

National Instrument 41-101
Prospectus Disclosure Requirements

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**NOTICE OF RULES UNDER THE SECURITIES ACT
NATIONAL INSTRUMENT 41-101 PROSPECTUS DISCLOSURE REQUIREMENTS
AND RESCISSION OF NATIONAL POLICY STATEMENTS NOS. 12, 13, 32 AND 35**

Notice of Rules

The Commission has, under section 143 of the *Securities Act* (the "Act"), made National Instrument 41-101 Prospectus Disclosure Requirements (the "National Instrument") as a Rule under the Act.

The National Instrument is an initiative of the Canadian Securities Administrators (the "CSA"). The National Instrument has been, or is expected to be, adopted as a rule in each of British Columbia, Alberta, and Ontario, a Commission regulation in Saskatchewan, and a policy in all other jurisdictions represented by the CSA.

The National Instrument and the material required by the Act to be delivered to the Minister of Finance were delivered on October 13, 2000. If the Minister does not approve the National Instrument, reject the National Instrument or return it to the Commission for further consideration by December 12, 2000, or if the Minister approves the National Instrument, the National Instrument will come into force, pursuant to section 6.1 of the National Instrument, on December 31, 2000.

Substance and Purpose of the National Instrument

The purpose of the proposed National Instrument is to consolidate the prospectus disclosure requirements currently set forth in National Policy Statement No. 12 Disclosure of "Market Out" Clauses in Underwriting Agreements in Prospectuses ("NP 12"), National Policy Statement No. 13 Disclaimer Clause on Prospectus ("NP 13"), National Policy Statement No. 32 Prospectus Warning Re: Scope of Distribution ("NP 32") and National Policy Statement No. 35 Purchaser's Statutory Rights ("NP 35") as well as similar prospectus disclosure requirements in the securities legislation of certain provinces.

The National Instrument is substantially similar to NP 12, NP13, NP32 and NP 35, which it will replace although the prescribed disclosure has been simplified.

Summary of Written Comments Received by the CSA

The CSA published a draft of the National Instrument in May 1997 (the "May 1997 Draft").¹ For a detailed summary of the contents of the May 1997 Draft, reference should be made to the Notice published with that instrument.

The CSA received one comment letter on the May 1997 Draft from Osler Hoskin & Harcourt. The CSA have considered the comments received and thank the commenter.

The following is a summary of the comments received together with the CSA's responses and, where applicable, the changes adopted by the CSA. The CSA have also made two changes to the May 1997 Draft as a result of further consideration which are also summarized below. As the changes to the National Instrument are not material, the instrument is not subject to a further comment period.

A. Discussion of Specific Comments Concerning the May 1997 Draft**Part 1 - Application and Interpretation - Section 1.2 Preliminary Prospectus***Comment*

The commenter suggested that an exception be included in section 1.2 for information which is not available as at the date of a preliminary prospectus.

Response

The CSA believe that an exception is not necessary. The National Instrument should be read together with the applicable form requirements for a prospectus. In this context, the form requirements provide that details concerning the price and other matters dependent upon or relating to price may be left out of a preliminary prospectus to the extent that these matters have not been decided.

¹ In Ontario, at (1997) 20 OSCB 2561.

Part 2 - Front Page Disclosure - Section 2.1 Prospectus Warning and Disclaimer Clause*Comment*

The commenter recommended that the word “distributed” in the prospectus warning be replaced with “offered for sale” in the interest of plain English disclosure.

Response

The CSA agree in principle with the comment but have made a number of drafting changes to this section which make the suggested drafting change unnecessary.

Part 2 - Front Page Disclosure - Section 2.2 Preliminary Prospectus Disclosure*Comment*

The commenter recommended that an issuer be given more flexibility in naming those jurisdictions in which it has filed a prospectus. The commenter also suggested replacing the reference to a “distribution” with the “sale of such securities” and “distributed” with “sold”, in the interests of plain English disclosure.

Response

The CSA agree with the comments. Section 2.2 and the related instruction have been revised accordingly.

Part 3 - Plan of Distribution Disclosure - Section 3.1 Plan of Distribution Disclosure*Comment*

The commenter made a number of drafting suggestions in the interest of plain English disclosure. In this regard the commenter noted that it had made similar comments to the Ontario Securities Commission in the context of the reformulation process respecting Rule 41-501 General Prospectus Requirements (the “Ontario Long Form Prospectus Rule”).

Response

The CSA agree in principle with the suggestions. The CSA are not, however, proposing changes at this time but will consider the suggestions again in the course of developing a national long form prospectus instrument based on the Ontario Long Form Prospectus Rule. The requirements of this National Instrument are likely to be incorporated in that national long form prospectus instrument. For more information about the development of a national long form prospectus instrument, refer to the notice respecting the Ontario Long Form Prospectus Rule in the Ontario Securities Commission’s Bulletin. A copy of the notice and the Ontario Long Form Prospectus Rule can also be found on the Ontario Securities Commission’s web site at www.osc.gov.on.ca.

Comment

The commenter suggested that the language in subsection 3.1(2) does not reflect the practice to refer to a flexible closing date and recommended drafting changes in this regard.

Response

The CSA do not believe that a change is strictly required. Section 1.3 of the National Instrument allows an issuer to modify any of the statements required to be included in a prospectus to reflect the terms and conditions of the distribution.

Part 4 - Purchasers’ Statutory Rights*Comment*

The commenter made a number of drafting suggestions in the interest of plain English disclosure. The commenter noted that similar comments were made to the Ontario Securities Commission in the context of the reformulation process respecting the Ontario Long Form Prospectus Rule.

Response

The CSA agree in principle with the suggestions. The CSA are not, however, proposing changes at this time but will consider the comments again in the course of developing a national long form prospectus instrument based on the Ontario Long Form Prospectus Rule.

B. Discussion of changes made by the CSA as a result of further deliberation

The CSA have also made two changes to the National Instrument as a result of further deliberation.

New section 2.3 prescribes disclosure describing the ability of investors to collect from foreign issuers, selling securityholders, credit supporters and/or promoters judgements obtained in Canadian courts based on the civil liability provisions of securities legislation.

New section 4.2 prescribes disclosure describing purchasers' statutory rights in the case of non-fixed price offerings.

National Instrument

The text of the National Instrument follows.

Regulations to be Revoked - Ontario

In Ontario, the Commission has, by regulation, revoked sections 50 and 51 of the Regulations, which are duplicative of section 2.1 of the National Instrument. The revocations will come into force at the time that the National Instrument comes into force.

Text of Rescission of National Policy Nos. 12, 13, 32, 35

“National Policy No. 12 Disclosure of “Market Out” Clauses in Underwriting Agreements in Prospectuses, National Policy No. 13 Disclaimer Clause on Prospectus, National Policy No. 32 Prospectus Warning Re: Scope of Distribution, and National Policy No. 35 Purchaser’s Statutory Rights, are rescinded.”

