

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, PROPOSED FORM 41-501F1,
AND PROPOSED COMPANION POLICY 41-501CP
GENERAL PROSPECTUS REQUIREMENTS**

A. Substance and Purpose of Proposed Rule, Forms and Companion Policy

1. Introduction

On July 23, 1999, the Ontario Securities Commission (the "Commission") published the following three instruments (collectively, the "1999 proposed Instruments") for comment:

- proposed Rule 41-501 General Prospectus Requirements (the "1999 proposed Rule")
- proposed Form 41-501F1 Information Required in a Prospectus (the "1999 proposed Form")
- proposed Companion Policy 41-501CP (the "1999 proposed Policy").

The 1999 proposed Instruments were published at (1999), 22 OSCB (LF Supp). The accompanying notice (the "1999 Notice") summarized the proposed instruments, generally requested comment and specifically requested comment on five issues, ie. the proposed treatment of junior issuers, the deadline for issuers' annual financial statements, financial statement disclosure for credit supporters, financial statement disclosure for significant acquisitions and the definition of probable acquisition.

The Instruments had previously been published for comment on May 2, 1997 at (1997), 20 OSCB (Supp) (the "1997 Instruments").

The Commission received submissions on the 1999 proposed Instruments from ten commentators. The list of commentators is contained in Appendix A of this Notice and a summary of their comments, together with the Commission's responses to those comments, are contained in Appendix B of this Notice. The Commission considered the comments received on the 1999 proposed Instruments and the comments received by the Canadian Securities Administrators ("CSA") on proposed National Instrument 44-101 Short Form Prospectus Distributions, which was published concurrently with the 1999 Proposed Instruments at (1999), 22 OSCB (POP Supp). The Commission also considered the changes proposed by the CSA to proposed National Instrument 44-101, which is being republished for comment concurrently with the proposed Instruments. In addition, the Commission considered a relevant comment from a submission received by the CSA on proposed National Instrument 81-101 Mutual Fund Prospectus Disclosure, regarding disclosure of settlement agreements with a regulator. As a result of these considerations and further deliberations of the Commission, the Commission has revised the 1999 proposed Instruments and is republishing them for comment.

The republished versions of these Instruments, along with a republished version of Form 41-501F2 Authorization of Indirect Collection of Personal Information, are referred to in this Notice collectively as the "proposed Instruments" and separately as the "proposed Rule", the "proposed Prospectus Form", the "proposed Form 41-501F2" (the two forms, collectively, the "proposed Forms") and the "proposed Policy".

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

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

2. Substance and Purpose

Rule 41-501

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 proposed Prospectus Form. Therefore, if it is intended that a particular provision in the proposed Rule or proposed 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.

Form 41-501F1

The substance and purpose of the proposed 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 proposed 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 issuers 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 proposed Prospectus Form attempts to parallel, as closely as possible and where appropriate, the substantive disclosure requirements 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 will replace National Policy Statement No. 47, Prompt Offering Qualification System.

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 Corporate Finance Accountants Practice Manual (the "Accountants Manual") that are not mandatory, to provide interpretive guidance as to certain of the provisions in the proposed Rule and proposed Prospectus Form and to set out the Commission's views as to how certain of these provisions ought to be administered.

A CSA staff committee is currently updating the Accountants Manual to reflect the evolution of staff's thinking in a number of areas and to harmonize positions across jurisdictions. Some of the proposed revisions have been reflected in the proposed Rule and the proposed Policy. The Accountants Manual has not been updated since it was first published in 1995.

For additional information concerning the background to the proposed Instruments, reference should be made to the Notice for the 1997 Instruments, the 1999 Notice and Appendix B of this Notice.

B. Summary of Changes to the Proposed Instruments

Changes of a substantive nature that have been made to the proposed Instruments are summarized here. Changes of a more minor nature are noted in the footnotes accompanying the proposed Instruments.

Rule 41-501

1. Exception to Audit Requirement for Junior Issuers

A number of commentators on the 1999 proposed Rule emphasized the difficulty that junior issuers doing an initial public offering have in producing audited financial statements for a three year period. In response to these comments, the Commission has in Parts 4, 6 and 7 of the proposed Rule added limited exceptions to the audit requirement for junior issuers.

Under the first exception in Part 4 of the proposed Rule, which contains the financial statement disclosure requirements for issuers, it is sufficient if only the most recent year of financial statements included in the prospectus are audited provided that those financial statements cover a period of not less than 12 months. The second and third most recent years do not have to be audited; however, if these statements have been audited, they must be included in the prospectus.

A second and parallel exception is included in Part 6 of the proposed Rule which contains the financial statement disclosure requirements for acquired businesses that are significant to the issuer. If an issuer acquires a business that is a junior issuer and the proposed Rule requires three years of financial statement history for the acquired business, an exception has been added that only the most recent of the three years of financial statements of the acquired business must be audited provided that the audited financial statements included are for a period of not less than 12 months.

A third and parallel exception is available in Part 7 which contains the financial statement disclosure requirements for issuers that have made, or are proposing to make, multiple acquisitions that are not otherwise significant.

For the purposes of these exceptions to the audit requirement, the term "junior issuer" has been defined as an issuer that satisfies four criteria: the issuer must have less than \$10 million in consolidated assets, consolidated revenue, shareholders' equity and, if publicly traded, market value. For the purposes of this definition, section 2.7 has been added to the proposed Rule which sets out how the market capitalization of a junior issuer is to be calculated. The 1999 Notice indicated that the CSA had been considering a \$5 million threshold for the definition of "junior issuer". However, in considering the comments received, the Commission, in conjunction with the CSA, decided that \$10 million was a more appropriate threshold. A number of the commentators advocated deleting the market capitalization component of the definition due to market volatility. The Commission has retained the market capitalization component as being a useful measure of size and following in the capital markets, despite potential volatility. The Commission believes that raising the threshold to \$10 million for market capitalization is an appropriate response to the concerns about market volatility.

2. **Financial Statement Disclosure for Significant Acquisitions**

(a) Significance Test

The three tests for determining whether an acquisition of a business by an issuer is "significant" and, consequently whether the financial statement disclosure requirements in Part 6 of the proposed Rule apply, are set out in subsection 2.2(1) of the proposed Rule. In the 1999 proposed Rule, the second of these three tests measured the acquired business' revenue against the revenue of the issuer. In response to comments received on the 1999 proposed Rule, the "revenue" test has been deleted and replaced by an "investment" test. This new test measures an issuer's investments in and advances to an acquired business against the assets of the issuer and closely parallels the investment test used by the Securities and Exchange Commission (the "SEC") to determine the significance of an acquisition to an issuer for the purposes of determining whether financial statements of the acquired business are required disclosure. (See SEC Rule 3-05(b) of Regulation S-X under the United States Securities Exchange Act of 1934.) This investment test is, in the Commission's view, better suited to hi-tech and other new economy businesses and also offers the benefit of greater harmonization with the SEC's practice.

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

(b) Timing of the Application of the Significance Test

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

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

(c) Periods Required

In response to comments, Part 6 of the proposed Rule has been revised to clarify the Commission's intention that separate financial statements of an acquired business are required only for periods before the acquisition, not after.

(d) Pro Forma Financial Statements

The 1999 proposed Rule required *pro forma* financial statements to give effect to the acquisition as at the beginning of the issuer's most recently completed financial year and at the beginning of the issuer's current year included in the prospectus. Revisions have been made such that the *pro forma* income statement is prepared assuming the acquisition(s) occurred on the first day of the earliest *pro forma* income statement presented.

It is acknowledged that by using different dates for reflecting assumptions in the *pro forma* balance sheet and income statement, there may be inconsistencies between items reflected in the balance sheet and income statement. This approach is consistent with the approach of the SEC.

(e) Exceptions to Disclosure Requirements for Significant Acquisitions

In Part 6 of the proposed Rule, a number of limited exceptions have been added to the financial statement disclosure requirements for significant acquisitions. These exceptions essentially parallel the exceptions available to the requirement for issuers to include three years of historical financial statements in a prospectus. The first exception applies if the acquired business changed its financial year end during the period for which the issuer is required to include financial statements of the business. To benefit from the exception, the issuer must include audited financial statements of the business for a nine month period in the year in which the year end changed. A second exception has been added that permits an issuer to omit separate financial statements of the business for the oldest financial year otherwise required if audited financial statements for a more recent year than is otherwise required are included.

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

The requirements for financial statement disclosure for multiple acquisitions by an issuer that do not, separately, meet the significance test and are otherwise not related are set out in Part 7 of the proposed Rule. This Part has been revised to clarify that the requirement to provide *pro forma* financial statements also applies to multiple acquisitions.

A number of limited exceptions to the disclosure requirements for multiple acquisitions have also been added to Part 7 of the proposed Rule. These exceptions essentially parallel the exceptions in Part 6 to the disclosure requirements for significant acquisitions.

4. Requirement to include Issuer's Financial Statements

(a) Predecessor Entities and Business Combinations

Section 4.4 of the proposed Rule deals with the scope of the requirement in Part 4 for an issuer to include three years of historical financial statements in a prospectus. In the 1999 proposed Rule, this provision applied only to issuers that had not been in existence for three years and required financial statements to be included of any predecessor entity that carried on the business of the issuer. In the proposed Rule, this provision has been expanded to address two other situations. First, issuers that have been involved in the three years before the date of the prospectus in a business combination or transaction between parties under common control accounted for as a pooling of interests or continuity of interests are required to comply with the financial statement disclosure requirement by including in the prospectus the restated historical financial statements of the combining entities as required under Canadian GAAP.

Second, the provision has been expanded to address issuers that have essentially changed the nature of their business through an acquisition. Financial statements of a business acquired by the issuer within three years before the prospectus must be included in order to comply with the financial statement requirement for issuers, if a reasonable investor reading the prospectus would regard the primary business of the issuer to be the business acquired, rather than the business conducted by the issuer before the acquisition.

(b) Exceptions to Financial Statement Disclosure Requirements for Issuers

The proposed Rule has been revised to make express the exception that an issuer that includes in a prospectus audited financial statements for a year ended less than 90 days before the date of the prospectus may omit the financial statements for the oldest of the three years otherwise required.

5. Definition of "Significant Disposition"

In response to comments, the Commission has added in section 2.6 of the proposed Rule quantitative standards for determining whether a disposition is significant to an issuer for the purposes of providing narrative disclosure in Item 5.2 of the proposed Prospectus Form. The significance is measured based on two tests: the first is the assets of the business disposed compared to the assets of the issuer and, second, the net income of the business disposed of measured against the net income of the issuer. If either of these two tests are satisfied at the 20 percent level, the disposition is considered significant.

6. Foreign GAAS

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

7. Supporting Documents to be Filed

Minor changes have been made to Part 11 of the proposed Rule dealing with general requirements as to filing. In particular, the requirement to file technical reports and reports or evaluations referred to in a prospectus has been updated to refer not only to filings with a preliminary prospectus, but also to filings with a prospectus.

8. Drafting Changes

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

Form 41-501F1

In response to comments, the Commission has revised Item 5.2 of the proposed Prospectus Form to require narrative disclosure for dispositions that meet the quantitative test that has been added to the proposed Rule.

The requirement in Item 8.2 of the proposed Prospectus Form to include quarterly financial information for the previous eight quarters has been revised, in response to comments, to exempt issuers that were not reporting issuers for the entire period. For the period before the issuer became a reporting issuer, the issuer is required to include the quarterly information only if it has otherwise prepared quarterly financial statements.

The Commission has also revised Item 9 of the proposed Prospectus Form which deals with earnings coverage ratios. The Commission received a number of comments on the treatment of "compound instruments" that combine elements of debt and equity. Item 9 has been revised to require issuers, in the case of compound instruments, to recalculate and disclose the earnings coverage ratios treating the equity component of those instruments as debt.

Item 16.3 of the proposed Prospectus Form which requires disclosure concerning directors, officers and significant shareholders has been revised to no longer require disclosure of a settlement agreement entered into before Rule 41-501 came into force unless the disclosure would likely be considered to be important to a reasonable investor in making an investment decision. A similar change has been made in Item 21.1 Promoters.

Form 41-501F2

Proposed Form 41-501F2 has been renamed Authorization of Indirect Collection of Personal Information. It has been revised to parallel the equivalent form under proposed National Instrument 44-101 Short Form Prospectus Distributions and to reflect the information required under securities legislation and the notification and authorization required under freedom of information and protection of privacy legislation. These changes have been made with a view to the form being acceptable in other jurisdictions.

Companion Policy 41-501CP**1. *Exception to Issuer Financial Statement Requirements***

The proposed Policy has been revised to emphasize, in response to comments, that exemptions from the requirement that issuers include three years of audited financial statements will be granted only in unusual circumstances. Also in response to comments, the commentary regarding possible exemptions from the requirement to include interim financial statements has been revised to emphasize that the exemption is only available if the issuer is unable to prepare such statements, rather than that it merely had not prepared such statements while a private company.

2. *Significant Acquisitions*

The commentary in Part 3 of the proposed Policy discussing the significance test for business acquisitions has been expanded to discuss the tests and the timing of their application. Explanation has also been added concerning the definition of "probable acquisition" and its reference to the "reasonable person".

