

**Notice of Proposed Changes to Proposed Rule 41-501**  
**General Prospectus Requirements**

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**NOTICE OF PROPOSED CHANGES TO PROPOSED RULE 41-501 GENERAL  
PROSPECTUS REQUIREMENTS, PROPOSED FORM 41-501F1  
INFORMATION REQUIRED IN A PROSPECTUS AND  
PROPOSED COMPANION POLICY 41-501CP GENERAL PROSPECTUS  
REQUIREMENTS UNDER THE SECURITIES ACT**

**Introduction**

On May 2, 1997, the Ontario Securities Commission (the "Commission") published the proposed Rule, four Forms and a Companion Policy for comment at (1997), 20 OSCB(Supp) (the "May Material"). A summary of the May Material may be found in the Notice published at (1997), 20 OSCB(Supp). As a result of staff's recommendations, comments received and further deliberations of the Commission, the Commission has amended and is republishing the following instruments for comment:

Rule 41-501 General Prospectus Requirements  
Form 41-501F1 Information Required in a Prospectus  
Companion Policy 41-501CP General Prospectus Requirements

Rule 41-501 General Prospectus Requirements (the "proposed Rule") consolidates various provisions currently set forth in the Regulation to the *Securities Act* (Ontario) (the "Act") and in various policy statements and notices and in the Commission staff Corporate Finance Accountants Practice Manual (the "Accountants Manual") concerning the preparation, certification, filing and receipting of preliminary prospectuses and prospectuses. The proposed Rule prescribes the use of proposed Form 41-501F1 Information Required in a Prospectus (the "Prospectus Form") as the form of prospectus to be used by issuers that currently file long-form prospectuses using Forms 12, 13 or 14 of the Regulation.

As a result of the implementation of the proposed Rule, Prospectus Form and Companion Policy 41-501 General Prospectus Requirements (the "proposed Companion Policy"), most of the provisions in Part III of the Regulation to the Act concerning the form, content, certification, filing and receipting of preliminary prospectuses and prospectuses will no longer be necessary and the Commission proposes to revoke these provisions. A table of concordance which indicates how each of the relevant sections in the Regulation, Ontario Securities Commission Policy 5.1 ("Policy 5.1"), Ontario Securities Commission Policy 5.7 ("Policy 5.7") and certain other existing instruments are to be treated in the proposed Rule, Prospectus Form and proposed Companion Policy will be published shortly.

In September 1998, the International Organization of Securities Commissions issued a set of international disclosure standards for use by companies in connection with cross-border public offerings and listings of equity securities. The proposed standards relate to non-financial statement disclosure requirements and do not address the issue of which bodies of accounting or auditing principles may be followed by the issuer in preparation of its financial statements. The Securities and Exchange Commission (the "SEC") has issued proposed changes to its disclosure requirements for foreign private issuers to conform to these standards. The Commission intends to review and monitor developments in this area and further changes may be made to the proposed Rule as a result.

**Substance and Purpose of Proposed Rule, Prospectus Form and Proposed Companion Policy**

**The Rule**

The substance and purpose of the proposed Rule are to consolidate in one place the requirements relating to the preparation, certification, filing and receipting of preliminary prospectuses and prospectuses. The proposed Rule is intended to contain basic prospectus requirements that may be supplemented by other rules dealing with requirements that apply to particular types of issuers (for example, mutual fund issuers) or that apply in particular circumstances (for example, rules relating to restricted shares or future oriented financial information). Section 1.1 of the proposed Rule expressly provides that all prospectuses must be prepared, certified and filed in accordance with the proposed Rule and the Prospectus Form. Therefore, if it is intended that a particular provision in the proposed Rule or Prospectus Form not apply to a particular issuer or in particular circumstances or that a different prospectus form be used, it will be necessary to expressly override that provision in another rule.

**The Prospectus Form**

The substance and purpose of the Prospectus Form are to consolidate existing Forms 12, 13 and 14 and restate the prospectus disclosure requirements from the Regulation, Policy 5.1 and Policy 5.7. The Prospectus Form rationalizes existing prospectus forms by eliminating duplication, avoiding the uncertainty that currently arises due to similarly but not identically worded items. Substantively different disclosure requirements for categories of issuer have been retained only if there is a sound policy basis for so doing, such as the special disclosure required in respect of natural resource issuers.

The Prospectus Form attempts to parallel, as closely as possible, the substantive disclosure obligations imposed on issuers qualified to file a prospectus in the form of a short form prospectus under proposed National Instrument 44-101 Short Form Prospectus Distributions ("National Instrument 44-101"). National Instrument 44-101 is being published for comment concurrently with the publication of this proposed Rule. National Instrument 44-101 will replace National Policy Statement No. 47, Prompt Offering Qualification System ("the POP Rule").

### **Companion Policy 41-501CP**

The substance and purpose of the proposed Companion Policy are to consolidate and update certain provisions in Policy 5.1, Policy 5.7 and the Accountants Manual that are not mandatory, to provide interpretive guidance as to certain of the provisions in the proposed Rule and Prospectus Form and to set out the Commission's views as to how certain of these provisions ought to be administered.

## **Summary of Changes to the Proposed Rule, Prospectus Form and Proposed Companion Policy**

### **Rule 41-501**

#### ***Definitions***

Part 2 of the proposed Rule is new. This Part includes definitions that had been contained in various places in the May Material and new definitions which deal primarily with financial matters and are discussed in more detail below. Sections 2.2, 2.3 and 2.4 include guidance on the interpretation of certain terms and provide, among other things, that unless otherwise stated in the proposed Rule, a reference to a prospectus includes a preliminary prospectus.

The definition of "approved rating organization" has been revised from the May Material to add Duff & Phelps Credit Rating Co., Fitch IBCA, Inc. and Thomson BankWatch, Inc., and to provide that successors to any approved rating organization would also be approved rating organizations. Staff at the Commission received and reviewed submissions from the new approved rating agencies. All three of these organizations are recognized by the SEC as "nationally recognized statistical rating organizations".

The proposed Rule includes a definition of "credit supporter" as a person or company that provides a guarantee or alternative credit support for any of the payments to be made by the issuer of securities as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities. "[A]lternative credit support" is also a new term which includes support for the payments to be made by an issuer that obliges a person or company to provide the issuer with funds to enable the issuer to make the stipulated payments.

#### ***General Requirements***

Part 3 of the proposed Rule sets out the general requirements as to the style, printing and legibility of prospectuses. A number of relatively minor changes have been made to this Part. Section 2.3 of the proposed Rule included in the May Material has been deleted as this is dealt with in the Prospectus Form. Other changes have been made to this Part to conform to the requirements of the System for Electronic Document Analysis and Retrieval ("SEDAR") Filer Manual.

#### ***Financial Statements of the Issuer and Credit Supporter***

Parts 4, 5 and 6 of the proposed Rule deal with financial matters and have been principally derived from sections 53 to 66 of the Regulation. A number of substantive changes have been made to the provisions of the May Material regarding financial disclosure.

Part 4 of the proposed Rule has been substantially revised in response to concerns raised by Commission staff that the age and date of the financial statements required in a long form prospectus should more closely parallel continuous disclosure requirements. In addition, the proposed Rule has been revised to change the financial disclosure requirements for a person or company that provides a guarantee or alternative credit support and for situations where the issuer has been involved in a business combination accounted for as a reverse take-over or a pooling of interests. The most significant changes from the May Material are as follows::

1. The financial disclosure requirements, with respect to the age of the financial statements required to be included in a prospectus, must be satisfied for both the preliminary and final prospectus. Currently the relevant date for determining what financial statements are to be included in a prospectus is the date of filing the preliminary prospectus. There is currently no statutory requirement to update the financial information in the final prospectus although staff practice has been to require this in most cases. This has been amended in the proposed Rule.
2. A preliminary or final prospectus filed within 90 days of the end of the issuer's fiscal year does not need to include financial statements for that recently completed financial year unless those financial statements have been approved by the Board, filed with the Commission or released to the public. Under the current requirements, a preliminary prospectus filed early in an issuer's new fiscal year must include financial statements for that recently completed year end or relief from this requirement

would have to be granted. Staff considered whether the prospectus disclosure requirement in this regard should be the same as the continuous disclosure requirement (ie: annual statements would be required to be included for any filing made more than 140 days after the fiscal year end). Ultimately, the Commission determined that potential investors should have the benefit of more current financial information on which to base an investment decision. For that reason, the Commission has suggested a 90 day period in the proposed Rule. Under the proposed Rule, in the event that an issuer does include annual financial statements for a financial year ended less than 90 days prior to the date of the prospectus, these statements are not required to be audited and may be included in substitution for financial statements for the most recent interim period;

3. Interim financial statements are to be included in a preliminary prospectus or final prospectus for any interim period ended more than 60 days prior to the date of the prospectus. This is a change from the current requirement to include interim financial statements prepared as at a date not more than 120 days prior to the date of the preliminary prospectus. Currently unless relief is provided, the interim statements are required to be audited if they are as at a date more than 90 days prior to the date of the preliminary prospectus. As reporting issuers are required under the Act to file interim financial statements within 60 days of the date to which they are made up, staff could see no justification for making the financial disclosure requirements for prospectuses less onerous than the continuous disclosure requirements.
4. If an issuer approves, files or releases annual or interim financial information for a period ended less than 90 or 60 days, respectively, prior to the date of the prospectus, the related annual or interim financial statements must be included in the prospectus.
5. The prospectus must include audited balance sheets for the issuer's two most recently completed fiscal years and a balance sheet as at the end of the interim period ended more than 60 days before the filing of the prospectus. The prospectus does not need to contain a balance sheet for the comparable interim period in the preceding financial year.
6. The financial reporting requirements have been amended to conform to proposed National Instrument 44-101 in the case of guaranteed offerings so that if a credit supporter has provided a guarantee or alternative credit support, financial statements of the credit supporter must be included in the prospectus. Where the guarantee or credit support is provided by a credit supporter that owns all of the issued and outstanding voting shares of the issuer, the issuer is not required to include its financial statements if
  - (a) in the case where the issuer has no operations or only minimal operations that are independent of the credit supporter, the prospectus contains a statement that the financial statements of the issuer are included in the consolidated financial statements of the credit supporter; and
  - (b) in the case where the issuer has more than minimal operations that are independent of the credit supporter, a summary of financial information of the issuer is included in a note to the financial statements of the credit supporter included in the prospectus.

This proposed approach is consistent with the proposed requirements under National Instrument 44-101 and proposals of the SEC for guaranteed securities. The Commission will continue to monitor developments in this area and in particular the progress of the recent proposals of the SEC regarding financial reporting requirements of issuers and guarantors of guaranteed securities.

### **Acquisitions**

Amendments have also been made to the provisions of the May Material governing the inclusion of financial statements of a "significant acquisition". In the May Material the Commission noted that it had considered SEC Release No. 33-7355; 34-37802; International Series Release No. 1021 dated October 10, 1996, which amended the existing provisions set forth in Rule 3-05(b) of Regulation S-X under the United States Securities Act of 1933 regarding inclusion of financial statements of acquired businesses (the "SEC Release").

Under the SEC Release, the extent of financial statement disclosure of an acquired business is determined not on the basis of whether the proceeds of the issue are to be applied to the acquisition, but instead on the basis of the significance of the acquisition to the business of the issuer determined by reference to a "sliding scale". The Commission chose not to adopt the "sliding scale" approach in the May Material although it did propose to adopt a materiality test as opposed to the existing use of proceeds test. Several commentators strongly recommended the approach used in the SEC Release as in their view it provides greater certainty and consistency. Accordingly, the provisions of Part 5 of the proposed Rule have been substantially revised to reflect, in principle, the SEC's approach.

#### **(a) Significant Acquisition Tests**

Section 2.2 of the proposed Rule provides that an acquisition of a business, an acquisition of related businesses, a probable acquisition of a business and a probable acquisition of related businesses will be considered a "significant acquisition" for purposes of the proposed Rule if the acquisition satisfies **any one** of the following conditions:

- the total consolidated assets of the business exceed 20 percent of the total consolidated assets of the issuer as at the date of the most recent balance sheet included in the prospectus (asset test)
- the issuer's proportionate share of the consolidated revenue of the business exceeds 20 percent of the total consolidated revenue of the issuer for the later of the most recently completed financial year of the issuer or the twelve months ended on the last day of the interim period of the issuer for which statements are included in the prospectus, but before giving effect to the acquisition (revenue test)
- the issuer's proportionate share of consolidated income from continuing operations of the business exceeds 20 percent of the income from continuing operations of the issuer on a consolidated basis for the later of the most recently completed financial year of the issuer or the twelve months ended on the last day of the interim period of the issuer for which statements are included in the prospectus but before giving effect to the acquisition. (income test)

A "probable acquisition of a business" is defined in the proposed Rule as a proposed acquisition of a business that has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high.

An "acquisition of related businesses" is defined as the acquisitions of two or more businesses if:

- (a) the businesses were under common control or management before the acquisitions were completed; or
- (b) each acquisition was conditional upon
  - (i) the completion of each other acquisition; or
  - (ii) the happening of one or more common events.

Financial statement disclosure requirements arise only with respect to significant acquisitions completed during the issuer's three most recently completed financial years or during the current financial year or significant acquisitions that are probable acquisitions.

**(b) Sliding Scale Approach**

The time period to be covered by the financial statements of the business varies depending on how significant the acquisition is to the issuer. The proposed Rule includes a sliding scale approach similar to the SEC rule where three years of financial statements must be included for the most significant acquisitions and only one year must be included for the least significant acquisitions.

The SEC rule recognizes that the importance of an acquisition is affected not just by the materiality of the acquisition but also the passage of time, and for this reason, the SEC rule permits the application of different percentages in the calculation to determine the number of fiscal years for which the historical financial statements of the acquired business are required to be presented. The SEC approach is as follows: (Note: Rule 3-05 uses the term "significant subsidiary", but for purposes of the proposed Rule the Commission is using the term "significant acquisition").

If any of the conditions for a

<u>Significant acquisition exceed</u>	<u>Include historical statements for</u>
20 percent but are less than 40 percent	1 year audited and any interim periods
40 percent but are less than 50 percent	2 years audited and any interim periods
50 percent or more	3 years audited and any interim periods

What this means is that the more material the acquisition, the more historical financial results that must be provided. The approach in the proposed Rule is essentially the same in this regard.

**(c) Acquisitions of "Major Significance"**

The SEC approach would require full inclusion of historical financial statements for 3 years if the acquisition was of "major significance". An example would be if a company acquired a business of major significance within the previous two years and is now

filing a prospectus. In this case, an additional year of historical financial statements of that acquired business would be required. The Commission is of the view that the benefit of providing the additional disclosure will offset the costs to the issuer. Section 5.6 of the proposed Rule provides that separate financial statements of an acquired business need not be included in a prospectus if the operating results of the business have been reflected in the audited financial statements of the issuer for a complete financial year unless the acquired business is so significant that the conditions specified in the definition would be satisfied if the 20 percent threshold was changed to 100 percent. This compares with the 80 percent threshold used by the SEC.

**(d) Aggregate Impact of Individually Insignificant Acquisitions**

Rule 3-05 states that if none of the conditions (significant acquisition test conditions) exceeds 20 percent, then financial statements are not required. However, if the aggregate impact of the individually insignificant businesses acquired exceeds 50 percent, financial statements covering at least the substantial majority of the businesses acquired must be provided. SEC staff informally indicated that "substantial" means "at least 50 percent". Similarly, section 5.7 of the proposed Rule requires this disclosure and stipulates that the requirement should be interpreted with reference to the relevant condition in the definition of significant acquisition.

**(e) Differences Between Proposed Rule and SEC Approach**

As noted above, the Commission has attempted to parallel the SEC approach to business acquisition disclosure in principle. The main aspects of the SEC's approach have been incorporated into the proposed Rule and proposed Companion Policy, whereas certain other aspects have not for a variety of reasons discussed below. The Commission's rationale for not adopting certain aspects of the SEC's regime is as follows:

1. SEC's Continuous Disclosure Regime for Business Acquisitions

On a continuous disclosure basis, the SEC requires business acquisition disclosure similar to that prescribed in the proposed Rule and proposed Companion Policy. As a result of this, the SEC provides relief from filing, in a registration statement (i.e. prospectus), business acquisition disclosure relating to acquisitions that have been consummated less than 75 days prior to filing the registration statement and to probable acquisitions if these recent and probable acquisitions are below a 50 percent threshold, on the basis that the financial statement disclosure would be provided on a continuous disclosure basis within 75 days of the consummation of the business acquisition. The Commission discussed this approach but was not comfortable, in the absence of a similar continuous disclosure regime in Canada for business acquisitions, omitting the requirement to file these financial statements.

The SEC rules require a registrant filing a prospectus to perform the significant acquisition tests on acquisitions only in its most recently completed year and its current year whereas the proposed Rule requires issuers to perform the tests on acquisitions in any of its three most recently completed years in addition to its current year, though relief is provided in a number of scenarios. Again, the reason for this difference is to address the fact that a parallel continuous disclosure regime for business acquisition disclosure does not exist.

In the event that a continuous disclosure regime for business acquisitions is adopted by the Commission, these areas will be reconsidered.

2. Simplicity and Relevance

In the Commission's view, the SEC's approach in some areas is overly complex and may result, from time to time, in the inclusion of information that is not significant at the time the prospectus is filed. The Commission has attempted to simplify to some extent the SEC's regime by requiring that the significance test be performed based on the most recent financial statements included in the prospectus rather than on the most recent financial statements prior to the acquisition. This is to ensure that the acquisitions that meet the significance tests continue to be material for purposes of the current prospectus.

In addition, the Commission has adopted a "revenue" test as one of the significance tests for its simplicity and effectiveness rather than the SEC's "investment in and advances to" test. The Commission has also increased the SEC's "major significance" test from 80 percent to 100 percent to trigger disclosure for only those acquisitions which would, in effect, have to provide "issuer level" disclosure of three years of historical financial statements.

The Commission also decided to provide a definition of "probable acquisition of a business" given the difficulty experienced in practice by both staff and issuers with the disclosure relating to these acquisitions.

3. Foreign GAAP and GAAS

The Commission has not provided an exemption similar to the SEC from the requirement to reconcile foreign GAAP to Canadian GAAP where the acquisition is below the 30 percent level nor has it permitted the earliest of the three required years of financial statements not to be reconciled. In addition, the Commission is proposing a new requirement that a letter from the auditor be filed

with the Commission that discusses the auditor's expertise to reconcile foreign GAAP to Canadian GAAP and to make the determination that the foreign GAAS used is substantially equivalent to Canadian GAAS. Though the SEC does not have a similar requirement, the Commission decided that this information was relevant to the decision of whether the financial statements were adequate for the purposes of Ontario investors.

4. Small Business Issuers

The Commission has not included an exemption similar to that of the SEC where if revenues are below \$25 million for the earliest of three years the financial statements for that year are not required to be included in the prospectus on the basis that the Commission, along with the Canadian Securities Administrators ("CSA"), is considering and is asking for comment on a proposed "Junior Issuer Carve-Out" as discussed below under "Specific Requests for Comment".

5. Pro forma Financial Statements, Comfort and Consent Letters

There are several areas where the SEC's requirements and U.S. practice in general are different than the requirements and practice in Canada. These areas include *pro forma* financial statements and the permissible *pro forma* adjustments and the requirement to file comfort and consent letters. Though comments on these areas were received, the Commission is not proposing changes at this time. However, Commission staff is representing the CSA as an observer on a CICA Task Force, "Prospectuses", that is considering these issues, among other matters. The Commission will consider with its CSA colleagues the recommendations of the Task Force in making any future changes to the instruments.

**GAAP, Auditor's Report and Audit Committee Review**

**(a) Foreign GAAP**

Section 6.1 of the proposed Rule deals with generally accepted accounting principles ("GAAP") and in particular, the use of foreign GAAP in preparing financial statements for an issuer incorporated or organized in a foreign jurisdiction. This provision has been changed from the May Material in response to comments received. Section 6.1 of the proposed Rule now permits non-Canadian issuers to use foreign GAAP. Foreign GAAP is defined in the proposed Rule as a body of generally accepted accounting principles that are as comprehensive as Canadian GAAP. The notes to the financial statements must include a reconciliation to Canadian GAAP which describes the effect of material differences that relate to measurements and provides disclosure consistent with Canadian GAAP. Pursuant to subsection 9.9(3) of the proposed Rule, issuers including financial statements prepared in accordance with foreign GAAP must file a letter from the auditor discussing the auditor's expertise to reconcile foreign GAAP to Canadian GAAP. Section 4.1 of the proposed Companion Policy provides some guidance as to what is meant by "as comprehensive as Canadian GAAP".

**(b) Foreign GAAS**

Subsection 6.1(2) of the proposed Rule has been substantially revised from the May Material to permit a foreign auditor's report in certain circumstances. A "foreign auditor's report" is defined in the proposed Rule as a report of an auditor that is prepared in accordance with foreign GAAS. Foreign GAAS is defined in the proposed Rule as a body of generally accepted auditing standards that are substantially equivalent to Canadian GAAS. The foreign auditor's report must be accompanied by a statement by the auditor confirming that the auditing standards applied are substantially equivalent to Canadian GAAS and commenting to Canadian readers on any material differences in the form and content of the foreign auditor's report as compared to the Canadian auditor's report. Under subsection 9.9(3) of the proposed Rule, issuers including a foreign auditor's report in a prospectus must file a letter from the auditor discussing the auditor's expertise to make the determination that foreign GAAS is substantially equivalent to Canadian GAAS. The proposed Companion Policy includes some guidance as to the interpretation of "substantially equivalent".

**(c) Audit Committee Review**

Section 6.3 has been added in response to a comment received. This section restates a requirement, currently in the Regulations, that financial statements included in a prospectus must have been reviewed by the audit committee of the issuer's board of directors, if the issuer is required to have an audit committee.

**Non-Fixed Price Offerings and Reduction of Offering Price Under a Prospectus**

Part 7 of the proposed Rule deals with non-fixed price offerings and the reduction of the offering price under a prospectus. Section 7.1 has been amended to conform to the approach taken in National Instrument 44-101 to no longer require an approved rating, merely a rating. In addition, this section has been amended to permit any securities to be offered at a non-fixed price, not just debt and preferred shares.

**Certification**

Part 8 of the proposed Rule deals with certification of prospectuses. In response to comments, the proposed Rule does not include a requirement that board approval of financial statements be evidenced by manually executed balance sheets.

The requirement regarding certification by credit supporters has been changed in the proposed Rule so that only related credit supporters are required to certify the prospectus. A related credit supporter is defined as a credit supporter that is an affiliate of the issuer. For a number of years the Canadian securities regulatory authorities have permitted third party guarantors of securities offered under the POP system to sign a modified issuer certificate which restricts guarantor certification to matters relating to the "guaranteed facility" and the "guarantor". It is not clear that this restricted certificate limits the guarantor's liability in the intended manner. The proposed change permits a third party to guarantee a prospectus offering without certifying the disclosure in the prospectus; however, the guarantor or credit supporter must file a consent and will be exposed to liability for disclosure in the prospectus concerning it.



### **General Requirements as to Filing**

#### **(a) Documents to be Delivered With Preliminary Prospectus and Prospectus**

Part 9 of the proposed Rule deals with matters relating to the filing of preliminary prospectuses and prospectuses. A new section (9.1) has been added to stipulate that in Part 9 of the Rule, a reference to prospectus does not include a preliminary prospectus. A number of changes have been made to sections 9.2 and 9.4 to reflect the requirements of SEDAR, specifically to delete filing requirements that are already dealt with in SEDAR. A new section (9.3) has been added which requires an issuer that has natural resource properties to file the technical reports and certificates required under National Instrument 43-101 Standards of Disclosure for Mineral Exploration and Development and Mining Properties and an issuer that has oil and gas operations to file a technical report and certificate on each property material to the issuer prepared in accordance with National Policy No. 2-B or any successor instrument thereto. These technical reports are to be filed with the preliminary prospectus.

#### **(b) Material Contracts**

Section 9.6 of the proposed Rule requires issuers to make available copies of certain material contracts. This section is consistent with current requirements. A new provision has been added requiring that an issuer file, unless previously filed, all material contracts creating or materially affecting the rights or obligations of holders of securities being distributed on or before the issuer files a preliminary prospectus or a prospectus.

#### **(c) Consent of Experts**

Section 9.7 of the proposed Rule requires the filing of the consent of experts named in the prospectus. A new provision has been added that states that these filing requirements do not apply to an approved rating organization named as issuing a rating or a provisional rating used in connection with a prospectus. This new provision is consistent with the provisions of proposed National Instrument 44-101.

#### **(d) Auditor's Communications**

Section 9.9 of the proposed Rule sets out the requirements for auditor's communications. This section has been revised in response to comments received and staff concerns that the communications received should be in the form required by the CICA. In addition as noted above, a new provision has been added to require, in the situation where financial statements included in the prospectus have been prepared in accordance with foreign GAAP or include a foreign auditor's report, the filing of a letter from the auditor outlining the auditor's expertise to reconcile foreign GAAP to Canadian GAAP and to make the determination that foreign GAAS is substantially equivalent to Canadian GAAS.

#### **(e) Prospectus Amendments**

The section of the May Material dealing with the deletion of warrants or conversion features between the preliminary and final prospectus and the section which mandated a ten day waiting period after the filing of an amendment in connection with a material adverse change have been deleted as it was determined that these were unnecessary in light of section 57 of the Act.

### **Receipts**

Part 10 of the proposed Rule concerns procedures and requirements for granting receipts. Certain provisions of the May Material have been deleted from the proposed Rule as they deal with disclosure matters covered in the Prospectus Form.

### **Form 41-501F1**

The Prospectus Form was prepared with a view to establishing one form of prospectus for use by all types of issuers, other than issuers for which a different form of prospectus is prescribed. The Prospectus Form includes virtually all of the disclosure requirements currently found in the Regulations, the forms, Policy 5.1 and Policy 5.7. In this regard the Prospectus Form (i) eliminates unnecessary differences in wording between Forms 12, 13 and 14, as well as differing substantive requirements that are not justified on a policy basis, (ii) parallels the substantive disclosure obligations imposed on POP eligible issuers in the short form prospectus and documents incorporated by reference, (iii) re-orders the items to more closely reflect the order in which they generally appear in long-form prospectuses (without actually requiring that any particular order be followed), and (iv) provides more extensive instructions, including General Instructions at the beginning of the Prospectus Form, to provide greater assistance in the preparation of prospectuses.