DATED: October 13, 2000

NATIONAL INSTRUMENT 41-101

PROSPECTUS DISCLOSURE REQUIREMENTS

- PART 1 APPLICATION AND INTERPRETATION
 - 1.1 Application
 - 1.2 Interpretation of "Prospectus"
 - 1.3 Variations

- PART 2 FRONT PAGE DISCLOSURE
 - 2.1 Prospectus Warning and Disclaimer Clause
 - 2.2 Preliminary Prospectus Disclosure
 - 2.3 International Issuers

- PART 3 PLAN OF DISTRIBUTION DISCLOSURE
 - 3.1 Plan of Distribution Disclosure

- PART 4 STATUTORY RIGHTS OF WITHDRAWAL AND RESCISSION
 - 4.1 General
 - 4.2 Non-Fixed Price Offerings

- PART 5 EXEMPTION
 - 5.1 Exemption
 - 5.2 Evidence of Exemption

- PART 6 EFFECTIVE DATE
 - 6.1 Effective Date

NATIONAL INSTRUMENT 41-101

PROSPECTUS DISCLOSURE REQUIREMENTS

PART 1 APPLICATION AND INTERPRETATION

- 1.1 Application** - Except as otherwise provided in securities legislation or an exemption from securities legislation, this Instrument applies to a prospectus.
- 1.2 Interpretation of "Prospectus"** - In this Instrument, unless otherwise stated, a reference to a prospectus includes a preliminary prospectus.
- 1.3 Variations** - An issuer may modify the statements required by this Instrument to be included in a prospectus to reflect the terms and conditions of a distribution of the issuer's securities.

PART 2 FRONT PAGE DISCLOSURE

- 2.1 Prospectus Warning and Disclaimer Clause** - An issuer shall include the following statement in italics at the top of the cover page of its prospectus:

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

- 2.2 Preliminary Prospectus Disclosure** - An issuer shall include the following statement in red ink and italics at the top of the cover page immediately above the disclosure required under section 2.1, 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 the sale of securities. Information contained in this preliminary prospectus may not be complete and may have to be amended. The securities may not be sold until a receipt for the prospectus is obtained from the securities regulatory authority(ies)."

INSTRUCTION *Issuers shall complete the bracketed information by (i) inserting the names of each jurisdiction in which the issuer intends to offer securities under the prospectus; (ii) stating that the filing has been made in each of the provinces of Canada or each of the provinces and territories of Canada; or (iii) identifying the filing jurisdictions by exception (i.e., every province of Canada or every province and territory of Canada, except [excluded jurisdictions]).*

2.3 International Issuers

- (1) If the issuer, a selling securityholder, a credit supporter of the securities distributed under the prospectus or a promoter of the issuer is incorporated, continued, or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada, state the following on the cover page or under a separate heading elsewhere in the prospectus, with the bracketed information completed:

"The [name of 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 [name of the issuer, selling securityholder, credit supporter and/or promoter] has appointed [name(s) and address(es) of agent(s) for service] as its agent(s) for service of process in [name of province or territory], it may not be possible for investors to collect from the issuer, selling securityholder, credit supporter or promoter, judgments obtained in courts in [name of provinces and territories] predicated on the civil liability provisions of securities legislation."

- (2) For the purposes of subsection (1), "credit supporter" has the meaning ascribed to that term in National Instrument 44-101 Short Form Prospectus Distributions.

PART 3 PLAN OF DISTRIBUTION DISCLOSURE

- 3.1 Plan of Distribution Disclosure** - 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, an issuer shall include the following statements in its prospectus with the bracketed information completed:

1. On the cover page of the prospectus:

"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."

2. In the section of the prospectus that describes the plan of distribution of the securities:

"Under an agreement dated [date of agreement] between [name of issuer or selling shareholder] and [name(s) of underwriter(s)], as underwriter[s], [name of issuer or selling shareholder] has agreed to sell and the underwriter[s] [has/have] agreed to purchase on [closing date] the securities at a price of [offering price] payable in cash to [name of issuer or selling shareholder] 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 the securities if any of the securities are purchased under the agreement."

PART 4 STATUTORY RIGHTS OF WITHDRAWAL AND RESCISSION

- 4.1 **General** - An issuer shall include a statement in substantially the following form, with bracketed information completed, in its prospectus:

"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."

- 4.2 **Non-Fixed Price Offerings** - In the case of a non-fixed price offering, replace, if applicable, in the jurisdiction in which the prospectus is filed, the second sentence in the legend in item 4.1 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."

PART 5 EXEMPTION

- 5.1 **Exemption**

- (1) The regulator or the securities regulatory authority may grant an exemption, in whole or in part, from the provisions of this Instrument subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario and Alberta, only the regulator may grant such an exemption.
- (3) An application made to the securities regulatory authority or regulator for an exemption from the provisions of this Instrument shall include a letter or memorandum describing the matters relating to the exemption and indicating why consideration should be given to the granting of the exemption.

- 5.2 **Evidence of Exemption**

- (1) Without limiting the manner in which an exemption under this Part may be evidenced, the granting of an exemption under this Part may be evidenced by the issuance of a receipt for a prospectus or an amendment to a prospectus.
- (2) An exemption under this Part may be evidenced in the manner set out in subsection (1) only if
 - (a) the person or company that sought the exemption sent the regulator the letter or memorandum referred to in subsection 5.1(3) on or before the date of the filing of the preliminary prospectus;
 - (b) sent to the regulator the letter or memorandum referred to in subsection 5.1(3) after the date of the filing of the preliminary prospectus and received a written acknowledgement from the regulator that the exemption may be evidenced in the manner set out in subsection (1); and

- (c) the regulator has not sent notice to the contrary to the person or company that sought the exemption before, or concurrently with, the issuance of the receipt.

PART 6 EFFECTIVE DATE

6.1 Effective Date - This Instrument shall come into force on December 31, 2000.

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Notice of Rule 41-501
General Prospectus Requirements

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NOTICE OF RULES AND POLICY UNDER THE SECURITIES ACT**RULE 41-501 GENERAL PROSPECTUS REQUIREMENTS
FORM 41-501F1 INFORMATION REQUIRED IN A PROSPECTUS
FORM 41-501F2 AUTHORIZATION OF INDIRECT COLLECTION OF PERSONAL INFORMATION
FORM 41-501F3 ISSUER FORM OF SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT
FOR SERVICE OF PROCESS
FORM 41-501F4 NON-ISSUER FORM OF SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT
FOR SERVICE OF PROCESS
COMPANION POLICY 41-501CP GENERAL PROSPECTUS REQUIREMENTS

AND RESCISSION OF PORTIONS OF
ONTARIO SECURITIES COMMISSION POLICY 5.7
AND PORTIONS OF
ONTARIO SECURITIES COMMISSION POLICY 5.1****I. NOTICE OF RULE, POLICY AND FORMS AND RESCISSION OF POLICY**

The Ontario Securities Commission (the "Commission") has, under section 143 of the *Securities Act* (the "Act"), made Rule 41-501 General Prospectus Requirements (the "Rule"), Form 41-501F1 Information Required In a Prospectus (the "Prospectus Form"), Form 41-501F2 Authorization of Indirect Collection of Personal Information ("Form F2"), Form 41-501F3 Issuer Form of Submission to Jurisdiction and Appointment of Agent for Service of Process ("Form F3"), and Form 41-501F4 Non-Issuer Form of Submission to Jurisdiction and Appointment of Agent for Service of Process ("Form F4") (the Prospectus Form, Form F2, Form F3, Form F4, collectively, the "Forms").