3. *Foreign GAAS*

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

4. *Registration Requirements*

Commentary has been added to section 5.12 of the proposed Policy reminding issuers and other market participants to ensure that members of underwriting syndicates are in compliance with the applicable registration requirements in each jurisdiction in which the syndicate members are participating in the distribution of securities.

C. *National Treatment of Form 41-501F1*

Many comments were received urging the CSA to adopt a national instrument and form of long form prospectus or, in the alternative, advocating that jurisdictions other than Ontario indicate their willingness to accept a prospectus prepared in compliance with the proposed Rule and the proposed Prospectus Form, without requiring the issuer to apply for relief. The CSA recognize the importance of national harmonization of prospectus requirements. Staff of the Alberta Securities Commission, British Columbia Securities Commission and Commission des valeurs mobilières du Québec have participated in the preparation of the proposed Rule and the proposed Prospectus Form and in the formulation of responses to submissions of commentators with a view to the proposed Rule and the proposed Prospectus Form ultimately forming the basis of a harmonized regime. Staff of the Alberta Securities Commission, the British Columbia Securities Commission and the Commission des valeurs mobilières du Québec have advised staff of the Commission

of their intention to recommend to their respective Commissions that they provide accommodation to facilitate, after the coming into force in Ontario of the proposed Rule, the filing with those Commissions of a prospectus prepared in accordance with the proposed Rule and proposed Prospectus Form. Staff recommendations do not, however, bind the Commissions.

D. Comments

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

Submissions should be sent in duplicate to:

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

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

Legal questions may be referred to either of:

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

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

Accounting questions may be referred to either of:

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

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

Regulations to be Revoked

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

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

Proposed Rule, Forms and Companion Policy

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

DATED: December 17, 1999

**APPENDIX A
TO NOTICE OF PROPOSED CHANGES
TO PROPOSED RULE 41-501,
PROPOSED FORMS AND PROPOSED POLICY
LIST OF COMMENTATORS**

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

APPENDIX B
SUMMARY OF COMMENTS RECEIVED ON 1999 PROPOSED RULE,
1999 PROPOSED FORM AND 1999 PROPOSED POLICY

RESPONSES OF THE COMMISSION

The Commission received 10 submissions on the 1999 proposed Instruments.

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

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

PART I. SPECIFIC REQUEST FOR COMMENT

A. Relief for Junior Issuers**1. Relief From Financial Statement Disclosure Requirements****(a) *Threshold for Junior Issuers****Comment (i):*

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

Response:

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

Comment (ii):

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

Response:

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

(b) *Deadline for Junior Issuer Financial Statements**Comment:*

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

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

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

Response:

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

(c) Audit Requirement

Comment:

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

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

Response:

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

2. Relief For Significant Acquisitions of Natural Resource Assets

Comment:

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

Response:

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

B. Deadline for Issuer's Annual Financial Statements

1. General Deadline

Comment:

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

Response:

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

2. Additional Statements Approved, Filed or Released

Comment (i):

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

Response:

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

Comment (ii):

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

Response:

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

3. Automatic Extension

Comment (i):

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

Response:

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

Comment (ii):

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

Response:

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

C. Financial Statement Disclosure for Credit Supporters

Comment:

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

Response:

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

D. Financial Statement Disclosure for Significant Acquisitions**1. General***Comment:*

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

Response:

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

2. Differences from the SEC**(a) General***Comment:*

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

Response:

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

(b) "Significance" Test*Comment (i):*

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

Response

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

Comment (ii):

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

Response:

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

Comment (iii):

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

Response:

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

Comment (iv):

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

Response:

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

Comment (vi):

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

Response:

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

3. Timing of Application of Significance Test for Completed Acquisitions

Comment:

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

Response:

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

4. Financial Statement Disclosure Required for Completed Acquisitions

(a) Periods Required

Comment:

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

Response:

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

(b) Pro Forma Requirements

Comment (i):

One commentator noted that paragraphs 5.2(1)6 and 7 (paragraphs 6.2(1)6 and 7 of the proposed Rule) appeared to require that *pro forma* balance sheets and income statements of the issuer be prepared for both the audited year and the interim period. The

commentator sought confirmation that the interim *pro forma* statements would only be required where an acquisition was effective after the interim period and therefore was not included in the historical interim statements.

Response:

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

Comment (ii):

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

Response:

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

Comment (iii):

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

Response:

The Commission agrees with this comment.

Comment (iv):

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

Response:

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

Comment (v):

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

Response:

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

Comment (vi):

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

Response:

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

Comment (vii):

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

Response:

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

(c) Statement of Retained Earnings

Comment:

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

Response:

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

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

Comment:

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

Response:

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

5. Disclosure Required for Probable Acquisitions

(a) Definition of "Probable Acquisition"

Comment (i):

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

Response:

The Commission disagrees with this comment and believes that it is undesirable to include such a bright line test in the definition of a "probable acquisition" as it can, in some circumstances, be easily avoided by deferring formal signing of an agreement to a point in time well after the time at which the Commission believes an issuer that is proceeding with the prospectus offering should be making disclosure concerning the acquisition.

Comment (ii):

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

Response:

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

Comment (iii):

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

Response:

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

Comment (iv):

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

Response:

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

(b) Disclosure of Target's Historical Financial Statements*Comment:*

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

Response:

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

(c) Disclosure of "Purchase Equation"*Comment (i):*

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

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

Response:

The Handbook distinguishes between mandatory requirements and practices that are encouraged. Therefore, it is sometimes necessary for the proposed Rule to overlap with subject matter of the Handbook in circumstances where the Commission believes that it is imperative that the disclosure be included in a prospectus and should not be left to the discretion of an issuer and its auditors.

Comment (ii):

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

Response:

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

Comment (iii):

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

Response:

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

6. Exception for Equity Accounted Acquisitions*Comment (i):*

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

Response:

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

Comment (ii):

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

Response:

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

7. Other Exceptions*Comment:*

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

Response:

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

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

Comment (i):

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

Response:

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

Comment (ii):

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

Response:

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

PART II. GENERAL REQUEST FOR COMMENT

A. Harmonization Across Canada

1. Harmonization of Long Form Rules

Comment:

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

Response:

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

2. Harmonization of Financial Statement Requirements in a National Instrument

Comment:

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

Response:

The Commission recognizes the merits of consolidating certain requirements, such as the financial statement requirements for issuers and acquired companies, into one or more separate National Instruments. Given the statutory time periods required to make a rule and the time available to the Commission before the deemed Rule replacing National Policy Statement No. 47 Prompt Offering

Qualification System is to expire, it would not have been possible to prepare a new National Instrument, publish it for comment and finalize it. The Commission will consider the commentators' suggestion in the future.

B. Field Testing

Comment:

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

Response:

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

C. Continuous Disclosure Issues

Comment:

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

Response:

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

D. Special Warrant Offerings

Comment:

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

Response:

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

E. Financial Statement Disclosure for Predecessor Entities

Comment:

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

Response:

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

F. Disclosure of Issuer's Financial Statements

Comment:

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

Response:

The Commission has added a reference to a statement of retained earnings in the financial statement disclosure requirements of issuers and significant acquisitions. The Commission is satisfied with the current practice of interpreting "statement of retained earnings" to include a statement of unitholders' equity or partners' equity, as the circumstances require.

G. Foreign GAAP**1. Definition of "Foreign GAAP"**

Comment:

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

Response:

The Commission is of the opinion that a body of generally accepted accounting principles that are as comprehensive as Canadian GAAP would form the basis of a reconciliation to Canadian GAAP and therefore has not added the phrase proposed.

2. Standard for "Foreign GAAP"

Comment (i):

One commentator noted that the proposed standards of reporting for foreign issuers and significant foreign acquisitions exceed those of the SEC. The commentator suggested that this would make it more costly for foreign issuers to access Canadian capital markets and for Canadian issuers to make acquisitions of foreign businesses. The commentator did not appreciate any policy reason for such high standards of foreign reporting and recommended the deletion of subparagraph 6.1(2)(b)(ii) of the 1999 proposed Rule (subparagraph 8.1(2)(b)(ii) of the proposed Rule) to provide Canadian GAAP disclosures for all significant foreign acquisitions. The commentator suggested that the requirements of subparagraph 6.1(2)(b)(i) of the 1999 proposed Rule be applied only to foreign acquisitions significant at the greater than 30% level.

Response:

The Commission strongly believes in the importance to investors of reconciliation of foreign GAAP to Canadian GAAP and therefore has not made the change suggested.

Comment (ii):

One commentator suggested that where three years of audited annual financial statements of a foreign issuer are required to be included in a prospectus, the requirement of paragraph 6.1(2)(b) of the 1999 proposed Rule be applied only to the two most recent financial years. The commentator noted that this would be consistent with the accommodation the SEC affords to foreign issuers filing a prospectus in the United States.

Response:

The Commission considered such a provision and rejected it in view of its strong belief in the importance to investors of reconciliation to Canadian GAAP and comparability of statements for periods disclosed.

3. Foreign GAAP Comfort Letter

Comment (i):

One commentator disagreed with the requirements contained in subsection 9.9(3) of the 1999 proposed Rule (subsection 11.9(3) of the proposed Rule). The commentator was of the view that it would be inappropriate to single out this aspect of the audit of a set of financial statements and attempt to second guess the quality of the audit work in this area by reading a letter. The commentator

believed that these concerns should continue to be addressed in the comment letter process on a case-by-case basis where judgment can be exercised. The commentator enumerated specific factors that could be considered in exercising this judgment.

Response:

Part of the rule-making process is to standardize requirements applicable to all issuers. On balance, the Commission continues to be of the view that this comfort letter discussing the auditor's expertise to audit the reconciliation of foreign GAAP to Canadian GAAP and to make the determination that foreign GAAS (other than U.S. GAAS) is substantially equivalent to Canadian GAAS is an appropriate filing in all cases.

Comment (ii):

Three commentators noted that responsibility for the preparation of the financial statements rests with the issuer, not the auditor. A letter from the issuer should outline steps they took in preparing the reconciliation. Any information concerning the audit procedures performed in connection with the reconciliation should come directly from the issuer's auditors.

Response:

This provision in the proposed Rule has been revised to require discussion of the auditor's expertise to audit the reconciliation rather than prepare the reconciliation.

Comment (iii):

Three commentators questioned how an auditor will be able to confirm that the foreign GAAS applied is "substantially equivalent" to Canadian GAAS. The commentators suggested that the Commission provide a list of foreign jurisdictions with auditing standards that are substantially equivalent to Canadian standards or, alternatively, clarify the definitions of "substantially equivalent to Canadian GAAS" and "comprehensive".

Response:

The Commission agrees that a list of foreign jurisdictions recognized as having auditing standards that are substantially equivalent to Canadian standards is a worthy objective. However, such a list does not exist at present and is beyond the scope of the proposed Rule. In the meantime, the responsibility for making a determination as to substantial equivalence and comprehensiveness appropriately lies with auditors with expertise in both of the jurisdictions in question.

Comment (iv):

One commentator was of the view that the SEC approach to dealing with foreign auditors represents a more practical means of ensuring their qualifications are adequate.

Response:

The Commission is satisfied that the approach adopted in the proposed Rule is practical.

Comment (v):

One commentator suggested that in cases where the foreign jurisdiction's auditing and accounting standards are not up to Canadian standards, the Commission should require Canadian GAAS reports from Canadian auditors on Canadian GAAP statements.

Response:

If a foreign auditor is unable to satisfy the Commission that the foreign accounting standards applied are substantially equivalent to Canadian GAAP and the foreign auditing standards are as comprehensive as Canadian GAAS, alternative auditing and reporting standards will be necessary.

H. Compilation Report Requirement

Comment:

Two commentators pointed out that the requirement for a compilation report will introduce a problem in cross-border filings in the United States because the SEC does not permit the use of such a report. The commentators suggested that under the MJDS, the auditor must, in effect, undo the report. The commentators also noted that, if the auditor believes a *pro forma* presentation is misleading, he or she will refuse to issue a consent.

Response:

The Commission acknowledges the differences in the regimes in this area. This had lead to difficulty for some time in this area. Discussion regarding compilation reports and consents are proceeding at this time. In the absence of viable alternatives no changes to the proposed Rule are appropriate at this time. In addition, the *Securities Act* (Ontario) requires that *pro forma* financial statements be accompanied by a compilation report.

I. Auditor's Consent

Comment:

Two commentators expressed concern about the requirements for the auditor's consent letter contained in paragraph 9.7(2)(b) of the 1999 proposed Rule (paragraph 11.7(2)(b) of the proposed Rule). The commentators also raised a number of objections to differences in the drafting between paragraph 9.7(2)(b) from the corresponding requirement in section 34 of the Regulation. The commentators' objections were: (1) the provision would apply only to the auditor of the issuer, and not to another reporting accountant; (2) the date of the auditor's report and the financial statements reported on by the auditor are not identified; and (3) the statement would appear to refer to information derived from any financial statements in the prospectus (including those that are unaudited or have been reported on by another accountant).

Response:

The Commission disagrees with the concerns described in (1) and (2) above as the proposed requirement in question addresses the concerns expressed. The Commission agrees with the third concern and has amended paragraph 11.7(2)(b) of the proposed Rule to limit the auditor's responsibility to those financial statements on which the auditor has opined.