A number of changes have been made to the Prospectus Form to conform to changes made to the proposed Rule and also to conform to proposed National Instrument 44-101. In addition, changes have been made to the Prospectus Form in response to comments as noted below in the discussion of comments.

Changes have also been made to the Prospectus Form to respond to issues that have arisen on recent prospectus filings and at Commission hearings. One change is with regard to disclosure concerning penalties, sanctions and judgements against directors and officers. The May Material included a requirement to disclose if a director or officer had been the subject of any penalties, judgements or sanctions imposed by a court or regulator relating to trading in securities, promotion or management of a public company or fraud or theft. This disclosure requirement has been broadened in a number of ways. Issuers will be required to disclose **any** penalties or sanctions imposed against a director or officer and also against a **promoter or controlling shareholder** which would be likely to be considered important to a reasonable investor making an investment decision.

### **Companion Policy 41-501CP**

The proposed Companion Policy has been revised to reflect changes made to the proposed Rule.

#### ***General Requirements***

Section 1.2 of the proposed Companion Policy has been revised to incorporate the plain language approach to drafting adopted by the SEC. The statutory standard is quite clear in requiring "full, true and plain" disclosure to be provided in a prospectus. However, the Commission is supportive of efforts to make prospectuses easier to read and so has provided some guidance on this subject in the proposed Companion Policy. In particular, this section now includes a list of plain language principles to be used, as much as possible, in preparing a prospectus.

Section 1.6 of the proposed Companion Policy has been revised to include a discussion as to required disclosure with regard to selling securityholders where they are numerous and each selling a small number of securities.

Section 1.7 of the proposed Companion Policy is a new section that has been added in response to comments raised covering the disclosure requirements of Item 10.6 of the Form; that item has been deleted in the Prospectus Form.

#### ***Financial Matters***

Part 2 of the proposed Companion Policy has been significantly revised to discuss the changes made to the proposed Rule. It has also been revised to offer guidance on the interpretation of certain terms and concepts in Part 4 of the proposed Rule. In particular, section 2.1 of the proposed Companion Policy states that issuers that have not existed for three years that have been involved in a business combination accounted for as a reverse take-over or pooling of interests should refer to Canadian GAAP requirements in determining which combining entities' historical financial statements to use for purposes of complying with the annual and interim statement requirements of the proposed Rule. In addition, section 2.2 of the proposed Companion Policy provides guidance on the circumstances in which relief from the three year reporting requirement may be granted. Section 4.1 includes guidance as to the Commission's view of what they consider when determining whether foreign GAAP is as comprehensive as Canadian GAAP for purposes of paragraph 6.1(2)(b) of the proposed Rule. In addition, section 4.3 of the proposed Companion Policy discusses the interpretation of "substantially equivalent" for purposes of determining whether foreign GAAS may be used. In section 4.3 of the proposed Companion Policy, issuers are cautioned that although the proposed Rule permits flexibility in the choice of foreign GAAS and auditors, the Commission may still have concerns with the acceptability of a particular auditor and a receipt may not be granted if the auditor is not acceptable to the Director.

#### ***Definition of Business***

Additional guidance was requested by commentators on what constitutes a business for purposes of the proposed Rule and proposed Companion Policy. In practice, the Commission has looked to the SEC rules in this area for guidance and so concluded that it was appropriate to adopt similar guidance in the proposed Companion Policy. The SEC considers the continuity of the business operations of the acquired entity to be a significant factor in determining whether a "business" has been acquired. Rule 11-01 of Regulation S-X provides some guidance for determining when a component of an entity may constitute a *business*. The SEC rule states that a "business" should be evaluated in light of the facts and circumstances involved and whether there is sufficient continuity of the acquired entity's operations prior to and after the transaction that would indicate whether disclosure of historical financial information is material to an understanding of future operations.

The SEC rule suggests that a presumption exists that a separate entity, a subsidiary, or a division constitutes a business. However, it also suggests a number of factors which should be considered in trying to evaluate whether an acquisition of a lesser component of an entity constitutes a business. Section 3.2 of the proposed Companion Policy includes a discussion of some factors to consider regarding whether an acquisition constitutes an acquisition of a business including:

- Whether the nature of the revenue-producing activity of the component will remain generally the same as before the transaction;

- Whether any of the physical facilities, employees, marketing, systems, sales forces, customers, operating rights, production techniques or trade names are acquired by the issuer.

### **General Requirement As to Filing and Amendments**

Section 5.3 is a new section in the proposed Companion Policy which discusses the distinction made in the Act between material that is filed and material that is delivered. Under section 140 of the Act, material that is required to be filed under Ontario securities law shall be made available for public inspection unless the Commission decides under section 140(2), with regard to material required to be filed under the Act, that it should be held in confidence. Material that is delivered is not required under the Act to be made available to the public.

Sections 5.7, 5.8, 5.9 and 5.11 of the proposed Companion Policy are new sections each dealing with different aspects of the filing and receipting of amendments to prospectuses. Staff receives a great number of inquiries about the situations in which the obligation to file an amendment arise. It is hoped that these new provisions will answer some of the frequently asked questions. Section 6.3 of the proposed Companion Policy is also a new provision related to amendments. This section states the Commission's view that the 90 day period prescribed for the raising of funds on a best efforts financing does not restart if an amendment to the prospectus is filed.

Section 5.10 of the proposed Companion Policy is a new section concerning distributions in situations in which a confidential material change report is on file with any securities regulatory authority. The distribution is to cease until the material change has been generally disclosed or the circumstances giving rise to the confidential material change report have changed and accordingly is no longer a material change. This provision has been added to be consistent with the POP Rule which has included this restriction for some time.

### **Specific Requests for Comment**

#### **(a) Proposed Treatment of Junior Issuers**

The CSA are currently considering whether it would be appropriate to provide some relief from the financial disclosure requirements for issuers whose revenue, assets, shareholders' equity and market capitalization were under \$5 million as at the end of the issuer's most recently completed financial year ("Junior Issuers"). In particular, they are contemplating permitting a Junior Issuer to include in a prospectus audited financial statements for only its most recent year end and unaudited financial statements for the two previous years, with a comfort letter, in lieu of three years of audited financial statements required by the proposed Rule. The same approach would be applied to significant acquisitions that Junior Issuers undertake provided that after the acquisition the size tests continue to be met by the issuer. The Commission specifically requests comments on this proposal.

#### **(b) Disclosure of Annual Financial Statements**

The proposed Rule provides that a preliminary prospectus filed within 90 days of the end of the issuer's financial year does not need to include financial statements for that year unless those financial statements have been approved by the Board, filed with the Commission or released to the public. The Commission welcomes comments concerning the 90 day period proposed. This approach is consistent with the Commission's intention to amend the continuous disclosure annual financial statement filing deadline from 140 days to 90 days. This would bring the deadline into line with the annual filing requirements of the SEC.

#### **(c) Financial Statement Disclosure for Credit Supporters**

As noted above, the financial reporting requirements have been amended to require financial statements of a credit supporter to be included in the prospectus. In the event that the guarantee or credit support is provided by a person or company that is related to the issuer, it will be unnecessary to include full financial statements of the issuer. The proposed approach is consistent with the proposals of the SEC. Comments on the extent to which this approach should be amended to adopt the approach of the SEC which requires condensed consolidated information rather than merely summarized information are welcome.

#### **(d) Financial Statement Disclosure for Significant Acquisitions**

Part 5 of the proposed Rule sets out the requirements for inclusion of financial statements of "significant acquisitions". These provisions have been substantially revised to reflect, in principle, the SEC's approach. Comments are welcomed on the extent to which the Commission has achieved the benefits of the SEC's approach in terms of greater certainty and consistency without excessive costs or unnecessary complexity.

#### **(e) Definition of Probable Acquisition**

The Commission has included a definition of "probable acquisition" in the proposed Rule. Comment is specifically sought on whether the proposed definition will be helpful in determining which proposed acquisitions are caught by the proposed Rule.

Interested parties are invited to make written submissions with respect to the proposed Rule, the Prospectus Form and the proposed Companion Policy. Submissions received by September 23, 1999 will be considered.

Submissions should be sent in duplicate to:

Daniel P. Iggers, Secretary  
Ontario Securities Commission  
20 Queen Street West  
Suite 800, Box 55  
Toronto, Ontario M5H 3S8

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

Questions may be referred to:

Susan Wolburgh Jenah  
General Counsel  
Ontario Securities Commission  
(416) 593-8245

Kathy Soden  
Director Corporate Finance  
Ontario Securities Commission  
(416) 593-8149

Julie Bertoia  
Senior Accountant, Corporate Finance  
Ontario Securities Commission  
(416) 593-8083

Rossana Di Lieto  
Legal Counsel, General Counsel's Office  
Ontario Securities Commission  
(416) 593-8106

### **Regulations to be Revoked**

The Commission proposes to revoke the following provisions in the Regulation:

- (i) Sections 33 to 66, inclusive; and
- (ii) Sections 80 to 82, inclusive.

### **Proposed Rule, Prospectus Form and Proposed Companion Policy**

The text of each of the proposed Rule, Prospectus Form and proposed Companion Policy follows, together with footnotes that are not part of the proposed Rule, Prospectus Form or proposed Companion Policy, but which have been included to provide background and explanation.

**DATED: July 23, 1999.**

**APPENDIX A**

1. Aur Resources Inc. by letter dated August 15, 1997.
2. Osler, Hoskin & Harcourt by letter dated September 2, 1997.
3. Duguay & Ringler by letter dated August 29, 1997.
4. Fasken Campbell Godfrey by letter dated September 2, 1997.
5. Aird & Berlis by letter dated August 29, 1997.
6. DBO Dunwoody by letter dated September 19, 1997.
7. KPMG by letter dated September 17, 1997.
8. Financial Executives Institute Canada by letter dated October 27, 1997.
9. Blake, Cassels & Graydon by letter dated September 16, 1997.
10. Coopers & Lybrand by letter dated October 31, 1997.

## APPENDIX B

### SUMMARY OF WRITTEN COMMENTS RECEIVED ON THE PROPOSED RULE, PROSPECTUS FORM AND PROPOSED COMPANION POLICY AND RESPONSES OF THE COMMISSION

The comment period on the May Material expired on September 2, 1997. The Commission received submissions from ten commentators. The commentators are listed in Appendix A to the Notice.

A long period of time has elapsed since the long form instruments were originally published for comment. The delay has been primarily caused by a decision to reconsider the financial disclosure requirements for acquisitions in light of a number of comments raised. That reconsideration also coincided with a review by the CSA of the Accountants Manual which impacted on the long form prospectus requirements in Part 4 of the proposed Rule. As a result of this ongoing CSA harmonization effort, we understand that notices regarding the long form prospectus instruments are being published for comment in certain other CSA jurisdictions. In addition, as it is intended that the proposed Rule, proposed Companion Policy and Prospectus Form parallel to the extent possible the substantive provisions of National Instrument 44-101, it was decided that these long form prospectus instruments would be revised and the comments addressed when the National Instrument was being revised. This has also resulted in a significant delay in republishing the long form instruments. Staff is satisfied, however that this delay was necessary.

#### Discussion of General Comments

There were several comments raised concerning changes which should be made to reflect the fact that SEDAR has been implemented. The Commission is generally in agreement with the comments raised and a number of changes have been made to the proposed Rule and proposed Companion Policy to reflect the implementation of SEDAR. For example, the requirement to deliver to the Commission an unsigned copy of the prospectus has been removed since a copy will be filed electronically through SEDAR. Similarly, the requirement to provide the issuer's CUSIP number has been eliminated since it is included in the issuer's SEDAR profile.

One commentator suggested that hopefully this proposal is an intermediate step in the process of adopting a fully integrated disclosure system, where common disclosure elements are set forth in one rule, and cross-referenced from the various disclosure rules and forms, regardless of whether the rules or forms relate to primary issues of securities or ongoing continuous disclosure relating to secondary trading of securities. The Commission agrees that the proposed Rule is a first step towards what will hopefully become in the future a more fully integrated disclosure system.

#### Specific Comments

##### **A. Rule 41-501**

##### **Financial Matters**

#### Financial Statements of the Issuer or Credit Supporter

##### *(i) Three Year Requirement*

One commentator indicated a general agreement with the reduction of the previous requirement for five years of financial statements. This commentator also suggested that it may be appropriate to take action with respect to the financial statement requirements of small businesses in the proposed Rule. The commentator noted that the requirements are somewhat more restrictive than those in the United States where a small business is required to have only one year of audited financial statements.

As described in the Notice, the Commission is considering, with the CSA, whether and to what extent regulatory requirements should be relaxed as they apply to Junior Issuers. This is consistent with the recommendations of the staff committee formed to review the Task Force on Small Business Financing Report proposals. Comments are specifically requested on a proposal to permit Junior Issuers to provide only one year of audited financial results and two years of unaudited results, with a comfort letter.

##### *(ii) Predecessor Business*

One commentator indicated that as it is common practice for a new company to be established to either acquire an existing business of another party or to be the vehicle for taking public the operations of an existing company, the rule should prescribe the financial statement requirements for the related "predecessor" business. This is done in the United States by defining a predecessor and then making the general financial statement requirements also applicable to the predecessor.

The Commission agrees with this comment and has added provisions to the proposed Rule and the proposed Companion Policy in this regard.

*(iii) Exemptive Relief*

One commentator indicated that it would be helpful to include in the proposed Companion Policy a list of criteria that would be considered by staff in an application to include less than three years of historical financial statements (along the lines of what is currently set out in section 3 of the Accountants Manual).

Some of the discussion which is currently included in the Accountants Manual is now contained in section 2.2 of the proposed Companion Policy. Section 2.2 indicates that the Commission will only provide relief from the three year requirement if the circumstances strongly warrant a reduction for reasons not related to time or money. Some examples from the Accountants Manual have been included. In addition, as described in the Notice, the Accountants Manual is in the process of being revised and updated and most importantly harmonized across the CSA. Additional guidance will be made available in the Accountants Manual or possibly in the proposed Companion Policy, hopefully by the time the proposed Rule is finalized.

*(iv) Balance Sheet*

One commentator suggested that the wording be amended to conform to the current practice of requiring the prospectus to contain audited balance sheets of the issuer for its two most recently completed fiscal years. The commentator was of the view that the wording of the provision was not clear.

As well, the commentator suggested that subsection 3.1(1) of the proposed Rule in the May Material should be revised. Subsection 3.1(1) permitted a prospectus to contain a balance sheet as of a date other than the issuer's fiscal year end, and required a comparative balance sheet as of the corresponding date of the previous fiscal year. Technically, this could have resulted in a prospectus containing two balance sheets, neither of which was as of the issuer's fiscal year end. Subsection 3.1(2) permitted the alternative of presenting the two most recently completed fiscal years in lieu of the comparative balance sheet required by subsection 3.1(1). The commentator suggested that this was the most useful information.

The Commission agrees that the provision should be revised and consequently it now requires an interim balance sheet and a comparative year end balance sheet. The alternative of including comparative interim balance sheets has been eliminated.

*(v) Financial Statements of Credit Supporter*

One commentator noted that the May Material required financial statements for all guarantors even where the guarantor was a subsidiary whose financial statements were consolidated into the issuer. The commentator was of the view that such a requirement is excessive and that sufficient information would be provided through requiring disclosure of summarized financial information of the subsidiary and information regarding restrictions on the ability to move funds from the subsidiary to the parent. The commentator suggested that the U.S. rules in this area were more complete and could be useful as guidance.

The Commission has made a number of changes to the guarantor requirements, as noted above. The requirements are consistent with the current U.S. approach. Comments are requested on the extent to which the recent proposals of the SEC in this area should be adopted.

Business Acquisition Disclosure

*(i) Definition of a Business*

One commentator indicated that more guidance was necessary regarding the determination as to whether a "business" has been acquired or merely a collection of assets that does not constitute a "business". In particular, the commentator suggested that the Commission should reconsider whether in fact, a "business" has been acquired in circumstances in which natural resource properties are acquired by an issuer. In some situations staff at the Commission has taken the approach that the acquisition of resource properties constitutes the acquisition of a "business", and as a result has required the prospectus of the acquiror to contain audited financial information about the properties notwithstanding the fact that it contains other information such as an engineer's report.

The Commission agrees with this comment and, as noted in the Notice, has provided some guidance in the proposed Companion Policy in this regard.

*(ii) Comments in Favour of SEC Sliding Scale Approach*

Several commentators agreed that the requirement for financial statements of an acquired business should be based on the materiality of the acquisition as opposed to the "use of proceeds" test. They were of the view that an approach similar to the "sliding

scale” used by the SEC should be adopted. The reason given was that unless materiality is very clearly defined and specific measures given, there will be instances where staff’s view of what is material could vary from the view of the issuer and its advisers. In addition, these commentators thought it seemed reasonable that the information required by the potential investors would vary depending on the materiality of the acquisition.

At the time amendments were made to the provisions governing the inclusion of financial statements of an acquired business, the Commission considered and rejected the possibility of adopting the SEC Rule 3-05 on the basis that the current disclosure requirement based on materiality appeared to work well. However, several commentators stated that there is a need for a precise measure of materiality which would result in an objective and consistent application of the rule. They submitted that the SEC requirements are more objective, result in less ambiguity in application and are more consistently applied. As discussed in the Notice, the Commission has agreed to adopt certain aspects of SEC Rule 3-05.

(iii) SEC System of Continuous Disclosure

In the United States, once an issuer becomes a “registrant”, it is required to comply with the continuous disclosure requirements under the Exchange Act. This is similar to the Ontario system which imposes certain continuous disclosure requirements on reporting issuers. However, one of the main differences between Canada and the United States is in the area of business acquisitions disclosure. In Canada, an issuer is only subject to business acquisitions disclosure when filing a prospectus. In the United States, a registrant must comply with Rule 3-05 on a continuous disclosure basis. So, in other words, if an SEC registrant has a material acquisition, it must comply with proposed Rule 3-05 which may mean providing historical financial statements of the acquired business as part of its continuous reporting requirements. (10-K, 10-Q, 8-K, etc.)

The Commission will be giving some consideration to continuous disclosure obligations in respect of reporting issuers and business acquisitions in the context of moving towards a more integrated disclosure regime. However, at the current time, the Commission is only proceeding with changes to the requirements at the time of filing a prospectus.

Pro Forma Statements

Two commentators noted that there should be a requirement for pro forma information regarding the stub period financial statements of the issuer. This is consistent with the requirements in the United States. The Commission agrees that a pro forma income statement is required for the most recent year end and for any interim periods and that a pro forma balance sheet as of the date of the most recent interim financial statements is required (same as U.S. Rule 11.02).

One commentator suggested that it might be inferred from the May Material that only one year of pro forma information can be provided. That commentator suggested that the proposed Rule should be more explicit in this regard. In the Commission’s view Staff Accounting Communique No. 9 addresses this issue.

One commentator suggested that the reference to underlying assumptions and events seemed circular and was adequately stated elsewhere. The Commission agrees and this reference has been deleted.

(i) Pro Forma Statement of Changes in Financial Position

One commentator suggested that the requirement for a pro forma statement of changes in financial position should be deleted. This statement is not required in practice now. The Commission agrees and the requirement has been deleted.

(ii) Pro Forma Basic and Pro Forma Diluted

One commentator suggested that the terms “pro forma basic” and “pro forma fully diluted” have specific meanings in section 3500 of the CICA Handbook which appear inconsistent with their usage here. The commentator suggested that they would either not include any requirement with regard to earnings per share or have only a very general one indicating that earnings per share data should be provided for the pro forma statements. In addition the “pro forma combined financial statements” were improperly described. They suggested deleting the word combined.

The Commission is of the view that there should be a general requirement indicating that earnings per share data should be provided for pro forma financial statements. The Commission agrees that the word combined should be deleted and the requirement to provide fully diluted earnings per share should be deleted.

Foreign GAAP

One commentator indicated that its members were divided on the issue of GAAP reconciliation. Some were of the view that the Commission should only accept financial statements prepared in accordance with Canadian GAAP in order to improve comparability and user understanding, while others believed the Commission should accept either Canadian GAAP or US GAAP financial

statements without a reconciliation requirement. If the Commission were to decide to accept US GAAP financial statements without reconciliation, the commentator suggested that the Commission would have to be willing to accept financial statements prepared in accordance with International Accounting Standards ("IASC") without reconciliation when IASC GAAP reaches an appropriate level of quality and coverage.

One commentator noted that it appeared that staff decided to defer consideration of the issue of whether to allow the use of international or U.S. GAAP. The commentator noted that although it did not appear to make sense to hold up development of this material until the issue was resolved, it is unfortunate that the debate could not be held now.

The proposed Rule provides that the financial statements of a foreign issuer may be prepared in accordance with foreign GAAP provided that the notes to the financial statements explain and quantify the effect of material measurement differences between Canadian and foreign GAAP and provide disclosure consistent with Canadian GAAP. In addition, issuers including financial statements prepared in accordance with foreign GAAP in a prospectus must file a letter from the auditor discussing the auditor's expertise to reconcile foreign GAAP to Canadian GAAP.

One commentator noted that reference was made to "generally accepted accounting principles of ... a province or territory of Canada." Since GAAP exists only on a national level, the reference to province or territory should be deleted. The Commission agrees with this suggestion.

One commentator indicated that a common issue is whether the financial statements of a foreign acquired business need to be reconciled to Canadian GAAP. The proposed Rule should be explicit in requiring such reconciliation. As noted above, this provision of the proposed Rule has been revised to make it clear that all financial statements included in a prospectus need to be reconciled to Canadian GAAP.

#### Foreign GAAS and Foreign Auditor's Reports

Three commentators discussed the requirement to include a Canadian auditors report. The rule in the May Material required a Canadian auditor's report even on financial statements that are not prepared in accordance with Canadian GAAP. It was not clear that a Canadian auditor could provide a report on financial statements which are not prepared in accordance with Canadian GAAP.

This section has been revised and broadened. It now provides that an auditor's report for an issuer incorporated in another jurisdiction may be a foreign auditor's report if the body of auditing standards applied is substantially equivalent to Canadian GAAS. However, additional requirements have been added that the auditor's report must be accompanied by a statement attesting to the substantial equivalence of foreign GAAS and Canadian GAAS and that a letter be provided from the auditor setting out its expertise to make that determination.

#### Other

##### (i) Dilution

Two commentators indicated that dilution disclosure should be retained since it provides investors with an indicator to assess their investment.

One commentator noted that the Commission should allow disclosure of the dilution calculation using both tangible book values and total book values, including intangible assets. The commentator further asked for a clear definition of "intangible assets".

The Commission is of the view that the dilution calculation does not provide investors with particularly useful information with which to assess their investment and accordingly will not require a dilution calculation.

##### (ii) Formality

One commentator expressed concern about the consequences of having the financial statement requirements in a rule given the exemption process described in Part 11 of the proposed Rule. The concern was that any non-compliance would necessitate a need to obtain a formal exemption. This may result in the need for a significant number of formal requests with time and costs involved.

The Commission has attempted to ensure that the exemption process will not be overly formal and should in fact be no different than the current practice. In most instances, the receipt for the prospectus will evidence approval of the application.

#### **Non-Fixed Price and Reduced Price Offerings**

One commentator suggested that the definition of an "approved rating organization" include the phrase "or any entity that is a successor thereto". The Commission agrees with this suggestion. The definition of "approved rating organization" has been amended to include new entities based on submissions received by these organizations.

## **Certification**

One commentator suggested that no certificate in a prospectus should be required. Instead clauses 130(b) and 130(e) of the Act should be revised so that any person's liability is determined by whether such person is in fact an underwriter that is in a contractual relationship with the issuer or selling securityholder or a chief executive officer, chief financial officer, promoter or guarantor, rather than by the presence or absence of a certificate.

The commentator suggested that if the Act cannot be amended, then the proposed Rule or proposed Companion Policy could deem that filing a SEDAR Certificate of Authorization constitutes compliance with the requirements of sections 58 or 59. At a minimum, there should be no requirement for signed certificates in a preliminary prospectus since no liability attaches to a preliminary prospectus. In the alternative, either the certifying language could be revised under a separate heading, although not requiring actual signature, or the certifying language could be included in the purchaser's statutory rights section.

The Commission is not able to make the suggested changes to the Act in this process.

One commentator did not agree with the Commission's proposal to do away with the current requirement in section 64 of the Regulation to have the issuer's audit committee, where such a committee exists, review the financial statements included in that prospectus, prior to their approval by the issuer's board of directors. The commentator noted that the approval of the financial statements and the audit of these statements occurs at the audit committee meetings. The approval by the board is generally more perfunctory. The commentator was of the view that companies should be required to go through the rigour of having their financial statements reviewed by an audit committee notwithstanding that this is more of a corporate governance issue.

The Commission agrees that it is valuable for companies to go through the rigour of having their financial statements reviewed by an audit committee and has decided to retain the requirement.

Two commentators indicated that manually executed balance sheets should not be required. They suggested that there be a requirement that the financial statements have been approved by the issuer but no requirement that they physically be signed. The Commission agrees and the requirement has been deleted.

Two commentators noted that the reference to the date of the certificates should be "on or within three business days before (rather than after) the date of filing the preliminary prospectus. The Commission agrees and has made this change.

## **Certificate of Guarantor**

One commentator noted that the proposed Companion Policy in the May Material acknowledged that a guarantor may be permitted to sign a different form of certificate. The commentator suggested some language to reflect this provision. As discussed above, the proposed Rule has been revised to provide that a certificate will only be required to be provided by a related credit supporter. Credit supporters that are not related will provide a consent so that their liability will be triggered by and limited to the matters referred to in S.130(1)(d) of the Act.

## **Documents to be Delivered with Preliminary Prospectus**

One commentator suggested that it should not be necessary to file reports in relation to producing properties of an issuer. The commentator was of the view that it is unclear what is added by having an independent geologist or other expert provide a report on such a property. The commentator noted that the auditors of the issuer will have audited the production revenues, etc. and the only area where independent verification could provide any significant comfort would be as to the calculation of the as yet unmined ore reserves. The commentator suggested that perhaps the requirement could only apply to properties that have been in production for less than two or three years and hence do not have an established track record.

Section 9.3 of the proposed Rule conforms with the requirements of proposed National Instrument 43-101, which will replace National Policy Statement 2-A. The new National Instrument requires reports in relation to producing properties.

One commentator suggested that it would be helpful to include a checklist to the documents to be delivered to the Commission at the time of filing a prospectus.