The Rule, the Forms and the material required by the Act to be delivered to the Minister of Finance were delivered on October 13, 2000. If the Minister does not approve the Rule and the Forms, reject the Rule and the Forms or return them to the Commission for further consideration by December 12, 2000, or if the Minister approves the Rule and Forms, the Rule and the Forms will come into force, pursuant to section 16.1 of the Rule, on December 31, 2000.

The Commission has adopted Companion Policy 41-501CP General Prospectus Requirements (the "Policy") under section 143.8 of the Act. The Policy will come into force on the date that the Rule and the Forms come into force.

The Rule consolidates various provisions currently set forth in the Regulation to the Act and in various policy statements and notices and in the Commission Staff Corporate Finance Accountants Practice Manual (the "Accountants Manual") concerning the preparation, certification, filing and receipting of preliminary prospectuses and prospectuses. The Rule prescribes the use of the Prospectus Form as the form of prospectus to be used by issuers that currently file long form prospectuses using Forms 12, 13 or 14 of the Regulation.

II. SUBSTANCE AND PURPOSE OF THE RULE, FORMS AND POLICY***The Rule***

The substance and purpose of the Rule are to consolidate certain provisions previously set forth in the Regulation and in various policy statements and notices of the Commission and Commission Staff concerning the preparation, certification, filing and receipting of preliminary prospectuses and prospectuses. The 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 Rule expressly provides that all long form prospectuses must be prepared in accordance with the Rule and the Prospectus Form. Therefore, if it is intended that a particular provision in the Rule or Prospectus Form not apply to a particular issuer or in particular circumstances or that a different prospectus form be used, it will be necessary to expressly override that provision in another rule.

The Rule applies to mutual fund issuers, except as specifically identified in proposed Rule 41-502 Prospectus Requirements for Mutual Funds. However, National Instrument 81-101 Mutual Fund Prospectus Disclosure ("NI 81-101") has the effect of requiring mutual funds that fall within its application to use a different prospectus format. NI 81-101 came into force on February 1, 2000. Proposed Rule 41-502 Prospectus Requirements for Mutual Funds was published for comment on June 27, 1997 and is designed to provide that prospectuses of mutual funds (not falling within NI 81-101's application) be prepared using different forms and, among other things, with different financial statement disclosure requirements that are more appropriate for mutual funds. Proposed Rule 41-502 is being finalized and is expected to be published shortly and in advance of the Rule coming into force.

Rule 56-501 Restricted Shares prescribes additional disclosure obligations for issuers distributing restricted shares under a prospectus.¹

The majority of the provisions in the Rule have been derived from Part III of the Regulation and from Ontario Securities Commission Policy 5.1 ("Policy 5.1") and Ontario Securities Commission Policy 5.7 ("Policy 5.7"). In many cases, these provisions have been included in the Rule with some modifications but no substantive changes. In other cases, existing provisions have been amended to reflect current practice, and in still others particular provisions of the Regulation or Policy 5.1 or Policy 5.7 are not reflected in the Rule as a result of a decision by the Commission that the provisions are no longer appropriate or necessary.

The Prospectus Form

The substance and purpose of the Prospectus Form are to consolidate existing Forms 12, 13 and 14 and restate the prospectus disclosure requirements from the Regulation, Policy 5.1 and Policy 5.7. The previous forms contained many items that were identical. In some instances, slight differences in wording existed between items but there did not appear to be any rationale for the differences. In other instances, no policy rationale could be discerned for additional disclosure obligations that were unique to one of the forms. The Prospectus Form attempts to rationalize existing prospectus forms by eliminating duplication, avoiding the uncertainty that arose due to similarly but not identically worded items. Substantively different disclosure requirements for categories of issuers have been retained only where there is a sound policy basis for so doing such as the special disclosure required in respect of natural resource operations.

The Prospectus Form attempts to parallel, as closely as possible, the substantive disclosure obligations imposed on issuers eligible to use the short form distribution system under National Instrument 44-101 Short Form Prospectus Distributions ("National Instrument 44-101"). A Notice of Rules, Form and Policy relating to National Instrument 44-101 is being published concurrently with the publication of this Rule. National Instrument 44-101 replaces National Policy Statement No. 47, Prompt Offering Qualification System.

Form F2

The substance and purpose of Form F2 are to prescribe a standard form to be completed by a promoter and, in certain circumstances, by a director or executive officer of an issuer or, if a promoter is a corporation, a director or executive officer of the promoter. Form F2 grants the Commission authority under the *Freedom of Information and Protection of Privacy Act (Ontario)* to collect personal information about these individuals. Form F2 is based on Appendix A to Policy 5.7 but has been revised to parallel the equivalent form under National Instrument 44-101 with a view to the form being acceptable in other jurisdictions. Form F2 reflects the information required under securities legislation and the notification and authorization required under freedom of information and protection of privacy legislation.

Form F3 and Form F4

The substance and purpose of Form F3 and Form F4 are to prescribe standard forms of submission to jurisdiction and appointment of agent for service of process for issuers, selling security holders, promoters or credit supporters that are incorporated or organized outside of Canada or reside outside of Canada. Form F3 and Form F4 are based very closely on Appendix A and Appendix B, respectively, to Policy 5.1.

Companion Policy 41-501CP

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

Terms used in the Policy that are defined or interpreted in the Rule or the definition instruments in force in Ontario should be read in accordance with the Rule or those definition instruments, unless the context otherwise requires.

For additional information concerning the background of the Rule, Forms and Policy, reference should be made to (1997), 20 OSCB (Supp), (1999) 22 OSCB (LF Supp) and (1999) 22 OSCB (LF Supp 2), which contain notices published with earlier drafts of the Rule, Forms and Policy.

¹ Rule 56-501 Restricted Shares came into force on October 27, 1999 and was published in the Bulletin on October 29, 1999 ((1999) 22 OSCB 6803).

III. CONVERSION OF THE RULE INTO A NATIONAL INSTRUMENT

Throughout the reformulation process relating to the Rule the Commission received comments urging the Canadian Securities Administrators (the "CSA") to adopt a national instrument and form of long form prospectus. The CSA recognize the importance of national harmonization of prospectus requirements. In this regard it should be noted that Staff of the securities commissions of Alberta, British Columbia Securities and Québec have participated throughout the reformulation process in the preparation of the Rule, Prospectus Form and Policy and in the formulation of responses to submissions of commentators with a view to the Rule, Prospectus Form and Policy ultimately forming the basis of a harmonized regime. Moreover Staff of the various jurisdictions have already begun to address and resolve those issues which require a consensus view before a national instrument based on Ontario's local rule can be implemented. Finally, the conversion of Ontario's Rule into a national instrument has been formally endorsed by the CSA Chairs.

In the interim, the Commission understands that staff of the securities commissions of Alberta, British Columbia and Québec will recommend to their respective commissions that relief be provided to permit, after the coming into force in Ontario of the Rule, the filing with those Commissions of a prospectus prepared in accordance with the Ontario instruments.

IV. SUMMARY OF CHANGES TO RULE, PROSPECTUS FORM AND COMPANION POLICY

A proposed version of the Rule, Forms and Policy was first published by the Commission for comment on May 2, 1997 (the "May 1997 Version").²

As a result of Staff's consideration of the comment letters received on the May 1997 Version, its recommendations to the Commission and the deliberations of the Commission, the Commission republished the Rule, Prospectus Form and Policy for second comment on July 23, 1999 (the "July 1999 Version").³

As a result of Staff's consideration of the comment letters received on the July 1999 Version, its recommendations to the Commission and the deliberations of the Commission, the Commission republished the Rule, Prospectus Form, Form F2 and the Policy for third comment on December 17, 1999 (the "December 1999 Version").⁴

The Commission received six comment letters on the December 1999 Version. The commentators are listed in Appendix A. A summary of the comments received and the Commission's response to those comments is contained in Appendix B.