J. Auditor's Comfort Letter Regarding Unaudited Statements

Comment:

Two commentators expressed concern about the auditor's comfort letter to the Commission relating to unaudited financial statements in a prospectus.

Response:

This area is being considered. At this time no change is being made.

K. Disclosure of Material Dispositions

Comment:

Three commentators suggested that any proposals for financial statement disclosure relating to material dispositions should include requirements analogous to those concerning acquisitions, as in the United States. The commentators were of the view that quantitative thresholds for determining when disclosures are required for dispositions are desirable.

Response:

The Commission agrees with the commentators. Standards for "significant" dispositions have been added to the proposed Form. The CSA Manual Committee plans to include in the next version of the Corporate Finance Accountants Manual guidelines with respect to the *pro forma* financial statement requirements and significant dispositions.

L. Approved Rating Organizations

Comment:

One commentator opposed including three United States rating agencies in the definitions of "approved rating organization" and "approved rating" until such time as the SEC agrees to recognize Canadian-based agencies as "Nationally Recognized Statistical Rating Organizations". The commentator noted that the objection to giving the rating agencies access to the Canadian markets is not a comment on their ability.

Response:

The Commission received submissions from each of the three United States rating agencies in question and believes, based on the submissions received, that the Canadian market is served by recognizing them.

M. Long Form Prospectus Form

1. Instructions to Form 41-501F1

Comment (i):

Instruction (6) of the initial instructions to the 1999 proposed Form uses a "more likely than not" criterion in connection with an evaluation as to whether a person or company will become a subsidiary or investee. Three commentators noted that this differs from the definition of "probable acquisition" and questioned whether it is intended to have two standards of disclosure, being one for the qualitative disclosures in the body of the prospectus and one for the financial disclosures in the prospectus.

Response:

The Commission believes that the difference is appropriate in the circumstances.

Comment (ii):

In paragraph (b) of the Instruction to Item 4.2 of the 1999 proposed Form dealing with intercorporate relationships, one commentator recommended the deletion of the modifiers "sales and operating" in front of the term "revenue".

Response:

The specific reference to sales and operating revenue is deliberate in order to exclude miscellaneous revenue, such as interest.

Comment (iii):

In Instruction (4) to Item 8.4 of the 1999 proposed Form, it was unclear to two commentators whether the reference to accounting recommendations and practices is intended to mean recommendations and practices in Canada and/or foreign jurisdictions. The commentators suggested that the instruction should refer to Canadian recommendations and practices.

Response:

The Commission agrees and has revised the instruction accordingly.

2. Form 41-501F1

(a) Distribution

The commentator noted that Item 1.4(7) of the 1999 proposed Form referred to expenses of the distribution, but that there was no requirement in this Item to disclose the amount of such expenses.

Response:

The Commission is of the view that disclosure of the portion of the expenses to be borne by the selling securityholder is more informative than disclosure of the amount of such expenses.

(b) Acquisitions and Dispositions

Comment (i):

Two commentators questioned whether the reference in Item 5.2(1)(a) of the 1999 proposed Form to any significant acquisition should include any significant probable acquisition.

Response:

The term "significant acquisition" does include significant probable acquisitions. An interpretation provision to this effect has been added to the proposed Rule.

Comment (ii):

The commentators suggested that, for purposes of Item 5.2(2)(e) of the proposed Form, *pro forma* financial statements or other *pro forma* presentation should be considered for acquisitions and dispositions.

Response:

The Commission encourages the use of *pro forma* financial statements in this area. The CSA Manual Committee plans to include in the next version of the Corporate Finance Accountants Manual guidelines with respect to the *pro forma* financial statement requirements and significant dispositions.

(c) Issuers with Asset-backed Securities Outstanding*Comment:*

It was unclear to two commentators whether, in Item 6.2(e), payments of principal and interest are to be disclosed separately or in the aggregate.

Response:

A clarification has been added to the proposed Form.

(d) Annual Information*Comment:*

With respect to Item 8.1 of the 1999 proposed Form, two commentators favoured disclosure of summarized annual financial information for at least five years.

Response:

The Commission has decided to move to a three year financial statement history requirement and, consequently, does not believe that it is appropriate or desirable to require issuers to include selected financial information for five years without the underlying financial statements being included in their entirety. Under the proposed Rule, the inclusion of selected financial information for earlier years is discretionary.

(e) Quarterly Information*Comment (i):*

One commentator believed issuers making an initial public offering should be exempted from the requirement for quarterly information in Item 8.2 of the 1999 proposed Form. In the commentator's experience, most IPO issuers do not have quarterly financial information available and it would require a significant accounting effort on the part of management to prepare this information. There also would be significant additional costs to the issuer because the underwriters would want assurances on this financial information in the auditors' comfort letter.

Response:

The Commission recognizes the difficulties identified by the commentator and has modified Item 8.2 to require an issuer, that has not been a reporting issuer for the eight most recently completed quarters ending at the end of the most recently completed financial year, to provide the quarterly information for the period that the issuer was not a reporting issuer only if the issuer has otherwise prepared quarterly financial statements for that period.

Comment (ii):

Two commentators noted that the period to be covered in the disclosure under Item 8.5 of the 1999 proposed Form of the amount of preliminary expenses already expended and the estimated future expenditures is not clear. In the situation of a natural resource company in the exploratory stage, for example, it may not be possible to make a reasonable estimate of preliminary expenses remaining to be incurred in future.

Response:

On further consideration, this Item has been deleted and what was Item 8.6 in the 1999 proposed Form has been expanded (now Item 8.5) to deal with businesses still in the development stage.

(f) Management's Discussion and Analysis

Comment:

One commentator agreed that only two discussions are needed for MD&A relating to the last three financial years in Item 8.6 of the 1999 proposed Form. The commentator further suggested that there were a significant number of situations where an integrated discussion of, eg., 1997 vs. 1996 vs. 1995 is preferable to discrete discussions of 1997 vs. 1996 and 1996 vs. 1995.

Response:

A clarification to this effect has been added to the Form.

(g) Earnings Coverage Ratios

Comment (i):

Four commentators expressed concern that the earnings coverage ratios, as calculated according to Item 9 of the 1999 proposed Form, could be misleading. Three of these commentators expressed concern regarding the effect of classification of financial instruments as "compound instruments" or "equity instruments".

Three of the commentators were of the view that making *pro forma* adjustments to the denominator, but not to the numerator of the ratio, could lead to the misleading results.

Response:

The Commission appreciates the limitations of the earnings coverage calculations, but has refrained from making changes that would represent a departure from GAAP. Instead, in response to the specific comment regarding "compound instruments", additional disclosure is required in the proposed Form, namely to re-calculate and disclose the ratios as if the equity component had been accounted for as debt.

N. Long Form Companion Policy**1. Applications for Exemption from Requirement to Include Financial Statements of the Issuer**

Comment (i):

Two commentators recommended that the matters discussed in section 2.2 of the 1999 proposed Policy regarding potential relief be identified only as factors to be considered when an exemption is requested, so as to avoid unduly raising the hopes of issuers who do not wish to comply with the requirements.

Response:

Clarification to this effect has been added to the proposed Policy.

Comment (ii):

The commentators noted that failure to provide comparative figures, as contemplated by subsection 2.2(5) of the 1999 proposed Policy, represents a departure from GAAP, unless the information is not reasonably determinable. The commentators suggested the issue should be not that the entity *did not* prepare interim financial statements, but that the entity *is unable* to prepare such statements.

Response:

The proposed Policy has been revised to reflect this comment.

2. Extension of Period for Issuance of Receipt

Comment:

Three commentators suggested that subsection 6.1(3) of the 1999 proposed Policy is no longer necessary because the proposals in Part 4 of the 1999 proposed Rule provide specific timing requirements for the issuer's financial statements included in the final prospectus.

Response

The Commission agrees with this comment and has revised the proposed Policy accordingly.

3. Generally Accepted Auditing Standards*Comment:*

The third sentence in section 4.2 of the 1999 proposed Policy states that the foreign auditor's report must be accompanied by a statement that the auditing standards applied are substantially equivalent to Canadian GAAS and include a comment disclosing any material differences in the form and content of the foreign auditor's report. The commentators suggested that the first statement should be included in the letter to be required by the Commission from the foreign auditor, whereas the latter statement should accompany the auditor's report.

Response

The Commission considered the suggestion but decided to retain the requirement that a foreign auditor's report include a statement that the foreign auditing standards applied are substantially equivalent to Canadian GAAS since this is important disclosure for investors.

4. Additional Guidance Regarding Identification of Audited and Unaudited Information*Comment:*

Two commentators noted that in the text of a prospectus, issuers and their professional advisors often wish to use the captions "audited" and "unaudited" to indicate which information is derived from audited financial statements, and which from unaudited statements. The commentators considered this practice potentially misleading, since normally it is only financial statements that are audited, and the danger is that a reader will assume that any figures not identified as unaudited (and possibly other information as well) have been audited or derived from audited financial statements. The commentators suggested it would be helpful if guidance on this practice was incorporated in the proposed Policy.

Response:

The Commission has decided to rely on the judgment of issuers and their advisors as to the manner most appropriate for marking information derived from financial statements.

5. Business Acquisition Disclosure*Comment:*

Two commentators believed that the decision chart attached as Appendix A to the Companion Policy relating to business acquisitions disclosure will be helpful to issuers and their advisers. The commentators pointed out that the first box on the right side of the page should refer to audited income statements for two, rather than three, years and the third box in the same vertical column should make reference to the requirement for a *pro forma* balance sheet and income statement.

Response:

The Commission agrees with this comment.

O. Drafting Style**1. Providing Examples and More Guidance***Comment:*

Two commentators recommended the development of additional guidance in the proposed Policy as to the interpretation of the proposed Rule and the proposed Form in specific situations. They also strongly encouraged the Commission to include examples in the proposed Policy illustrating the application of the proposed Rule and proposed Policy.

Response:

The Commission has added some examples in the proposed Policy in response to this comment.

2. Obscure and Legalistic Drafting Style

Comment:

Three commentators expressed significant concern with the obscure and overly legalistic style of the text. Many of the detailed provisions require the reader to refer back and forth from paragraph to paragraph in order to decipher their intent. The commentators encouraged the re-drafting of the proposals in simpler form and language.

Response:

The Commission is sympathetic to this concern and hopes that the re-drafting in the proposed Instruments is responsive to this comment.

Proposed Rule 41-501
General Prospectus Requirements

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**ONTARIO SECURITIES COMMISSION RULE 41-501
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**ONTARIO SECURITIES COMMISSION RULE 41-501
GENERAL PROSPECTUS REQUIREMENTS¹****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 INTERPRETATIONS²**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 the completion of each other acquisition;

"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;

¹ 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) and was published a second time for comment on July 23, 1999 in 22 OSCB (LF Supp) ("the 1999 Proposal"). In view of the number of comments received concerning the 1999 Proposal and the resulting changes that have been made, the proposed Rule is being republished for comment. References to "the proposed Rule" refer to this republished version of the Rule and not to the 1999 Proposal. Unless otherwise indicated, the footnotes comment on changes to the 1999 Proposal.

Footnotes included in the 1999 Proposal have generally not been repeated here.

² 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.

"auditor's report" means

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

"connected issuer" has the meaning ascribed to that term in securities legislation;⁴

"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 net income or loss, 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 most recently completed financial year for which audited annual financial statements are included in a prospectus;

"junior issuer" means an issuer that satisfies all of the following criteria:

1. The issuer's total consolidated assets as at the date of the most recent balance sheet of the issuer included in the prospectus are less than \$10,000,000.
2. The issuer's consolidated revenue as shown in the most recent annual income statement of the issuer included in the prospectus is less than \$10,000,000.
3. The issuer's shareholders' equity as at the date of the most recent balance sheet of the issuer included in the prospectus is less than \$10,000,000.
4. The average aggregate market value of the issuer's equity securities, if any, for which there is a published market in Canada, as calculated in accordance with section 2.7, is less than \$10,000,000;⁵

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

"probable acquisition of related businesses" means

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

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

⁴ This definition has been added to replace a reference to Multilateral Instrument 33-105 Underwriting Conflicts which has not yet come into force. The term is used in Form 41-501F1.

⁵ This definition is new.

- (i) each proposed acquisition has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high, and
- (ii) either
 - (A) the businesses are under common control or management, or
 - (B) each acquisition is conditional upon the completion of each other acquisition, or
- (b) a completed acquisition of a business and a proposed acquisition of a business if
 - (i) the proposed acquisition has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high, and
 - (ii) either
 - (A) the businesses were under common control or management, or
 - (B) the proposed acquisition was conditional upon the completed acquisition;⁶

"probable disposition of a business" means a proposed disposition of a business that has progressed to a state where a reasonable person would believe that the likelihood of the disposition being completed is high;⁷

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

"U.S. GAAS" means the body of generally accepted auditing standards in the United States of America.⁸

2.2 Significant Acquisitions⁹

- (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 three conditions:
 1. **The Asset Test.** The issuer's proportionate share of the total consolidated assets of the business or related businesses exceeds 20 percent of the consolidated assets of the issuer as at both
 - (a) the date of the most recent financial year end of the issuer before the date of the acquisition, without giving effect to the acquisition; and
 - (b) the date of the most recent balance sheet of the issuer included in the prospectus, without giving effect to the acquisition.
 2. **The Investment Test.** The issuer's consolidated investments in and advances to the business or the related businesses exceeds 20 percent of the consolidated assets of the issuer as at both
 - (a) the date of the most recent financial year end of the issuer before the date of the acquisition, without giving effect to the acquisition; and
 - (b) the date of the most recent balance sheet of the issuer included in the prospectus, without giving effect to the acquisition.¹⁰

⁶ Paragraph (b) is new.