The Commission is of the view that since SEDAR has a checklist, a checklist under this provision would not be necessary.

## **French Version**

One commentator suggested that the French version be filed in SEDAR with the Commission at the same time that it is filed with the Quebec Securities Commission. In the Commission's view, the filing requirements under this local rule should be tied to distributions in Ontario. Accordingly, no change has been made to the requirement to file the French version before it is used in Ontario.

### **Filing of Material Contracts**

One commentator noted that this section requires an issuer to make available all material contracts referred to in the prospectus. The commentator suggested it would be more practical to mirror the requirement found in OSC Policy 9.1 relating to the provision of valuation reports and require that a copy of the relevant contract be sent to any interested party upon payment, if required by the issuer, of a nominal charge to cover printing and postage.

The Commission is of the view that it would be preferable to have the contracts available for viewing free of charge during the duration of the distribution. In addition, certain material contracts by virtue of being filed with the Commission and so placed on the public file, will be accessible even after the distribution is complete.

### **Consent of Experts**

One commentator expressed concern that the requirement for an auditor to include in his consent letter "negative assurance" regarding misrepresentations in the prospectus conflicts with the current standards of the auditing profession. The CICA has adopted Standards for Assurance Engagements which states, among other things, that in undertaking an engagement to provide a written communication expressing a conclusion concerning a subject matter, the auditor should identify criteria that are suitable for evaluation of the subject matter. The commentator was of the view that the terms "misrepresentation" and "material fact" are not definitions which meet the CICA's stringent requirements regarding "criteria".

The commentator further stated that the problem was compounded because once this assurance has been given to staff of the Commission it is difficult to avoid giving the same assurances to underwriters, underwriters' counsel and directors of the issuer either in the form of a comfort letter or in answer to questions at underwriters due diligence meetings. The concern expressed was that underwriters' counsel and directors may not have an appreciation of the relatively low level of assurance the auditor is providing in these circumstances. Accordingly, the commentator suggested alternatives to requiring a comfort letter.

In addition, the commentator was concerned about staff's occasional request to include a review engagement report in a prospectus.

The Commission is not considering changes to the auditor's consent requirement at this time. However, Commission staff is representing the CSA as an observer on a CICA Task Force "Prospectuses" that is considering the issue of consent letters, among other issues.

The Commission, along with the CSA, is considering whether requiring review engagement reports to be included in a prospectus would cause investors to place undue reliance on the financial statements as a result of a lack of understanding of "negative assurance". Ontario staff practice has been to only require a review engagement report to be included in a prospectus where staff have provided relief from the requirement to provide audited financial statements by accepting review level assurance. Other CSA jurisdictions have different practices. As a result, this issue is currently under discussion by the CSA group reviewing the Accountants Manual in the hopes of reaching a consensus on the matter.

### **Auditor's Communications**

One commentator indicated that a reference should also be made to cash flows of the issuer. The Commission agrees with this change.

One commentator noted that it would be more appropriate to have the auditor file a comfort letter rather than the issuer. The Commission is of the view that although the auditor prepares the letter it is actually filed by the issuer at the time the other information is filed via SEDAR.

### **International Offerings**

One commentator submitted that although they understood the logic of extending the requirement for filing a submission to jurisdiction and appointment of agent for service to include selling securityholders and promoters, this new requirement may cause difficulties in circumstances where an offering of securities by an overseas issuer is being extended to both the United States and Canada. In the United States such a requirement applies only to the issuer and not the other named entities. In the commentator's opinion there may be reluctance to extend an offering to Canada if requirements are more onerous than in the United States. The commentator suggested that the proposed Companion Policy include a statement that the Commission would favourably entertain applications for exemption from this requirement with respect to an offering of securities of an overseas issuer which is extended to both the United States and Canada.

The Commission does not agree that the submission to jurisdiction should be limited. In the Commission's view, it is reasonable that these individuals and companies should submit to the jurisdiction. The proposed requirement to submit to the jurisdiction was modified from the current requirement which, in many respects, was more onerous than the new requirement since it required general partners of limited partnerships and certain others to submit to jurisdiction.

**Amendments**

A comment was raised that it is not clear why in the case of an amended and restated preliminary prospectus it is necessary to refer back to the date of the original preliminary prospectus. The Commission agrees with this comment and this section has been revised.

## **Waiting Period**

One commentator noted that the policy rationale for mandating a ten day waiting period after the receipt for an amended preliminary prospectus was not clear.

The Commission agrees with this comment and has removed the provision in the proposed Rule regarding the ten day waiting period. This change does not, of course, affect section 57 of the Act which does impose a waiting period in certain situations.

## **Procedures and Requirements for Granting Receipts**

Two commentators noted that the rule in the May Material stated that only Canadian chartered banks and trust companies would be acceptable depositories for the receipt of funds during a distribution period. The view was that this unnecessarily restricted the group that could provide this service resulting in higher financing costs. The commentators suggested that the issue could be dealt with through disclosure in the prospectus and relying on the fiduciary responsibility of the directors to ensure that the funds are protected and that as a practical matter, most cheques are made payable to the underwriters who safeguard the assets of their clients.

The Commission agrees that the provision was too restrictive and is of the view that funds should be able to be held by a depository who is a registrant. In many instances the funds do not even leave the client's account until the minimum is obtained and accordingly the costs of involving a bank or trust company to hold the funds are not warranted. In the Commission's view, underwriters are regulated and are accustomed to handling the assets of their clients. Furthermore, some protection is provided through the Canadian Investor Protection Fund. The requirement concerning acceptable depositories is included in the Prospectus Form and is not reproduced in the proposed Rule.

## **Exemption Power**

One commentator noted that the general exempting power of the Director in Part 11 of the proposed Rule to permit non-compliant disclosure would be more flexible and simpler than specific references in certain sections to the discretion of the Director. The commentator hoped however that the removal of these references would not result in reluctance by issuers to seek the exemptions where appropriate. The Commission agrees with this comment. It is not intended that the system be more rigid.

## **Evidence of Exemption**

Two commentators noted that it was unclear why a prospectus receipt should be evidence of the granting of an exemption only if the exemption is sought "on or before the date the preliminary prospectus was filed". The commentators suggested that some leeway for the application of this provision would be appropriate if the exemption application was made on or before ten business days prior to filing of the final prospectus.

The Commission has revised subsection 11.2(2) of the proposed Rule to provide that an exemption may be evidenced by issuance of a receipt only if the person or company that sought the exemption either (i) sent the requisite letter or memorandum to the Director on or before the date the preliminary prospectus or the amendment to the prospectus was filed, or (ii) sent the requisite letter or memorandum to the Director after the preliminary prospectus was filed if the issuer receives a written acknowledgement from the Director that the exemption may be evidenced by a receipt; and the Director has not sent notice to the contrary to the person or company that sought the exemption before or concurrently with, the issuance of the receipt.

## **B. Companion Policy**

### **General Comments**

One commentator suggested that the Commission consider incorporating into the proposed Companion Policy the guidance found in the Staff Accounting Communiqués (SACs) and the Accountants Manual. The commentator found the guidance in the SACs and the Accountants Manual to be very helpful in advising clients regarding the form and content of proposed prospectuses. As well, the commentator suggested that the Commission implement procedures to periodically update the proposed Companion Policy as new issues emerge.

Similarly, one commentator noted that the guidance found in section 10 of the Accountants Manual should be carried forward into the proposed Companion Policy as it is helpful to issuers in applying the acquired business rules. As well, guidance was requested on the issue of materiality.

The Commission agrees that certain parts of the Accountants Manual should be moved into the proposed Companion Policy. In particular, the provisions of the Accountants Manual dealing with applications for exemption from the requirement to include three years of financial statements, some of the business acquisition guidance and the material on earnings coverage have been included

in the proposed Companion Policy or Form. As noted above, the Accountants Manual is being revised and harmonized across the CSA and where appropriate, certain parts of the Accountants Manual have been included in the long form instruments.

## **Specific Comments**

### Filings Soon After Year End

One commentator submitted that issuers who file shortly after their year end will have difficulty satisfying the requirement of the proposed Rule that financial statements in respect of the most recently completed financial year be included in a prospectus. The commentator suggested an automatic exemption should be granted to those issuers who filed their preliminary prospectus within a certain time period (for example, thirty days) after their year end (with either nine month or twelve month unaudited statements) on the condition that the audited twelve month statements be included in the final prospectus. Issuers filing a prospectus after such period would be required to include audited statements or to apply for relief under Part 11 of the proposed Rule .

The Commission agrees with this comment and the proposed Rule has been changed in this regard as noted above, to permit issuers filing in the first 90 days of a financial year not to include financial statements for the most recently completed financial year.

### Acquisitions

Two commentators indicated that more explicit guidance should be provided concerning materiality. Materiality should be determined in the context of the issuer's overall financial position. The Commission agrees with this comment and is of the view that the changes to the business acquisition disclosure section of the proposed Rule address the need for more certainty.

### Pro Forma Financial Information

One commentator indicated that the proposed Companion Policy should be clarified concerning whether pro forma financial information can be prepared only at a date other than the financial year end if considerable time has elapsed or significant events have occurred since that date or whether such information would be in addition to the pro forma information required as at the financial year end. This requirement has been clarified in the proposed Rule and the provision has been deleted from the proposed Companion Policy.

### Full, True and Plain Disclosure

One commentator noted that sections of the May Material refer to "full, true and plain disclosure". The commentator suggested that the term "fair disclosure" would be more relevant and understandable to those who prepare and use financial statements.

The phrase "full, true and plain disclosure" is based on language contained in the Act which the Commission is not proposing to alter. Accordingly, the references in the proposed Rule, proposed Companion Policy and Prospectus Form have not been amended.

## **C. *Prospectus Form***

### Item 1 - Cover Page Disclosure

One commentator suggested a number of deletions from the mandated front page disclosure. The commentator was of the view that the Prospectus Form in the May Material required too much information to be disclosed in detail on the front page. The cover page is a prospective investor's introduction to the offering, the issuer and the securities, and the commentator was of the view that investors would be better served by a simple, uncluttered, "plain English" cover page. One commentator specifically suggested that the reason for a selling securityholder not bearing any of the offering expenses need not be on the face page.

In light of these comments, certain requirements for face page disclosure have been deleted.

### Item 1.3 - Basic Disclosure about the Distribution

One commentator indicated that it is unclear why it is necessary to mandate that the prospectus describe the offering as "Initial Public Offering", "New Issue" or "Secondary Offering". This list is not exhaustive and they recommended deleting this requirement. In the Commission's view, information concerning the type of issue is useful to investors. Some flexibility will be given concerning wording which has the same meaning.

### Item 1.4(2) - Distribution

One commentator indicated that they do not understand the necessity of qualifying the over-allotment option under the prospectus as the exemption under clause 72(1)(r) can be relied upon for the grant of over allotment options. Further, as the primary reason

for qualifying the option would be to qualify the underlying shares, since the proposed Rule contemplates qualifying the underlying shares, there does not appear to be any reason to qualify the option as well.

As a result of proposed Rule 48-502, the exemption under clause 72(1)(r) will not be available for the granting of over-allotment options. Instead Rule 48-502 denies the availability of clause 72(1)(r), but provides an exemption subject to certain conditions. One of these conditions requires disclosure and qualification of the option and the shares under the prospectus.

#### Item 1.6 - Reduced Price Distributions

One commentator noted that the required disclosure relating to a possible reduction in price was unclear. Does it require that an amended prospectus be filed in order to offer the securities at a reduced price? If not, how can the parties know in advance that the required disclosure should be included in the prospectus. As well, the commentator suggested the reference in this section to "initial public offering price" should be changed to "the price initially negotiated for the offering" since otherwise it could be read as applying only to initial public offerings.

In the Commission's view, although underwriters won't know necessarily if they may want to reduce the price in a particular offering, by including the disclosure they will have the option of doing so without having to file an amendment. The reference to the "initial public offering price" has been changed to "the initial offering price" in recognition that a reduction in price may occur in other types of offerings.

#### Item 1.7 - Market for Securities

One commentator suggested that disclosure concerning application to list the securities did not need to be on the cover page of the prospectus and could be dealt with in the proposed Companion Policy. The commentator was also of the view that confirmation from a foreign stock exchange relating to the status of the listing application should not be required.

The Prospectus Form does not require confirmation from any exchange to be sent to the Commission. Disclosure in the prospectus about the status of the application is all that is required. The Commission agrees that this disclosure does not need to be on the cover page of the prospectus.

#### Item 3 - Summary of Prospectus

One commentator suggested that disclosure of the prescribed financial information in the summary would be largely irrelevant for most junior issuers, particularly in the resource section and should not be mandatory disclosure in the summary. More generally, the commentator noted that the disclosure to be put in the prospectus summary area would be best left to the discretion of the issuer and the underwriters.

In the Commission's view certain information should appear in the summary section and no change has been made.

#### Item 4.2 - Intercorporate Relationships

One commentator noted that instruction (b) eliminates the revenue test in determining materiality of subsidiaries but maintains the asset test. The commentator noted that the revenue test would be more appropriate. The Commission agrees that the revenue test is relevant, and has revised the instruction to Item 4.2 of the Prospectus Form to reflect both asset and revenue tests, as well as an aggregate test that refers to both the asset and revenue components.

#### Item 5.1 - General Development of the Business

One commentator submitted that presumably the disclosure items listed need not be disclosed if they are immaterial. The commentator suggested that item 5 of the general instruction should be amended to make it clear that, to the extent the disclosure is immaterial the disclosure need not be made.

Although the Commission considered putting in a blanket statement about excluding disclosure if it is immaterial, the Commission notes that some items require disclosure even if the information is not material.

One commentator noted that the content for industry segment disclosure should be improved for clarification and to recognize the recent CICA and FASB standards. They recommended terminology such as "reportable segments" rather than "material" and "dominant" segments. They also recommended eliminating the requirements to disclose research and development expenditures, exploration and development expenditures, and the impacts of environmental protection requirements. In the commentator's view these apply to limited industry segments and can be costly to determine.

The Commission agrees with this comment and the Prospectus Form now requires that the issuer include major events or conditions that have influenced the general development of the business of the issuer.

Item 6 - Narrative Description of the Business

One commentator suggested that if the requirement to disclose the impact on operations of the “extent to which the business of the segment is seasonal” remains, guidance should be provided for issuers. For example, while the Commission is asking for disclosure on seasonality, is cyclical the real issue being addressed? The Commission has revised the provision to refer to both seasonal and cyclical factors.

Item 8 - Selected Consolidated Financial Information and Management's Discussion and Analysis

Summary financial information is required to be included both in the summary and in the body of a prospectus. Although this is a common practice, it is an addition to the previous requirements. One commentator suggested that a cross-reference contained in the summary to the summary financial information in the body of the prospectus should satisfy the requirements. The Commission is of the view that the summary financial information should be included in the summary rather than a cross-reference.

One commentator suggested that there be some elaboration of the term "total long term financial liabilities" (which has replaced "total long term debt"). The Commission is of the view that "total long term financial liabilities" is the appropriate Handbook term.

One commentator noted that instruction (4) under Item 8.1 requires the summary financial information to contain reconciliation notes and presumed a reference to the reconciliation notes in the financial statements would satisfy this requirement. In the Commission's view, a cross-reference to the reconciliation notes is sufficient.

Subsection 8.1(2) - Discussion of Last Eight Quarters

Subsection 8.1(2) of the Prospectus Form in the May Material required certain information "for each of the issuer's last eight quarters" to be disclosed. One commentator noted that this information may not be readily available for new issuers and recommended that it not be required for new reporting issuers.

Another commentator suggested that the Commission reconsider the application of this rule to initial public offerings.

In the Commission's view, the general exemption mechanism set out in Part 11 of the proposed Rule should be adequate to deal with this matter. Issuers who are unable to comply with the requirement would be able to apply for relief.

Item 8.3 - Management's Discussion and Analysis

One commentator noted that the requirement in Item 8.3 that the MD&A should relate to the issuer's last three financial years is subject to confusion. For example, it is not clear whether the rule would require a comparison for 1997 compared to 1996 and 1996 to 1995 or whether it would also require a comparison of 1995 to 1994. This section has been revised to make it clear that it is just the two discussions that are needed.

A comment was made that if unaudited interim financial statements are included in the prospectus the proposed Rule should clarify whether the MD&A should discuss the current interim period compared to the comparative interim period.

The wording of Item 8.6 of the Prospectus Form has been revised to clarify what is required for MD&A disclosure. MD&A disclosure is required for interim period financial statements included in a prospectus.

Item 9 - Earnings Coverage Ratios

One commentator noted that the method of calculating earnings coverage should be considered. Item 9 of the Prospectus Form in the May Material required that an adjustment be made for long-term financial liabilities to be repaid or redeemed from the proceeds of the issued securities. It does not allow imputed interest income from proceeds to be considered nor does it allow for coverage based on "pro forma" income. The commentator was of the view that this results in earnings coverage which bears no relationship to the actual coverage which will be achieved when the proceeds are put into use.

One commentator expressed concern that the instructions to Item 9.1 could produce potentially misleading earnings coverage ratios in certain circumstances. These instructions state that earnings coverage ratios shall be based on earnings and interest expense as determined by GAAP. The commentator was concerned that the earnings coverage ratios based on GAAP may be misleading because they do not take into account the complexity of modern financial instruments and complex corporate structures. The commentator recommended that the instruction and the proposed Companion Policy discuss the problem of calculating earnings coverage ratios when complex financial instruments are included in the calculation or when complex corporate structures affect the flow of funds between the issuer and its subsidiaries and should encourage or require supplementary coverage ratios.

A description of how to calculate earnings coverage which was in the Accountants Manual has been included in the instructions to the Prospectus Form. As well, the instructions indicate that supplemental disclosure may be included if the source is disclosed and it is not given greater prominence than the required earnings coverage calculations.

Item 10 - Description of the Securities Distributed

A comment was made that Item 10 in effect provides that in circumstances where the offered security is convertible or exchangeable for securities of another issuer, that full prospectus-type disclosure in its entirety be provided as regards to the other issuer. The commentator noted that if this was intended the requirements should be specified in more detail.

The Commission has agreed to delete the Item from the Prospectus Form. A general statement has been added, however, into the proposed Companion Policy as to the requirement for a prospectus to contain full, true and plain disclosure of all material facts relating to the securities being offered and reminds issuers that this standard may require that disclosure be included concerning the underlying security in appropriate circumstances.

Paragraph 10.1(1)(h) - Liability Regarding Shares

Paragraph (h) requires a description of "liability to further calls or to an assessment by the issuer" in respect of shares. One commentator noted that although it may be appropriate for certain foreign incorporated issuers, modern corporate statutes in Canada provide that validly issued shares are not assessable under corporate law. Accordingly, this requirement may not be necessary.

This requirement has been deleted from this list of description of securities as it is not an attribute of the security; however, as such a provision is material, it should be described in the prospectus.

Item 11 - Consolidated Capitalization

One commentator submitted that although they agreed that a consolidated capitalization table should no longer be required in a prospectus, since underwriters often ask issuers to put it in, it may still be presented voluntarily. Accordingly, the commentator recommended that the Commission include in item 11, or in the proposed Companion Policy, the current instructions found in item 7 of Form 12 regarding the presentation of a table of consolidated capitalization.

The Commission does not believe that it is necessary to set out instructions for a capitalization table that is voluntarily included. Presumably the form and content of this voluntary disclosure can be left to the discretion of the issuer and the underwriters.

Item 12 - Options to Purchase Securities

One commentator submitted that a separate item containing this disclosure is not justified. For named executive officers, an investor will obtain most of the information in the Executive Compensation section. For options granted under a stock option plan for a TSE/ME listed company, the plan will contain standard limits on grants to insiders. For directors and executive officers as a group, option holdings could be added to disclosure under Item 15. For others the option holdings are typically minimum. The only options likely disclosable under paragraph 12.1(e) could be disclosed under the Plan of Distribution for underwriters' options, and as a footnote under Consolidated Capitalization for any remaining options.

Another commentator stated that options disclosure varies greatly. Some issuers provide the number of options available for exercise at an average price, and the number of options "in the money" and "not in the money". This commentator recommended that the Commission consider expansion of the required disclosure of options to capture this information which is very relevant to understanding the likely dilution of equity.

The Commission is of the view that the disclosure should be provided since it is relevant to dilution. However, it is not necessary to provide more detailed disclosure. Therefore, no change has been made.

Item 13 - Prior Sales

One commentator indicated that selling securityholder prior sales are already covered under Item 15 which may be the more logical place for disclosure. Therefore, the commentator suggested deleting this requirement from Item 13.

The Commission is of the view that Item 15 deals with acquisitions by a selling securityholder and not dispositions as in Item 13 therefore, no change has been made.

Item 15 - Principal Shareholders and Selling Securityholders

One commentator indicated that the issuer should have discretion as to whether or not to disclose the required information in tabular form. In many circumstances it would be preferable to simply disclose the required information in a sentence. A similar comment also applies to Item 14.

The Commission agrees with this comment and a change has been made to the Prospectus Form so that the information need not be disclosed in tabular form.

Instruction 1 requires disclosure of the principal shareholders of principal shareholders of the issuer. Disclosure would therefore be required where the underlying principal shareholder's indirect interest in the issuer could be as little as 1 percent. The commentator suggested that the requirement could be limited to non-reporting issuer principal shareholders.

The Commission has decided to retain the provision.

Instructions 4 and 5 to Item 15.1 address the issue of arrangements relating to control and/or management of an issuer but is perhaps worded too narrowly. One commentator suggested that the instructions be written to generally require disclosure of details of agreements which do or could materially affect control and/or management of the issuer.

The instructions have been revised to reflect this comment.

#### Item 16 - Directors and Officers

One commentator noted that the requirements of paragraph 15.1(b) and item 16.1 overlap. Paragraph 15.1(b) should be eliminated. Note also the use of "senior" officers in Item 15.1 versus "executive officers" elsewhere (eg. Items 16, 17, 18 and 23). The Commission agrees with this comment and the duplication has been removed. As well, the reference is now to executive officers.

One commentator noted that there should be no obligation to provide this information in tabular form, particularly given the Form 40 disclosure required under Item 17 Executive Compensation. The Commission agrees that tabular form should not be required in all cases and the wording has been revised.

One commentator suggested limiting disclosure under this heading to executive officers. It is unclear why separate information needs to be disclosed for officers, senior officers and executive officers. The Commission agrees and the term "executive officer" will be used.

One commentator noted that the instruction repeats the existing requirement that the first and current position held "be disclosed". The commentator was of the view that disclosure of the first position is somewhat irrelevant and should be replaced by simply referring to employment with the issuer "in prior capacities" prior to the individual's current position. The Commission agrees with this suggestion and has revised the instruction to require only a discussion of the current position held.

#### Item 17 - Executive Compensation

One commentator noted that there is substantial overlap between Item 12 and Item 17 - Executive Compensation in that items III and IV of Form 40 deal with options held by executive officers. It would make sense to delete this Item given the Form 40 requirements and the fact that the notes to the financial statements give detailed information as to potential share dilution.

The Commission agrees that there is some overlap, however, for the reasons noted above under Item 12, believes that it is important to retain both requirements.

It is unclear if small business issuers are required to include the Form 40 item VI disclosure (this disclosure is not required under item XIII of Form 40). The Commission agrees that this should not be required.

A few comments were received concerning Form 40 that will be considered at a future date.

#### Item 18 - Indebtedness of Directors and Executive Officers

One commentator stated that the required disclosure is overkill and should be subject to some materiality parameters (the fact that it is required disclosure for an information circular does not in itself mean that it is appropriate prospectus disclosure). The Commission is of the view that no distinction should be drawn between the requirements in an information circular versus a prospectus.

#### Item 19 - Plan of Distribution

Comments were received that there should be changes made to Item 19.6 concerning the requirement to hold funds in escrow that are raised for a new business which is subject to material licensing or registration. The suggestion is that these funds would be better maintained and protected by a broker, lawyer or other competent entity knowledgeable in escrow requirements. The requirement that only trust companies and banks can hold these funds introduces another layer of administrative burden and cost.

The Commission is of the view that brokers should be permitted to hold funds in escrow in these circumstances and has revised the relevant provisions of the Prospectus Form.

#### Item 20 - Risk Factors

One commentator questioned the appropriateness of specifying matters to be discussed. For example "reliance on key personnel" is relevant for every issuer. It would be more appropriate to have this item instruct the issuer to disclose the more pertinent risks but not provide a list of generic risk factors which due to their length are largely ignored.

Also, the commentator indicated that ordering the risk disclosure in order of significance would often be impractical and could be unwieldy as it is often preferable to group together certain types of risks.

Changes have been made to this item in response to these comments.

Item 24 - Relationship between Issuer or Selling Securityholder and Underwriter

A comment was made that, while recognizing that the substantive requirements of this disclosure will ultimately reflect a separate instrument that is not yet finalized, this disclosure does not merit a separate section in a prospectus, and should be able to be disclosed as a subsection of "Plan of Distribution".

The Commission disagrees with this comment and is of the view that this disclosure should be set out in a separate section.

Item 25 - Credit Support

One commentator indicated that the Commission may wish to consider including the disclosure regarding the guarantor under Item 20 (Risk Factors) to the list and deleting the disclosure required under Item 6 (Description of Property), Item 16 (Directors and Officers) and perhaps Item 5 (Business of the Issuer).

This Item is consistent with the approach taken in proposed National Instrument 44-101. The Commission is of the view that having a separate item relating to credit supporters is preferable.

Item 30 - Other Material Facts

One commentator asked whether the requirement should be to give particulars of any material facts about the issuer as well as material facts "about the securities". Since the wording of this section tracks the wording in subsection 56(1) of the Act, the Commission is of the view that the current wording is sufficient.

One commentator suggested that the certificate language should be recast in plain English. The Commission is not currently considering this amendment since it would require an amendment to the Act.

**Proposed Rule 41-501**  
**General Prospectus Requirements**

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**ONTARIO SECURITIES COMMISSION RULE 41-501  
GENERAL PROSPECTUS REQUIREMENTS**

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**ONTARIO SECURITIES COMMISSION RULE 41-501  
GENERAL PROSPECTUS REQUIREMENTS<sup>1</sup>**

**PART 1 FORM OF PROSPECTUS**

- 1.1 Form of Prospectus** - Except as otherwise provided in the regulations or an exemption to the regulations, a prospectus shall be
- (a) prepared in accordance with Form 41-501F1 and this Rule; and
  - (b) certified and filed in accordance with this Rule.
- 1.2 Pro Forma Prospectus** - Except as otherwise provided in the regulations, a *pro forma* prospectus shall be prepared in accordance with Form 41-501F1 and this Rule.