As a result of these comments and further consideration and deliberation by the Commission, the Commission has made the following changes to the December 1999 Version, none of which changes are material. Changes of a substantive nature that have been made to the instruments are summarized here.

A. Rule

Definitions and Interpretations - Part 2 of the Rule

The Commission has made a number of changes to the definitions in the Rule as follows:

- (i) A third criterion has been added to the definition of "acquisition of related businesses" to harmonize the definition with that of the U.S. Securities & Exchange Commission (the "SEC"). Explanatory guidance is provided in subsection 3.4(3) of the Policy.
- (ii) The definition of "junior issuer" and section 2.7 of the Rule have been clarified to address when the market capitalization test should be calculated. The definition has also been amended so that issuers must take into account acquisitions completed after the most recent balance sheet and income statement in the prospectus, and probable acquisitions.
- (iii) The definition of "income from continuing operations" has been amended to specifically address goodwill amortization and write-offs of goodwill.
- (iv) A number of additional definitions have been added to the Rule to simplify the drafting. These are highlighted through footnotes to the Rule.

² (1997) 20 OSCB (Supp).

³ (1999) 22 OSCB (LF Supp).

⁴ (1999) 22 OSCB (LF Supp 2).

In response to comments, the Commission also made the following changes to the interpretations in the Rule to provide greater clarity:

(i) Required and Optional significance tests

The significance tests have been rewritten to clearly identify the required and optional tests: the required significance tests to be calculated as at the date of the acquisition are set out in subsection 2.2(2) of the Rule; and, the optional significance tests to be calculated at a date subsequent to the acquisition are set out in subsection 2.2(3) of the Rule. A new subsection 2.2(4) of the Rule states clearly that the significance levels, and thus the number of years of financial statements required to be included in a prospectus, will not increase as a result of applying the optional significance tests. Subsections 2.2(5) to 2.2(9), most of which have been newly added, provide additional clarity.

(ii) Application of significance tests

Clarification has been provided in the Rule on what financial statements to use for purposes of calculating the significance tests. Subsection 2.2(6) of the Rule states that unaudited financial statements of an acquired business may be used provided that those financial statements have not been audited. Guidance is provided in new section 3.9 of the Policy. Subsection 2.2(9) of the Rule provides that if the financial statements of an acquired business are prepared in accordance with a foreign GAAP, the financial statements must be reconciled to Canadian GAAP and converted to Canadian dollars before applying the significance tests. New subsection 3.8 of the Policy provides that neither the reconciliation nor the conversion has to be audited for purposes of calculating the tests.

(iii) Applying the income test when losses have been incurred

Additional provisions have been added to the Rule in subsections 2.3(1) and 2.3(6) on how to apply the income test when losses have been incurred.

Financial Statement Disclosure for the Issuer - Part 4 of the Rule

A number of provisions in Part 4 have been amended as follows:

(i) Additional financial statements or financial information filed or released

In response to comments, the requirements in section 4.7 of the Rule have been modified in response to the comments received. The requirement to include in a prospectus the financial statements underlying recent press releases has been deleted. Subsection 4.7(2) of the Rule requires that only the contents of the press release be included in the prospectus. There is no requirement in the Rule for an auditor to comfort the financial information contained in such a press release nor is there a specific requirement to update the MD&A or the *pro forma* financial statements contained in the prospectus.

However, if more recent interim or annual financial statements are filed for a period more recent than the periods for which financial statements are required to be included in a prospectus, then subsection 4.7(1) requires that the more recent financial statements be included in the prospectus. These financial statements, like other unaudited financial statements included in a prospectus, must be accompanied by a comfort letter from the auditor and the MD&A and *pro-forma* financial statements contained in the prospectus are required to be updated.

The specific requirement to include financial statements which have been approved by the board of directors for a more recent period but which have not been filed, has been deleted.

Similar provisions for acquired businesses are contained in sections 6.7 and 7.3 of the Rule.

(ii) Change in year end

In response to comments, a definition of "transition year" has been added to the Rule and sections 4.3 and 6.9 have been modified to clarify that only a transition year of at least nine months may be used for one of the years of historical financial statements required to be included in a prospectus.

(iii) Relief

New provisions in sections 4.10 and 6.15 have been added to the Rule to state that if annual financial statements were previously included in a prospectus without an auditor's report and an audit has not been subsequently performed, those unaudited financial statements may be included in subsequent prospectuses.

Financial Statement Disclosure for Significant Acquisitions and for Multiple Acquisitions - Parts 6 and 7 of the Rule

Part 6 of the Rule has been amended to create separate sections outlining the financial disclosure requirements for: (i) significant acquisitions which have been completed within the three most recently completed financial years; (ii) significant acquisitions which have been completed during the issuer's current financial year; and, (iii) significant probable acquisitions. This restructuring was done in response to comments to make Part 6 easier to understand. The Commission also made the following changes to Parts 6 and 7 of the Rule:

(i) Interim financial statement requirements

In response to comments, the Rule was amended to clarify that interim financial statements for periods subsequent to the date of an acquisition are not required.

(ii) Balance sheet requirement

The Rule has been amended to clarify that a balance sheet of an acquired business is not required if the acquisition was completed prior to the date of the issuer's most recent balance sheet included in the prospectus.

(iii) Pre-acquisition financial statements

In response to comments, sections 6.2, 6.3, and 7.2 of the Rule have been modified to permit the inclusion of pre-acquisition financial statements in lieu of interim financial statements.

(iv) Purchase price equation

In response to comments, the requirement to provide an audited purchase price equation for probable acquisitions has been deleted from the Rule.

(v) Non-coterminous year-ends

In response to comments to provide more guidance on how to deal with the situation of non-coterminous year-ends, a new subsection 6.5(4) of the Rule has been added. Guidance is provided in subsection 3.17(3) of the Policy. This guidance is very similar to the SEC's "93-day" rule.

(vi) Pro Forma periods presented

In response to comments, subsection 6.5(1) of the Rule has been amended to require that a *pro forma* income statement give effect to an acquisition as if it had taken place at the beginning of the earliest *pro forma* period presented, whether the acquisition occurred in the issuer's current or most recently completed financial year.

Pro Forma Financial Statement Disclosure for Significant Dispositions - Part 8 of the Rule

A new Part 8 has been added to the Rule that requires certain *pro forma* financial statements for significant dispositions, consistent with the SEC's requirements. Sections 3.17 and 3.18 of the Policy provide guidance.

GAAP, GAAS and Auditors' Reports - Part 9 of the Rule

The following changes have been made to Part 9 of the Rule:

(i) Reconciliation of financial statements of foreign acquired businesses

If an issuer has acquired a business and is required to include in a prospectus three years of financial statements for that business and those financial statements are prepared in accordance with foreign GAAP, section 9.2 of the Rule provides relief from the requirement to reconcile to Canadian GAAP the earliest of the three years of financial statements included in the prospectus.