⁷ This definition is new.

⁸ This definition is new.

⁹ Each test is applied on two dates; the earlier of the two dates is new.

¹⁰ This test is new and replaces the revenue test in the 1999 proposed Rule.

3. **The Income Test.** Both the following subparagraph (a) and subparagraph (b) are true:
- (a) The issuer's proportionate share of the consolidated income from continuing operations of the business or the related businesses for the most recently completed financial year of the business or the related businesses before the date of the acquisition exceeds 20 percent of the total consolidated income from continuing operations of the issuer for the most recently completed financial year of the issuer before the date of the acquisition, without giving effect to the acquisition.
 - (b) The income from continuing operations referred to in the following clause (i) exceeds 20 percent of the income from continuing operations referred to in the following clause (ii):
 - (i) The issuer's proportionate share of the consolidated income from continuing operations of the business or the related businesses for the later of
 - (A) the most recently completed financial year of the business or the related businesses that ended more than 90 days before the date of the prospectus, or
 - (B) the 12 months ended on the last day of the most recently completed interim period of the business or related businesses that ended more than 60 days before the date of the prospectus.
 - (ii) The income from continuing operations of the issuer on a consolidated basis for the later of
 - (A) the most recently completed financial year, without giving effect to the acquisition, or
 - (B) the 12 months ended on the last day of the most recently completed interim period of the issuer for which statements are included in the prospectus, without giving effect to the acquisition.
- (2) In determining whether an acquisition of related businesses or a probable acquisition of related businesses is a significant acquisition, the related businesses shall be considered on a combined basis.
- (3) Unless the context otherwise requires, the term "significant acquisition" refers to an acquisition of a business, an acquisition of related businesses, a probable acquisition of a business or a probable acquisition of related businesses that satisfies any of the three conditions in subsection (1).¹¹

2.3 Application of Income Test¹²

- (1) For the purposes of paragraph 3 of subsection 2.2(1), if
- (a) the issuer's income from continuing operations on a consolidated basis for the most recently completed financial year referred to in subclause 3(b)(ii)(A) of subsection 2.2(1) was not a loss; and
 - (b) the issuer's income from continuing operations on a consolidated basis for that year is
 - (i) positive, and
 - (ii) lower by 20 percent or more than the average consolidated income from continuing operations of the issuer for the three most recently completed financial years,

then, the average consolidated income for the three most recently completed financial years shall, subject to subsection (3), be substituted in determining whether the condition set out in paragraph 3 of subsection 2.2(1) is satisfied.

- (2) For the purposes of paragraph 3 of subsection 2.2(1), if
- (a) the issuer's income from continuing operations on a consolidated basis for the most recent 12 month period referred to in subclause 3(b)(ii)(B) of subsection 2.2(1) was not a loss; and

¹¹ This subsection is new.

¹² This section is new.

- (b) the issuer's income from continuing operations on a consolidated basis for that 12 month period is
 - (i) positive, and
 - (ii) lower by 20 percent or more than the average consolidated income from continuing operations of the issuer for the three previous 12 month periods,

then, the average consolidated income for the three previous 12 month periods shall, subject to subsection (3), be substituted in determining whether the condition set out in paragraph 3 of subsection 2.2(1) is satisfied.

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

2.4 Probable Acquisitions

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

2.5 Acquisitions - The term "acquisition" includes an acquisition of an interest in a business accounted for using the equity method.¹³

2.6 Significant Dispositions¹⁴

- (1) For the purposes of this Rule, a disposition of a business, including a probable disposition of a business, is a significant disposition, if it satisfies either of the following conditions:
 - 1. The issuer's proportionate share of the total consolidated assets of the business exceeds 20 percent of the consolidated assets of the issuer as at the date of the most recent financial year end of the issuer before the date of the disposition, without giving effect to the disposition.
 - 2. The issuer's proportionate share of the consolidated income from continuing operations of the business for the most recently completed financial year of the business before the date of the disposition exceeds 20 percent of the total consolidated income from continuing operations of the issuer for the most recently completed financial year of the issuer before the date of the disposition, without giving effect to the disposition.
- (2) Unless the context otherwise requires, the term "significant disposition" refers to a disposition of a business and a probable disposition of a business that satisfies either of the two conditions in subsection (1).

2.7 Calculation of Market Capitalization¹⁵

- (1) For the purposes of the definition of "junior issuer", the aggregate market value of the equity securities of an issuer is the aggregate of the market value of each class of its equity securities for which there is a published market in Canada, calculated, for each class, by multiplying the simple average of the closing prices of the equity securities of the class for each of the 20 most recent trading days on which there was a closing price by the simple average number of equity securities of the class outstanding over that 20 trading day period.
- (2) If equity securities of an issuer of a class are traded on more than one published market in Canada, the closing price on the market in Canada on which the equity securities of the class are principally traded shall be used for the calculation under subsection (1).

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

¹³ This section is new and has been added for greater clarity.

¹⁴ This section is new and has been added to provide a quantitative test to measure the significance of a disposition.

¹⁵ This section is new and has been added for the purposes of the definition of "junior issuer".

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 under 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 STATEMENT DISCLOSURE FOR THE ISSUER¹⁶

4.1 Annual Financial Statements of the Issuer - Subject to sections 4.2, 4.3 and 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. Statements of retained earnings and cash flow statements for each of the financial periods for which income statements are required to be included.¹⁷
- 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.

4.2 Exception to Annual Statement Requirement if More Recent Annual Statements Included - An issuer may omit its financial statements for the oldest financial year otherwise required under section 4.1, if audited financial statements of the issuer are included in the prospectus for a financial year ended 90 days or less before the date of the prospectus.

4.3 Exception to Annual Statement Requirement if Financial Year End has Changed - An issuer that has changed its financial year end during any of the financial years for which financial statements are required to be included in a prospectus

¹⁶ The provisions dealing with financial statement disclosure requirements for issuers and credit supporters have been subdivided into two Parts: Part 4 which deals with issuer disclosure requirements and Part 5 which deals with credit supporter disclosure requirements.

¹⁷ The specific reference to "statements of retained earnings" is new.

under section 4.1 may omit the financial statements for the financial year in which the financial year end changed, if the issuer includes audited financial statements for a period of at least nine months of the financial year in which the year end changed.

4.4 Predecessor Entities and Business Combinations

- (1) The financial statements of an issuer required under this Part to be included in a prospectus include
 - (a) the financial statements of predecessor entities that carried on the business of the issuer, even though the predecessor may have been a different legal entity, if the issuer has not existed for three years;
 - (b) the restated combined financial statements of the issuer and any other entity with which the issuer completed a business combination within three years before the date of the prospectus, if the business combination was accounted for as a pooling of interests;
 - (c) the financial statements of a business acquired by the issuer within three years before the date of the prospectus, if a reasonable investor reading the prospectus would regard the primary business of the issuer to
 - (i) be the business acquired by the issuer, and
 - (ii) not be the business of the issuer, as it was before the date of the acquisition; and
 - (d) the restated combined financial statements of the issuer and any other entity with which the issuer completed a transaction within three years before the date of the prospectus, if the issuer accounted for the transaction as a continuity of interests.¹⁸
- (2) If restated combined financial statements of an issuer are included in a prospectus under paragraphs (1)(b) or (1)(d), the issuer may omit from a prospectus its financial statements that do not reflect the business combination or a continuity of interests transaction.¹⁹

4.5 Reverse Take-Overs - If an issuer has been involved in a business combination accounted for as a reverse take-over, an issuer shall determine, in accordance with Canadian GAAP, which entity's historical financial statements to use for purposes of complying with the annual and interim financial statement requirements in this Part.²⁰

4.6 Interim Financial Statements of the Issuer - Subject to subsection 4.7(2) and section 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 statement of retained earnings and a cash flow statement for both of the periods referred to in paragraph 1.²¹
3. A balance sheet as at the date on which the most recently completed interim period referred to in paragraph 1 ended.

4.7 Additional Financial Statements of the Issuer 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 4.6 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

¹⁸ Paragraphs (b), (c) and (d) are new. Paragraph (b) replaces, in part, section 2.1 of the Companion Policy in the 1999 Proposal.

¹⁹ This is new and has been added for greater clarity.

²⁰ This has been moved into the Rule from section 2.1 of the Companion Policy in the 1999 Proposal.

²¹ The specific reference to "statement of retained earnings" is new.

(c) the financial statements for the more recent period, or selected information from those statements, have been released to the public.

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

4.8 Audit Requirement for Financial Statements of the Issuer - Financial statements of an issuer included in a prospectus shall be accompanied by an auditor's report without a reservation of opinion.²²

4.9 Exception to Audit Requirement for Interim Financial Statements of the Issuer - Despite section 4.8, an issuer may omit from its prospectus an auditor's report for interim financial statements of the issuer required to be included under section 4.6 or 4.7.²³

4.10 Exception to Audit Requirement for Recent Financial Statements of the Issuer - Despite section 4.8, an issuer may omit from its prospectus an auditor's report for the annual financial statements of the issuer required to be included under paragraphs (a) and (c) of subsection 4.7(1) if the auditor has not issued an auditor's report on the financial statements.²⁴

4.11 Exception to Audit Requirement for Financial Statements of a Junior Issuer - Despite section 4.8, an issuer that is a junior issuer may omit from its prospectus an auditor's report for its financial statements for the second and third most recently completed financial years for which financial statements are included in the prospectus if

(a) the auditor has not issued an auditor's report on the financial statements; and

(b) the most recently completed financial year for which audited financial statements are included in the prospectus is not less than 12 months.²⁵

4.12 Exception to Audit Requirement for Financial Statements of an Issuer in a *Pro Forma* Prospectus - Despite section 4.8, an issuer may omit from a prospectus an auditor's report for the financial statements of the issuer included in a *pro forma* prospectus.²⁶

PART 5 FINANCIAL STATEMENT DISCLOSURE FOR A CREDIT SUPPORTER²⁷

5.1 Financial Statements of a Credit Supporter - 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 Part 4, as if the credit supporter were the issuer of the securities being distributed.

5.2 Omission of Issuer's Financial Statements - An issuer that is required under section 5.1 to include financial statements of a credit supporter may omit the financial statements of the issuer required to be included under Part 4 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

²² This section is new and supplements the general audit requirement in section 8.2. The reference to "without reservation of opinion" is new and has been added for greater clarity.

²³ This section replaces section 6.2 in the 1999 Proposal and has been added to reduce cross-references to different Parts of the Rule.

²⁴ This section replaces section 6.2 in the 1999 Proposal and has been added to reduce cross-references to different Parts of the Rule.

²⁵ This section is new.

²⁶ This section replaces section 6.2 in the 1999 Proposal and has been added to reduce cross-references to different Parts of the Rule.

²⁷ The provisions dealing with the financial statement disclosure requirements for credit supporters have been broken out into a separate Part for ease of reference.

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 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 section 5.1.

5.3 Audit Requirement for Financial Statements of a Credit Supporter - Financial statements of a credit supporter included in a prospectus shall be accompanied by an auditor's report without a reservation of opinion.²⁸

5.4 Exception to Audit Requirement for Interim Financial Statements of a Credit Supporter - Despite section 5.3, an issuer may omit from its prospectus an auditor's report for the interim financial statements of a credit supporter required to be included under section 5.1.²⁹

5.5 Exception to Audit Requirement for Financial Statements of a Credit Supporter in a *Pro Forma* Prospectus - Despite section 5.3, an issuer may omit from a prospectus an auditor's report for the financial statements of a credit supporter included in a *pro forma* prospectus.³⁰

PART 6 FINANCIAL STATEMENT DISCLOSURE FOR SIGNIFICANT ACQUISITIONS³¹

6.1 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.

6.2 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 6.3.
 2. Statements of retained earnings and cash flow statements for the periods for which income statements are included under paragraph 1.³²
 3. A balance sheet as at the date on which each of the periods specified in section 6.3 ended, except that, if section 6.3 specifies that separate financial statements of the business are to be included for three financial years, a balance sheet as at the end of the earliest of the three financial years is not required.³³
 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

²⁸ This section is new and supplements the general audit requirement in section 8.2. The reference to "without reservation of opinion" is new and has been added for greater clarity.

²⁹ This section replaces section 6.2 in the 1999 Proposal and has been added to reduce cross-references to different Parts of the Rule.

³⁰ This section replaces section 6.2 in the 1999 Proposal and has been added to reduce cross-references to different Parts of the Rule.