**PART 2 DEFINITIONS AND INTERPRETATIONS**

**2.1 Definitions** - In this Rule

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

- (a) the businesses were under common control or management before the acquisitions were completed; or
- (b) each acquisition was conditional upon
  - (i) the completion of each other acquisition, or
  - (ii) the happening of one or more common events;<sup>2</sup>

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

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

"approved rating organization" means each of CBRS Inc., Dominion Bond Rating Service Limited, Duff & Phelps Credit Rating Co., Fitch IBCA, Inc., Moody's Investors Service, Inc., Standard & Poor's Corporation, Thomson Bankwatch, Inc. and any of their successors;<sup>3</sup>

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<sup>1</sup> The proposed 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. The proposed Rule was originally published for comment on May 2, 1997 in 20 OSCB (Supp) 3 (the "Original Proposal"). In view of the number of comments received concerning the Original Proposal and the resulting changes that have been made, the proposed Rule is being republished for comment. References to "the proposed Rule" refer to the republished Rule and not to the Original Proposal.

A general definition rule has been adopted as Rule 14-501 Definitions. It contains definitions of certain terms used in more than one rule. Rule 14-501 also provides, among other things, that terms used in a rule and defined or interpreted 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. Rule 14-501 also incorporates terms defined in subsection 1.1(3) of National Instrument 14-101 Definitions. National Instrument 14-101 contains, among other things, definitions for terms used in more than one national instrument.

Footnotes included in the Original Proposal have generally not been repeated here.

<sup>2</sup> This definition is new and has been added because the term is used in Part 5.

<sup>3</sup> This definition has been expanded to include Duff & Phelps Credit Rating Co., Fitch IBCA, Inc. and Thomson Bankwatch, Inc.



"auditor's report" means

- (a) a Canadian auditor's report<sup>4</sup>, or
- (b) in the case of an issuer incorporated or organized in a foreign jurisdiction
  - (i) a Canadian auditor's report, or
  - (ii) a foreign auditor's report;

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

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

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

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

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

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

"probable acquisition of a business" means a proposed acquisition of a business that has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high<sup>5</sup>;

"probable acquisition of related businesses" means the proposed acquisitions of two or more businesses that have progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high and

- (a) the businesses are under common control or management; or
- (b) each acquisition is conditional upon
  - (i) the completion of each other acquisition, or
  - (ii) the happening of one or more common events<sup>6</sup>; and

"related credit supporter" for an issuer, means a credit supporter of the issuer that is an affiliate of the issuer.

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<sup>4</sup> The term "Canadian auditor's report" is defined in National Instrument 14-101 Definitions. The definition is "an auditor's report prepared in accordance with Canadian GAAS". The term "Canadian GAAS" is also defined in National Instrument 14-101 Definitions. The definition is "generally accepted auditing standards determined with reference to the Handbook". Handbook is defined in National Instrument 14-101 Definitions to mean "the handbook of the Canadian Institute of Chartered Accountants, as amended from time to time".

<sup>5</sup> This definition is new and has been added because the term is used in Part 5.

<sup>6</sup> This definition is new and has been added because the term is used in Part 5.

## 2.2 Significant Acquisitions<sup>7</sup>

- (1) For the purposes of this Rule, an acquisition of a business, an acquisition of related businesses, a probable acquisition of a business or a probable acquisition of related businesses is a significant acquisition, if it satisfies any of the following conditions:
  1. The total consolidated assets of the business or related businesses exceed 20 percent of the consolidated assets of the issuer as at the date of the most recent balance sheet of the issuer included in the prospectus, before giving effect to the acquisition.
  2. The issuer's proportionate share of the consolidated revenue of the business or the related businesses for the later of
    - (a) the most recently completed financial year of the business or the related businesses that ended more than 90 days before the date of the prospectus, and
    - (b) the 12 months ended on the last day of the most recently completed interim period of the business or related business that ended more than 60 days before the date of the prospectus,exceeds 20 percent of the total consolidated revenue of the issuer for the later of the most recently completed financial year or the 12 months ended on the last day of the most recently completed interim period of the issuer for which statements are included in the prospectus, but before giving effect to the acquisition.
  3. The issuer's proportionate share of the consolidated income from continuing operations of the business or the related businesses for the later of
    - (a) the most recently completed financial year of the business or the related businesses that ended more than 90 days before the date of the prospectus, and
    - (b) the 12 months ended on the last day of the most recently completed interim period of the business or related businesses that ended more than 60 days before the date of the prospectus,exceeds 20 percent of the income from continuing operations of the issuer on a consolidated basis for the later of the most recently completed financial year or the 12 months ended on the last day of the most recently completed interim period of the issuer for which statements are included in the prospectus, before giving effect to the acquisition.
- (2) In determining whether an acquisition of related businesses or a probable acquisition of related businesses is a significant acquisition, the related businesses shall be considered on a combined basis.
- (3) For purposes of paragraph 3 of subsection (1), if the income from continuing operations of the issuer on a consolidated basis for the most recent 12 months is lower by 20 percent or more than the average consolidated income from continuing operations of the issuer for the two previous financial years as shown in its financial statements, excluding any years in which the issuer incurred a loss, the average consolidated income for those two financial years shall be substituted in determining whether the condition set out in paragraph 3 of subsection (1) is satisfied.

## 2.3 Probable Acquisitions<sup>8</sup>

- (1) The term "probable acquisition" refers to both a probable acquisition of a business and a probable acquisition of related businesses.
- (2) The term "significant probable acquisition" refers to a probable acquisition of a business and a probable acquisition of related businesses that is a significant acquisition under section 2.2.

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<sup>7</sup> This Section is new and has been added in light of Part 5.

<sup>8</sup> This Section is new and has been added in light of Part 5.

- 2.4 Interpretation of "Prospectus"** - In this Rule, unless otherwise stated, a reference to a prospectus includes a preliminary prospectus.

**PART 3 GENERAL REQUIREMENTS**

- 3.1 Effective Date** - A prospectus shall be prepared in accordance with the Ontario securities law in effect

- (a) if the prospectus is a *pro forma* prospectus filed under section 62 of the Act, at the date of the *pro forma* prospectus; or
- (b) otherwise, at the issuer's option either the date of issuance of a receipt for
  - (i) the preliminary prospectus, or
  - (ii) the prospectus.

**3.2 Style of Prospectus**

- (1) Except as otherwise provided in a required form of prospectus or the regulations, the information contained in a prospectus shall be in narrative form.
- (2) A prospectus shall include descriptive headings.
- (3) A prospectus shall include a table of contents.
- (4) Except for information that appears in a summary, information required by more than one item of a required form of prospectus need not be repeated.
- (5) Despite subsection (1), a prospectus may contain graphs, photographs, maps, artwork or other forms of illustration, if relevant to the business of the issuer or the distribution and not misleading.

**PART 4 FINANCIAL STATEMENTS OF THE ISSUER AND CREDIT SUPPORTER**

**4.1 Annual Financial Statements of the Issuer**

- (1) Subject to subsections 4.1(2) and 4.5(2), an issuer shall include in its prospectus the following annual financial statements of the issuer:
  - 1. Income statements for
    - (a) each of the three most recently completed financial years ended more than 90 days before the date of the prospectus; or
    - (b) such shorter period, ended more than 90 days before the date of the prospectus, as the issuer has been in existence.
  - 2. Cash flow statements for each of the financial periods for which income statements are included under paragraph 1.
  - 3. A balance sheet as at
    - (a) the most recent financial year end ended more than 90 days before the date of the prospectus; and
    - (b) the immediately preceding financial year end.
- (2) An issuer that has changed its financial year end during any of its three most recently completed financial years may omit the financial statements required under subsection (1) for the year in which the year end changed if the issuer includes audited financial statements for a period of at least nine months of the financial year.

**4.2 Interim Financial Statements of the Issuer** - Subject to section 4.3 and subsection 4.5(2), an issuer shall include in its prospectus the following interim financial statements of the issuer:

1. An income statement for the most recently completed interim period that ended more than 60 days before the date of the prospectus and for the comparable period in the immediately preceding financial year.
2. A cash flow statement for both of the periods referred to in paragraph 1.
3. A balance sheet<sup>9</sup> as at the date on which the most recent interim period referred to in paragraph 1 ended.

**4.3 Additional Financial Statements Approved, Filed or Released**

- (1) An issuer shall include in its prospectus annual and interim financial statements of the issuer for a financial period more recent than the periods for which financial statements are required under sections 4.1 or 4.2 if, before the prospectus is filed
  - (a) the issuer's board of directors has approved the statements for the more recent period;
  - (b) the statements for the more recent period have been filed; or
  - (c) the financial statements for the more recent period or selected information from those statements have been released to the public.
- (2) If annual financial statements are required under subsection (1) for a financial year ended less than 90 days before the date of the prospectus, an issuer may omit from the prospectus the financial statements for the most recently completed interim period of the issuer required under section 4.2.

**4.4 Predecessor Entities** - If an issuer has not existed for three years, the obligation to file historical financial statements under this Rule extends to the financial statements of predecessor entities that carried on the business, or a material portion of the business, of the issuer, even though the predecessor may have been a different legal entity.

**4.5 Credit Supporters**

- (1) If a credit supporter has provided a guarantee or alternative credit support, for all or substantially all of the payments to be made under the securities to be distributed, the issuer shall include in its prospectus the financial statements of the credit supporter that would be required to be included under subsection 4.1(1) and if applicable, subsection 4.1(2) and sections 4.2 and 4.3, as if the credit supporter were the issuer of the securities being distributed.
- (2) An issuer that is required under subsection (1) to include financial statements of a credit supporter may omit the financial statements of the issuer required to be included under subsection 4.1(1) and if applicable, subsection 4.1(2) and sections 4.2 and 4.3 if
  - (a) the credit supporter owns, directly or indirectly, all of the issued and outstanding voting securities of the issuer; and
  - (b) in the case where
    - (i) the issuer has no operations or only minimal operations, that are independent of the credit supporter and is an entity that functions essentially as a special purpose division of the credit supporter, the prospectus contains a statement that the financial results of the issuer are included in the consolidated financial results of the credit supporter, or
    - (ii) the issuer has more than minimal operations that are independent of the credit supporter, a summary of financial information of the issuer that includes current assets, non-current assets, current liabilities, non-current liabilities, revenues, gross profit, income from continuing operations

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<sup>9</sup> The alternative of having comparative balance sheets for periods other than financial year ends of the issuer has been eliminated as this was not often used in practice. In addition, the Commission is very reluctant to permit the omission of year-end, audited comparative balance sheets.

and net income, is included in a note to the financial statements of the credit supporter that are required to be included in the prospectus under subsection (1).

**PART 5 FINANCIAL STATEMENT DISCLOSURE FOR SIGNIFICANT ACQUISITIONS<sup>10</sup>**

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

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

**5.2 Financial Statement Disclosure for Significant Acquisitions**

- (1) If an issuer has made a significant acquisition or is proposing to make a significant probable acquisition, the issuer shall include in its prospectus the following financial statements of each business acquired or to be acquired:
  - 1. Income statements for at least the periods specified in section 5.3.
  - 2. Cash flow statements for the periods for which income statements are included under paragraph 1.
  - 3. A balance sheet as at the date on which each of the periods specified in section 5.3 ended, other than the earliest of the three periods specified in paragraph 3 of section 5.3.
  - 4. An income statement and a cash flow statement for
    - (a) the most recently completed interim period that ended more than 60 days before the date of the prospectus; and
    - (b) the comparable period in the preceding financial year.
  - 5. A balance sheet as at the date on which the interim period referred to in paragraph 4 ended.
  - 6. A *pro forma* balance sheet of the issuer as at the date of the issuer's most recent balance sheet included in the prospectus that
    - (a) gives effect, as if they had taken place as at the date of the *pro forma* balance sheet, to
      - (i) significant acquisitions that have been completed, but are not reflected in the issuer's most recent audited or interim balance sheet included in the prospectus, and
      - (ii) significant probable acquisitions;
    - (b) separately identifies each significant probable acquisition; and
    - (c) discloses, in the notes, the effect on the *pro forma* balance sheet if a significant probable acquisition is not completed.
  - 7. A *pro forma* income statement that
    - (a) gives effect to
      - (i) significant acquisitions completed during the most recently completed financial year of the issuer or during the issuer's current financial year, and

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<sup>10</sup> In the Notice of Proposed Rules and Companion Policy accompanying the Original Proposal, the Commission noted that it had considered SEC Release No. 33-7355, 34-37802; International Series Release No. 1021 dated October 10, 1996, which amended the existing provisions set forth in Rule 3-05(b) of Regulation S-X under the United States Securities Act of 1933 regarding inclusion of financial statements of acquired businesses (the "SEC Release"). The Commission noted that it chose not to adopt the "sliding scale" approach used in the SEC Release to determine the extent of financial statement disclosure in a prospectus as the current disclosure requirement in section 56 of the Regulation and in section 23 of Policy 5.1 appeared to work well in practice. Several commentators responded to the Original Proposal by strongly recommending the approach used in the SEC Release. Accordingly, the provisions of Part 5 of the proposed Rule have been substantially revised to reflect an approach similar in principle to the SEC's approach.

- (ii) significant probable acquisitions;
  - (b) gives effect to the acquisitions referred to in subparagraph (a) as if they had taken place at the beginning of
    - (i) the most recent financial year of the issuer for which audited financial statements are included in the prospectus, and
    - (ii) the most recent interim period of the issuer for which financial statements are included in the prospectus;
  - (c) separately identifies each significant probable acquisition; and
  - (d) discloses, in the notes, the effect on the *pro forma* income statement if a significant probable acquisition is not completed.
- 8. *Pro forma* earnings per share based on the *pro forma* financial statements referred to in paragraphs 6 and 7.
  - (2) If an issuer is required under subsection (1) to include financial statements in a prospectus for more than one business because the significant acquisition involves an acquisition of related businesses or a probable acquisition of related businesses, or a probable acquisition of related businesses, the financial statements required under subsection (1) shall be presented separately for each business, except for the periods during which the businesses have been under common control or management, in which case the issuer may present the financial statements of the businesses on a combined basis.
  - (3) If an issuer is required under subsection (1) to include *pro forma* financial statements in a prospectus, the issuer shall include in the prospectus a description of the underlying assumptions on which the *pro forma* financial statements are prepared, cross-referenced to each related *pro forma* adjustment.

**5.3 Reporting Periods** - The periods for which the financial statements are required under paragraphs 1, 2 and 3 of subsection 5.2(1) shall be determined by reference to the conditions set out in subsection 2.2(1) as follows:

- 1. If none of the conditions are satisfied if the 20 percent threshold is changed to 40 percent, financial statements shall be included for the most recent financial year of the business ended more than 90 days before the date of the prospectus or such shorter period, ended more than 90 days before the date of the prospectus, as the business has been in existence.
- 2. If any of the conditions are satisfied if the 20 percent threshold is changed to 40 percent, but none of the conditions are satisfied if the 20 percent threshold is changed to 50 percent, financial statements shall be included for each of the two most recent financial years of the business ended more than 90 days before the date of the prospectus or such shorter period, ended more than 90 days before the date of the prospectus, as the business has been in existence.
- 3. If any of the conditions are satisfied if the 20 percent threshold is changed to 50 percent, financial statements shall be included for each of the three most recent financial years of the business ended more than 90 days before the date of the prospectus or such shorter period, ended more than 90 days before the date of the prospectus, as the business has been in existence.

**5.4 Additional Financial Statements Approved, Filed or Released**

- (1) An issuer shall include in its prospectus annual and interim financial statements of a business for a financial period more recent than the periods for which financial statements are required under subsection 5.2(1) if, before the prospectus is filed
  - (a) the board of directors having responsibility for the business at the end of the financial period has approved the statements for the more recent period;
  - (b) the statements for the more recent period have been filed; or
  - (c) the financial statements for the more recent period or selected information from those statements, have been released to the public.

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

#### **5.5 Significant Acquisitions After Financial Year End - Purchase Method Accounting**

- (1) An issuer shall include in the subsequent event note in its financial statements included in a prospectus the information referred to in subsection (2), if
  - (a) the issuer
    - (i) has made a significant acquisition since its most recent financial year end, or
    - (ii) is proposing to make a significant probable acquisition; and
  - (b) the purchase method is, or will be, used to account for the acquisition.
- (2) The information required under subsection (1) is
  - (a) if
    - (i) determined by the date of the note, details of the purchase equation, namely the allocation of the purchase price to the underlying assets being acquired, the underlying liabilities being assumed and any resulting goodwill, or
    - (ii) not determined by the date of the note, the issuer's reasonable estimate of the allocation; and
  - (b) the terms and status of the acquisition, including any material conditions to the completion of the acquisition that have not yet been satisfied.

#### **5.6 Exceptions to Disclosure Requirements for Significant Acquisitions**

- (1) Despite subsection 5.2(1), an issuer may omit from a prospectus separate financial statements of a business, if
  - (a) the results of the business for a complete financial year have been reflected in the audited consolidated financial statements of the issuer; and
  - (b) in the case where the acquisition of the business would satisfy any of the conditions specified in subsection 2.2(1) if the 20 percent threshold in the conditions were changed to 100 percent, separate financial statements of the business are included in the prospectus for as many periods before the acquisition as may be necessary so that, when these periods are added to the periods for which the financial statements in the prospectus of the issuer for the periods following the acquisition reflect the results of the business, financial statements reflecting the results of the business, either separately or on a consolidated basis, are included for a total of three years or such lesser period as the business has been in existence.
- (2) Despite subsection 5.2(1), an issuer may omit from a prospectus financial statements of a business if
  - (a) the acquisition of the business is, or will be, an investment accounted for using the equity method, as that term is defined in the Handbook;
  - (b) disclosure is included in the prospectus for the periods for which financial statements are required under section 5.3 that
    - (i) summarizes information as to the assets, liabilities and results of operations of the business, and
    - (ii) describes the issuer's proportionate interest in the business and any contingent issuance of securities by the business that might significantly affect the issuer's share of earnings; and
  - (c) the prospectus

- (i) identifies the audited financial statements from which the disclosure provided under paragraph (b) has been derived, and
- (ii) describes the nature of the audit opinion.

- (3) Despite subsection 5.2(1), an issuer may omit from a prospectus financial statements of a business for a complete financial year if
  - (a) audited financial statements for a period of at least nine months in the financial year are included in the prospectus;
  - (b) the business is not seasonal; and
  - (c) this exception is relied upon to omit only one year of the financial statements required under subsection 5.2(1).
- (4) Despite subsection 5.2(1), an issuer may omit from a prospectus the balance sheets of a business referred to in paragraphs 3 and 5 of subsection 5.2(1), if the issuer's most recent audited balance sheet required by subparagraph 4.1(1)3(a) is for a date after the date the significant acquisition was completed.

**5.7 Financial Statement Disclosure for Multiple Acquisitions that are not a Significant Acquisition of Related Businesses**

- (1) An issuer shall include in a prospectus separate financial statements of each business required under subsection (2) for the periods referred to in subsection (3), if
  - (a) the issuer
    - (i) has acquired two or more businesses since the beginning of its most recently completed financial year,
    - (ii) is proposing to make two or more probable acquisitions of a business, or
    - (iii) has acquired one or more businesses since the beginning of its most recently completed financial year and is proposing to make one or more probable acquisitions of a business;
  - (b) the acquisitions referred to in paragraph (a) do not involve an acquisition of related businesses;
  - (c) none of the acquisitions referred to in paragraph (a) individually constitutes a significant acquisition; and
  - (d) any of the conditions specified in subsection 2.2(1) would be satisfied if
    - (i) the 20 percent threshold in the conditions were changed to 50 percent, and
    - (ii) the total consolidated assets, consolidated revenue and consolidated income from continuing operations of the businesses were each considered on a combined basis.
- (2) An issuer shall include financial statements under subsection (1) for those businesses referred to in paragraph (1)(a) that, on a combined basis, represent a majority of the total consolidated assets, consolidated revenue or consolidated income from continuing operations of all of the businesses referred to in paragraph (1)(a) using the basis, or one of the bases, upon which the condition in paragraph (1)(d) is satisfied.
- (3) An issuer shall include financial statements of a business under subsection (1) for
  - (a) the most recently completed financial year of the business ended more than 90 days before the date of the prospectus or such shorter period, ended more than 90 days before the date of the prospectus, as the business has been in existence; and
  - (b) the most recently completed interim period of the business ended more than 60 days before the date of the prospectus.

## PART 6 GAAP, AUDITOR'S REPORT AND AUDIT COMMITTEE

### 6.1 Generally Accepted Accounting Principles

- (1) The financial statements of a person or company incorporated or organized in a jurisdiction<sup>11</sup> that are included in a prospectus shall be prepared in accordance with Canadian GAAP<sup>12</sup>.
- (2) The financial statements of a person or company incorporated or organized in a foreign jurisdiction that are included in a prospectus shall be prepared in accordance with
  - (a) Canadian GAAP; or
  - (b) foreign GAAP, if the notes to the financial statements
    - (i) explain and quantify the effect of material differences between Canadian GAAP and foreign GAAP that relate to measurements, and
    - (ii) provide disclosure consistent with Canadian GAAP requirements to the extent not already reflected in the financial statements.

### 6.2 Auditor's Report<sup>13</sup>

- (1) Financial statements included in a prospectus, other than the following, shall be accompanied by an auditor's report:
  1. The interim financial statements of an issuer required to be included in a prospectus under section 4.2.
  2. The interim financial statements of a credit supporter required to be included in a prospectus under subsection 4.5(1).
  3. The interim financial statements of a business required to be included in a prospectus under paragraphs 4 and 5 of subsection 5.2(1) and section 5.7.
  4. The financial statements of an issuer required to be included in a prospectus under paragraphs (a) and (c) of subsection 4.3, if the auditor has not issued an auditor's report or the financial statements.
  5. The financial statements of a business required to be included in a prospectus under paragraphs (a) and (c) of subsection 5.4, if the auditor has not issued an auditor's report or the financial statements.
  6. The *pro forma* financial statements if the *pro forma* financial statements are accompanied by a compilation report signed by the auditor and prepared in accordance with the Handbook.
  7. The financial statements included in a *pro forma* prospectus.
- (2) If the financial statements included in a prospectus are accompanied by a foreign auditor's report, the auditor's report shall be accompanied by a statement by the auditor confirming that the auditing standards applied are substantially equivalent to Canadian GAAS and disclosing any material differences in the form and content of the foreign auditor's report as compared to a Canadian auditor's report.

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<sup>11</sup> The term "jurisdiction" is defined in National Instrument 14-101 Definitions. The definition is "a province or territory of Canada except when used in the term foreign jurisdiction. The term "foreign jurisdiction" is defined in National Instrument 14-101 as "a country, or political subdivision of a country, other than Canada."

<sup>12</sup> The term "Canadian GAAP" is defined in National Instrument 14-101 Definitions. The definition is "generally accepted accounting principles determined with reference to the Handbook".

<sup>13</sup> This section has been substantially revised to broaden the scope of acceptable auditing standards, to include GAAS (ie., Canadian GAAS) and "foreign GAAS", and the identity of the auditor, to include an "auditor's report" that qualifies either as a "Canadian auditor's report" or a "foreign auditor's report" from a "foreign auditor". As noted in section 2.7 of proposed Companion Policy 41-501CP, the Director is required under paragraph 61(2)(i) of the Act to not issue a receipt for a prospectus if a person (including an auditor) who is named as having prepared or certified a report used in a prospectus is not acceptable to the Director.

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

**PART 7 NON-FIXED PRICE OFFERINGS AND REDUCTION OF OFFERING PRICE UNDER A PROSPECTUS**

**7.1 Non-Fixed Price Offerings and Reduction of Offering Price Under a Prospectus<sup>14</sup>**

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

**PART 8 CERTIFICATION**

**8.1 Certificate of Related Credit Supporter** - If disclosure of a related credit supporter is prescribed by this Rule or the required form of prospectus, an issuer shall include in the prospectus a certificate of the related credit supporter in the form set out in subsection 58(1) of the Act, signed by

- (a) the chief executive officer and the chief financial officer; and
- (b) on behalf of the board of directors of the credit supporter, any two directors of the credit supporter other than the persons referred to in paragraph (a), duly authorized to sign.

**8.2 Date of Certificates** - The date of the certificates in a preliminary prospectus, a prospectus or an amendment to a preliminary prospectus or prospectus shall be within three business days before the date of filing the preliminary prospectus, prospectus or amendment, as applicable.

**8.3 Pro Forma Prospectus** - A certificate required by section 58 or section 59 of the Act or section 8.1 of this Rule may be omitted from a *pro forma* prospectus.

**PART 9 GENERAL REQUIREMENTS AS TO FILING**

**9.1 Interpretation of "Prospectus"** - In this Part, a reference to a prospectus does not include a preliminary prospectus.

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<sup>14</sup> Section 7.1 has been amended to conform to the approach taken in proposed National Instrument 44-101 Prompt Offering Qualification System to no longer require an approved rating, but merely a rating. In addition, this section has been amended to permit any securities to be offered at a non-fixed or reduced price, not just debt and preferred shares.

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

1. For each director and executive officer of an issuer, each promoter of the issuer or, if the promoter is not an individual, each director and executive officer of the promoter, for whom the issuer has not previously delivered the following information, a statement containing that individual's
  - (a) full name;
  - (b) place and date of birth;
  - (c) full residential address; and
  - (d) employer's name and address, if other than the issuer.
2. A completed Form 41-501F2 consenting to the collection of the personal information.
3. A copy of each report or valuation for which a consent is required to be filed under section 9.7 and that has not previously been delivered, other than a technical report not otherwise required to be filed under section 9.3.
4. If the preliminary prospectus is filed for a proposed distribution of debt securities having a term to maturity in excess of one year or for a proposed distribution of preferred shares, a letter indicating the calculation of the earnings coverage.

**9.3 Technical Reports**

- (1) An issuer that has mineral exploration, development or mining properties shall file with a preliminary prospectus the technical reports and certificates required to be filed under National Instrument 43-101 Standards of Disclosure for Mineral Exploration and Development and Mining Properties.
- (2) An issuer that has oil and gas operations shall file a technical report and certificate with a preliminary prospectus on each property material to the issuer prepared in accordance with National Policy No. 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators or any successor instrument thereto.