(ii) Application of US GAAS

In response to a comment, subsection 13.2(2)7(ii) has been modified so as to exempt only US auditors who apply US GAAS from the requirement to deliver the letter specified in that subsection.

General Requirements as to Filing - Part 13 of the Rule

The following changes have been made to Part 13 of the Rule:

(i) Auditors' comfort letters

New subsections 13.3(2)1(ii), (iii) and (iv) have been added to provide that a comfort letter is required to be delivered with the following financial statements: financial information related to equity investees; financial statements constructed to comply with the "93-day" rule; and *pro forma* financial statements included in a prospectus to give effect to a significant disposition.

(ii) Required Documents for Filing a Prospectus

The Rule has been amended to require the filing of all material contracts referred to in a prospectus. The December 1999 Version of the Rule required the filing of only those material contracts that "create or materially affect the rights or obligations of the holders of the securities being distributed". This filing requirement was inconsistent with the requirements of many CSA jurisdictions which mandate the filing of all material contracts. Consequential amendments have also been made to the Policy.

The form of consent required to be filed by experts under the Rule has been changed. All consent letters required to be filed by experts must now include a statement that the expert has read the prospectus and has no reason to believe that there are any misrepresentations in the information contained in it that are derived from the expert's report, valuation, statement or opinion; or within the knowledge of the expert as a result of the services performed by the expert in connection with their report, valuation, statement or opinion. This filing requirement harmonizes with the requirements in Alberta and will facilitate the introduction of a national long form prospectus instrument based on Ontario's Rule.

A number of changes have also been made to Part 13 of the Rule as a result of recent amendments made to section 140 of the Act under the *More Tax Cuts for Jobs, Growth and Prosperity Act, 1999*. Both the July 1999 Version and December 1999 Version of the Rule mandated either a "filing" or "delivery" requirement for the various supporting documents to a preliminary and final prospectus. The distinction reflected the fact that, in Ontario, regulatory discretion to keep filed documents confidential was previously limited to material required to be filed under the Act. Section 140(2) of the Act was amended in December 1999, however, to provide the Commission with the necessary flexibility to maintain the confidentiality of information that is required to be filed under requirements established under the rules in addition to the Act itself. As a result of this amendment, consequential amendments have been made to Part 13 of the Rule.

(iii) Amendments

Several changes have been made to the provisions of the Rule dealing with amendments.

Subsection 13.8(2) has been added to the Rule and is intended to make it clear that the ten day waiting period prescribed by subsection 65(1) of the Act does not apply where an amendment to a preliminary prospectus has been filed.

New section 13.9 deals with amendments to a final prospectus. Subsection 13.9(1) requires that an amendment to a final prospectus must be filed where securities in addition to the securities previously disclosed in the prospectus are to be distributed. Subsections 13.9(2) and (3) provide that all amendments to a final prospectus must be receipted unless the Director considers that it is not in the public interest to do so; or any of the receipt refusal grounds set out in subsection 61(2) of the Act are present.⁵ Subsection 13.9(5) provides that a distribution must cease until a receipt for an amendment to a final prospectus has been obtained. New section 13.9 tracks the prospectus provisions in the Act and is intended to provide greater certainty to issuers and their counsel respecting the Commission's treatment of amendments to a final prospectus.

Procedures And Requirements for Granting Receipts - Part 14 of the Rule

Part 14 of the Rule has been amended to provide that an issuer shall not file a prospectus more than 90 days after the date of the receipt for the preliminary prospectus. The December 1999 Version provided for a 75 day period consistent with subsection 38(1)2 of the Regulations. The 90 day period harmonizes with requirements in Québec and will facilitate the introduction of a long form prospectus national instrument based on Ontario's Rule.

B. Prospectus Form**National harmonization**

To address comments received and the desire to harmonize more fully with the CSA, a number of provisions have been added to the Prospectus Form to make it more consistent with the prospectus form required under the British Columbia Securities Act. Subsections 6.1(1)1 and 6.1(1)2 have been added to require the disclosure of business objectives and milestones for all issuers. Sections 7.2 and 16.6 have been added for junior issuers. Section 7.2 requires junior issuers to disclose their funds available. Section 16.6 requires additional disclosure regarding the management of junior issuers.

⁵ The Rule also provides that all amendments to preliminary prospectuses must be receipted (see subsection 13.8(1)). This provision is not new, however, and appeared in all three previous publications of the Rule.

MD&A

The MD&A requirements for prospectuses is now cross referenced to a new, separate form - Form 44-101F2. In addition, a new requirement for a supplement to the MD&A if a Canadian issuer prepares its MD&A on the basis of other than Canadian GAAP financial statements has been added to Item 8.5(2) of the Form. This requirement is consistent with the requirement in Ontario's proposed Rule 51-501, AIF and MD&A.

Asset-backed securitizations ("ABS")

In response to informal comments received and additional experience gained by staff reviewing several ABS transactions over the past year, minor refinements have been to the ABS related disclosure requirements in sections 6.2 and 10.3 of the Form.

C. Policy**Issuers and Significant Acquisitions - Parts 2 and 3 of the Policy**

In response to comments received, substantially more guidance has been added to the Policy in the following areas, among others:

- & the interpretation of 60/90 day references to the age of financial statements (see section 2.1 of the Policy);
- & guidance with respect to when exemptions from financial statement requirements may be available in situations where records have been destroyed, an issuer or business is emerging from bankruptcy and a fundamental change in the business has occurred (see subsections 2.7(5) and 3.20(6) of the Policy);
- & the required and optional significance tests and their application (see section 3.7 of the Policy);
- & non-coterminous year ends: the "93-day" rule (see sections 3.10 and 3.17 of the Policy);
- & acquisitions of related businesses (see section 3.14 of the Policy);
- & unrelated individually insignificant acquisitions (see section 3.15 of the Policy); and
- & pro forma financial statements (see an expanded section 3.17 of the Policy).

Financial Statement Disclosure for Significant Acquisitions, Significant Dispositions and Multiple Acquisitions - Part 3 of the Policy**(i) Acquisition of an interest in an oil & gas property**

A new section 3.3 of the Policy has been added to address the acquisition of an interest in an oil and gas property. The section sets out the Commission's view on when relief from the requirement to provide audited financial statements may be granted and the conditions likely to be imposed.

(ii) Divisional and carve-out financial statements

As suggested in comment letters, new guidance has been included in section 3.16 of the Policy on preparing divisional and carve-out financial statements.

(iii) Significant dispositions

Additional guidance has been provided in section 3.17 and 3.18 on the requirements related to significant dispositions.

(iv) Transitional provision

A new provision has been added to section 3.20(1) where relief may be granted where the business was acquired prior to December 31, 2000, the effective date of the Rule.

General Requirements as to Filing and Amendments - Part 5 of the Policy

Section 5.1 has been added to the Policy. The new section provides interpretive guidance respecting section 58 of the Act which deals with the certification of a prospectus by an issuer. The commentary in section 5.1 of the Policy provides that in the Commission's view section 58 of the Act requires that the positions of the chief executive and chief financial officers of an issuer must be held by two individuals.

Additional interpretive guidance has been added to the Policy respecting the circumstances when an amendment to a preliminary prospectus may required (see new subsections 5.8(2) and (3)).

