minimum amount of funds is not received within the time specified, return the funds to the subscribers unless the subscribers have otherwise instructed the depository.

distributed on a best efforts basis, other than securities to be distributed continuously, shall not issue unless the prospectus indicates that the offering may not continue for more than sixty days where the minimum amount of funds are not subscribed within sixty days, without the consent of the Director and those persons or companies who subscribed within such sixty days.

Source: Policy 5.1, s. 3

In a best efforts offering, the minimum subscriptions necessary to accomplish the purposes in the prospectus must be specified. Section 27(1)7 [38(1)(7)] of the regulations made under the Act (the Regulation) restricts this offering period to a maximum of 60 days or, with the consent of the Director and those already subscribing, for a longer period. During this period any subscriptions received must be held by a trust company or other acceptable depository who will, when the minimum amount necessary is received, turn it over to the issuer or will, if the minimum is not received within the time specified, return the money to the individual subscribers.

Comment: The first two sentences of the existing provision have been omitted as they are covered by paragraph (a). The reference to 60 days has been changed to 90 days to conform with paragraph (a). The depository may be a bank or trust company and reference to "other depository acceptable to the Director" has been deleted. The release of funds by the depository after minimum subscriptions are received is now a permissive event rather than mandatory (there may be other conditions to release imposed by the issuer, underwriters or purchasers).

7.2 Registration or Licensing of Issuer

- (1) If the purpose of a distribution under a prospectus is to fund a new business and the issuer has not obtained all material licences, registrations and approvals necessary for the operation of the business, the issuer shall not file the prospectus unless
 - (a) all funds received from subscribers will be held by a Canadian chartered bank or trust company, as depository, for not longer than 90 days;

Source: Policy 5.1, s. 4

Where the purpose of the issue is to fund a new loan, trust, insurance or other business prior to its licensing or registration by another government agency, a final receipt will issue subject to a condition, which must be set out in the prospectus, that the subscriptions will be held by a trust company or other suitable depository for not longer than a specified period. If, during this time, the licence issues, the subscriptions will be turned over to the issuer. If, at the end of the period, the licence has not issued, the funds must be returned to the individual subscribers.

SOURCE FROM EXISTING INSTRUMENT

COMMENTS

- (b) there is an agreement with the depository that states that, if, at the end of the period, the necessary licences, registrations and approvals have not been obtained, the depository will return the funds to subscribers; and
- (c) disclosure is made in the prospectus of the conditions in paragraphs (a) and (b).

- (2) If, during the period referred to in subsection (1), the necessary licences, registrations and approvals are obtained, the funds may be released to the issuer.

Source: Policy 5.1, s. 4
(See above.)

PART 8 EXEMPTION

- 8.1 Exemption - The Director may grant an exemption to this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.**

Source: New

- 8.2 Evidence of Exemption - Without limiting the manner in which an exemption under section 8.1 may be evidenced, the issuance by the Director of a receipt for a prospectus or an amendment to a prospectus is evidence of the granting of the exemption if**

- (a) the person or company that sought the exemption delivered to the Director on or before the date the preliminary prospectus was filed, a letter or memorandum describing the matters relating to the exemption, and indicating why consideration should be given to the granting of the exemption; and

Source: NP 47, s.7.3

Where an issuer anticipates not being in a position to comply with one or more of the provisions of this Policy Statement, other than the provisions of part 4 in respect of which a formal application must be made and a waiver issued pursuant to section 4.5, the issuer shall at or prior to the time of filing a preliminary short form prospectus so notify in writing the Applicable Regulator in each Jurisdiction in which the preliminary short form prospectus is to be filed providing the reasons why the applicable Securities Regulatory Authority should grant relief. Relief shall be deemed to have been granted if a receipt in respect of the short form prospectus is issued.

SOURCE FROM EXISTING INSTRUMENT

COMMENTS

(b) the Director has not sent written notice to the contrary to the person or company that sought the exemption before the issuance of the receipt.

Ontario Securities Commission Rule 41-501

General Prospectus Requirements

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