**9.4 Documents or Information to be Delivered with Prospectus** - An issuer that files a prospectus or an amendment to a prospectus shall deliver to the Commission the following documents and information at the time of filing:

1. A copy of the prospectus blacklined to show changes from the preliminary prospectus or in the case of an amendment to a prospectus, the prospectus.
2. A signed copy of the underwriting agreement.

**9.5 French Version** - An issuer shall file a signed copy of a French language version of a preliminary prospectus, prospectus, any amendment to a preliminary prospectus or prospectus and any supporting document before sending the French language version of a preliminary prospectus, prospectus or an amendment to a preliminary prospectus or prospectus to an investor or prospective investor in Ontario.

**9.6 Material Contracts**

- (1) An issuer shall make available all material contracts referred to in a prospectus for inspection at a reasonable time and place, without charge, during the distribution of the securities being offered under the prospectus.
- (2) An issuer shall file, unless previously filed, copies of material contracts that create or materially affect the rights or obligations of the holders of the securities being distributed on or before the time the issuer files a preliminary prospectus or a prospectus.

**9.7 Consent of Experts**

- (1) If any solicitor, auditor, accountant, engineer, appraiser or any other person or company whose profession gives authority to a statement made by that person or company, is named in a prospectus or an amendment to a prospectus
  - (a) as having prepared or certified a part of the prospectus or the amendment; or
  - (b) as having prepared or certified a report or valuation referred to in the prospectus or the amendment;the issuer shall file no later than the time the prospectus or the amendment to the prospectus is filed, the written consent of the person or company to being named and to that use of the report or valuation.
- (2) The consent of an auditor required by subsection (1) for a report on financial statements shall
  - (a) refer to the report stating its date and the dates of the financial statements on which the report is made; and
  - (b) contain a statement that the auditor has read the prospectus and has no reason to believe that there are any misrepresentations in the information in the prospectus derived from the financial statements or that is within the auditor's knowledge as a result of the audit of the financial statements.
- (3) Subsection (1) does not apply to an approved rating organization that issues a rating or provisional rating that is used in or in connection with a preliminary prospectus or prospectus or an amendment to a prospectus.

**9.8 Consent of Credit Supporter** - If statements of a credit supporter are required by Item 25.1 of Form 41-501F1 to be included in a prospectus and a certificate of the credit supporter is not required by section 8.1 to be included in the prospectus, the written consent of the credit supporter to the inclusion of the statements in the prospectus shall be filed no later than the time the prospectus is filed.

#### **9.9 Auditor's Communications**

- (1) **Comfort Letter with Preliminary Prospectus** - If a financial statement of an issuer or a business included in a preliminary prospectus is accompanied by an unsigned auditor's report, the issuer shall file, no later than the time the preliminary prospectus is filed, a signed letter to the Commission from the auditor of the issuer or the business, as applicable, prepared in accordance with the form suggested for this circumstance by the Handbook.
- (2) **Comfort Letter Filed with Prospectus** - If an unaudited financial statement of an issuer or a business is included in a prospectus, the issuer shall file, no later than the time the prospectus is filed, a comfort letter to the Commission from the auditor of the issuer or the business, as applicable, prepared in accordance with the relevant standards in the Handbook.
- (3) **Letter Filed with Financial Statements Prepared using Foreign GAAP or Accompanied by a Foreign Auditor's Report** - If a financial statement included in a prospectus has been prepared in accordance with foreign GAAP or includes a foreign auditor's report, the issuer shall file, no later than the time the prospectus is filed, a letter to the Commission from the auditor that discusses the auditor's expertise to reconcile foreign GAAP to Canadian GAAP and to make the determination that foreign GAAS is substantially equivalent to Canadian GAAS.

#### **9.10 International Offerings**

- (1) If an issuer is incorporated or organized in a foreign jurisdiction and does not have an office in Canada, the issuer shall file a submission to jurisdiction and appointment of agent for service of process of the issuer in Form 41-501F3 no later than 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 no later than the time a prospectus of the issuer is filed.

#### **9.11 Amendments**

- (1) An amendment to a preliminary prospectus or a prospectus may consist of either an amendment that does not fully restate the text of the preliminary prospectus or prospectus, or an amended and restated preliminary prospectus or prospectus.
- (2) An amendment to a preliminary prospectus or a prospectus shall contain the certificates required by section 8.1 and by sections 58 and 59 of the Act and, in the case of an amendment that does not restate the text of the preliminary prospectus or prospectus, 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]."*
- (3) An issuer that files a signed copy of an amendment to a preliminary prospectus or a prospectus shall
  - (a) file a signed copy of the amendment;
  - (b) deliver to the Commission a copy of the preliminary prospectus or prospectus, blacklined to show the changes made by the amendment, if the amendment is also a restatement of the preliminary prospectus or prospectus; and
  - (c) file or deliver to the Commission any supporting documents required under this Rule or other provisions of securities legislation to be filed or delivered to the Commission with a preliminary prospectus or prospectus, as the case may be, unless the documents originally filed with the preliminary prospectus or prospectus, as the case may be, are correct as of the date the amendment is filed.
- (4) An amendment to a preliminary prospectus shall be forwarded to each recipient of the preliminary prospectus according to the record to be maintained under section 67 of the Act.
- (5) If an amendment to a preliminary prospectus or a prospectus materially affects, or relates to, the subject matter to which a consent filed under subsection 9.7(1) or section 9.8 or an auditor's letter filed under section 9.9 refers, the issuer shall file with the amendment, a new consent or auditor's letter, as applicable.

**9.12 Receipt for Amendment to Preliminary Prospectus** - The Director shall issue a receipt for an amendment to a preliminary prospectus as soon as reasonably possible after the amendment is filed.

## **PART 10 PROCEDURES AND REQUIREMENTS FOR GRANTING RECEIPTS**

### **10.1 Procedures and Requirements for Granting Receipts**

- (1) An issuer shall not file a prospectus if the issuer is in default in filing or delivering to the Commission 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 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 if 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.

## **PART 11 EXEMPTION**

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

### **11.2 Evidence of Exemption**

- (1) Without limiting the manner in which an exemption under section 11.1 may be evidenced, the granting of the exemption under section 11.1 may be evidenced by the issuance by the Director of a receipt for a prospectus or an amendment to a prospectus.
- (2) An exemption under section 11.1 may be evidenced by issuance of a receipt only if
  - (a) the person or company that sought the exemption
    - (i) sent to the Director on or before the date the preliminary prospectus or the amendment to the 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, or
    - (ii) sent to the Director a letter or memorandum describing the matters relating to the exemption, and indicating why consideration should be given to the granting of the exemption, after the preliminary prospectus has been filed, if the issuer receives a written acknowledgement from the Director that the exemption may be evidenced in the manner set out in subsection (1), and
  - (b) the Director has not sent notice to the contrary to the person or company that sought the exemption before, or concurrently with, the issuance of the receipt.

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**Proposed Form 41-501F1**  
**Information Required in a Prospectus**

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**ONTARIO SECURITIES COMMISSION RULE 41-501  
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**ONTARIO SECURITIES COMMISSION RULE 41-501  
FORM 41-501F1  
INFORMATION REQUIRED IN A PROSPECTUS**

INSTRUCTIONS

- (1) *The objective of the prospectus is to provide information concerning the issuer that an investor needs in order to make an informed investment decision. This Form sets out specific disclosure requirements that are in addition to the general requirement under securities legislation to provide full, true and plain disclosure of all material facts relating to the securities to be distributed. Certain rules of specific application impose prospectus disclosure obligations in addition to those described in this Form.*
- (2) *Terms used and not defined in this Form that are defined or interpreted in Rule 41-501 General Prospectus Requirements shall bear that definition or interpretation. A general definition rule has been adopted as Rule 14-501 Definitions.*
- (3) *Unless an item specifically requires disclosure only in the preliminary prospectus, the disclosure requirements set out in this Form apply to both the preliminary prospectus and the prospectus. Details concerning the price and other matters dependent upon or relating to price, such as the number of securities being distributed, may be left out of the preliminary prospectus, along with specifics concerning the plan of distribution, to the extent that these matters have not been decided.*
- (4) *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 1.2 of Companion Policy 41-501CP General Prospectus Requirements. If technical terms are required, clear and concise explanations should be included.*
- (5) *No reference need be made to inapplicable items and, unless otherwise required in this Form, negative answers to items may be omitted.*
- (6) *Where the term "issuer" is used, it may be necessary, in order to meet the requirement for full, true and plain disclosure of all material facts, to also include disclosure with respect to the issuer's subsidiaries and investees. If it is more likely than not that a person or company will become a subsidiary or investee, it may be necessary to also include disclosure with respect to the person or company. For this purpose, "investees" is defined to mean any entity that the Handbook recommends that the issuer account for by the equity method or the proportionate consolidation method.*
- (7) *An issuer that is a special purpose vehicle and intends to issue or has issued asset-backed securities (as that term is defined in an instruction to Item 6.2) may have to modify the disclosure items to reflect the special purpose nature of its business.*
- (8) *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.*
- (9) *If the term "class" is used in any item to describe securities, the term includes a series of a class.*

**Item 1: Cover Page Disclosure**

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

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

**1.2 Preliminary Prospectus Disclosure** - Every preliminary prospectus shall have printed in red ink at the top of the cover page immediately above the disclosure required by item 1.1 the following, with bracketed information completed:

"A copy of this preliminary prospectus has been filed with [the securities regulatory authority(ies) in each of/certain of the provinces/provinces and territories of Canada] but has not yet become final for the purpose of a distribution. Information contained in this preliminary prospectus may not be complete and may have to be

amended. The securities may not be distributed until a receipt for the prospectus is obtained from the securities regulatory [authority(ies)]."

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

[PRELIMINARY] PROSPECTUS

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

(Date)

Name of Issuer

[number and type of securities qualified for distribution under the prospectus, including any options or warrants, and the price per security]<sup>1</sup>

**INSTRUCTIONS**

- (1) *The description of the number and type of securities being distributed shall include the restricted share terms, if any, prescribed by Rule 56-501 Restricted Shares.<sup>2</sup>*
- (2) *If the offering price is in a currency other than the Canadian dollar or the U.S. dollar, comply with the exchange rate disclosure requirements of National Instrument 52-102 Use of Currencies.<sup>3</sup>*

**1.4 Distribution**

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

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

- (2) If there is an over-allotment option, describe the terms of the option and the fact that the 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 being distributed at a premium or a discount, state in **bold type** the effective yield if held to maturity.
- (5) Disclose separately those securities that are underwritten, those under option and those to be sold on a best efforts basis, and, in the case of a best efforts distribution, the latest date that the distribution is to remain open.
- (6) In column (b) of the table, disclose only commissions paid or payable in cash by the issuer or selling securityholder and discounts granted. Set out in a note to the table

<sup>1</sup> New requirement that formalizes current cover page disclosure.

<sup>2</sup> Proposed Rule 56-501 Restricted Shares was published for comment by the Commission on May 21, 1999.

<sup>3</sup> From National Policy Statement No. 14 which has been reformulated as proposed National Instrument 52-102 Use of Currencies. Proposed National Instrument 52-102 was published for comment May 29, 1998.

- (a) commissions or other consideration paid or payable by persons or companies other than the issuer or selling securityholder;
  - (b) consideration other than discounts granted and cash paid or payable by the issuer or selling securityholder, including warrants and options; and
  - (c) any finder's fees or similar required payment.
- (7) If a security is being distributed for the account of a selling securityholder, state the name of the securityholder and a cross-reference to the applicable section in the prospectus where further information about the selling securityholder is provided. State the portion of the expenses of the distribution to be borne by the selling securityholder and, if none of the expenses of the distribution are being borne by the selling securityholder, include a statement to that effect and discuss the reason why this is the case.
- (8) If the underwriter has been granted a compensation option, state whether the prospectus qualifies the grant of all or part of the compensation option and provide a cross-reference to the applicable section in the prospectus where further information about the compensation option is provided.

#### INSTRUCTIONS

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

#### 1.5 **Non-Fixed Price Distributions** - If the securities are being distributed at non-fixed prices, disclose

- (a) the discount allowed or commission payable to the underwriter;
- (b) any other compensation payable to the underwriter and, if applicable, that the underwriter's compensation will be increased or decreased by the amount by which the aggregate price paid for the securities by the purchasers exceeds or is less than the gross proceeds paid by the underwriter to the issuer or selling securityholder;
- (c) that the securities to be distributed under the 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; and
- (f) the net proceeds or, if the distribution is to be made on a best efforts basis, the minimum amount of net proceeds, if any, to be received by the issuer or selling securityholder.

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

#### 1.7 **Market for Securities**

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

- (2) Disclose any intention to stabilize the market. Provide a cross-reference to the section in the prospectus where further information about market stabilization is provided.
- (3) If no market for the securities being distributed under the prospectus 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 prospectus".**

**1.8 Risk Factors** - Include a cross-reference to sections, if any, in the prospectus where information about the risks of an investment in the securities being distributed is provided.

**1.9 Underwriter(s)**

- (1) State the name of each underwriter.
- (2) If applicable, comply with the requirements of Multilateral Instrument 33-105 Underwriting Conflicts<sup>4</sup> for cover page prospectus disclosure.
- (3) If an underwriter has agreed to purchase all of the securities being distributed at a specified price and the underwriter's obligations are subject to conditions, state the following, with bracketed information completed:

"We, as principals, conditionally offer these securities, subject to prior sale, if, as and when issued by [name of issuer] and accepted by us in accordance with the conditions contained in the underwriting agreement referred to under Plan of Distribution".<sup>5</sup>

- (4) If an underwriter has agreed to purchase a specified number or principal amount of the securities at a specified price, state that the securities are to be taken up by the underwriter, if at all, on or before a date not later than 42 days after the date of the receipt for the prospectus.
- (5) If there is no underwriter involved in the distribution, provide a statement in **bold type** to the effect that no underwriter has been involved in the preparation of the prospectus or performed any review of the contents of the prospectus.

**1.10 International Issuers** - If the issuer, a selling securityholder, a credit supporter of the securities distributed under the 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 prospectus, with the bracketed information completed:

"The [issuer, selling securityholder, credit supporter and/or promoter] is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada. Although [the issuer, selling securityholder, credit supporter and/or promoter] has appointed [name(s) and addresses of agent(s) for service] as its agent(s) for service of process in Ontario it may not be possible for investors to collect from the issuer, selling securityholder, credit supporter or promoter, judgments obtained in courts in [Ontario/Canada] predicated on the civil liability provisions of securities legislation."<sup>6</sup>

**Item 2: Table of Contents**

**2.1 Table of Contents** - Include a table of contents.

**Item 3: Summary of Prospectus**

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<sup>4</sup> Proposed Multilateral Instrument 33-105 Underwriting Conflicts was published for comment in February 1998.

<sup>5</sup> This paragraph is currently required under National Policy No. 12 Disclosure of "Market Out" Clauses in Underwriting Agreements in Prospectuses.

<sup>6</sup> This has been expanded to include credit supporters. "Credit supporter" is defined in Proposed Rule 41-501 General Prospectus Requirements.

- 3.1 General** - Briefly summarize, near the beginning of the prospectus, information appearing elsewhere in the prospectus that, in the opinion of the issuer or selling securityholder, would be most likely to influence the investor's decision to purchase the securities being distributed. Include a description of
- (a) the principal business of the issuer and its subsidiaries;
  - (b) the securities to be distributed, including the offering price and expected net proceeds;
  - (c) use of proceeds;
  - (d) risk factors; and
  - (e) summary financial information.

INSTRUCTIONS

- (1) *Provide appropriate cross-references to items in the prospectus.*
- (2) *It is not sufficient to satisfy paragraph 3.1(e) by cross-referencing the summary financial information appearing elsewhere in the prospectus.*

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

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

**Item 4: Corporate Structure**

**4.1 Name and Incorporation**

- (1) State the full corporate name of the issuer or, if the issuer is an unincorporated entity, the full name under which the entity exists and carries on business and the address(es) of the issuer's head and registered office.
- (2) State the statute under which the issuer is incorporated or continued or, if the issuer is an unincorporated entity, the laws of the jurisdiction or foreign jurisdiction under which the issuer is established and exists. If material, state whether the articles or other constating or establishing documents of the issuer have been amended and describe the substance of the material amendments.

**4.2 Intercorporate Relationships**

- (1) Describe, by way of a diagram or otherwise, the intercorporate relationships among the issuer and the issuer's subsidiaries. For each subsidiary state
  - (a) the percentage of votes attaching to all voting securities of the subsidiary represented by voting securities beneficially owned, or over which control or direction is exercised, by the issuer;
  - (b) the place of incorporation or continuance; and
  - (c) the percentage of each class of non-voting securities beneficially owned, or over which control or direction is exercised, by the issuer.
- (2) If the securities distributed under the prospectus are being issued in connection with an acquisition, amalgamation, merger, reorganization or arrangement, describe by way of a diagram or otherwise these intercorporate relationships both before and after the completion of the proposed transaction.

INSTRUCTION *A particular subsidiary may be omitted if*

- (a) *the total assets of the subsidiary do not constitute more than 10 percent of the consolidated assets of the issuer at the most recent financial year end;*

- (b) *the sales and operating revenues of the subsidiary do not exceed 10 percent of the consolidated sales and operating revenues of the issuer at the most recent financial year end; and*
- (c) *the conditions in paragraphs (a) and (b) would be satisfied if*
  - (i) *the subsidiaries that may be omitted under paragraphs (a) and (b) were considered in the aggregate, and*
  - (ii) *the reference to 10 percent in those paragraphs were changed to 20 percent.*<sup>7</sup>

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<sup>7</sup> This has been conformed to the corresponding provision in Item 2.2 of proposed Form 44-101F1 AIF.

**Item 5: General Development of the Business**

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

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

**5.2 Acquisitions and Dispositions<sup>8</sup>**

- (1) Disclose
  - (a) any significant acquisition for which financial statement disclosure is required under Part 5 of Rule 41-501 General Prospectus Requirements; and
  - (b) any material disposition or proposed material disposition completed or to be completed in or subsequent to the issuer's most recently completed financial year.
- (2) Include particulars of
  - (a) the nature of the assets acquired or disposed of or to be acquired or disposed of;
  - (b) the actual or proposed date of each acquisition or disposition;
  - (c) the consideration, both monetary and non-monetary, paid or to be paid to or by the issuer;
  - (d) any material obligations that must be complied with to keep any acquisition or disposition agreement in good standing;
  - (e) the impact of the acquisition or disposition on the operating results and financial position of the issuer;
  - (f) any valuation opinion obtained within the last 12 months required by Canadian securities legislation or Canadian securities directives of a Canadian securities regulatory authority or a requirement of a Canadian stock exchange or other Canadian market to support the value of the consideration received or paid by the issuer or any of its subsidiaries for the assets, including the name of the author, the date of the opinion, the assets to which the opinion relates and the value attributed to the assets; and
  - (g) whether the transaction is at arm's length and, if not, the identity of the other parties and the relationship of the other parties to the issuer.

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

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

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<sup>8</sup> Currently required under Item 11 of Form 12, Item 15 of Form 13 and Item 12 of Form 14. Expanded from current form requirement to include the same requirements as British Columbia and to extend the relevant time frame from 2 to 3 years except in the case of valuations, in order to match the financial statement disclosure requirement. The term "significant acquisition" is defined in Rule 41-501 General Prospectus Requirements.

**Item 6: Narrative Description of the Business**

**6.1 General**

- (1) Describe the business of the issuer with reference to the reportable operating segments as defined in the Handbook and the issuer's business in general. Include the following for each reportable operating segment of the issuer:
  1. **Principal Products or Services** - For principal products or services,
    - (a) the methods of their distribution and their principal markets;
    - (b) as dollar amounts or as percentages, for each of the last two completed financial years, the revenues for each category of principal products or services that accounted for 15 percent or more of total consolidated revenues for the applicable financial year derived from
      - (i) sales to customers, other than investees, outside the consolidated entity, and
      - (ii) sales or transfers to investees; and
    - (c) if not fully developed, the stage of development of the principal products or services and, if the products are not at the commercial production stage, or if more than 10 percent of the net proceeds from the distribution will be used for research and development,
      - (i) the timing and stage of research and development programs that management anticipates will be reached using such proceeds, as applicable,
      - (ii) the major components of the proposed programs that will be funded using the proceeds from the distribution, including an estimate of anticipated costs,
      - (iii) whether the issuer is conducting its own research and development, is subcontracting out the research and development or is using a combination of those methods, and
      - (iv) the additional steps required to reach commercial production and an estimate of costs and timing.
  2. **Operations** - Concerning production and sales
    - (a) the actual or proposed method of production of products and if the issuer provides services, the actual or proposed method of providing services;
    - (b) the payment terms, expiration dates and terms of any renewal options of any material leases or mortgages, whether they are in good standing and, if applicable, that the landlord or mortgagee is not at arm's length with the issuer;
    - (c) specialized skill and knowledge requirements and the extent that the skill and knowledge are available to the issuer;
    - (d) the sources, pricing and availability of raw materials, component parts or finished products;
    - (e) the importance, duration and effect on the segment of identifiable intangible properties such as brand names, circulation lists, copyrights, franchises, licences, patents, software, subscription lists and trademarks;
    - (f) the extent to which the business of the segment is cyclical or seasonal;
    - (g) a description of any aspect of the issuer's business that may be affected in the twelve months following the date of the prospectus by renegotiation or termination of contracts or sub-contracts and the likely effect;

- (h) the financial and operational effects of environmental protection requirements on the capital expenditures, earnings and competitive position of the issuer in the current financial year and the expected effect, on future years;
  - (i) the number of employees, as at the most recent financial year end or as an average over that year, whichever is more relevant; and
  - (j) any risks associated with foreign operations of the issuer and any dependence of the segments upon the foreign operations.
- 3. Competitive Conditions** - The competitive conditions in the principal markets and geographic areas in which the issuer operates, including, if reasonably possible, an assessment of the issuer's competitive position.
- 4. Lending** - With respect to lending operations of an issuer's business, the investment policies and lending and investment restrictions.
- (2) Disclose the nature and results of any bankruptcy, or any receivership or similar proceedings against the issuer or any of its subsidiaries or any voluntary bankruptcy, receivership or similar proceedings by the issuer or any of its subsidiaries, within the last three completed financial years.
- (3) Disclose the nature and results of any material reorganization of the issuer or any of its subsidiaries within the last three completed financial years.

**6.2 Issuers with Asset-Backed Securities Outstanding** - For issuers with asset-backed securities outstanding that were distributed under a prospectus, disclose to the extent material to the securities being distributed

- (a) a description of any events, covenants, standards or preconditions that are dependant or based on the economic performance of the underlying pool of financial assets and that may impact on the timing or amount of payments or distributions to be made under the asset-backed securities;
- (b) for the last two completed financial years of the issuer or such lesser period commencing on the first date on which the issuer had asset-backed securities outstanding, information on the underlying pool of financial assets relating to
  - (i) the composition of the pool as of the end of each financial year or partial period,
  - (ii) income and losses from the pool, on at least a quarterly basis,
  - (iii) the payment, prepayment and collection experience of the pool on a quarterly basis, and
  - (iv) any significant variances experienced in the matters referred to in clauses (i), (ii) and (iii);
- (c) if any of the information disclosed under paragraph (b) has been audited, the existence and results of the audit;
- (d) the investment parameters applicable to investments of any cash flow surpluses;
- (e) the amount of payments made during the most recently completed financial year or the lesser period commencing on the first date on which the issuer had asset-backed securities outstanding, in respect of principal and interest or capital and yield on asset-backed securities of the issuer outstanding;
- (f) the occurrence of any events that have led or with the passage of time could lead to the accelerated payment of principal or capital of asset-backed securities; and
- (g) the identity of any principal obligors for the outstanding asset-backed securities of the issuer at the end of the most recent financial year or interim period, the percentage of the underlying pool of financial assets represented by obligations of each principal obligor and whether the principal obligor, if any, has filed an AIF in any jurisdiction or a Form 10-K or Form 20-F in the United States.<sup>9</sup>

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<sup>9</sup> This provision is new and is consistent with Item 4.2 of proposed Form 44-101F1 AIF.

## INSTRUCTIONS

- (1) *For purposes of this Item and Item 10.3 "asset-backed security" means a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, and any rights or other assets designed to assure the servicing or timely distribution of proceeds to securityholders.*
- (2) *For purposes of this item "principal obligor" means, for an asset-backed security, a person or company that is obligated to make payments; has guaranteed payments or has provided alternative credit support for payments on financial assets that represent a third or more of the aggregate amount owing on all of the financial assets underlying the asset-backed security.*
- (3) *Present the information required by paragraph (b) in a manner that will enable a reader to easily determine if, and the extent to which, the events, covenants, standards and preconditions referred to in paragraph (a) have occurred, are being satisfied or may be satisfied.*
- (4) *If the information required by paragraph (b) is not compiled specifically on the underlying pool of financial assets, but is compiled on a larger pool of the same assets from which the securitized assets are randomly selected such that the performance of the larger pool is representative of the performance of the pool of securitized assets, then an issuer may comply with paragraph (b) by providing the information required based on the larger pool and disclosing that it has done so.*

**6.3 Issuers With Natural Resource Operations (other than Oil and Gas)<sup>10</sup>** - For issuers with natural resource operations, other than oil and gas operations, disclose the following information for each property material to the issuer:

**1. Property Description and Location**

- (a) The size and location of the property.
- (b) The nature and extent of the issuer's title to or interest in the property, including accompanying surface rights, the sufficiency of the rights for mining operations, obligations that must be met to retain the property and the expiry date of claims, licenses and other property tenure rights.
- (c) The terms of any royalties, overrides, back-in rights, payments or other agreements and encumbrances to which the property is subject.
- (d) All environmental liabilities to which the property is subject.

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

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

**3. History**

- (a) The prior ownership of the property and ownership changes and the type, amount, quantity and results of the exploration work undertaken by previous owners, and any previous production on the property, to the extent known.

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<sup>10</sup> This item has been amended to conform to the provisions of proposed National Instrument 43-101 Standards of Disclosure for Mineral Exploration and Development and Mining Properties which will replace National Policy 2-A Guide for Engineers, Geologists and Prospectors Submitting Reports on Mining Properties to Canadian Securities Administrators.