Appendix B to Companion Policy 41-501CP

A new Appendix B to the Policy was developed. This Appendix provides examples that illustrate how certain provisions of the Rule are to be applied.

V. INTERNATIONAL DISCLOSURE STANDARDS FOR CROSS-BORDER OFFERINGS

In September 1998, the International Organization of Securities Commissions ("IOSCO") issued a set of international disclosure standards for use by companies in connection with cross-border public offerings and listings of equity securities ("International Disclosure Standards"). The proposed standards relate to non-financial statement disclosure requirements and do not address the issue of which bodies of accounting or auditing principles may be followed by the issuer in preparation of its financial statements. On September 28, 1999 the U.S. Securities and Exchange Commission adopted changes to its non-financial statement disclosure requirements for foreign private issuers, to conform those requirements more closely to the International Disclosure Standards endorsed by IOSCO. The Commission intends to review the developments in this area and further changes may be made to the Rule as part of the process relating to the conversion of Ontario's local rule into a national instrument.

VI. REGULATIONS REVOKED AND POLICIES RESCINDED**Amendment of Regulation**

The Commission has made the following amendments to Regulation 1015 of the Revised Regulations of Ontario, 1990 (the "Regulation"), in conjunction with the making of the Rule. These amendments come into force at the time that the Rule comes into force:

1. Subsection 1(4) of the Regulation is amended by striking out "Subject to section 58" and substituting "Subject to Ontario Securities Commission Rule 41-501 *General Prospectus Requirements* and National Instrument 44-101 *Short Form Prospectus Distributions* and".
2. Subsection 2 (3) of the Regulation is revoked and the following substituted:

(3) If the issuer is a bank listed in Schedule 1 or II to the *Bank Act* (Canada) or is a company undertaking and transacting life insurance that is licensed under the *Insurance Act*, the issuer's financial statements are not required to comply with the following provisions if the financial statements are prepared in accordance with a statute incorporating, continuing or governing the issuer and in accordance with any applicable generally accepted accounting principles:

 1. Subsection (1).
 2. Subsection 9.1 (1) of Ontario Securities Commission Rule 41-501 *General Prospectus Requirements*.
 3. Subsection 7.1 (1) of National Instrument 44-101 *Short Form Prospectus Distributions*.
3. Subsection 2 (5) of the Regulation is amended by striking out "sections 9, 52, 65, 91 and 94" and substituting "sections 9, 91 and 94".
4. Sections 34, 35, 36 and 37 of the Regulation are revoked.
5. Paragraphs 1, 2, 4, 5, 6 and 7 of subsection 38(1) of the Regulation are revoked.
6. Sections 39, 40, 41 and 42 of the Regulation are revoked.
7. Sections 45, 46, 47, 48 and 49 of the Regulation are revoked.
8. Sections 52, 53, 55, 56, 57, 58 and 59 of the Regulation are revoked.
9. Sections 61, 62, 63, 64, 65 and 66 of the Regulation are revoked.

10. Section 72 of the Regulation is revoked and the following substituted:
- 72.** The following provisions apply with necessary modifications to a statement of material facts:
1. Section 60.
 2. Subsection 3.2 (4), section 4.9, Part 9, section 10.1, paragraphs 2 and 3 of subsection 13.2 (1), paragraph 6 of subsection 13.2 (2), paragraphs 7 and 8 of subsection 13.3 (1), paragraph 1 of subsection 13.3 (2), section 13.4 and clause 13.7 (3) (d) of Ontario Securities Commission Rule 41-501 *General Prospectus Requirements*.
 3. Item 9 of Form 41-501F1 *Information Required in a Prospectus*.
11. Sections 80, 81 and 82 of the Regulation are revoked.
12. Forms 12, 13 and 14 of the Regulation are revoked.

Rescission of Ontario Securities Commission Policy 5.1 and 5.7

The Commission has also rescinded, effective on the date that the Rule comes into force,

- (i) Policy 5.1 (other than Part A(a) and (b) of Section 10; Section 19; Section 24 and; Section 26)⁶; and
- (ii) Policy 5.7 (other than Section 1a of Item A and Section 2(c) of Item B)⁷.

The text of the rescission follows:

"Policy 5.1, except Part A(a) and (b) of section 10, section 19, section 24 and section 26 and Policy 5.7, except section 1a of Item A and Section 2(c) of Item B, are hereby rescinded."

VII. ACCOUNTANTS MANUAL

Upon the coming into force of the Rule and Companion Policy several chapters of the Accountants Manual will no longer be relevant. Staff will be publishing a notice at the appropriate time to indicate which chapters of the Accountants Manual are no longer applicable.

VIII. TEXT OF RULE, FORMS AND COMPANION POLICY

The text of the Rule, Forms and Policy follows.

DATED: October 13, 2000

⁶ Part A(a) and (b) of Section 10 of Policy 5.1 is being reformulated as part of proposed Rule 48-502 Over-Allotment Options and Underwriters' Compensation. Proposed Rule 48-502 was published for comment on April 25, 1997.

Section 24 of Policy 5.1 is being reformulated as part of proposed Rule 54-501 Prospectus Disclosure in Certain Information Circulars. Proposed Rule 54-501 was published for comment on March 17, 2000.

Section 26 of Policy 5.1 will be reformulated as part of proposed Rule 48-501 Market Stabilization.

⁷ Section 1a of Item A is being reformulated as part of proposed Rule 41-502 Prospectus Requirements for Mutual Funds. Proposed Rule 41-502 was published for comment on June 27, 1997.

Section 2(c) of Item B is being reformulated as part of proposed National Instrument 52-102 Use of Currencies.

**APPENDIX A
TO NOTICE OF RULES AND POLICY UNDER
THE SECURITIES ACT
RULE 41-501 GENERAL PROSPECTUS REQUIREMENTS
LIST OF COMMENTERS**

1. Bennett Jones by letter dated February 15, 2000.
2. Burnet, Duckworth & Palmer by letter dated February 14, 2000.
3. CICA Task Force on Prospectuses and Other Offering Documents by letter dated February 14, 2000.
4. Ernst & Young LLP by letter dated February 16, 2000.
5. KPMG LLP by letter dated February 21, 2000.
6. McCarthy Tétrault by letter dated February 14, 2000.

**APPENDIX B
TO NOTICE OF RULES AND POLICY UNDER THE SECURITIES ACT
RULE 41-501 GENERAL PROSPECTUS REQUIREMENTS
SUMMARY OF COMMENTS RECEIVED
AND
RESPONSES OF THE ONTARIO SECURITIES COMMISSION**

The Commission received 6 submissions on the December 1999 proposed instruments.

The Commission carefully considered all of the submissions received and would like to thank the commenters for taking the time to compile their very valuable comments. The Commission would particularly like to thank those commenters who also elaborated on their comments and suggested how the instruments could be made more understandable. The Commission hopes that the redrafted instruments represent a marked improvement over the December 1999 proposals.

The following is a summary of the comments received, together with the Commission's responses, organized by topic. In the summary, references to proposed Rule, proposed Policy and proposed Forms (collectively, the "proposed instruments") are references to the December 1999 version of these documents. References to the Rule, Policy and Forms (collectively, the "instruments") are references, the final version of these documents.