³¹ The provisions dealing with business acquisition disclosure have been subdivided into two Parts: Part 6 which deals with significant acquisitions and Part 7 which deals with multiple acquisitions that are not otherwise significant or related.

³² The specific reference to "statements of retained earnings" is new.

³³ This paragraph has been revised for greater clarity.

- (b) the comparable period in the preceding financial year.
5. A balance sheet as at the date on which the most recently completed interim period referred to in paragraph 4 ended.
6. A *pro forma* balance sheet of the issuer as at the date of the issuer's most recent balance sheet included in the 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 annual or interim balance sheet included in the prospectus, and
- (ii) significant probable acquisitions; and
- (b) separately identifies each significant probable acquisition.
7. A *pro forma* income statement of the issuer that
- (a) gives effect to
- (i) significant acquisitions completed during the most recently completed financial year of the issuer,
- (ii) significant acquisitions completed during the issuer's current financial year, and
- (iii) significant probable acquisitions;
- (b) gives effect to
- (i) the acquisitions referred to in clause (a)(i) as if they had taken place at the beginning of the most recent financial year of the issuer for which audited financial statements are included in the prospectus, and
- (ii) the acquisitions referred to in clauses (a)(ii) and (iii) as if they had taken place at the beginning of
- (A) the most recent financial year of the issuer for which audited financial statements are included in the prospectus, and
- (B) the most recent interim period of the issuer for which financial statements are included in the prospectus;³⁴ and
- (c) separately identifies each significant probable acquisition.
8. *Pro forma* earnings per share based on the *pro forma* financial statements referred to in paragraphs 6 and 7.
- (2) If an issuer is required under subsection (1) to include financial statements in a prospectus for more than one business because the significant acquisition involves an acquisition of related businesses or a probable acquisition of related businesses, the financial statements required under subsection (1) shall be presented separately for each business, except for the periods during which the businesses have been under common control or management, in which case the issuer may present the financial statements of the businesses on a combined basis.
- (3) If an issuer is required under subsection (1) to include *pro forma* financial statements in a 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.

³⁴ Paragraph (b) has been revised to require the *pro forma* statement to give effect to acquisitions completed in the previous year only as of the beginning of the year in which the acquisition occurred, not also at the beginning of the most recent interim period.

6.3 Reporting Periods³⁵

- (1) No financial statements are required under section 6.2 to be included in a prospectus if
 - (a) the results of the business for a complete financial year have been reflected in the audited consolidated financial statements of the issuer included in the prospectus; and
 - (b) none of the three conditions specified in subsection 2.2(1) would be satisfied if the 20 percent threshold in the conditions were changed to 100 percent.
- (2) If the results of the business for a complete financial year have been reflected in the audited consolidated financial statements of the issuer included in the prospectus and any of the three conditions specified in subsection 2.2(1) would be satisfied if the 20 percent threshold in the conditions were changed to 100 percent, separate financial statements of a business are required for as many periods before the acquisition as may be necessary so that, when these periods are added to the periods for which the financial statements in the prospectus of the issuer following the acquisition reflect the results of the business, financial statements reflecting the results of the business, either separately or on a consolidated basis, are included for a total of three years or such lesser period as the business has been in existence.
- (3) Subject to subsections (1) and (2), the periods for which the financial statements are required under paragraphs 1, 2 and 3 of subsection 6.2(1) to be included in a prospectus shall be determined by reference to the three conditions set out in subsection 2.2(1) as follows:
 1. If none of the three conditions are satisfied if the 20 percent threshold is changed to 40 percent, financial statements shall be included for
 - (a) the most recently completed financial year of the business before the date of the acquisition, if the acquisition was completed more than 90 days before the date of the prospectus;
 - (b) the most recently completed financial year of the business ended more than 90 days before the date of the prospectus, if the acquisition either has not been completed at the date of the prospectus or was completed 90 days or less before the date of the prospectus; or
 - (c) 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 three conditions are satisfied if the 20 percent threshold is changed to 40 percent, but none of the three conditions are satisfied if the 20 percent threshold is changed to 50 percent, financial statements shall be included for
 - (a) each of the two most recently completed financial years of the business before the date of the acquisition, if the acquisition was completed more than 90 days before the date of the prospectus;
 - (b) each of the two most recently completed financial years of the business ended more than 90 days before the date of the prospectus, if the acquisition either has not been completed at the date of the prospectus or was completed 90 days or less before the date of the prospectus; or
 - (c) 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 three conditions are satisfied if the 20 percent threshold is changed to 50 percent, financial statements shall be included for
 - (a) each of the three most recently completed financial years of the business before the date of the acquisition, if the acquisition was completed more than 90 days before the date of the prospectus;
 - (b) each of the three most recently completed financial years of the business ended more than 90 days before the date of the prospectus, if the acquisition either has not been completed at the date of the prospectus or was completed 90 days or less before the date of the prospectus; or

³⁵ This section has been reorganized for greater clarity and expanded to include the exception that appeared in subsection 5.6(1) in the 1999 Proposal in an effort to consolidate more of the provisions dealing with reporting periods in one section.

- (c) such shorter period, ended more than 90 days before the date of the prospectus, as the business has been in existence.
- (4) Despite subsection (3), the balance sheets of a business referred to in paragraphs 3 and 5 of subsection 6.2(1) are not required to be included in a prospectus, if the acquisition of the business was completed before the date of the issuer's most recent audited balance sheet included in the prospectus.

6.4 Additional Financial Statements of the Business 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 6.2(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 90 days or less before the date of the prospectus, an issuer may omit the financial statements for the most recently completed interim period from the prospectus.

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

- (1) Despite subsection 6.3(3), an issuer may omit separate financial statements of a business for the oldest financial year otherwise required under subsection 6.3(3), if audited financial statements of the business are included in the prospectus for a financial year ended 90 days or less before the date of the prospectus.³⁶
- (2) Despite subsection 6.3(3), an issuer may omit separate financial statements of a business for the oldest financial year otherwise required under subsection 6.3(3) if
 - (a) audited financial statements are included in the prospectus for a period of at least nine months in the financial year after the most recent year for which separate financial statements are required under subsection 6.3(3);
 - (b) the business is not seasonal;
 - (c) separate financial statements of a business are required under subsection 6.3(3) for more than one financial year; and
 - (d) the issuer has not included audited financial statements in the prospectus for a period of less than 12 months using the exception in section 6.6.³⁷
- (3) Despite subsection 6.2(1), an issuer may omit from a prospectus the financial statements of a business for the interim period otherwise required under subsection 6.2(1) if the issuer includes annual financial statements of the business for a financial year ended 90 days or less before the date of the prospectus.³⁸

6.6 Exception to Disclosure Requirements for Significant Acquisitions if Financial Year End Changed - Despite section 6.3, an issuer may omit separate financial statements of a business for a financial year in which the business changed its financial year end, if the issuer includes audited financial statements of the business for a period of at least nine months of the financial year in which the year end changed.³⁹

³⁶ This subsection is new.

³⁷ Paragraphs (c) and (d) are new.

³⁸ This subsection is new.

³⁹ This exception is new.

6.7 Exception to Disclosure Requirements for Significant Acquisitions Accounted for Using the Equity Method - Despite subsection 6.2(1), an issuer may omit from its prospectus the financial statements of a business and the *pro forma* financial statements for an acquisition of a business otherwise required under subsection 6.2(1) if

- (a) the acquisition is, or will be, an investment accounted for using the equity method, as that term is defined in the Handbook;
- (b) disclosure is included in the prospectus for the periods for which financial statements are otherwise required under subsection 6.2(1) that
 - (i) summarizes information as to the assets, liabilities and results of operations of the business, and
 - (ii) describes the issuer's proportionate interest in the business and any contingent issuance of securities by the business that might significantly affect the issuer's share of earnings;
- (c) the financial statements of the business, from which the disclosure provided under paragraph (b) has been derived, have been audited; and
- (d) 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.⁴⁰

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

- (1) An issuer shall include in the subsequent event note in its financial statements included in a 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.

6.9 Audit Requirement for Financial Statements of a Business - Financial statements of a business included in a prospectus under this Part, other than *pro forma* financial statements, shall be accompanied by an auditor's report without a reservation of opinion.⁴¹

⁴⁰ This exception has been broken out into a separate section for ease of reference.

⁴¹ This section is new and supplements the general audit requirement in section 8.2. The reference to "without reservation of opinion" is new and has been added for greater clarity.

6.10 Exception to Audit Requirement for Interim Financial Statements of a Business - Despite section 6.9, an issuer may omit from its prospectus an auditor's report for the interim financial statements of a business included under this Part.⁴²

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

(1) Despite section 6.9, an issuer may omit from its prospectus an auditor's report for the annual financial statements of a business required to be included under paragraphs (a) and (c) of subsection 6.4(1), if the auditor has not issued an auditor's report on the financial statements.⁴³

(2) Despite section 6.9, an issuer may omit from its prospectus an auditor's report for the annual financial statements of a business included under subsection 6.5(3), if the auditor has not issued an auditor's report on the financial statements.⁴⁴

6.12 Exception to Audit Requirement for Financial Statements of a Business that is a Junior Issuer - Despite section 6.9, if the business acquired or to be acquired is a junior issuer and separate financial statements of the business are required to be included in the prospectus for more than one financial year, the issuer may omit from its prospectus an auditor's report for the financial statements of the business for financial years other than the most recent year for which financial statements of the business are included, if

(a) an auditor has not issued an auditor's report on the statements,⁴⁵ and

(b) the most recently completed financial year for which audited financial statements are included in the prospectus is not less than 12 months.

6.13 Exception to Audit Requirement for Financial Statements of a Business in a *Pro Forma* Prospectus - Despite section 6.9, an issuer may omit from a prospectus an auditor's report for the separate financial statements included in a *pro forma* prospectus under this Part.⁴⁶

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

PART 7 FINANCIAL STATEMENT DISCLOSURE FOR MULTIPLE ACQUISITIONS THAT ARE NOT OTHERWISE SIGNIFICANT OR RELATED⁴⁷

7.1 Scope - This Part applies only to an issuer that

(a) has acquired two or more businesses since the beginning of its most recently completed financial year;

(b) is proposing to make two or more probable acquisitions of a business; or

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

excluding, in each case, acquisitions that are significant acquisitions, significant probable acquisitions, acquisitions of related businesses and probable acquisitions of related businesses.⁴⁸

⁴² This section replaces section 6.2 in the 1999 Proposal and has been added to reduce cross-references to different Parts of the Rule.

⁴³ This section replaces section 6.2 in the 1999 Proposal and has been added to reduce cross-references to different Parts of the Rule.

⁴⁴ This subsection is new.

⁴⁵ This section is new.

⁴⁶ This section replaces section 6.2 in the 1999 Proposal and has been added to reduce cross-references to different Parts of the Rule.

⁴⁷ The provisions dealing with financial statement disclosure for multiple acquisitions that are not otherwise significant or related have been broken out into a separate Part for ease of reference.

⁴⁸ This has been revised and broken out into a separate section for greater clarity.

7.2 Historical Financial Statement Disclosure

- (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 any of the three conditions specified in subsection 2.2(1) would be satisfied if
 - (a) the 20 percent threshold in the conditions were changed to 50 percent;
 - (b) the total consolidated assets of the businesses referred to in section 7.1 were considered on a combined basis;
 - (c) the issuer's consolidated investments in and advances to the businesses referred to in section 7.1 were considered on a combined basis; and
 - (d) the consolidated income from continuing operations of the businesses referred to in section 7.1 were considered on a combined basis.⁴⁹
- (2) An issuer shall include financial statements under subsection (1) for only those businesses referred to in section 7.1 that, on a combined basis and using the basis, or one of the bases, upon which the conditions in subsection (1) are satisfied, represent a majority of
 - (a) the total consolidated assets of all of the businesses referred to in section 7.1;
 - (b) the issuer's consolidated investments in and advances to all of the businesses referred to in section 7.1; or
 - (c) the consolidated income from continuing operations of all of the businesses referred to in section 7.1.⁵⁰
- (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.
- (4) Despite subsections (1), (2) and (3), the balance sheets of a business referred to in subsection (2) are not required to be included in a prospectus, if the acquisition of the business was completed before the date of the issuer's most recent audited balance sheet included in the prospectus.⁵¹

7.3 Additional Financial Statements of the Business 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 section 7.2 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.

⁴⁹ This has been revised for greater clarity.

⁵⁰ This has been revised for greater clarity.

⁵¹ This subsection is new.