- (b) If a property was acquired within the most recently completed three financial years of the issuer or during its current financial year, or is intended to be acquired by the issuer from an insider or promoter of the issuer or an associate or affiliate of an insider or promoter, the name and address of the vendor, the relationship of the vendor to the issuer and the consideration paid or intended to be paid to the vendor.
  - (c) To the extent known, the name of every person or company that has received or is expected to receive a greater than five percent interest in the consideration received or to be received by the vendor referred to in subparagraph (b).
4. **Geology** - The geology of the region and the property.
5. **Exploration Information** - The nature and extent of all exploration work and metallurgical or other testing conducted by, or on behalf of, the issuer on the property, including
- (a) the results of all surveys and investigations;
  - (b) an interpretation of the exploration information; and
  - (c) whether the surveys and investigations have been carried out by the issuer or a contractor.
6. **Mineralization** - The mineralization encountered on the property, detailing length, width, depth, continuity and the basis of measurement together with a description of the type, character and distribution of the mineralization.
7. **Sampling and Analysis** - The sampling and assaying, including
- (a) mineral occurrences and the nature of mineralization found;
  - (b) mineral distributions, rock types, structural controls, cut-off grades and other parameters used to establish sampling intervals;
  - (c) the location, number, type, spacing and density of samples collected;
  - (d) the area covered;
  - (e) any drilling, sampling or recovery problems encountered that could materially impact the accuracy or reliability of the results;
  - (f) the assay procedures used; and
  - (g) quality control and check assay procedures.
8. **Security of Samples** - The measures taken to ensure the validity and security of samples taken.
9. **Resources and Reserves** - The resources and reserves, if any, including
- (a) the quantity and grade of each category of resource and reserve;
  - (b) the key assumptions, parameters and methods used to estimate the resource and reserve; and
  - (c) the extent to which the estimate of resources and reserves may be affected by metallurgical, environmental, permitting, infrastructure, mining, legal, title, political and other issues.
10. **Mining Operations** - For development properties and production properties, the mining method, metallurgical process, production forecast, market contracts for sale of products, mine life and expected payback period of capital.

INSTRUCTIONS

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

*of Mineral Exploration and Development and Mining Properties including the use of the appropriate terminology to describe reserves and resources.<sup>11</sup>*

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

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

1. **Drilling Activity** - The number of wells the issuer has drilled or has participated in drilling, the number of these wells that were completed as oil wells and gas wells that are capable of production, each stated separately, and the number of dry holes, expressed in each case as gross and net wells, during each of the two most recently completed financial years of the issuer.
2. **Location of Production** - The geographical areas of the issuer's production, the groups of oil and gas properties, the individual oil and gas properties and the plants, facilities and installations that, in each case, are owned or leased by the issuer and are material to the issuer's operations or exploratory activities.<sup>12</sup>
3. **Location of Wells** - The location, stated separately for oil wells and gas wells, by jurisdiction, if in Canada, by state, if in the United States, and by country otherwise, of producing wells and wells capable of producing, in which the issuer has an interest and which are material, with the interest expressed in terms of gross and net wells.<sup>13</sup>
4. **Interest in Material Properties** - For interests in material properties to which no proved reserves have been attributed, the gross acreage in which the issuer has an interest and the net interest of the issuer, and the location of acreage by geographical area.
5. **Reserve Estimates** - To the extent material, estimated reserve volumes and discounted cash flow from such reserves, stated separately by country and by categories and types that conform to the classifications, definitions and disclosure requirements of National Policy Statement No. 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators or any successor instrument, on both a gross and net basis as at the most recent financial year end, including information on royalties.<sup>14</sup>
6. **Source of Reserve Estimates** - The source of the reserve estimates and whether the reserve estimates have been prepared by the issuer or by independent engineers or other qualified independent persons and any other information relating to reserve estimates required to be disclosed in a prospectus by any

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<sup>11</sup> Proposed National Instrument 43-101 Standards of Disclosure of Mineral Exploration and Development and Mining Properties was published for comment on July 3, 1998. This proposed instrument consolidates and expands significantly on the current disclosure and reporting requirements for issuers with several exploration and development properties and mining operations and includes new requirements that affect prospectuses.

<sup>12</sup> This has been modified to refer to geographical areas of production and groups of properties and to replace the "importance" test with a "materiality" test.

<sup>13</sup> The reference to "gross wells" is new.

<sup>14</sup> This has been modified to require the reserve estimates on a country basis using National Policy Statement No. 2-B classifications.

successor instrument to National Policy Statement No. 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators.<sup>15</sup>

7. **Reconciliation of Reserves** - A reconciliation of the reserve volumes by categories and types that conform to the classifications, definitions and disclosure requirements of National Policy Statement No. 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators or any successor instrument, as at the financial year end immediately preceding the most recently completed financial year to the reserve volume information furnished under paragraph 5, with the effects of production, acquisitions, dispositions, discoveries and revision of estimates shown separately, if material.
8. **History** - For each quarter of the most recently completed financial year of the issuer, with comparative data for the same periods in the preceding financial year,
  - (a) the average daily production, after deduction of royalties payable in kind, of
    - (i) conventional crude oil,
    - (ii) natural gas liquids, and
    - (iii) natural gas;
  - (b) the following on a per barrel basis for conventional crude oil and natural gas liquids and on a per thousand cubic feet basis for natural gas
    - (i) the average net product prices received,
    - (ii) royalties,
    - (iii) operating expenses, specifying the particular items included, and
    - (iv) netback received;
  - (c) the average net product price received for the following, if the issuer's production of the following is material to the issuer's overall production,
    - (i) light and medium conventional crude oil,
    - (ii) heavy conventional crude oil, and
    - (iii) synthetic crude oil; and
  - (d) the dollar amounts expended on
    - (i) property acquisition,
    - (ii) exploration, including drilling, and
    - (iii) development, including facilities.
9. **Future Commitments** - A description of the issuer's future material commitments to buy, sell, exchange or transport oil or gas, stating for each commitment separately
  - (a) the aggregate price;
  - (b) the price per unit;
  - (c) the volume to be purchased, sold, exchanged or transported; and

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<sup>15</sup> This paragraph has been modified to refer to National Policy Statement No. 2-B.

(d) the term of the commitment.<sup>16</sup>

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

INSTRUCTION *The information required by this item shall be derived from or supported by information obtained from a report prepared and filed with the Commission under National Policy No. 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators or any successor instrument.*

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<sup>16</sup> This requirement is new.

**Item 7: Use of Proceeds**

- 7.1 Proceeds** - State the estimated net proceeds received, in the case of a special warrant offering, or to be received by the issuer or selling securityholder or, in the case of a non-fixed price distribution or a distribution to be made on a best efforts basis, the minimum amount, if any, of net proceeds to be received by the issuer or selling securityholder from the sale of the securities distributed and state the particulars of any provisions or arrangements made for holding any part of the net proceeds of the distribution in trust or escrow subject to the fulfilment of conditions.
- 7.2 Principal Purposes** - Describe in reasonable detail and, if appropriate, using tabular form, each of the principal purposes, with approximate amounts, for which the net proceeds will be used by the issuer. 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.
- 7.3 Escrowed Proceeds** - If applicable, disclose that unallocated funds will be placed in a trust or escrow account, invested or added to the working capital of the company and give details of the arrangements made for, and the persons or companies responsible for, the supervision of the trust or escrow account or the investment of unallocated funds and the investment policy to be followed.
- 7.4 Other Sources of Funding** - If any material amounts of other funds are to be used in conjunction with the proceeds, state the amounts and sources of the other funds.
- 7.5 Acquisition** - If more than 10 percent of the net proceeds are to be used to acquire assets, describe the assets. If known, disclose the particulars of the purchase price being paid for or being allocated to the assets or categories of assets, including intangible assets. If the vendor of the assets is an insider of the issuer, give the name of the vendor and the method used in determining the purchase price. Describe the nature of the title to or interest in the assets to be acquired by the issuer. If any part of the consideration for the acquisition of the assets consists of securities of the issuer, give brief particulars of the class, number or amount, voting rights, if any, and other appropriate information relating to the securities, including particulars of any issuance of any securities of the same class within the two preceding years.
- 7.6 Retirement or Repayment of Debt** - 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 of the issuer, identify the creditor and the nature of the relationship to the issuer and the outstanding amount owed.
- 7.7 Special Warrant Financing** - If the prospectus is used to qualify the distribution of securities issued upon the exercise of special warrants or the exercise of other securities acquired on a prospectus-exempt basis, describe the principal purposes for which the proceeds of the prospectus-exempt financing were used or are to be used. If all or a portion of the funds have been spent, explain how the funds were spent.

**INSTRUCTIONS**

(1) *For the purposes of the disclosure in Item 7.2 the phrase "for general corporate purposes" will generally not be sufficient.*

(2) *The issuer may choose to include a statement similar to the following as a lead-in:<sup>17</sup>*

*"The issuer intends to spend the funds available to it as stated in this prospectus. There may be circumstances, however, where, for sound business reasons, a reallocation of funds may be necessary."*

**Item 8: Selected Consolidated Financial Information and Management's Discussion and Analysis**

- 8.1 Annual Information<sup>18</sup>** - Provide the following financial data for the issuer in summary form for each of the last three completed financial years and any period subsequent to the most recent financial year end for which financial statements are included in the prospectus accompanied by a discussion of the factors affecting the comparability of the data, including discontinued operations, changes in accounting policies, significant acquisitions or dispositions and major changes in the direction of the business:

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<sup>17</sup> New provision.

<sup>18</sup> This disclosure is consistent with the requirement of Item 5 of National Instrument 44-101 Form 44-101F1 AIF.

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

**8.2 Quarterly Information-** For each of the last eight quarters ending at the end of the most recently completed financial year, provide the information required in paragraphs 1, 2 and 3 of Item 8.1, provided that, if the issuer is only required to file six month interim financial statements, the information may instead be provided for each of the last four completed six month periods ended at the end of the most recently completed financial year for which financial statements are included in the prospectus.

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

**8.4 Foreign GAAP -** An issuer may present the selected consolidated financial information required in this Item 8 on the basis of foreign GAAP if

- (a) the issuer's primary financial statements have been prepared using foreign GAAP; and
- (b) the issuer provides a cross reference to the notes to the financial statements containing the reconciliation of the financial statements to Canadian GAAP.

#### INSTRUCTIONS

- (1) *If the financial information that is included in the summary is derived from financial statements included in the prospectus, but the financial information is neither directly presented in, nor readily determinable from, the financial statements, include a reconciliation to the financial statements in notes.*
- (2) *Disclose in the derivation of ratios included in the prospectus in notes.*
- (3) *If the financial information that is included in the prospectus is derived from financial statements that are not included in the prospectus, indicate in the lead-in to the summary the source from which the information is extracted, the percentage interest that the issuer has in the person or company, the relevant GAAP principles used, the name of the auditors, the date of the report, and the nature of the opinion expressed.*
- (4) *Information included in the prospectus should be presented in a manner that is consistent with the intent of accounting recommendations and practices (e.g., cash flow data should not be interspersed with amounts from an income statement in a manner which suggests that cash flow data has been or should be presented in an income statement, and cash flow data should not be presented in a manner that appears to give it prominence equal to or greater than earnings data).*

**8.5 Issuers Incorporated Less than One Year -** If the issuer was incorporated or organized less than one year before the date as of which the most recent balance sheet contained in the prospectus is drawn up or if the issuer's business is still in the development stage, indicate the amount or estimated amount of preliminary expenses incurred by the issuer, showing administrative and development expenses separately, including the amount already expended and the estimated future expenditures.

**8.6 Management's Discussion and Analysis -** Reproduce the disclosure required to be included in the issuer's Annual Information Form as Management's Discussion and Analysis

- (a) providing an analysis of the issuer's financial condition, changes in financial condition and results of operations in the most recently completed financial year included in the prospectus, including a comparison against the previously completed financial year;
- (b) comparing the financial condition, changes in financial condition and results of operations for the financial year included in the prospectus preceding the most recently completed financial year of the issuer with the preceding financial year; and
- (c) providing an analysis of the issuer's financial condition, changes in financial condition and results of operations in the most recently completed interim period, including a comparison against the comparable period in the previous financial year.

**Item 9: Earnings Coverage Ratios<sup>19</sup>**

**9.1 Earnings Coverage Ratios**

- (1) If the securities being distributed are debt securities having a term to maturity in excess of one year or are preferred shares, disclose the following earnings coverage ratios adjusted in accordance with paragraph 2:
  - 1. The earnings coverage ratio based on the 12 month period ended on the last day of the most recently completed period for which audited annual financial statements of the issuer are included in the prospectus.
  - 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 are included in the prospectus if the period is subsequent to the last day of the most recently completed period for which audited annual financial statements of the issuer are required to be included in the prospectus.
- (2) The ratios referred to in paragraph (1) shall be adjusted to reflect
  - (a) the issuance of the securities that are to be distributed under the prospectus, based on the price at which the securities are expected to be distributed;
  - (b) in the case of a distribution of preferred shares,
    - (i) all preferred shares issued since the date of the annual or interim financial statements, and
    - (ii) all preferred shares repurchased, redeemed or otherwise retired since the date of the annual or interim financial statements and all preferred shares to be repurchased, redeemed or otherwise retired from the proceeds to be realized from the sale of securities under the prospectus;
  - (c) the issuance of all long-term financial liabilities, as defined in the Handbook;
  - (d) the repayment, redemption or other retirement of all long-term financial liabilities, as defined in the Handbook, since the date of the annual or interim financial statements and all long-term financial liabilities to be repaid or redeemed from the proceeds to be realized from the sale of securities distributed under the prospectus; and
  - (e) the servicing costs that were incurred, or are expected to be incurred, in relation to the adjustments.

**INSTRUCTIONS**

- (1) *Cash flow coverage may be disclosed but only as a supplement to earnings coverage and only if the method of calculation is fully disclosed. Earnings coverage is calculated by dividing an entity's earnings (the numerator) by its interest and dividend obligations (the denominator).*
- (2) *For the earnings coverage calculation*
  - (a) *the numerator should be calculated using consolidated net income before interest and income taxes;*

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<sup>19</sup> A similar approach has been adopted in proposed National Instrument 44-101 Short Form Prospectus Distributions.

- (b) *imputed interest income from the proceeds of a distribution should not be added to the numerator;*
  - (c) *an issuer may also present, as supplementary disclosure, a coverage calculation based on earnings before discontinued operations and extraordinary items;*
  - (d) *for distributions of debt securities, the appropriate denominator is interest expense determined in accordance with generally accepted accounting principles, after giving effect to the new debt issue and any retirement of obligations plus the amount of interest that has been capitalized during the period;*
  - (e) *for distributions of preferred shares,*
    - (i) *the appropriate denominator is dividends declared during the period, together with undeclared dividends on cumulative preferred shares, after giving effect to the new preferred share issue, plus the issuer's annual interest requirements, including the amount of interest that has been capitalized during the period, less any retirement obligations;*
    - (ii) *the coverage calculation should gross up dividends to a before-tax equivalent using the issuer's effective income tax rate (this is the rate that is reconciled to the basic income tax rate in the issuer's financial statement notes);*
    - (iii) *the combined interest and dividend method (the "combined method"), and not the prior deduction method, should be used to calculate earnings coverage; and*
  - (f) *for distributions of both debt securities and preferred shares, the appropriate denominator is the same as for a preferred share issue, except that the denominator should also reflect the effect of the debt being offered pursuant to the prospectus.*
- (3) *The prior deduction method referred to in Instruction 2(e)(ii) reflects the net coverage for preferred dividends after meeting interest obligations and results in a higher ratio than the combined method. As investors may falsely interpret the higher ratio as indicating less risk, without appreciating the fact that debtholders rank prior to preferred shareholders, the combined method should be used, although disclosure of a supplementary coverage ratio calculated using the prior deduction method is permitted.*
- (4) *The denominator represents a pro forma calculation of the aggregate of an issuer's interest obligations on all long-term debt and dividend obligations (including both dividends declared and undeclared dividends on cumulative preferred shares) with respect to all outstanding preferred shares, as adjusted to reflect*
  - (a) *the issuance of all long-term debt and, in addition in the case of an issuance of preferred shares, all preferred shares issued, since the date of the annual or interim financial statements;*
  - (b) *the issuance of the securities that are to be distributed under the prospectus, based on a reasonable estimate of the price at which these securities will be distributed;*
  - (c) *the repayment or redemption of all long-term debt since the date of the annual or interim financial statements, all long-term debt to be repaid or redeemed from the proceeds to be realized from the sale of securities under the prospectus and, in addition, in the case of an issuance of preferred shares, all preferred shares repaid or redeemed since the date of the annual or interim financial statements and all preferred shares to be repaid or redeemed from the proceeds to be realized from the sale of securities under the prospectus; and*
  - (d) *the servicing costs that were incurred, or will be incurred, in relation to the above adjustments.*
- (5) *If, under section 4.3 of Rule 41-501 General Prospectus Requirements, financial statements of an issuer for a more recent financial period than the periods covered by the financial statements normally required under subsection 4.1(1) of the Rule are included in the prospectus, earnings coverage must be calculated based on the updated financial statements. In addition, if meaningful in the circumstances, earnings coverage ratio must be calculated and disclosed based on a pro forma income statement that is included in a prospectus.*
- (6) *For debt securities, disclosure of earnings coverage shall include language similar to the following:*

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

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

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

- (8) *If the issuer is a wholly-owned subsidiary of a credit supporter, has no operations or only minimal operations, that are independent of the credit supporter and is an entity that functions essentially as a special purpose vehicle, disclose the earnings coverage of the credit supporter. If this disclosure is included, the earnings coverage of the issuer may not be material and, if not material, may be omitted. If the issuer is a wholly-owned subsidiary of the credit supporter but has more than minimal operations that are independent of the credit supporter, or if the issuer is not a wholly-owned subsidiary of the credit supporter, the earnings coverage of both the credit supporter and the issuer shall be disclosed.*
- (9) *If the earnings coverage is less than one-to-one, disclose this fact in bold-face on the cover page of the prospectus. While the actual coverage ratio should not be disclosed in these circumstances, the dollar amount of the coverage deficiency (i.e., the dollar amount of earnings required to attain a ratio of one-to-one) should be disclosed in the body of the prospectus.*
- (10) *Other earnings coverage calculations may be included as supplementary disclosure to the required earnings coverage calculations outlined above as long as their derivation is disclosed and they are not given greater prominence than the required earnings coverage calculations.*

**Item 10: Description of the Securities Distributed**

**10.1 Shares** - If shares are being distributed, state the description or the designation of the class of shares distributed and describe all material attributes and characteristics, including,

- (a) dividend rights;
- (b) voting rights;
- (c) rights upon dissolution or winding-up;
- (d) pre-emptive rights;
- (e) conversion or exchange rights;
- (f) redemption, retraction, purchase for cancellation or surrender provisions;
- (g) sinking or purchase fund provisions; and
- (h) provisions permitting or restricting the issuance of additional securities and any other material restrictions.

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

- (a) provisions for interest rate, maturity and premium, if any;
- (b) conversion or exchange rights;
- (c) redemption, retraction, purchase for cancellation or surrender provisions;
- (d) sinking or purchase fund provisions;

- (e) the nature and priority of any security for the debt securities, briefly identifying the principal properties subject to lien or charge;
- (f) provisions permitting or restricting the issuance of additional securities, the incurring of additional indebtedness and other material negative covenants, including restrictions against payment of dividends and restrictions against giving security on the assets of the issuer or its subsidiaries, and provisions as to the release or substitution of assets securing the debt securities;
- (g) the name of the trustee under any indenture relating to the debt securities and the nature of any material relationship between the trustee or any of its affiliates and the issuer or any of its affiliates; and
- (h) any financial arrangements between the issuer and any of its affiliates or among its affiliates that could affect the security for the indebtedness.

**10.3 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 return of capital may be made before such date, including any redemption or prepayment obligations or privileges of the issuer and any events that may trigger early liquidation or amortization of the underlying pool of financial assets,
  - (iii) provisions for the accumulation of cash flows to provide for the repayment of principal or return of capital,
  - (iv) provisions permitting or restricting the issuance of additional securities and any other material negative covenants applicable to the issuer,
  - (v) the nature, order and priority of the entitlements of holders of asset-backed securities and any other entitled persons or companies to receive cash flows generated from the underlying pool of financial assets, and
  - (vi) any events, covenants, standards or preconditions that are dependant or based on the economic performance of the underlying pool of financial assets and that may impact on the timing or amount of payments or distributions to be made under the asset-backed securities;
- (b) information on the underlying pool of financial assets, for the period from the date as at which the following information was presented in the prospectus under Item 6.2 to a date not more than 90 days before the date of the issuance of a receipt for the preliminary prospectus or *pro forma* prospectus, as applicable, relating to
  - (i) the composition of the pool as of the end of the period,
  - (ii) income and losses from the pool for the period on at least a quarterly basis, and
  - (iii) the payment, prepayment and collection experience of the pool for the period on at least a quarterly basis;
- (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.<sup>20</sup>

## INSTRUCTIONS

- (1) *The term "asset-backed security" is defined in the Instructions to Item 6.2.*
- (2) *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.*
- (3) *Present the information required by paragraph (b) in a manner that will enable a reader to easily determine if, and the extent to which the events, covenants, standards and precondition referred to in clause (a)(vi) have occurred, are being satisfied or may be satisfied.*
- (4) *If information required by paragraph (b) is not compiled specifically on the underlying pool of financial assets, but is compiled on a larger pool of the same assets from which the securitized assets are randomly selected such that the performance of the pool is representative of the performance of the 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.*

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<sup>20</sup> This paragraph (3) is new and has been added to conform to proposed National Instrument 44-101 Form 44-101F2 Short Form Prospectus.

- 10.4 Derivatives<sup>21</sup>** - 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.
- 10.5 Other Securities** - If securities other than shares, debt securities, asset-backed securities or derivatives are being distributed, describe fully the material attributes and characteristics of those securities.
- 10.6 Modification of Terms** - Describe provisions as to modification, amendment or variation of any rights 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.
- 10.7 Constraints**
- (1) 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.
  - (2) If the shares are restricted shares for purposes of Rule 56-501 Restricted Shares, comply with the applicable disclosure requirements of that rule.
- 10.8 Ratings** - If one or more ratings, including provisional ratings, have been received from one or more approved rating organizations for the securities to be distributed and the rating or ratings continue in effect, disclose
- (a) each security rating, including a provisional rating, received from an approved rating organization;
  - (b) the name of each approved rating organization that has assigned a rating for the securities to be distributed;
  - (c) a definition or description of the category in which each approved rating organization rated the securities to be distributed and the relative rank of each rating within the organization's overall classification system;
  - (d) an explanation of what the rating addresses and what attributes, if any, of the securities to be distributed are not addressed by the rating;
  - (e) any factors or considerations identified by the approved rating organization as giving rise to unusual risks associated with the securities to be distributed;
  - (f) a statement that a security rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time by the rating organization; and
  - (g) any announcement made by 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.

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<sup>21</sup> The term "derivatives" is defined in Rule 14-501 Definitions as an instrument, agreement or security, the market price, value or payment obligation of which is derived from, or based on an underlying interest and the term "underlying interest" means, for a derivative, the security, commodity, financial instrument, currency, interest rate, foreign exchange rate, economic indicator, index, basket, agreement or 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.

**10.9 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.

**INSTRUCTIONS**

- (1) *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.*
- (2) *No information need be given as to any class of securities that is to be redeemed or otherwise retired if appropriate steps to assure redemption or retirement have been or will be taken before or contemporaneously with the delivery of the securities being distributed.*

**Item 11: Consolidated Capitalization<sup>22</sup>**

**11.1 Consolidated Capitalization** - Describe any material change in, and the effect of the material change on, the share and loan capital of the issuer, on a consolidated basis, since the date of the comparative financial statements for the issuer's most recently completed financial year contained in the prospectus.

**Item 12: Options to Purchase Securities**

**12.1 Options to Purchase Securities** - State, in tabular form, as at a specified date not more than 30 days before the date of the prospectus or *pro forma* prospectus, as applicable, information as to options<sup>23</sup> to purchase securities of the issuer or a subsidiary of the issuer that are held or will be held upon completion of the distribution by

- (a) all executive officers and past executive officers of the issuer as a group and all directors and past directors of the issuer who are not also executive officers as a group, indicating the aggregate number of executive officers and the aggregate number of directors to whom the information applies, without naming them;
- (b) all executive officers and past executive officers of all subsidiaries of the issuer as a group and all directors and past directors of those subsidiaries who are not also executive officers of the subsidiary as a group, in each case, without naming them and excluding individuals referred to in paragraph (a), indicating the aggregate number of executive officers and the aggregate number of directors to whom the information applies;
- (c) all other employees and past employees of the issuer as a group, without naming them;
- (d) all other employees and past employees of subsidiaries of the issuer as a group, without naming them;
- (e) all consultants of the issuer as a group, without naming them; and
- (f) any other person or company, including the underwriter, naming each person or company.

**INSTRUCTION** *Describe the options, stating the material provisions of each class or type of option, including:*

- (a) *the designation and number of the securities under option;*

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<sup>22</sup> This Item has been revised to parallel the requirement in Item 4 of National Instrument 44-101 Form 44-101F2 Short Form Prospectus.

<sup>23</sup> The term "option" is defined in Rule 14-501 Definitions. The definition is "an agreement that provides the holder with the right, but not the obligation, to do one or more of the following on terms or at a price established by or determinable by reference to the agreement at or by a time established by the agreement: (1) Receive an amount of cash determinable by reference to a specified quantity of the underlying interest of the option. (2) Purchase a specified quantity of the underlying interest of the option. (3) Sell a specified quantity of the underlying interest of the option".

- (b) *the purchase price of the securities under option or the formula by which the purchase price will be determined, and the expiration dates of the options;*
- (c) *if reasonably ascertainable, the market value of the securities under option on the date of grant;*
- (d) *if reasonably ascertainable, the market value of the securities under option on the specified date; and*
- (e) *with respect to options referred to in paragraph (f) of Item 12.1, the particulars of the grant including the consideration for the grant.*

**Item 13: Prior Sales**

**13.1 Prior Sales** - State the prices at which securities of the same class as the securities distributed under the prospectus have been sold within the 12 months before the date of the prospectus or *pro forma* prospectus, as applicable, or are to be sold, by the issuer or selling securityholder and the number of securities of the class sold or to be sold at each price.