PART A - OVERALL COMMENTS

I. Drafting Style

(i) Comment

Three commenters, all commenting on behalf of accountants, expressed views on the drafting style of the proposed Rule, Policy and Prospectus Form. One commenter stated that the wording of the instruments was unnecessarily obscure; the text was not user friendly; and as a result, the instruments will be difficult for issuers and their advisers to understand and apply, and for Commission staff to administer. The commenter noted that the proposals should embody the plain language principles set out in section 1.2 of the Policy.

Another commenter found the language difficult to work through and overly legalistic and recommended that every effort should be given to simplifying the language.

The third commenter also noted that it continued to find the proposed Rule very difficult to understand and interpret.

Response

In finalizing the instruments the Commission was keenly aware of these concerns and made every effort to address them. Given that many of the key provisions of the instruments relate to financial reporting and that accountants would be called upon to assist issuers in applying them, it was very important to the Commission that the issues raised by the commenters were satisfactorily addressed. Consequently, staff of the Commission, on behalf of the CSA, invited the commenters who raised these issues to a meeting to discuss them with staff in greater detail. The meeting between these commenters and the staff was very helpful in identifying ways in which their comments could be addressed. Though the general style of drafting is dictated by legislative requirements in Ontario, and other jurisdictions, a number of changes were made to the proposed Rule in an attempt to simplify it, and extensive additional guidance, including examples, was added to the proposed Policy to assist issuers and their advisors. Some sections of the proposed Rule have been re-organized and reworded in an effort to make it easier to read and understand. The Commission very much hopes that the re-drafting of the proposed instruments is responsive to these comments.

II. National Harmonization

(i) Comment

One commenter applauded the Commission's undertaking to work with the CSA and the stated intention of Commission staff in Alberta, British Columbia and Quebec, to recommend that their respective Commissions provide accommodation to facilitate filings prepared in accordance with the proposed Rule and Prospectus Form.

Another commenter strongly encouraged the Commission to work with the CSA to adopt a national general prospectus instrument. In fact, the commenter recommended that the Commission delay implementing the proposed Rule in Ontario until a national instrument is developed and continuous disclosure standards are in place which address significant business acquisitions.

Response

The Commission understands the commenters' concerns and has worked diligently with the CSA to address this point. The CSA Chairs have approved using the Rule as the basis for developing a national instrument and work has begun on that front. However, given the statutory time periods required to make a rule and the time available to the Commission before the rule entitled National Policy Statement No. 47 *Prompt Offering Qualification System* is to expire, it would not have been possible to prepare a national general prospectus rule.

The Commission also understands that in the interim, staff of the securities commission in each of British Columbia, Alberta and Quebec will recommend to their respective commission that relief be provided to permit the filings of prospectuses prepared in compliance with the requirements of the Ontario instruments.

Regarding the comment that implementing the instruments should be delayed until continuous disclosure requirements are in place for business acquisition disclosure, the Commission has decided to proceed with finalizing the Rule. The Rule not only brings together in one place the prospectus requirements that have been scattered throughout the Act, Regulation, policy statements, notices and the Corporate Finance Accountant's Practice Manual, it also considerably updates these requirements. The existing requirements in securities regulation have included business acquisition disclosure requirements for prospectuses for many years. When the Commission requested comment in May 1997 on its proposal to either maintain its materiality approach to business acquisition disclosure or adopt an SEC approach, the public comments received overwhelmingly supported an SEC approach. This approach is now reflected in the instruments.

(ii) Comment

One commenter again encouraged the Commission to develop national instruments consolidating various requirements such as those for the financial statements of issuers and acquired entities, MD&A, and AIF's.

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 rule replacing National Policy Statement No. 47 is to expire, it would not have been possible to prepare a new national instrument, publish it for comment and finalize it.

III. Harmonization with the SEC*(i) Comment*

A commenter again requested that the Commission formally adopt the SEC's rules regarding historical financial statements and *pro forma* financial statements relating to businesses that have been acquired as the commenter continued to find the proposed Rule difficult to understand and interpret. The commenter acknowledged that the SEC rules are also complex but stated that practitioners are experienced in applying the rules, and that most anomalies in the SEC rules have been fixed over time. Concern was expressed that there will be a significant "break-in" period for the proposed rules.

Another commenter expressed concern about the significant differences between the proposed requirements and the SEC regime and hopes that they can be minimized in time.

Response

As noted in the December 1999 Notice, the Commission recognizes the value in harmonization with the requirements of the SEC where those requirements are appropriate for Canadian capital markets and consequently made harmonizing changes to the proposed Rule. 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 and in other areas. In many instances, the differences between the Rule and the SEC's requirements result in requirements that the Commission believes are better suited to the Canadian market.

In several instances, additional conforming changes have been made to the Rule. For example, the revised instruments include guidance very similar to the SEC's "93 day rule" for situations where the issuer and the business do not have coterminous year-ends. As another example, the guidance for applying the significance tests has been brought more in line with the SEC's approach. The Commission believes that, in the few areas where there are differences from the SEC regime (i.e., where an option has been provided to perform the significance tests at a more recent date and to present pro-forma income statements using "pre-acquisition" stub period financial statements), there are good reasons for these differences. The Commission also believes that the instruments will, after an initial break-in period, be easier to apply than the SEC's requirements since all the requirements have been included in one set of instruments rather than scattered throughout many different reference sources.

(ii) Comment

A commenter expressed concerns about the acquisition disclosure requirements as they apply to cross-border financings that are also subject to SEC jurisdiction. The commenter stated that it would be a disservice to investors if the differing requirements in Canada and the U.S. were permitted to create alternative or conflicting accounting presentations. The commenter recommended that the Commission accept the requirements for an SEC Form-1 filing incorporating financial statements prepared in accordance with Canadian GAAP with a reconciliation to U.S. GAAP.

Response

The Commission agrees generally with the concern and, as noted in the previous response, has tried to achieve a substantially similar regime. There should be no significant differences between the requirements given that the SEC's significance tests, financial statement and *pro forma* financial statement requirements are the same. The Commission is not, however, prepared to permit a Canadian company doing a cross-border offering to file in Canada documents prepared in accordance with the SEC's Form F-1. The onus is on issuers who are reporting issuers in both jurisdictions to ensure that they comply with the regulatory requirements in both Canada and the U.S.

IV. Continuous Disclosure Regime*(i) Comment*

One commenter thought that the provisions concerning significant acquisition disclosure have been included in the prospectus proposals to address shortcomings in the continuous disclosure system. The commenter does not support this approach and believes that the timely disclosure of business combinations should be addressed through the continuous disclosure system.

Another commenter noted that the continuous disclosure regime should remain a priority.

Response

The Commission emphasizes that the provisions concerning significant acquisition disclosures were included in response to comments received on the December 1999 version of the Rule as noted above. The requirements were not introduced to address shortcomings in the continuous disclosure system.

However, the Commission recognizes the interaction between the requirements for prospectus and continuous disclosure and the Commission also recognizes that the market would benefit from more timely disclosure of significant business acquisitions. The continuous disclosure regime is a priority of the Commission. The issue of continuous disclosure for business acquisitions is discussed in the Integrated Disclosure System ("IDS") Concept Paper, which was published for comment in January, 2000. Comments on the IDS Concept Paper are currently being analyzed. The prospectus requirements will be revisited if changes are made to the continuous disclosure regime to address business acquisition disclosure as a result of the IDS proposals.