- (2) If annual financial statements are required under subsection (1) for a financial year ended 90 days or less before the date of the prospectus, an issuer may omit the financial statements for the most recently completed interim period from the prospectus.⁵²

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

- (1) Despite section 7.2, an issuer may omit the financial statements for the financial year otherwise required under section 7.2 if audited financial statements of the business are included in the prospectus for a financial year ended 90 days or less before the date of the prospectus.
- (2) Despite section 7.2, an issuer may omit from a prospectus the financial statements of a business for the interim period otherwise required under section 7.2 if the issuer includes annual financial statements of the business for a financial year ended 90 days or less before the date of the prospectus.⁵³

7.5 Exception to Disclosure Requirements for Multiple Acquisitions if Financial Year End Changed - Despite section 7.2, an issuer may omit separate financial statements of a business for a financial year in which the business changed its financial year end, if the issuer includes audited financial statements of the business for a period of at least nine months of the financial year in which the year end changed.⁵⁴

7.6 Pro Forma Financial Statement Disclosure

- (1) If subsection 7.2(1) applies, the issuer shall include in its prospectus the following financial statements:
1. 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 the effect, as if they had taken place as at the date of the *pro forma* balance sheet, to
 - (i) the acquisitions of businesses
 - (A) for which the issuer has included separate financial statements under section 7.2, and
 - (B) that have been completed, but are not reflected in the issuer's most recent annual or interim balance sheet included in the prospectus, and
 - (ii) probable acquisitions of businesses for which the issuer has included separate financial statements under section 7.2; and
 - (b) separately identifies each probable acquisition.
 2. A *pro forma* income statement of the issuer that
 - (a) gives effect to the acquisitions of businesses for which the issuer has included separate financial statements under section 7.2 as if they had taken place at the beginning of
 - (i) the most recent financial year of the issuer for which audited financial statements are included in the prospectus, and
 - (ii) the most recent interim period of the issuer for which financial statements are included in the prospectus; and
 - (b) separately identifies each probable acquisition.
 3. *Pro forma* earnings per share based on the *pro forma* financial statements referred to in paragraphs 1 and 2.

⁵² This section is new.

⁵³ This section is new.

⁵⁴ This section is new.

- (2) 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.⁵⁵

7.7 Audit Requirement for Financial Statements of a Business - Financial statements of a business included in a prospectus under this Part, other than *pro forma* financial statements, shall be accompanied by an auditor's report without a reservation of opinion.⁵⁶

7.8 Exception to Audit Requirement for Interim Financial Statements of a Business - Despite section 7.7, an issuer may omit from its prospectus an auditor's report for the interim financial statements of a business included under this Part.⁵⁷

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

- (1) Despite section 7.7, an issuer may omit from its prospectus an auditor's report for the annual financial statements of a business required to be included under paragraphs (a) and (c) of subsection 7.3(1), if the auditor has not issued an auditor's report on the financial statements.

- (2) Despite section 7.7, an issuer may omit from its prospectus an auditor's report for the annual financial statements of a business included under subsection 7.4(2), if the auditor has not issued an auditor's report on the financial statements.⁵⁸

7.10 Exception to Audit Requirement for Financial Statements of a Business that is a Junior Issuer - Despite section 7.7, if the business acquired or to be acquired is a junior issuer and separate financial statements of the business are included in the prospectus for more than one financial year, the issuer may omit from its prospectus an auditor's report for the financial statements of the business for financial years other than the most recent year for which financial statements of the business are included if an auditor has not issued an auditor's report on the statements.⁵⁹

7.11 Exception to Audit Requirement for Financial Statements of a Business in a *Pro Forma* Prospectus - Despite section 7.7, an issuer may omit from a prospectus an auditor's report for the separate financial statements included in a *pro forma* prospectus under this Part.⁶⁰

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

PART 8 GAAP, AUDIT REQUIREMENT, FOREIGN AUDITOR'S REPORT AND AUDIT COMMITTEE

8.1 Generally Accepted Accounting Principles

- (1) The financial statements of a person or company incorporated or organized in a jurisdiction⁶¹ that are included in a prospectus shall be prepared in accordance with Canadian GAAP.⁶²

⁵⁵ This section is new.

⁵⁶ This section is new and supplements the general audit requirement in section 8.2. The reference to "without reservation of opinion" is new and has been added for greater clarity.

⁵⁷ This section replaces section 6.2 in the 1999 Proposal and has been added to reduce cross-references to different Parts of the Rule.

⁵⁸ This section is new.

⁵⁹ This section is new.

⁶⁰ This section replaces section 6.2 in the 1999 Proposal and has been added to reduce cross-references to different Parts of the Rule.

⁶¹ 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".

⁶² 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".

- (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.

8.2 Audit Requirement - Subject to the exceptions in this Rule to the audit requirements in sections 4.8, 5.3, 6.9 and 7.7, all financial statements included in a prospectus, other than a *pro forma* prospectus, shall be accompanied by an auditor's report without a reservation of opinion.⁶³

8.3 Foreign Auditor's Report - 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

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

8.4 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 9 NON-FIXED PRICE OFFERINGS AND REDUCTION OF OFFERING PRICE UNDER A PROSPECTUS

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

- (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.

⁶³ The reference to "without reservation of opinion" has been added for clarity.

PART 10 CERTIFICATION

10.1 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 duly authorized to sign, other than the persons referred to in paragraph (a).

10.2 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.

10.3 Pro Forma Prospectus - A certificate required under section 58 or section 59 of the Act or section 10.1 of this Rule may be omitted from a *pro forma* prospectus.

PART 11 GENERAL REQUIREMENTS AS TO FILING

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

11.2 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) position with or relationship to issuer;
 - (c) employer's name and address, if other than the issuer;
 - (d) full residential address;
 - (e) date and place of birth; and
 - (f) citizenship.
2. A completed Form 41-501F2 authorizing 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 11.7 and that has not previously been delivered, other than a technical report not otherwise required to be filed under subsection 11.3(1) or (2).
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.

11.3 Technical Reports

- (1) An issuer that has mineral exploration, development or production activities on a mineral property shall file
 - (a) with a preliminary prospectus filed
 - (i) before the coming into force of National Instrument 43-101, Standards of Disclosure for Mineral Projects a technical report prepared following the guidelines set out in National Policy Statement No. 2-A Guide for Mining Engineers, Geologists and Prospectors; and
 - (ii) after the coming into force of National Instrument 43-101, a technical report prepared in accordance with National Instrument 43-101; and

- (b) with a prospectus filed
 - (i) before the coming into force of National Instrument 43-101, Standards of Disclosure for Mineral Projects a technical report prepared following the guidelines set out in National Policy Statement No. 2-A Guide for Mining Engineers, Geologists and Prospectors in respect of new material information subsequent to the date of the filing of the preliminary prospectus; and
 - (ii) after the coming into force of National Instrument 43-101, a technical report prepared in accordance with National Instrument 43-101.⁶⁴
- (2) An issuer that has oil and gas operations shall file
 - (a) with a preliminary prospectus, a technical report or certificate 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; and
 - (b) with a prospectus any other technical report or certificate required to be filed under the successor instrument to National Policy No. 2-B, once in force and until that time shall file, unless previously filed, a technical report or certificate on each property material to the issuer prepared in accordance with National Policy 2-B.⁶⁵
- (3) An issuer shall deliver to the Commission with a prospectus a copy of each report or valuation for which a consent is required to be filed under section 11.7 and that has not previously been delivered, other than a technical report not otherwise required to be filed under subsection (1) or (2).⁶⁶

11.4 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.

11.5 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.

11.6 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.

11.7 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.

⁶⁴ Paragraph (b) is new.

⁶⁵ Paragraph (b) is new.

⁶⁶ This subsection is new.

- (2) The consent of an auditor required under subsection (1) for a report on financial statements shall
 - (a) refer to the report stating its date and the dates of the financial statements on which the report is made; and
 - (b) contain a statement that the auditor has read the prospectus and has no reason to believe that there are any misrepresentations in the information in the prospectus derived from the financial statements upon which the auditor has reported or that is within the auditor's knowledge as a result of the audit of the financial statements.
- (3) Subsection (1) does not apply to an approved rating organization that issues a rating to the securities being distributed under the preliminary prospectus or prospectus.

11.8 Consent of Credit Supporter - If statements of a credit supporter are required under Item 25.1 of Form 41-501F1 to be included in a prospectus and a certificate of the credit supporter is not required under section 10.1 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.

11.9 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
 - (a) to audit the reconciliation of foreign GAAP to Canadian GAAP; and
 - (b) in the case of foreign GAAS other than U.S. GAAS, to make the determination that auditing standards applied are substantially equivalent to Canadian GAAS.⁶⁷

11.10 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 credit supporter 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 credit supporter, as applicable, in Form 41-501F4 shall be filed no later than the time a prospectus of the issuer is filed.

11.11 Amendments

- (1) An amendment to a preliminary prospectus or a prospectus shall 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 under section 10.1 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]."

⁶⁷ The exception for U.S. GAAS in paragraph (b) is new.

- (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 11.7(1) or section 11.8 or an auditor's letter filed under section 11.9 refers, the issuer shall file with the amendment, a new consent or auditor's letter, as applicable.

11.12 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 12 PROCEDURES AND REQUIREMENTS FOR GRANTING RECEIPTS

12.1 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.

PART 13 EXEMPTION

13.1 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.

13.2 Evidence of Exemption

- (1) Without limiting the manner in which an exemption under section 13.1 may be evidenced, the granting of the exemption under section 13.1 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 13.1 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.

Forms

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**FORM 41-501F1
INFORMATION REQUIRED IN A PROSPECTUS**

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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 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.*

PROSPECTUS FORM**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 under item 1.1 the following, with the bracketed information completed:

"A copy of this preliminary prospectus has been filed with [the securities regulatory authority(ies) in each of/certain of the provinces/provinces and territories of Canada] but has not yet become final for the purpose of 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 under Items 1.1 and 1.2 with the bracketed information completed:

[PRELIMINARY] PROSPECTUS

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

(Date)

Name of Issuer

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

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.¹*
- (2) *If the offering price is in a currency other than the Canadian dollar or the U.S. dollar, comply with the exchange rate disclosure requirements of National Instrument 52-102 Use of Currencies, once in force. Until National Instrument 52-102 is in force, issuers should refer to National Policy No. 14 Acceptability of Currencies in Material filed with Securities Regulatory Authorities.²*

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
 - (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

¹ Rule 56-501 Restricted Shares came into force on October 27, 1999.

² 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.

- (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,
 - (a) until Multilateral Instrument 33-105 Underwriting Conflicts comes into force, provide the disclosure required by Item 30 of Form 12 of the Regulation to the Act, as that Form read immediately before it was revoked; and
 - (b) after Multilateral Instrument 33-105 comes into force, comply with the requirements of that Multilateral Instrument 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".

- (3) 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.
- (4) 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 being 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, comply with National Instrument 41-101 Prospectus Disclosure Requirements by stating 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.

Item 2: Table of Contents

2.1 Table of Contents - Include a table of contents.

Item 3: Summary of Prospectus

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 organized 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.*

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

- (1) Disclose
 - (a) any acquisition completed by the issuer or probable acquisition proposed by the issuer, for which financial statement disclosure is required under Part 6 or 7 of the Rule; and
 - (b) any significant disposition completed by the issuer during the most recently completed financial year or the current financial year or any significant probable disposition proposed by the issuer.³
- (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 under 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.*

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;

³ See sections 2.1, 2.2, 2.4 and 2.6 of Rule 41-501 for definitions and interpretation of "significant" acquisitions and dispositions as well as "probable" acquisitions and dispositions.

- (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 12 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.

62 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, each stated separately, 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.

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 under paragraph (b) in a manner that will enable a reader to easily determine if, and the extent to which, the events, covenants, standards and preconditions referred to in paragraph (a) have occurred, are being satisfied or may be satisfied.*
- (4) *If the information required under paragraph (b) is not compiled specifically on the underlying pool of financial assets, but is compiled on a larger pool of the same assets from which the securitized assets are randomly selected such that the performance of the larger pool is representative of the performance of the pool of securitized assets, then an issuer may comply with paragraph (b) by providing the information required based on the larger pool and disclosing that it has done so.*

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

1. Property Description and Location

- (a) The size and location of the property.
- (b) The nature and extent of the issuer's title to or interest in the property, including accompanying surface rights, the sufficiency of the rights for mining operations, obligations that must be met to retain the property and the expiry date of claims, 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.
- (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 Projects, once in force, including the use of the appropriate terminology to describe reserves and resources. Until National Instrument 43-101 is in force, issuers should refer to National Policy No. 22 Use of Information and Opinion Re Mining and Oil Properties by Registrants and Others.*
- (2) *Disclosure is required for each property material to the issuer. Materiality is to be determined in the context of the issuer's overall business and financial condition, taking into account quantitative and qualitative factors. A property will not generally be considered material to an issuer if the book value of the property as reflected in the issuer's most recently filed financial statements or the value of the consideration paid or to be paid (including exploration obligations) is less than 10 percent of the book value of the total of the issuer's mineral properties and related plant and equipment.*
- (3) *The information required under these items shall be derived from or supported by information obtained from the report relating to the property prepared and filed with the Commission under National Instrument 43-101 Standards of Disclosure for Mineral Projects, once in force. Until National Instrument 43-101 is in force, issuers should support the information required under these items with a report prepared following the guidelines set out in National Policy Statement No. 2-A Guide for Mining Engineers, Geologists and Prospectors.*
- (4) *In giving the information required under these Items, include the nature of ownership interests, such as fee interests, leasehold interests, royalty interests and any other types and variations of ownership interests.*

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.
- 3. Location of Wells** - The location, stated separately for oil wells and gas wells, by jurisdiction, if in Canada, by state, if in the United States, and by country otherwise, of producing wells and wells capable of producing, in which the issuer has an interest and which are material, with the interest expressed in terms of gross and net wells.