**13.2 Stock Exchange Price**

- (1) If shares of the same class as the shares to be distributed under the prospectus are listed on a Canadian stock exchange or traded on a Canadian market, provide the price ranges and volume traded on the Canadian stock exchange or market on which the greatest volume of trading generally occurs.
- (2) If shares of the same class as the shares to be distributed under the prospectus are not listed on a Canadian stock exchange or traded on a Canadian market, provide the price ranges and volume traded on the foreign stock exchange or market on which the greatest volume of trading generally occurs.
- (3) Information is to be provided on a monthly basis for each month or, if applicable, part month, of the current quarter and the immediately preceding quarter and on a quarterly basis for the next preceding seven quarters.

**INSTRUCTION** *In the case of sales by a selling securityholder, the information required by Item 13.1 may be given in the form of price ranges for each calendar month.*

**Item 14: Escrowed Securities<sup>24</sup>**

**14.1 Escrowed Securities**

- (1) State as of a specified date within 30 days before the date of the prospectus or *pro forma* prospectus, as applicable, in substantially the following tabular form, the number of securities of each class of voting securities of the issuer held, to the knowledge of the issuer, in escrow and the percentage that number represents of the outstanding securities of that class.

**ESCROWED SECURITIES**

Designation of class	Number of securities held in escrow	Percentage of class

- (2) In a note to the table disclose the name of the depository, if any, and the date of and conditions governing the release of the securities from escrow.

**Item 15: Principal Shareholders<sup>25</sup> and Selling Securityholders**

**15.1 Principal Shareholders and Selling Securityholders**

- (1) Provide the following information for each principal shareholder of the issuer and, if any securities are being distributed for the account of a securityholder, for each selling securityholder, as of a specified date not more than 30 days before the date of the prospectus or *pro forma* prospectus, as applicable:
  - 1. The name;
  - 2. The number or amount of securities owned of the class being distributed.
  - 3. The number or amount of securities of the class being distributed for the account of the securityholder.
  - 4. The number or amount of securities of the issuer of any class to be owned after the distribution.
  - 5. Whether the securities referred to in paragraphs 3 or 4 are owned both of record and beneficially, of record only, or beneficially only.

<sup>24</sup> Currently required under Item 25 of Form 12, Item 29 of Form 13 and Item 25 of Form 14.

<sup>25</sup> The term "principal shareholder" is defined in Rule 14-501 Definitions. The definition is, if used to indicate a relationship with a person or company, "a person or company that is the direct or indirect beneficial owner of or exercises control or direction over more than 10 percent of any class or series of voting securities" of the person or company.

6. The percentages of each class of securities known by the issuer to be owned before and after the distribution.
- (2) If voting securities are being distributed in connection with an acquisition, amalgamation, merger, reorganization or arrangement, indicate, to the extent known, the holdings of each person or company described in paragraph (1) that will exist after giving effect to the transaction.
- (3) If any of the securities being distributed are being distributed for the account of a securityholder and those securities were purchased by the selling securityholder within the two years preceding the date of the prospectus or *pro forma* prospectus, as applicable, state the date the selling securityholder acquired the securities and, if the securities were acquired in the 12 months preceding the date of the prospectus or *pro forma* prospectus, as applicable, the cost to the securityholder in the aggregate and on an average cost per security basis.
- (4) If, to the knowledge of the issuer or the underwriter of the securities being distributed, more than 10 percent of any class of voting securities of the issuer is held, or is to be held, subject to any voting trust or other similar agreement, disclose, to the extent known, the designation of the securities, the number or amount of the securities held or to be held subject to the agreement and the duration of the agreement. State the names and addresses of the voting trustees and outline briefly their voting rights and other powers under the agreement.
- (5) If, to the knowledge of the issuer or the underwriter of the securities being distributed, any principal shareholder or selling securityholder is an associate or affiliate of another person or company named as a principal shareholder, disclose, to the extent known, the material facts of the relationship, including any basis for influence over the issuer held by the person or company other than the holding of voting securities of the issuer.

**INSTRUCTION** *If a company or partnership is a principal shareholder of an issuer, disclose, to the extent known, the name of each individual who, through ownership of or control or direction over the securities of the company or membership in the partnership, as the case may be, is a principal shareholder of the company or partnership.*

**Item 16: Directors and Officers**

**16.1 Name, Address, Occupation and Security Holding**

- (1) List the name and municipality of residence of each director and each officer of the issuer and indicate their respective positions and offices held with the issuer and their respective principal occupations within the five preceding years.
- (2) State the period or periods during which each director has served as a director and when the term of office of each director will expire.
- (3) State the number and percentage of securities of each class of voting securities of the issuer or any of its subsidiaries beneficially owned, directly or indirectly, or over which control or direction is exercised by all directors and executive officers of the issuer as a group.
- (4) Disclose the board committees of the issuer and identify the members of each committee.
- (5) If the principal occupation of a director or officer is that of an officer of a person or company other than the issuer, state the principal business of the person or company.

**INSTRUCTIONS**

- (1) *If, during the period, a director or officer has held more than one position with the issuer or the issuer's controlling shareholder or a subsidiary of the issuer, state only the current position held.*
- (2) *Securities of subsidiaries that are beneficially owned, directly or indirectly, or over which control or direction is exercised by directors or senior officers through ownership or control or direction over securities of the issuer do not need to be included.*

**16.2 Corporate Cease Trade Orders or Bankruptcies** - If a director or officer of the issuer or a shareholder holding a sufficient number of securities of the issuer to affect materially the control of the issuer, is, or within the 10 years before the date of the prospectus or *pro forma* prospectus, as applicable, has been, a director or officer of any other issuer that, while that person was acting in that capacity,

- (a) was the subject of a cease trade or similar order, or an order that denied the other issuer access to any exemptions under Ontario securities law, for a period of more than 30 consecutive days, state the fact and describe the basis on which the order was made and whether the order is still in effect; or
- (b) became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets, state the fact.

**16.3 Penalties or Sanctions<sup>26</sup>** - If a director or officer of the issuer or a shareholder holding sufficient securities of the issuer to affect materially the control of the issuer has

- (a) been subject to any penalties or sanctions imposed by a court or regulator, or
- (b) entered into a settlement agreement with a regulator,

which would be likely to be considered important to a reasonable investor making an investment decision, describe the penalties or sanctions imposed and the grounds on which they were imposed or the terms of the settlement agreement.

**16.4 Personal Bankruptcies** - If a director or officer of the issuer, or a shareholder holding sufficient securities of the issuer to affect materially the control of the issuer has, within the 10 years before the date of the prospectus or *pro forma* prospectus, as applicable, become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency, or been subject to or instituted any proceedings, arrangement or compromise with creditors, or had a receiver, receiver manager or trustee appointed to hold the assets of the director or officer, state the fact.

**16.5 Conflicts of Interest** - Disclose particulars of existing or potential material conflicts of interest between the issuer or a subsidiary of the issuer and a director or officer of the issuer or a subsidiary as a result of the director's or officer's outside business interests.

**Item 17: Executive Compensation**

**17.1 Disclosure** - Include in the prospectus a Statement of Executive Compensation in Form 40 to the Regulation and describe any intention to make any material changes to that compensation.

**17.2 Exception** - Despite section 17.1, the disclosure required by Items V, VIII, IX and X of Form 40 may be omitted.

**Item 18: Indebtedness of Directors and Executive Officers**

**18.1 Indebtedness of Directors and Executive Officers**

- (1) Disclose in substantially the following tabular form all indebtedness (other than routine indebtedness), and the other details prescribed in paragraph (2), for each individual who is, or at any time during the most recently completed financial year of the issuer was, a director or executive officer of the issuer, and each associate of such an individual,
  - (a) who is, indebted to the issuer or a subsidiary of the issuer; or
  - (b) whose indebtedness to another entity is the subject of a guarantee, support agreement, letter of credit or other similar arrangement or understanding provided by the issuer or a subsidiary of the issuer.

**INDEBTEDNESS OF DIRECTORS AND EXECUTIVE OFFICERS**

Name and Principal Position	Involvement of Issuer or Subsidiary	Largest Amount Outstanding During [Last Completed Financial Year] (\$)	Amount Outstanding as at [current date] (\$)	Financially Assisted Securities Purchases During [Last Completed Financial Year] (#)	Security for Indebtedness
(a)	(b)	(c)	(d)	(e)	(f)

<sup>26</sup> The requirement to include this disclosure for controlling shareholders is new.


- (2) Include the following in the table required under paragraph (1):
1. The name of the borrower (column (a)).
  2. If the borrower is a director or executive officer, the principal position of the borrower; if the borrower was, during the year, but no longer is a director or executive officer, include a statement to that effect; if the borrower is included as an associate of a director or executive officer, describe briefly the relationship of the borrower to any individual who is or, during the year, was a director or executive officer, name that individual and provide the information that would be required by this subparagraph for that individual if he or she was the borrower (column (a)).
  3. Whether the issuer or a subsidiary of the issuer is the lender or the provider of a guarantee, support agreement, letter of credit or similar arrangement or understanding (column (b)).
  4. The largest aggregate amount of the indebtedness outstanding at any time during the last completed financial year (column (c)).
  5. The aggregate amount of the indebtedness outstanding as at a specified date not more than 30 days before the date of the prospectus or *pro forma* prospectus (column (d)).
  6. If the indebtedness was incurred to purchase securities of the issuer or of a subsidiary of the issuer, separately for each class of securities the aggregate number of securities purchased during the last completed financial year with the financial assistance (column (e)).
  7. The security, if any, provided to the issuer, a subsidiary of the issuer or the other entity for the indebtedness (column (f)).
- (3) Disclose in the introduction to the table required by paragraph (1) the aggregate indebtedness of all officers, directors, employees, and former officers, directors and employees of the issuer or a subsidiary of the issuer outstanding as at a specified date not more than 30 days before the date of the prospectus or *pro forma* prospectus, as applicable, that is owed to
- (a) the issuer or a subsidiary of the issuer; or
  - (b) another entity if the indebtedness is the subject of a guarantee, support agreement, letter of credit or other similar arrangement or understanding provided by the issuer or any of its subsidiaries.
- (4) Disclose in a footnote to, or a narrative accompanying, the table required under paragraph (1)
- (a) the material terms of the indebtedness and, if applicable, of each guarantee, support agreement, letter of credit or other similar arrangement or understanding, including the term to maturity, rate of interest and any understanding, agreement or intention to limit recourse, and the nature of the transaction in which the indebtedness was incurred;
  - (b) any material adjustment or amendment made to the terms of the indebtedness and, if applicable, the guarantee, support agreement, letter of credit or similar arrangement or understanding; and
  - (c) the class of the securities purchased with financial assistance from the issuer or held as security for the indebtedness and, if the class of securities is not publicly traded, all material terms of the securities.

INSTRUCTIONS

- (1) For purposes of this item, the following interpretation applies to the term "routine indebtedness":
1. A loan, whether or not in the ordinary course of business, is considered as routine indebtedness if made on terms, including terms relating to interest rate and security, no more favourable to the borrower than the terms on which loans are made by the issuer to employees generally unless the amount at any time

*during the last completed financial year remaining unpaid under the loans to any one director or executive officer together with his or her associates exceeds \$25,000, in which case the indebtedness is not routine.*

2. *A loan made by an issuer to a director or executive officer, whether or not the issuer makes loans in the ordinary course of business, is routine indebtedness if*
  - (a) *the borrower is a full-time employee of the issuer or a subsidiary of the issuer;*
  - (b) *the loan is fully secured against the residence of the borrower; and*
  - (c) *the amount of the loan does not exceed the annual aggregate salary of the borrower from the issuer and its subsidiaries.*
3. *If the issuer makes loans in the ordinary course of business, a loan to a person or company other than a full-time employee of the issuer or of a subsidiary of the issuer is routine indebtedness, if the loan*
  - (a) *is made on substantially the same terms, including terms relating to interest rate and security, as are available when a loan is made to other customers of the issuer with comparable credit ratings, and*
  - (b) *involves no greater than usual risks of collectability.*
4. *Indebtedness for purchases made on usual trade terms, for ordinary travel or expense advances or for loans or advances made for similar purposes is routine indebtedness if the repayment arrangements are in accordance with usual commercial practice.*
  - (2) *For purposes of this item, "support agreement" includes an agreement to provide assistance in the maintenance or servicing of any indebtedness and an agreement to provide compensation for the purpose of maintaining or servicing any indebtedness of the borrower.*
  - (3) *No disclosure need be made under this item of indebtedness that has been entirely repaid on or before the date of the prospectus.*

**Item 19: Plan of Distribution**

- 19.1 Name of Underwriters** - If the securities are being distributed by an underwriter, state the name of the underwriter and describe briefly the nature of the underwriter's obligation to take up and pay for the securities. Give the date by which the underwriter is obligated to purchase the securities.
- 19.2 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 terms, with bracketed information completed and with modifications necessary to reflect the terms of the distribution:
- "Under an agreement dated [insert date of agreement] between [insert name of issuer or selling securityholder] and [insert name(s) of underwriter(s)], as underwriter[s], [insert name of issuer or selling security shareholder] has agreed to sell and the underwriter[s] [has/have] agreed to purchase on [insert closing date] the securities at a price of [insert offering price], payable in cash to [insert name of issuer or selling securityholder] against delivery. The obligations of the underwriter[s] under the agreement may be terminated at [its/their] discretion on the basis of [its/their] assessment of the state of the financial markets and may also be terminated upon the occurrence of certain stated events. The underwriter[s] [is/are], however, obligated to take up and pay for all of the securities if any of the securities are purchased under the agreement."
- 19.3 Best Efforts Offering** - Outline briefly the plan of distribution of any securities being distributed other than on the basis described in Item 19.2.
- 19.4 Over-Allotments** - If the issuer, a selling securityholder or an underwriter knows or has reason to believe that there is an intention to over-allot or that the price of any security may be stabilized to facilitate the distribution of the securities, disclose this intention.
- 19.5 Minimum Distribution** - If a minimum amount of funds is required by the issuer 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 and

indicate that the distribution will not continue for a period of more than 90 days after the date of the receipt for the prospectus if subscriptions representing the minimum amount of funds are not obtained within that period, unless each of the persons or companies who subscribed within that period has consented to the continuation. State that during the 90 day period funds received from subscriptions will be held by a depository who is a registrant, bank or trust company and that 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.

**19.6 Approvals** - If the purpose of the distribution is to fund in whole or in part a new business of the issuer and the issuer has not obtained all material licenses, registrations and approvals necessary for the operation of the business, include a statement that

- (a) all funds received from subscribers will be held by a depository who is a registrant, bank or trust company for a period not longer than 90 days; and
- (b) if, at the end of the period, the material licences, registrations and approvals have not been obtained, the depository will return the funds to subscribers.

**19.7 Reduced Price Distributions** - If an issuer, underwriter or selling securityholder wishes to be able to decrease the price at which securities are distributed for cash from the initial public offering price disclosed in the prospectus and thereafter change, from time to time, the price at which securities are distributed under the prospectus in accordance with the procedures permitted by Rule 41-501 General Prospectus Requirements, disclose that, after the underwriter has made a reasonable effort to sell all of the securities at the initial offering price fixed in the prospectus, the offering price may be decreased, and further changed from time to time, to an amount not greater than the initial offering price disclosed in the prospectus and that the compensation realized by the underwriter will be decreased by the amount that the aggregate price paid by purchasers for the securities is less than the gross proceeds paid by the underwriter to the issuer or selling securityholder.

**19.8 Listing Application** - If application has been made to list or quote the securities being distributed on a stock exchange or other market and if securities of the issuer of the same class as the securities being distributed or any other class are currently listed or quoted on a stock exchange or other market, include a statement, in substantially the following form, with bracketed information completed:

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

**19.9 Conditional Listing Approval** - If application has been made to list or quote the securities being distributed on a stock exchange or other market and conditional listing approval has been received, include a statement, in substantially the following form, with 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 issuer] fulfilling all of the requirements of the [name of exchange or market] on or before [date], [including distribution of these securities to a minimum number of public securityholders.]"

**19.10 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 of determining the estimates.

**Item 20: Risk Factors**

**20.1 Risk Factors**

- (1) Describe the factors material to the issuer that a reasonable investor would consider relevant to an investment in the securities being distributed, such as cash flow and liquidity problems, if any, experience of management, the general risks inherent in the business carried on by the issuer, environmental and health risks, reliance on key personnel, the arbitrary establishment of the offering price, regulatory constraints, economic or political conditions and financial history and any other matter that in the opinion of the issuer or selling securityholder would be most likely to influence the investor's decision to purchase the securities. Risks should be disclosed in the order of their seriousness in the opinion of the issuer or selling securityholder.
- (2) If there is a risk that purchasers of the securities distributed may become liable to make an additional contribution beyond the price of the security, disclose the risk.

**Item 21: Promoters**

**21.1 Promoters**

- (1) For a person or company that is or has been, within the two years immediately preceding the date of the prospectus or *pro forma* prospectus, as applicable, a promoter of the issuer or of a subsidiary of the issuer state
  - (a) the person or company's name;
  - (b) the number and percentage of each class of voting securities of the issuer or any of its subsidiaries beneficially owned, directly or indirectly, or over which control is exercised;
  - (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 therefor received or to be received by the issuer or a subsidiary of the issuer; and
  - (d) for an asset acquired within the two years before the date of the preliminary prospectus or *pro forma* prospectus or thereafter, 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 associate or 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 the promoter has been a director, officer or promoter of any issuer during the 10 years ending on the date of the preliminary prospectus or *pro forma* prospectus, as applicable, that
  - (a) was the subject of a cease trade or similar order, or an order that denied the other issuer access to any exemptions under Ontario securities law, for a period of more than 30 consecutive days, state the fact and describe the basis on which the order was made and whether the order is still in effect; or
  - (b) became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or been subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets, state the fact.
- (3) If the promoter has been subject to any penalties or sanctions imposed by a court or regulator, or has entered into a settlement agreement with a regulator, which would be likely to be considered important to a reasonable investor in making an investment decision, describe the penalties or sanctions imposed and the grounds on which they were imposed or the terms of the settlement agreement.
- (4) If the promoter has, within the 10 years before the date of the prospectus or *pro forma* prospectus, as applicable, become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency, or been subject to or instituted any proceedings, arrangement or compromise with creditors, or had a receiver, receiver manager or trustee appointed to hold the assets of the director or officer, state the fact.

**Item 22: Legal Proceedings**

**22.1 Legal Proceedings** - Describe any legal proceedings material to the issuer to which the issuer or a subsidiary of the issuer is a party or of which any of their respective property is the subject matter and any such proceedings known to the issuer to be contemplated, including the name of the court or agency, the date instituted, the principal parties to the proceedings, the nature of the claim, the amount claimed, if any, if the proceedings are being contested, and the present status of the proceedings.

**INSTRUCTION** *No information need be given with respect to any proceeding that involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the current assets of the issuer and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same legal*

*and factual issues as other proceedings pending or known to be contemplated, the amount involved in the other proceedings shall be included in computing the percentage.*

**Item 23: Interest of Management and Others in Material Transactions**

**23.1 Interest of Management and Others in Material Transactions** - Describe, and state the approximate amount of, any material interest, direct or indirect, of any of the following persons or companies in any transaction within the three years before the date of the prospectus or *pro forma* prospectus, or in any proposed transaction, that has materially affected or will materially affect the issuer or a subsidiary of the issuer:

1. Any director or executive officer of the issuer.
2. A securityholder disclosed in the prospectus as a principal shareholder.
3. An associate or affiliate of any of the persons or companies referred to in paragraphs 1 or 2.

**INSTRUCTIONS**

- (1) *The materiality of an interest is to be determined on the basis of the significance of the information to investors in light of all the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other and the amount involved are among the factors to be considered in determining the significance of the information to investors.*
- (2) *Give a brief description of the material transaction. Include the name of each person or company whose interest in any transaction is described and the nature of the relationship to the issuer.*
- (3) *For any transaction involving the purchase of assets by or sale of assets to the issuer or a subsidiary of the issuer, state the cost of the assets to the purchaser, and the cost of the assets to the seller if acquired by the seller within three years before the transaction.*
- (4) *This item does not apply to any interest arising from the ownership of securities of the issuer if the securityholder receives no extra or special benefit or advantage not shared on an equal basis by all other holders of the same class of securities or all other holders of the same class of securities who are resident in Canada.*
- (5) *Information must be included as to any material underwriting discounts or commissions upon the sale of securities by the issuer if any of the specified persons or companies were or are to be an underwriter or are associates, affiliates or partners of a person or company that was or is to be an underwriter.*
- (6) *No information need be given in answer to this item as to a transaction, or an interest in a transaction, if*
  - (a) *the rates or charges involved in the transaction are fixed by law or determined by competitive bids;*
  - (b) *the interest of a specified person or company in the transaction is solely that of a director of another company that is a party to the transaction;*
  - (c) *the transaction involves services as a bank or other depository of funds, a transfer agent, registrar, trustee under a trust indenture or other similar services;*
  - (d) *the interest of a specified person or company, including all periodic instalments in the case of any lease or other agreement providing for periodic payments or instalments, does not exceed \$100,000; or*
  - (e) *the transaction does not involve remuneration for services and the interest of the specified person or company arose from the beneficial ownership, direct or indirect, of less than 10 percent of any class of equity securities of another company that is party to the transaction and the transaction is in the ordinary course of business of the issuer or its subsidiaries.*
- (7) *Describe all transactions not excluded above that involve remuneration (including an issuance of securities), directly or indirectly, to any of the specified persons or companies for services in any capacity unless the interest of the person or company arises solely from the beneficial ownership, direct or indirect, of less than 10 percent of any class of equity securities of another company furnishing the services to the issuer or its subsidiaries.*

**Item 24: Relationship Between Issuer or Selling Securityholder and Underwriter**

**24.1 Relationship Between Issuer or Selling Securityholder and Underwriter** - If the issuer or selling securityholder is a connected issuer of an underwriter of the distribution, or if the issuer or selling securityholder is also an underwriter, comply with the disclosure requirements of Multilateral Instrument 33-105 Underwriting Conflicts.

**Item 25: Credit Supporter Disclosure**

**25.1 Credit Supporter Disclosure** - If a credit supporter has provided a guarantee or alternative credit support for all or substantially all of the payments to be made under the securities to be distributed, include statements by the credit supporter providing disclosure about the credit supporter that would be required under Items 4, 5, 6, 8, 16, 22, 24 and 29 of this Form if the credit supporter were the issuer of the securities and such other information about the credit supporter as is necessary to provide full, true and plain disclosure of all material facts concerning the securities to be distributed.

**Item 26: Auditors, Transfer Agents and Registrars**

**26.1 Auditors** - State the name and address of the auditor of the issuer.

**26.2 Transfer Agent and Registrar** - If shares are to be distributed, state the names of the issuer's transfer agent(s) and registrar(s) and the location (by municipalities) of the register(s) of transfers of that class of shares.

**26.3 Registration of Securities** - If securities other than shares are to be distributed, state the location (by municipalities) of each register on which transfers of the securities may be recorded.

**Item 27: Material Contracts**

**27.1 Material Contracts** - Give particulars of every material contract, other than contracts entered into in the ordinary course of business that was entered into within the two years before the date of the preliminary prospectus or *pro forma* prospectus, as applicable, by the issuer or a subsidiary of the issuer, and state a reasonable time and place at which the contracts or copies of the contracts may be inspected during distribution of the securities being distributed.

INSTRUCTIONS

- (1) *The term "material contract" for this purpose means a contract that can reasonably be regarded as material to a proposed investor in the securities being distributed and may in some circumstances include contracts with a person or company providing the issuer with promotional or investor relations services.*
- (2) *Set out a complete list of all material contracts, indicating those that are disclosed elsewhere in the prospectus and provide particulars about those material contracts for which particulars are not given elsewhere in the prospectus.*
- (3) *Particulars of contracts should include the dates of, parties to, consideration provided for in, and general nature of, the contracts.*

**Item 28: Experts**

**28.1 Opinions** - Name all counsel responsible for opinions referred to in the prospectus.

**28.2 Tax Consequences** - If the income tax aspects of an investment in the securities being distributed are particularly relevant to an investor, include a statement in **bold type** to the effect that investors are advised to consult their own tax advisers.

**28.3 Interest of Experts**

- (1) Disclose all direct or indirect interests in the property of the issuer or of an associate or affiliate of the issuer received or to be received by a person or company whose profession or business gives authority to a statement made by the person or company and who is named as having prepared or certified a part of the prospectus or prepared or certified a report or valuation described or included in the prospectus.
- (2) Disclose the beneficial ownership, direct or indirect, by a person or company referred to in paragraph (1) of any securities of the issuer or any associate or affiliate of the issuer.
- (3) For the purpose of paragraph (2), if the ownership is less than one percent, a general statement to that effect shall be sufficient.
- (4) If a person, or a director, officer or employee of a person or company referred to in paragraph (1) is or is expected to be elected, appointed or employed as a director, officer or employee of the issuer or of any associate or affiliate of the issuer, disclose the fact or expectation.

**Item 29: Other Material Facts**

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

**Item 30: Project Financings**

**30.1 Project Financings** - If the distribution is a project financing made by an issuer that is an unincorporated association or co-tenancy comprised of securityholders, disclose who will have responsibility for compliance with the continuous disclosure obligations under the Act.

**Item 31: Purchasers' Statutory Rights of Withdrawal and Rescission**

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

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

**31.2 Non-fixed Price Offerings** - In the case of a non-fixed price offering, replace the second sentence in the legend in Item 31.1 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."<sup>27</sup>

**Item 32: Financial Statements**

**32.1 Financial Statements** - Include the financial statements required under Parts 4 and 5 of Rule 41-501 General Prospectus Requirements.

**Item 33: Certificates**

**33.1 Certificates** - Include the certificates required under the Act and under Part 8 of Rule 41-501 General Prospectus Requirements.

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<sup>27</sup> This paragraph is new and has been added to modify the legend contained in paragraph (1) in the case of non-fixed price offerings to clarify when the statutory right of withdrawal begins to run.

**Proposed Companion Policy 41-501CP**  
**General Prospectus Requirements**

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**ONTARIO SECURITIES COMMISSION COMPANION POLICY 41-501CP  
TO ONTARIO SECURITIES COMMISSION RULE 41-501  
GENERAL PROSPECTUS REQUIREMENTS**

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**ONTARIO SECURITIES COMMISSION COMPANION POLICY 41-501CP  
TO ONTARIO SECURITIES COMMISSION RULE 41-501  
GENERAL PROSPECTUS REQUIREMENTS**

**PART 1 GENERAL REQUIREMENTS**

**1.1 Experience of Officers and Directors** - Clause 61(2)(c) of the Act requires the Director to refuse to issue a receipt for a prospectus if it appears that the proceeds received from the sale of securities to be paid to the treasury of the issuer, together with other resources of the issuer, will be insufficient to accomplish the purposes stated in the prospectus. The Commission believes that people are an important resource and that a sufficient number of the directors and officers of the issuer should have relevant knowledge and experience so that the Director will not conclude that the human and other resources are insufficient to accomplish these purposes. If the requisite knowledge and experience are not possessed by the directors and officers, the Director may be satisfied that the human and other resources are sufficient if it is shown that the issuer has contracted to obtain the knowledge and experience from others.