4. **Interest in Material Properties** - For interests in material properties to which no proved reserves have been attributed, the gross acreage in which the issuer has an interest and the net interest of the issuer, and the location of acreage by geographical area.
5. **Reserve Estimates** - To the extent material, estimated reserve volumes and discounted cash flow from such reserves, stated separately by country and by categories and types that conform to the classifications, definitions and disclosure requirements of National Policy Statement No. 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators or any successor instrument, on both a gross and net basis as at the most recent financial year end, including information on royalties.
6. **Source of Reserve Estimates** - The source of the reserve estimates and whether the reserve estimates have been prepared by the issuer or by independent engineers or other qualified independent persons and any other information relating to reserve estimates required to be disclosed in a prospectus by any successor instrument to National Policy Statement No. 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators.
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
- (d) the term of the commitment.

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

INSTRUCTION *The information required under 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.*

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:*

"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 - 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:

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

- (1) For each of the eight most recently completed quarters ending at the end of the most recently completed financial year, provide the information required in paragraphs 1, 2 and 3 of Item 8.1.
- (2) For an issuer that has not been a reporting issuer for the eight most recently completed quarters ending at the end of the most recently completed financial year, provide the information required in paragraphs 1, 2 and 3 of Item 8.1 for the period that the issuer was not a reporting issuer only if the issuer has prepared quarterly financial statements for that period.⁴
- (3) If the issuer is only required to file six month interim financial statements, the information required under paragraph (1) may instead be provided for each of the four most recently completed six month periods ended at the end of the most recently completed financial year for which financial statements are included in the prospectus.

8.3 Dividends

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

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.

⁴ Paragraph (2) is new.

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 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 Canadian 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).⁵*

8.5 Management's Discussion and Analysis

- (1) 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 of the issuer for which financial statements are 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.
- (2) If the issuer's business is still in the development stage, include in the analysis of the issuer's results of operation a discussion of the issuer's material expenditures.⁶

INSTRUCTION *The two two-year comparisons required may be presented as a single three-year comparison.⁷*

Item 9: Earnings Coverage Ratios**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.

⁵ The reference to "Canadian" accounting recommendations and practices is new. Item 8.5 of the 1999 proposed Form has been deleted.

⁶ Paragraph (2) is new.

⁷ This instruction is new.

- (2) Adjust the ratios referred to in paragraph (1) to reflect
 - (a) the issuance of the securities being 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.
- (3) If the issuer is distributing, or has outstanding, debt securities that are accounted for, in whole or in part, as equity under Canadian GAAP, disclose in notes to the ratios required under paragraph (1)
 - (a) that the ratios have been calculated excluding the carrying charges for those securities that have been reflected in equity in the calculation of the issuer's interest and dividend obligations;
 - (b) that if those securities had been accounted for in their entirety as debt for the purpose of calculating the ratios required under paragraph (1), the entire amount of the annual carrying charges for those securities would have been reflected in the calculation of the issuer's interest and dividend obligations; and
 - (c) the earnings coverage ratios for the periods referred to in paragraph (1), re-calculated as though those securities had been accounted for as debt.

INSTRUCTIONS

- (1) *Cash flow coverage may be disclosed but only as a supplement to earnings coverage and only if the method of calculation is fully disclosed. Earnings coverage is calculated by dividing an entity's earnings (the numerator) by its interest and dividend obligations (the denominator).*
- (2) *For the earnings coverage calculation*
 - (a) *the numerator should be calculated using consolidated net income before interest and income taxes;*
 - (b) *imputed interest income from the proceeds of a distribution should not be added to the numerator;*
 - (c) *an issuer may also present, as supplementary disclosure, a coverage calculation based on earnings before discontinued operations and extraordinary items;*
 - (d) *for distributions of debt securities, the appropriate denominator is interest expense determined in accordance with generally accepted accounting principles, after giving effect to the new debt issue and any retirement of obligations plus the amount of interest that has been capitalized during the period;*
 - (e) *for distributions of preferred shares,*
 - (i) *the appropriate denominator is dividends declared during the period together with undeclared dividends on cumulative preferred shares after giving effect to the new preferred share issue, plus the issuer's annual interest requirements, including the amount of interest that has been capitalized during the period, less any retirement obligations,*
 - (ii) *the coverage calculation should gross up dividends to a before-tax equivalent (the "prior deduction method") using the issuer's effective income tax rate (this is the rate that is reconciled to the basic income tax rate in the issuer's financial statement notes), and*

- (iii) *the combined interest and dividend method (the "combined method"), and not the prior deduction method, should be used to calculate earnings coverage; and*
- (f) *for distributions of both debt securities and preferred shares, the appropriate denominator is the same as for a preferred share issue, except that the denominator should also reflect the effect of the debt being offered pursuant to the 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 meaningful in the circumstances, the earnings coverage ratio must be calculated and disclosed based on a pro forma income statement that is included in a 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 pre-payment obligations or privileges of the issuer and any events that may trigger early liquidation or amortization of the underlying pool of financial assets,
 - (iii) provisions for the accumulation of cash flows to provide for the repayment of principal or return of capital,

- (iv) provisions permitting or restricting the issuance of additional securities and any other material negative covenants applicable to the issuer,
 - (v) the nature, order and priority of the entitlements of holders of asset-backed securities and any other entitled persons or companies to receive cash flows generated from the underlying pool of financial assets, and
 - (vi) any events, covenants, standards or preconditions that are dependant or based on the economic performance of the underlying pool of financial assets and that may impact on the timing or amount of payments or distributions to be made under the asset-backed securities;
- (b) information on the underlying pool of financial assets, for the period from the date as at which the following information was presented in the 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.

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 under paragraph (b) in a manner that will enable a reader to easily determine if, and the extent to which the events, covenants, standards and precondition referred to in clause (a)(vi) have occurred, are being satisfied or may be satisfied.*
- (4) *If information required under paragraph (b) is not compiled specifically on the underlying pool of financial assets, but is compiled on a larger pool of the same assets from which the securitized assets are randomly selected such that the performance of the 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.*

10.4 Derivatives⁸ - 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.

⁸ 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.

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

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

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

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 options⁹ 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

⁹ 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".

- (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;*
- (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 under Item 13.1 may be given in the form of price ranges for each calendar month.*

Item 14: Escrowed Securities

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 Shareholders¹⁰ 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.
 - 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.*

¹⁰ 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.

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

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 executive 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 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

- (1) Describe the penalties or sanctions imposed and the grounds on which they were imposed or the terms of the settlement agreement and the circumstances that gave rise to the settlement agreement, if a director or officer of the issuer, or a shareholder holding 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 relating to Canadian securities legislation or by a Canadian securities regulatory authority or has entered into a settlement agreement with a Canadian securities regulatory authority; or
 - (b) been subject to any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor making an investment decision.¹¹
- (2) Despite paragraph (1), no disclosure is required of a settlement agreement entered into before the date Rule 41-501 came into force unless the disclosure would likely be considered important to a reasonable investor in making an investment decision.¹²

¹¹ This has been revised to include the circumstances that gave rise to any settlement agreement and to reflect that the "importance to an investor" qualification qualifies only non-securities-related penalties or sanctions.

¹² This paragraph is new.

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 of the issuer.

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 Item 17.1, the disclosure required under 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 (a)	Involvement of Issuer or Subsidiary (b)	Largest Amount Outstanding During [Last Completed Financial Year] (\$) (c)	Amount Outstanding as at [current date] (\$) (d)	Financially Assisted Securities Purchases During [Last Completed Financial Year] (#) (e)	Security for Indebtedness (f)

- (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 under 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 under 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 collectibility.*

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 form, with the bracketed information completed and with modifications necessary to reflect the terms of the distribution:
- "Under an agreement dated [insert date of agreement] between [insert name of issuer or selling securityholder] and [insert name(s) of underwriter(s)], as underwriter[s], [insert name of issuer or selling 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 information.
- 19.5 Minimum Distribution** - If a minimum amount of funds is required under 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. Also 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, 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 or 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 the bracketed information completed:

"[name of exchange or other market] has conditionally approved the [listing/quotation] of these securities. [Listing/Quotation] is subject to the [name of 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, 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 a promoter or past promoter referred to in paragraph (1) has been a director, officer or promoter of any person or company during the 10 years ending on the date of the preliminary 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 person or company 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) Describe the penalties or sanctions imposed and the grounds on which they were imposed or the terms of the settlement agreement and the circumstances that gave rise to the settlement agreement, if a promoter or past promoter referred to in paragraph (1) has
 - (a) been subject to any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority or has entered into a settlement agreement with a Canadian securities regulatory authority; or
 - (b) been subject to any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor in making an investment decision.
- (4) Despite paragraph (3), no disclosure is required of a settlement agreement entered into before the date Rule 41-501 came into force unless the disclosure would likely be considered important to a reasonable investor in making an investment decision.¹³
- (5) If a promoter or past promoter referred to in paragraph (1) 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:

¹³ This paragraph is new.

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,

- (a) until Multilateral Instrument 33-105 Underwriting Conflicts comes into force, provide the disclosure required by Item 30 of Form 12 of the Regulation to the Act, as that Form read immediately before it was revoked; and
- (b) after Multilateral Instrument 33-105 comes into force, comply with the requirements of that Multilateral Instrument.

Item 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 being 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 being distributed that are not disclosed under the preceding items and are necessary in order for the prospectus to contain full, true and plain disclosure of all material facts relating to the securities 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** - Comply with National Instrument 41-101 Prospectus Disclosure Requirements by including 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, comply with National Instrument 41-101 Prospectus Disclosure Requirements by replacing 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."

Item 32: Financial Statements

- 32.1 Financial Statements** - Include the financial statements required under Parts 4, 5, 6 and 7 of Rule 41-501.

Item 33: Certificates

- 33.1 Certificates** - Include the certificates required under the Act and under Part 10 of Rule 41-501.

**FORM 41-501F2
GENERAL PROSPECTUS REQUIREMENTS
FORM 41-501F2
AUTHORIZATION OF
INDIRECT COLLECTION
OF PERSONAL INFORMATION**

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

- (a) has been notified by the Issuer
 - (i) of the Issuer's delivery to the Director of the information pertaining to the person or company as set out in Schedule 1,
 - (ii) that such information is being collected indirectly by the Director under the authority granted to it in securities legislation,
 - (iii) that such information is being collected for the purpose of enabling the Director to discharge its obligations under the provisions of securities legislation that among other things require or permit the Director to refuse to issue a receipt for a prospectus if it appears to the Director that the past conduct of management or promoters of the issuer affords reasonable grounds for belief that the business of the issuer will not be conducted with integrity and in the best interests of its securityholders, and
 - (iv) of the title, business address and business telephone number of the public official who can answer questions about the regulator's indirect collection of the information is:
[!]
Ontario Securities Commission,
18th Floor, 20 Queen Street West,
Toronto, Onario M5H 2S8
[(416)593-!]; and
- (b) has authorized the indirect collection of the information by the regulator.

Date: _____

Name of Issuer

Per: _____

Name

Official Capacity

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

**Schedule 1 Personal Information
to Form 41-502F2 Authorization of Indirect
Collection of Personal Information**

[Name of Issuer]

<u>Name and Position with or Relationship to Issuer</u>	<u>Name and Address of Employer, if other than Issuer</u>	<u>Residential Address</u>	<u>Date and Place of Birth</u>	<u>Citizenship</u>
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Proposed Companion Policy 41-501 CP
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:
- ! use short sentences
 - ! use definite, concrete, everyday language
 - ! use the active voice
 - ! avoid superfluous words
 - ! organize the document into clear, concise sections, paragraphs and sentences
 - ! avoid legal or business jargon
 - ! use strong verbs
 - ! use personal pronouns to speak directly to the reader
 - ! avoid reliance on glossaries and defined terms unless it facilitates understanding of the disclosure
 - ! avoid vague boilerplate wording
 - ! avoid abstractions by using more concrete terms or examples
 - ! avoid excessive detail
 - ! avoid multiple negatives.
- If technical or business terms are required, clear and concise explanations should be used. The 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 Disclosure of Principal Shareholders** - Item 15 of Form 41-501F1 requires disclosure of the identity and shareholdings 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 Disclosure of Selling Securityholders** - Item 1.4(7) and Item 15 of Form 41-501F1 require that if any securities are being distributed for the account of an existing securityholder who purchased those securities within two 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 under Item 15.1(3) on or before filing the prospectus.
- 1.6 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.

- 1.7 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.

PART 2 FINANCIAL MATTERS

2.1 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. If in unusual circumstances 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 audit reports containing a reservation of opinion or an audited statement of net operating income.¹
- (2) 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.
- (3) 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.
- (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 the issuer was, prior to the filing of the prospectus, a private entity and that the issuer is, at the time of making the application, unable to prepare the interim financial statements.²
- (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 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.

2.2 Approval of Financial Statements - Paragraphs 4.7(1)(a) and 6.4(1)(a) 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.

2.3 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.

¹ Subsections (1) and (2) have been combined.

² This has been revised to refer to the issuer being unable to prepare the interim statements.

- 2.4 Auditor's Report for All Financial Statements Included in the Prospectus** - Section 8.2 of the Rule requires that all financial statements included in a prospectus be accompanied by an auditor's report without a reservation of opinion, except financial statements specifically excepted in the Rule. 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 AND MULTIPLE ACQUISITIONS³

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

- 3.2 Acquisition of a Business** - Part 6 of the Rule requires that an issuer that has made a significant acquisition or is proposing to make a significant probable acquisition to include in its prospectus certain financial statements of each business acquired or to be acquired. Part 7 of the Rule has similar requirements for an issuer that has made or is proposing to make multiple acquisitions that are not otherwise significant. For this purpose, the term "business" should be evaluated in light of the facts and circumstances involved. The 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

- (1) The definitions of "probable acquisition of a business" and "probable acquisition of related businesses" in the Rule both include the phrase "where a reasonable person would believe that the likelihood of the acquisition being completed is high". The Commission will interpret this phrase 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 the likelihood of an acquisition being completed is high
- (a) whether the acquisition has been publicly announced;
 - (b) whether the acquisition is the subject of an executed agreement; and
 - (c) the nature of conditions to the completion of the acquisition including any material third party consents required.
- (2) The test of whether a proposed acquisition is a "probable acquisition of a business" or "probable acquisition of related businesses" is an objective, rather than subjective, test in that the question turns on what a "reasonable person" would believe. It is not sufficient for an officer of an issuer to determine that he or she personally believes that the likelihood of the acquisition being completed is or is not high. The officer must form an opinion as to what a reasonable person would believe in the circumstances. In the event of a dispute as to whether an acquisition is a probable acquisition, an objective test requires the adjudicator to decide whether a reasonable person would believe in the circumstances that the likelihood of an acquisition being completed was high. By contrast, if the definition relied on a subjective test, the adjudicator would assess an individual's credibility and decide whether the personal opinion of the individual as to whether the likelihood of the acquisition being completed was high was an honestly held opinion. Formulating the definition using an objective test rather than a subjective test strengthens the basis on which the Director may object to an issuer's application of the definition in particular circumstances.⁴

- 3.4 Timing of Significance Tests** - Subsection 2.2(1) of the Rule sets out the three tests for whether an acquisition of a business by an issuer is a "significant acquisition". The first test measures the assets of the acquired business against the assets of

³ This Part has been revised to refer expressly to the business acquisition financial statement disclosure requirements for multiple acquisitions in Part 7 of the Rule.

⁴ This subsection is new.

the issuer. The second test measures the issuer's investments in and advances to the acquired business against the assets of the issuer. The third test measures the income from continuing operations of the acquired business against the income from continuing operations of the issuer. If any one of these three tests is satisfied at the 20 percent level, the acquisition is considered "significant" to the issuer. The three tests for significance of an acquisition are applied at two points in time: first, at the time of acquisition and, again, at the time of filing the preliminary prospectus. The earlier date is consistent with the timing of the application of the SEC's application of its test for significance of an acquisition and provides issuers with the certainty that if an acquisition is not significant at the time it is made it will not become significant for the purpose of the test. The three tests are applied again at a later date only if the acquisition was significant at the time of the earlier date. The second date is important, in the Commission's view, to recognize the potential growth of issuers between the date of acquisition and the date of a prospectus offering and the corresponding potential decline in significance of any acquisition made. In order for an acquisition to be significant it must satisfy one of the three 20 percent tests on both dates.⁵

3.5 Application of Investment Test for Significance of an Acquisition - 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 consolidated investments in and advances to the business or related businesses exceeds 20 percent of the consolidated total assets of the issuer as at the date of the most recent year end balance sheet of the issuer, before giving effect to the acquisition. In applying this test, the "investments in" the business should be determined using the total cost of the purchase, as determined by generally accepted accounting principles, which includes consideration paid and the costs of the acquisition. For the purpose of this test any new debt incurred by the issuer in the acquisition should also be included as an investment by the issuer in the business.⁶

3.6 Application of Income Test for Significance of an Acquisition - The third test of an acquisition's significance is whether the issuer's proportionate share of consolidated income from continuing operations of the business exceeds 20 percent of the income of the issuer from continuing operations for the 12 months ended on the later of most recently completed financial year of the issuer or interim period of the issuer. The 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. Subsections 2.3(1) and 2.3(2) of the Rule permit the issuer to use the average income of its three most recently completed fiscal years or 12 month periods, respectively, if the income from continuing operations for the most recently completed fiscal year is positive and at least 20 percent lower than the average for the three most recently completed years. The averaging option is not available if the issuer has incurred a loss from continuing operations during its most recently completed year or more recent 12 month period. If the averaging option is available to the issuer but it incurred a loss from continuing operations in the second and/or third most recently completed fiscal years or 12 month periods, subsection 2.3(3) of the Rule states that for purposes of calculating the average consolidated income from continuing operations for the three fiscal years or 12 month periods, the loss must be treated as zero in the numerator and as one in the denominator. If the issuer or the business has incurred a loss in the most recently completed fiscal year or 12 month period, the income test outlined in paragraph 2.2(1)3 of the Rule shall be applied using the absolute dollar amount of any income or loss.⁷

3.7 Exemptions from Parts 6 and 7 of the Rule

- (1) The Commission is of the view that relief from the financial statement requirements of Parts 6 and 7 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 Parts 6 and 7 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 audit reports containing a reservation of opinion or an audited statement of net operating income for a business.
- (3) Relief may be granted in appropriate circumstances to permit the auditor's report on financial statements of a business acquisition to contain a reservation relating to opening inventory if there is a subsequent audited period of at least six months on which the auditor's report contains no reservation and the business is not seasonal.
- (4) Considerations relevant to a request for exemption from the requirement to include interim financial statements for the comparable period in the immediately preceding financial year may include the fact that an acquired business was, before the filing of the prospectus, a private entity that did not prepare interim financial statements.

⁵ This section is new.

⁶ This section is new.

⁷ This section is new.

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

PART 4 FOREIGN GAAP AND GAAS⁸

4.1 Foreign GAAP

- (1) Subsection 8.1(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.
- (2) 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.
- (3) 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 Foreign Auditors and Foreign GAAS

- (1) 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. The Rule provides foreign issuers with flexibility as to their choice of auditor for purposes of a prospectus filing in Ontario in that the generally accepted auditing standards applied to their financial statements may be other than those applied in Canada, if those auditing standards are substantially equivalent to Canadian auditing standards.
- (2) Issuers should recognize that 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. Therefore, under section 8.3 of the Rule, the foreign auditor's report must be accompanied by a statement confirming that the auditing standards applied are substantially equivalent to Canadian GAAS. The statement must also disclose any material differences in the form and content of the foreign auditor's report.
- (3) The 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 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.
- (4) In making a determination whether the foreign auditing standards applied are substantially equivalent to Canadian GAAS, auditors are referred, in particular to the general standard of Canadian GAAS as set out in section 5100 of the Handbook and its reference to an auditor's "objective state of mind". This standard, when read together with the objectivity standard for auditors contained in the standards of professional conduct applicable to Canadian auditors in each jurisdiction, emphasizes the importance of the independence of the auditor. In the view of the Commission, auditor independence is an essential element of Canadian GAAS which would need to be reflected, among other things, in the foreign GAAS applied in order for the foreign GAAS applied and Canadian GAAS to be considered substantially equivalent.⁹

⁸ This Part has been revised for greater ease of reference.

⁹ This subsection is new.

- (5) Subsection 11.9(3) of the Rule requires an issuer, if a financial statement included in a prospectus has been prepared in accordance with foreign GAAP or includes a foreign auditor's report, to file a letter from the auditor that discusses the auditor's expertise to audit the reconciliation of foreign GAAP to Canadian GAAP and, in the case of foreign GAAS other than U.S. GAAS, to make the determination that foreign GAAS is substantially equivalent to Canadian GAAS. While this provision requires that this comfort letter be filed no later than the time the prospectus is filed, issuers are strongly encouraged to file this letter before filing the final prospectus to minimize any delay in issuing a receipt for the final prospectus.¹⁰

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 11.7(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 11.7(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 11.7(1) applies and the consent is required.
- 5.2 Material Contracts** - Subsection 11.6(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 under 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

¹⁰ This has been revised to reflect that U.S. GAAS is an exception.

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 11.11 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.
- 5.12 Registration Requirement** - Issuers filing a preliminary prospectus or prospectus and other market participants are reminded to ensure that members of underwriting syndicates are in compliance with registration requirements under Canadian securities legislation in each jurisdiction in which syndicate members are participating in the distribution of securities under the prospectus.

PART 6 PROCEDURES FOR GRANTING OF RECEIPTS

6.1 Extension of 75 Day Period for Issuance of Final Receipt

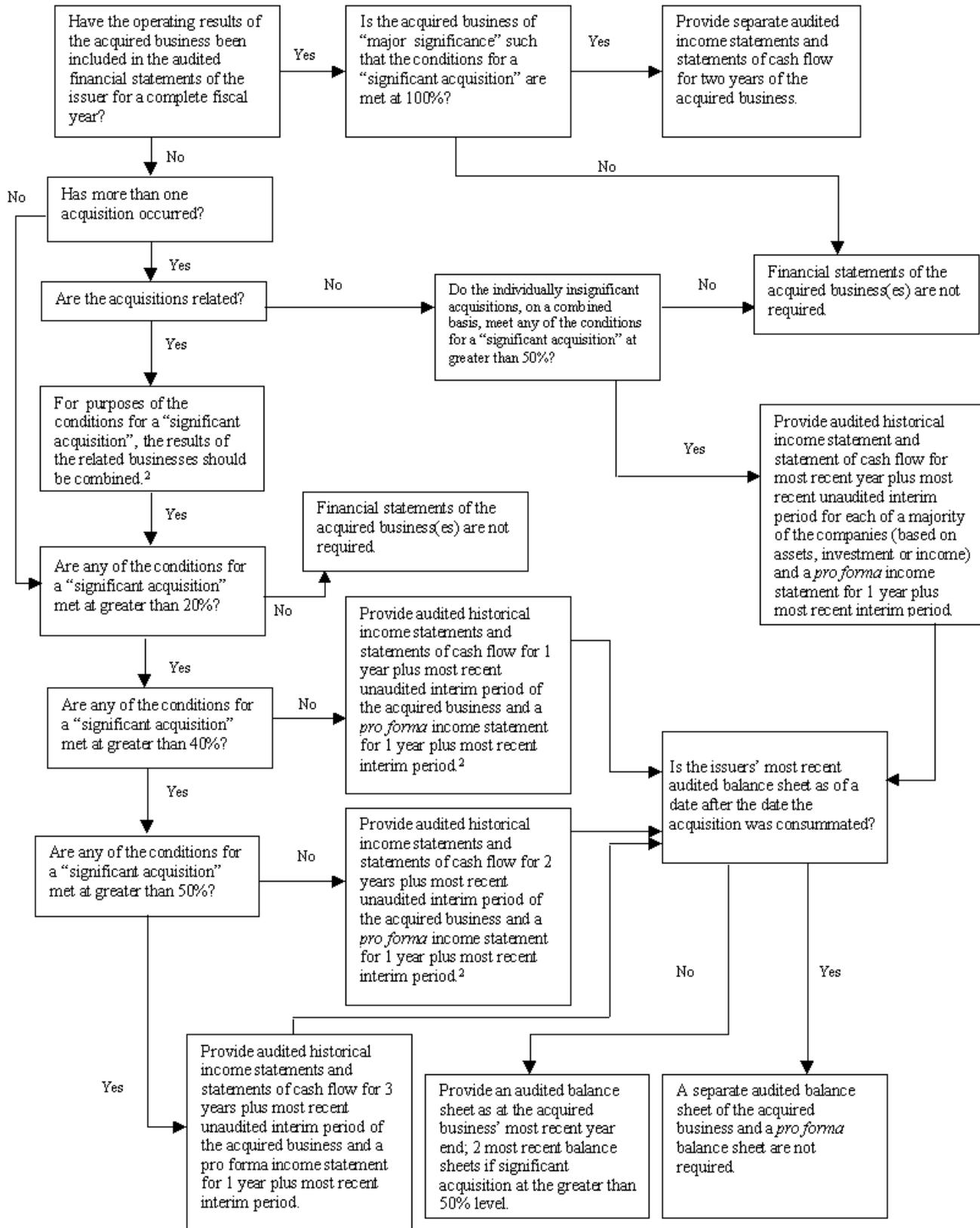
- (1) Subsection 12.1(2) of the Rule provides that an issuer shall not file a prospectus more than 75 days after the date of the receipt for the preliminary prospectus if the primary reason for the failure to file the prospectus within the 75 day period is the inaction of the issuer. The Commission considers 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 12.1(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. It should be noted that Part 13 of the Rule gives the Director discretion to exempt the issuer from compliance with any provision of section 12.1 if the Director is satisfied that there is sufficient justification for so doing.
- (3) 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 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.
- (4) 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.

APPENDIX A
OVERVIEW OF BUSINESS ACQUISITIONS DECISION CHART¹



- ¹ This decision chart provides general guidance and should be read in conjunction with Rule 41-501 and Companion Policy 41-501CP.
- ² If an acquisition of related businesses constitutes a significant acquisition when the results of the related businesses are combined, the required financial statements shall be provided for each of the related businesses.