**1.2 Style of Prospectus** - Subsection 3.2(1) of Rule 41-501 General Prospectus Requirements (the "Rule") provides that the information contained in a prospectus shall be in narrative form. The Commission notes that subsection 56(1) of the Act requires that a prospectus contain "full, true and plain" disclosure. To that end, issuers and their advisors are reminded that they should ensure that disclosure documents are easy to read, and are encouraged to adopt the following plain language principles in preparing a prospectus:

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

If technical or business terms are required, clear and concise explanations should be used. The Commission is of the view that question and answer and bullet point formats are consistent with the requirements of subsection 3.2(1) of the Rule.

**1.3 Graphs, Photographs, Maps and Artwork** - Subsection 3.2(5) of the Rule provides that a prospectus may contain graphs, photographs, maps, artwork or other forms of illustration if they are relevant to the business of the issuer or the distribution and are not misleading. There is no longer an obligation to seek prior approval from staff of the Commission for the inclusion of a graph, photograph, map or artwork in a prospectus before the filing of the preliminary prospectus.

**1.4 Principal Shareholders** - Form 41-501F1 requires disclosure of the identity of each principal shareholder of the issuer and, if a principal shareholder is a company, of the identity of any individual who controls the company. Issuers are therefore advised that they should institute procedures to obtain and disclose such information.

**1.5 Certificate of Underwriter in Prospectus** - Subsection 59(1) of the Act requires that if an underwriter is in a contractual relationship with the issuer or selling securityholder, the prospectus shall contain a certificate signed by the underwriter in the prescribed form. An underwriter participating in the preparation of a prospectus undertakes a due diligence investigation in relation to the business of the issuer that usually results in enhanced quality of disclosure in the prospectus. For that reason, and particularly in the case of an initial public offering, the Commission encourages underwriter participation in the prospectus process. Issuers are reminded that the Director has discretion under subsection 61(1) of the Act to refuse to issue a receipt for a prospectus if it is in the public interest to do so, including in the case of a prospectus that contains disclosure that is considered deficient.

**1.6 Disclosure of Selling Securityholders** - Item 1.4(7) and Item 15.1(3) of Form 41-501F1 require that if any securities are being distributed for the account of an existing securityholder who purchased those securities within 2 years before the date of the prospectus, the name of the securityholder and the number or amount of the securities of the class being

distributed that are owned by the securityholder, shall be included in the prospectus. In some cases, particularly if there are a large number of selling securityholders each selling a small number or amount of securities, it may be desirable to disclose the required information on an aggregate, and not an individual securityholder, basis. In these cases, application for relief from the requirements in the Form must be made to the Director. The Director will normally require that the issuer undertake to file with the Commission all of the information required by Item 15.1(3) on or before filing the prospectus.

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

## **PART 2 FINANCIAL MATTERS**

- 2.1 Predecessor Financial Statements** - If an issuer has not existed for three years but has been involved in a business combination accounted for as a reverse take-over or pooling of interests, Canadian GAAP should be referred to in determining which combining entities' historical financial statements to use for purposes of complying with the annual and interim financial statement requirements in Part 4 of the Rule.

### **2.2 Applications for Exemption from Requirement to Include Financial Statements of the Issuer**

- (1) One of the key changes to the prospectus disclosure requirements introduced by the Rule was the reduction to three years, from five, for historical financial statements of the issuer. As a result of this change the Commission is of the view that relief from the requirement to provide three years of audited financial statements should be granted only in unusual circumstances not related to cost or the time involved in preparing and auditing the financial statements.
- (2) If relief from Part 4 of the Rule is granted, conditions will likely be imposed, such as a requirement to include audited divisional or partial income statements or divisional statements of cash flow, financial statements accompanied by qualified audit reports or an audited statement of net operating income.
- (3) In view of the Director's reluctance to grant exemptions from the three year requirement, issuers seeking relief should consult with staff as early as possible.
- (4) Relief may be granted in appropriate circumstances to permit the auditor's report on financial statements to contain a reservation relating to opening inventory if there is a subsequent audited period of at least six months on which the auditor's report contains no reservation and the business is not seasonal.
- (5) Considerations relevant to a request for exemption from the requirement to include interim financial statements for the comparable period in the immediately preceding financial year may include the fact that the issuer was, prior to the filing of the prospectus, a private entity that did not prepare interim financial statements.
- (6) Considerations relevant to a request for exemption from the requirement to include three years of financial statement disclosure may include the fact that the issuer has undergone a fundamental change in the nature of its business or operations affecting a majority of its operations within the last three years.

- 2.3 Approval of Financial Statements** - Paragraph 4.3(1)(a) and subsection 5.4(1) of the Rule provide that if the board of directors has approved annual or interim financial statements before the filing of a prospectus, the prospectus shall include the statements. Issuers that are reporting issuers have an obligation under Part XVIII of the Act to prepare and file financial statements as part of their continuous disclosure obligations. The Commission is of the view that directors of issuers should endeavour to consider and approve financial statements in a timely manner and should not delay the approval and release of the statements for the purpose of avoiding their inclusion in a prospectus.

- 2.4 Additional Information** - An issuer may find it necessary, in order to meet the requirement for full, true and plain disclosure in section 56 of the Act, to include certain additional information such as

- (a) separate financial statements of a subsidiary of the issuer in a prospectus, even if the financial statements of the subsidiary are included in the consolidated financial statements of the issuer. For example, separate financial statements of a subsidiary may be necessary to help explain the risk profile and nature of the operations of the subsidiary;

- (b) selected financial information of the issuer for a period of more than three years if the information would be helpful to an understanding of trends in the business or financial condition of the issuer; and
- (c) a *pro forma* restatement of the financial statements of the issuer giving effect to a substantial reorganization of the issuer to illustrate the impact of the reorganization.

**2.5 Auditor's Report for all Financial Statements Included in the Prospectus** - Section 6.2 of the Rule requires that all financial statements included in a prospectus be accompanied by an auditor's report, except financial statements specifically excepted in that section. Issuers are reminded that this requirement extends to financial statements of subsidiaries and other entities even if the financial statements are not required to be included in the prospectus but have been included at the discretion of the issuer.

### **PART 3 FINANCIAL STATEMENT DISCLOSURE FOR SIGNIFICANT ACQUISITIONS**

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

**3.2 Acquisition of a Business** - Part 5 of the Rule requires that an issuer that has made a significant acquisition or is proposing to make a significant probable acquisition include in its prospectus certain financial statements of each business acquired or to be acquired. For this purpose, the term "business" should be evaluated in light of the facts and circumstances involved. The Commission considers that a separate entity, a subsidiary or a division will normally be a business and that in certain circumstances a lesser component of a person or company may also constitute a business, whether or not the subject of the acquisition previously had financial information. Continuity of business operations is considered in determining whether an acquisition constitutes the acquisition of a business. Other factors that staff will consider include

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

**3.3 Probable Acquisitions** - The Commission will interpret and apply the definitions of "probable acquisition of a business" and "probable acquisition of related businesses" having regard to section 3290 of the Handbook "Contingencies". It is the Commission's view that the following factors may be relevant in determining whether an acquisition is probable

- (a) whether the acquisition has been publicly announced;
- (b) whether the acquisition is the subject of an executed agreement; and
- (c) the nature of conditions to the completion of the acquisition including any material third party consents required.

**3.4 Significant Acquisitions** - Subsection 2.2(1) of the Rule sets out when an acquisition of a business by an issuer is a "significant acquisition". One of the tests is whether the issuer's proportionate share of consolidated income from continuing operations of the business exceeds 20 percent of the income of the issuer from continuing operations for the 12 months ended on the later of most recently completed financial year of the issuer or interim period of the issuer. The Commission is of the view that in applying this test, the income from continuing operations of the business should be determined using the generally accepted accounting principles applied by the issuer.

#### **3.5 Exemptions from Part 5 of the Rule**

- (1) The Commission is of the view that relief from the financial statement requirements of Part 5 of the Rule should be granted only in unusual circumstances not related to cost or the time involved in preparing and auditing the financial statements.
- (2) If relief is granted from the requirements of Part 5 of the Rule, conditions will likely be imposed, such as a requirement to include audited divisional or partial income statements or divisional statements of cash flow, financial statements accompanied by qualified audit reports or an audited statement of net operating income for a business.

- (3) Relief may be granted in appropriate circumstances to permit the auditor's report on financial statements of a business acquisition to contain a reservation relating to opening inventory if there is a subsequent audited period of at least six months on which the auditor's report contains no reservation and the business is not seasonal.
- (4) Considerations relevant to a request for exemption from the requirement to include interim financial statements for the comparable period in the immediately preceding financial year may include the fact that an acquired business was, before the filing of the prospectus, a private entity that did not prepare interim financial statements.
- (5) Considerations relevant to a request for exemption from the requirement to include three years of financial statement disclosure may include the fact that the business has been bankrupt, has undergone a change in its management or has undergone a fundamental change in the nature of its business or operations affecting a majority of its operations within the last three years.

#### **PART 4 GAAP, GAAS AND AUDITORS**

- 4.1 Generally Accepted Accounting Principles** - Subsection 6.1(2) of the Rule provides that if a person or company is incorporated or organized in a foreign jurisdiction, the financial statements of the person or company included in the prospectus shall be prepared in accordance with either (a) Canadian GAAP; or (b) foreign GAAP. Foreign GAAP is defined in the Rule to mean a body of generally accepted accounting principles, other than Canadian GAAP, that are as comprehensive as Canadian GAAP. The Commission is of the view that foreign GAAP will be as comprehensive as Canadian GAAP if it covers substantially the same core subject matter as Canadian GAAP, including recognition and measurement principles and disclosure requirements. The Rule permits foreign GAAP to be used only if the notes to the financial statements explain and quantify the effect of material differences between the foreign GAAP and Canadian GAAP that relate to measurements and provide disclosure consistent with Canadian GAAP requirements. The Commission expects that in most cases the reconciliation will be adequate to ensure clear and understandable disclosure for investors in Canada, unless the differences are so pervasive as to render the financial statements misleading.
- 4.2 Generally Accepted Auditing Standards** - Subsection 6.2(1) of the Rule requires financial statements in a prospectus to be accompanied by an auditor's report which by definition is prepared in accordance with generally accepted auditing standards. For issuers incorporated or organized in a foreign jurisdiction, the generally accepted auditing standards may be other than those applied in Canada, if those auditing standards are substantially equivalent to Canadian auditing standards. The foreign auditor's report must be accompanied by a statement that the auditing standards applied are substantially equivalent to Canadian GAAS and include a comment disclosing any material differences in the form and content of the foreign auditor's report. Under subsection 9.8(3) of the Rule, the issuer must also deliver a letter from the auditor setting out the auditor's expertise to make the determination that foreign GAAS is substantially equivalent to Canadian GAAS.
- 4.3 Acceptable Auditors** - The Rule provides foreign issuers with flexibility as to their choice of auditor for purposes of a prospectus filing in Ontario. However, issuers should also recognize that subsection 61(2) of the Act requires the Director not to issue a receipt for a prospectus if it appears to the Director that a person or company who has prepared any part of the prospectus or is named as having prepared or certified a report used in or in connection with a prospectus is not acceptable to the Director. The Commission is of the view that in order for auditing standards to be substantially equivalent to Canadian GAAS, they must require underlying work that is comparable in scope, nature and timing to the work required in connection with an audit conducted in accordance with Canadian GAAS. For instance, auditing standards of foreign jurisdictions such as the United States are known to the Commission to be substantially equivalent to the standards of the CICA. Foreign issuers using auditors from foreign jurisdictions, with audit standards and supervision that are less well known to the Commission, are encouraged to consult with staff of the Commission in advance of filing a preliminary prospectus to resolve uncertainty as to whether the Commission will consider a particular auditor or auditing standards to be acceptable.

#### **PART 5 GENERAL REQUIREMENTS AS TO FILING AND AMENDMENTS**

- 5.1 Consents of Lawyers** - The names of lawyers or legal firms frequently appear in prospectuses in two ways. First, the underwriters, the issuer and selling securityholders may name the lawyers upon whose advice they are relying. Second, the opinions of counsel that the securities may be eligible for investment under certain statutes may be expressed or opinions on the tax consequences of the investment may be given. In the first case, the Commission is of the view that the lawyer is not, in the words of subsection 9.6(1) of the Rule, named as having prepared or certified a part of the prospectus and is not named as having prepared or certified a report or valuation referred to in the prospectus. Accordingly, the written consent of the lawyer contemplated by subsection 9.6(1) of the Rule is not required. In the

second case, because the opinions or similar reports are prepared for the purpose of inclusion in the prospectus, the Commission is of the view that subsection 9.6(1) applies and the consent is required.

- 5.2 Material Contracts** - Subsection 9.5(1) of the Rule requires an issuer to make available all material contracts referred to in a prospectus. The Commission recognizes that certain material contracts or portions thereof may contain sensitive operational or financial information, disclosure of which would be competitively disadvantageous or otherwise detrimental to the issuer. The Director will consider granting relief from the requirement to make these contracts available for public inspection if disclosure would be unduly detrimental to the issuer and the disclosure would not be necessary in the public interest. Issuers are reminded that in connection with the prospectus review process the Director may request an issuer to deliver copies of material contracts to the Commission.
- 5.3 Filed or Delivered** - The Act makes a distinction between material that is filed and material that is delivered. Under section 140 of the Act, if Ontario securities law requires that material be filed, the material will be made available by the Commission for public inspection, unless, with respect to material that is filed under the Act, the Commission decides to hold the material in confidence because the material discloses intimate financial, personal or other information. Material that is delivered to the Commission is not required by the Act to be made available for public inspection, but the Commission may choose to make such material available for public inspection. Ontario Securities Commission Policy No. 2.2 discusses the views of the Commission regarding this matter. This policy is under review and may be changed.
- 5.4 Response Letters and Marked-up Copies** - The Commission recommends that a response to a comment letter for a preliminary prospectus include draft wording for the proposed changes to be reflected in the prospectus. When the comments of the various securities regulators have been resolved, a draft of the prospectus with all proposed changes from the preliminary prospectus should be clearly marked and submitted as far as possible in advance of the filing of final material. These procedures may prevent delay in the issuing of a receipt for the prospectus, particularly if the number or extent of changes are substantial.
- 5.5 Disclosure of Investigations or Proceedings**
- (1) Subsection 61(1) of the Act provides that, subject to subsections 61(2) and 63(4), the Director shall issue a receipt for a prospectus unless it appears that it would not be in the public interest to do so. The existence of an ongoing or recently concluded investigation or proceeding relating to an issuer, a promoter, a controlling shareholder, director or officer of the issuer or an underwriter or other person or company involved in a proposed distribution will be considered by the Director in determining if the Director should refuse to issue a receipt for the prospectus. That decision will be made on a case by case basis and will depend upon the facts known at the time.
  - (2) If the facts and circumstances do not warrant the denial of a receipt for a prospectus, the Act nonetheless imposes a statutory obligation to provide full, true and plain disclosure of all material facts relating to the securities issued or proposed to be issued by the prospectus. Disclosure of an ongoing or recently concluded investigation or proceeding relating to a person or company involved in a proposed distribution may be necessary to meet this standard. The circumstances in which disclosure will be required and the nature and extent of the disclosure will also be determined on a case by case basis. In making this determination, all relevant facts, including the allegations that gave rise to the investigation or proceeding, the status of the investigation or proceeding, the seriousness of the alleged breaches that are the subject of the investigation or proceeding and the degree of involvement in the proposed distribution by the person or company under investigation will be considered.
- 5.6 Filing of Advertising and Sales Literature** - The Director may request that an issuer file a copy of all advertising and sales literature that has been used in connection with the distribution in Ontario of the securities distributed under the prospectus.
- 5.7 Amendments to a Preliminary Prospectus** - Subsection 57(1) of the Act provides that if a material adverse change occurs after a receipt for a preliminary prospectus is obtained, an amendment to the preliminary prospectus shall be filed as soon as practicable and in any event within 10 days after the change occurs. Section 9.10 of the Rule contains additional provisions concerning amendments. In the Commission's view, if a preliminary prospectus indicates the number or value of the securities to be distributed under the prospectus, an increase in the number or value is, absent unusual circumstances, unlikely to constitute a material adverse change requiring an amendment to the preliminary prospectus.
- 5.8 Subsection 57(2) of the Act** - Subsection 57(2) of the Act provides that where an amendment to a prospectus is filed under subsection 57(1) of the Act for the purpose of distributing securities in addition to the securities previously

disclosed in the prospectus or an amendment to the prospectus, the additional distribution shall not be proceeded with for a period of 10 days after the amendment is filed or, in the event the Commission informs the party filing in writing within 10 days of the filing that it objects to the further distribution, until such time as a receipt for the amended prospectus is obtained from the Director. The Commission is of the view that subsection 57(2) applies not only in cases where a new class or series of securities is added but also in cases where the purpose of the amendment is to materially increase the number or value of securities to be distributed.

**5.9 Deleting Warrants and Conversion Features** - The Commission is of the view that the removal of a conversion feature or warrant disclosed in a preliminary prospectus may constitute a material adverse change with the result that before the prospectus is filed, an amendment to the preliminary prospectus must be filed and accepted and subsection 57(3) of the Act complied with. Issuers are reminded that other changes to the terms and conditions of a security being distributed may constitute a material adverse change requiring an amendment to the preliminary prospectus under subsection 57(1) of the Act and compliance with subsection 57(3) of the Act.

**5.10 Confidential Material Change Reports** - In the view of the Commission, if an issuer has a confidential material change report on file with any Canadian securities regulatory authority at the time that it is contemplating a distribution, or if circumstances arise that cause an issuer to file a confidential material change report during the distribution period of securities under a prospectus, the issuer should cease all activities related to the distribution until

- (a) the material change is generally disclosed in the prospectus, or if the prospectus has been filed, a prospectus amendment is filed, if required; or
- (b) the circumstances that gave rise to the confidential material change have changed or the proposed transaction constituting the material change has been rejected and the issuer has so notified the Commission.

If the Commission is aware that a distribution is taking place while the issuer has a confidential material change report on file, the Commission may take steps to cease trade the distribution if it considers it appropriate.

**5.11 Receipt for Amendment to a Prospectus**- Section 53(1) of the Act provides that no person or company shall trade a security, where the trade is a distribution, unless a preliminary prospectus and a prospectus have been filed and receipts obtained. Issuers are reminded that if a prospectus is amended, they must obtain a receipt for the amendment before they continue the distribution.

## **PART 6 PROCEDURES FOR GRANTING OF RECEIPTS**

### **6.1 Extension of 75 Day Period for Issuance of Final Receipt**

- (1) Subsection 10.1(2) of the Rule provides that an issuer shall not file a prospectus more than 75 days after the date of the receipt for the preliminary prospectus if the primary reason for the failure to file the prospectus within the 75 day period is the inaction of the issuer. The Commission considers that such "inaction" may consist of either failing to make reasonable and timely efforts to make acceptable responses to the comments or, after having satisfactorily dealt with the comments, delaying the filing of final material pending favourable market conditions.
- (2) The effect of subsection 10.1(2) of the Rule is to make it possible for the Director to close inactive files, and more importantly, to ensure that issues are not being marketed by means of preliminary prospectuses containing outdated information, particularly financial statements. It should be noted that Part 11 of the Rule gives the Director discretion to exempt the issuer from compliance with any provision of section 10.1 if the Director is satisfied that there is sufficient justification for so doing.
- (3) If the 75 day period has expired and application is made for the Director to exercise the discretion under Part 11 to permit the prospectus to be filed, the Director will usually require that the prospectus contain updated financial statements.
- (4) If the period between the issuance of the receipt for the preliminary prospectus and the prospectus exceeds 75 days by more than a few days, the Commission will normally consider it to be in the public interest that either an amended preliminary prospectus containing updated information, including financial statements and including a restatement of the statutory rights of the purchaser and fresh certificates, or a new preliminary prospectus be filed with the Commission. Exceptions may be made if the Director is satisfied that the preliminary prospectus is not being used to market the issue or if the issuer is newly incorporated or formed and is not yet carrying on business to a significant extent.

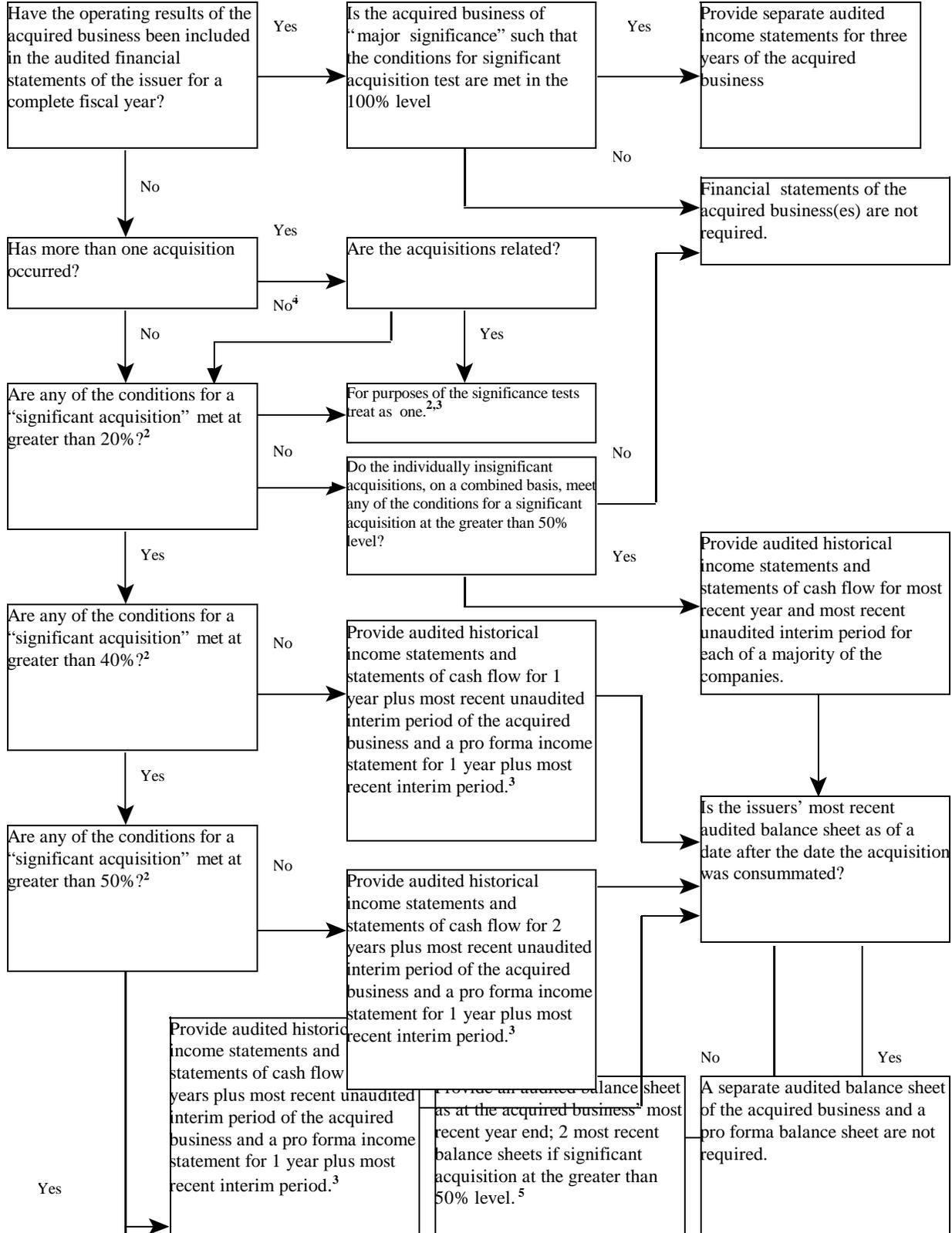
- (5) The Commission is of the view that the Director should not permit an amended preliminary prospectus to be used to extend the 75 day period unless the issuer is continuing to use its best efforts to finalize and file the prospectus and obtain a receipt.

**6.2 Project Financings** - Certain project financings are made by issuers that are unincorporated associations or co-tenancies comprised of securityholders. In the view of the Commission, it is not appropriate for an unincorporated association or co-tenancy comprised of securityholders to be responsible for compliance with the continuous disclosure obligations under the Act, including financial reporting requirements, given the passive nature of the investment and the absence of directors and officers who might appropriately assume this responsibility. The Commission would not normally consider it to be in the public interest to issue a receipt for a prospectus unless the constating documents of the issuer designate the person to be responsible for the day to day operations of the issuer including fulfilling continuous disclosure obligations.

**6.3 Minimum Amount of Funds** - Item 19.5 of Form 41-501F1 requires a prospectus to state that if a minimum amount of funds specified in a prospectus is not raised within 90 days from the date of the prospectus, and if each of the persons or companies who subscribed during that period have not consented to an extension of that period, the funds actually received from subscribers shall be returned to the subscribers unless the subscribers have otherwise instructed the depository. The 90 day period does not restart if an amendment to the prospectus is filed.

- 1 This decision chart provides general guidance and should be read in conjunction with Rule 41-501 and Companion Policy 41-501CP.
- 2 If more than one acquisition occurs and the businesses are related, for the purpose of determining the significance of the acquisition, the results of the related businesses should be combined.
- 3 If an acquisition of related businesses constitutes a significant acquisition calculated in accordance with the guidance provided in note 2, the required financial statements shall be provided for each of the related businesses.
- 4 If more than one acquisition occurs and the businesses are unrelated, determine the significance of each acquisition and provide the required financial statements for each acquisition.
- 5 For individually insignificant acquisitions, provide an audited balance sheet for a majority of the acquired businesses as at their most recent year end and an unaudited balance sheet for the most recent interim period.

**APPENDIX A**  
**OVERVIEW OF BUSINESS ACQUISITIONS DECISION CHART<sup>1</sup>**



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# **General Prospectus Requirements**

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