V. Special Warrant Prospectuses*(i) Comment*

One commenter expressed the view that the preparation of a prospectus for the issuance of securities under special warrants, while providing documentation for the public record, is largely irrelevant to the investors that the prospectus is designed to inform and protect. In the commenter's view, the result is an unnecessary cost for issuers without a corresponding benefit for investors. The commenter thought that the utility of a prospectus in this situation will be reduced further if the IDS proposals are adopted.

Response

As noted in the December 1999 Notice, the Commission has resolved not to provide special treatment for special warrant transactions in the context of the instruments. 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.

It is very possible that when proposed Multilateral Instrument 45-201 Resale of Securities, published for comment in September, 2000, and the IDS proposals become effective, special warrant offerings will no longer be made. In the meantime, special warrants transactions will continue to be done and certain disclosure standards must be met in order for the underlying securities to become freely tradeable.

PART B - SPECIFIC COMMENTS**I. Definitions and Interpretations****1. Junior Issuer - “Market Capitalization” Test***(i) Comment*

One commenter requested clarification of when the market capitalization calculation, for purposes of defining a junior issuer, should be made.

Response

Clarification has been added to the definition of junior issuer and to the interpretation in section 2.7 of the Rule. The test now refers to a 20 day average calculation within 5 days prior to the date of the preliminary prospectus.

2. Probable Acquisition of a Business*(i) Comment*

One commenter agreed with the guidance provided in section 3.4(2) (section 3.3(2) in the 1999 proposed Policy) of the Policy. The commenter believed that the test of whether a proposed acquisition is a “probable acquisition of a business” should be an objective, rather than a subjective, test. However, the commenter believed that the Commission should provide additional guidance on the standard of probability as in its view, the guidance provided in the Policy is unworkable. The commenter noted that applying the objective standard of the “reasonable person” test is different from assessing the range of probabilities contained in Handbook s. 3290, *Contingencies*. Furthermore, within Handbook s. 3290, the ranges of probabilities are provided as a basis for establishing the appropriate accounting treatment only. A business combination is never recorded prior to closing irrespective of how “likely” it is to occur.

Response

The Commission believes that although the Rule and the wording in the Handbook s. 3290 are not identical, they are not substantially different. The “reasonable person” concept is well known in the field of law. Applying the reasonable person test is not meant to complicate the decision making process, it should simplify it by requiring the use of common sense. Reference to Handbook s.3290 was meant to assist accountants by directing them to a concept better known by them, but one which should not result in a substantially different result than the reasonable person concept. If in doubt, the issuer’s accounting advisor should consult the issuer’s legal counsel.

3. Definition of Income from Continuing Operations*(i) Comment*

One commenter suggested removing the word “net” from the definition of “income from continuing operations” because “net income” implies income *after* the deduction of discontinued operations, extraordinary items, and income taxes.

Response

The Commission agrees with the comment and has made the change to the definition.

II. Comparative Figures*(i) Comment*

One commenter disagreed with comment N.1(ii) in Appendix B to the December 1999 Notice which stated 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 commenter objected to the rationale provided and the original commenters’ view that it is contrary to GAAP to omit comparative financial statements. The commenter also stated that if securities regulators have concluded that depending on the significance of an acquisition, only a single year of financial statements of an acquired business is necessary for users of a prospectus, then it is not meaningful to require comparative financial statements in these circumstances. In such circumstances, presenting a single year of financial statements would be in accordance with GAAP.

Response

The Commission is of the view that in certain circumstances, such as the one provided for in section 2.7(4) of the Policy, lack of comparatives is appropriate and would be in accordance with GAAP.

III. Change in Year End*(i) Comment*

Two commenters found it difficult to understand the wording regarding financial statement requirements where there has been a change in a year-end. In particular, the use of the words "...may omit the financial statements for the year in which the financial year end changed", which suggests that a gap in the continuity of the financial statements is acceptable, was confusing to the commenters.

One commenter hoped that it was the Commission's intention that a financial year of less than 9 months resulting from a change in year end will not count as one of the three most recently completed financial years in the case of s. 4.3 of the proposed Rule or one of the most recently completed financial years under s. 6.3 of the proposed Rule. The commenter noted that this would be consistent with its understanding of the SEC's rules and with s.7.2(1) of National Policy Statement No. 51, Changes in the Ending Date of a Financial Year and in Reporting Status, ("NP 51"), which does not consider a Transition Year of less than nine months to count as a comparative to the new financial year.

The commenter suggested defining "Transition Year" using the definition in NP 51 and then using this defined term in the Rule. The commenter also suggested adding an example.

Response

The Commission agrees. Section 2.1 of the Rule has been amended to include a definition of "transition year" identical to that in NP 51. In addition, sections 4.3 and 6.9 of the Rule have been modified to clarify that only a transition year of at least nine months may be used for one of the years of historical financial statements required to be included in a prospectus.

IV. Significant Acquisitions - Reporting Requirements**1. Annual Financial Statements***(i) Comment*

A commenter expressed the view that the requirement in s.6.3(2) of the proposed Rule is unduly onerous in the absence of a continuous disclosure rule. It was noted that at the time of a transaction, an issuer may not necessarily know that the transaction will have to be revisited three years later if the issuer files a prospectus.

Response

In the vast majority of cases, the issuer will know at the time of an acquisition whether the acquisition will be a significant acquisition for purposes of prospectus disclosure. For some acquisitions, such as individually insignificant acquisitions and acquisitions of major significance (ie. at the 100% significance level), this may not be the case. To partially offset this, the Rule, unlike the requirements in the U.S., permits the significance tests to be recalculated at a date closer to the date of the prospectus to recognize the potential growth of the issuer and thus the potential decline in significance of the acquisition.

As noted above, the Commission has substantially adopted the SEC's rules for business acquisition disclosure, notwithstanding the absence of continuous disclosure rules. This approach was advocated by commenters several years ago. The Commission believes that business acquisition disclosure is material and should be included in a prospectus. As noted in previous Notices, the Commission supports extending these requirements to continuous disclosure filings. Progress is being made on that front through the IDS proposal.

2. Interim Financial Statements*(i) Comment*

Two commenters noted that although the proposed Rule was revised to clarify that separate financial statements of the acquired business would be required only for the years before the acquisition, no similar clarification was made for interim financial statements.

Response

The Commission agrees with this comment. The Rule has been amended to clarify that interim financial statements for periods subsequent to the date of an acquisition are not required.

3. Pre-acquisition Financial Statements

(i) Comment

One commenter previously commented on the July 1999 version of the proposed Rule and recommended that when interim financial statements of an acquired business are required to be included in a prospectus, the Rule should permit the filing of financial statements covering a stub period from the *beginning* of the acquired business's last financial year to *the date of the acquisition*, with comparatives for a period of approximately the same length. The Commission's response, as noted in the December 1999 Notice, was that an issuer may, at its option, include additional financial statements for a stub period but that the issuer was nonetheless required to include the interim financial statements for the acquired business's most recently completed interim period.

The commenter, in response to the December 1999 Notice, acknowledged that there was some merit in the Commission's approach in situations where the acquired business itself is a reporting issuer subject to quarterly reporting on a continuous disclosure basis. However, the commenter noted that even in these situations (i.e. the acquisitions of one public company by another), certain Canadian stock exchanges require the acquired company to file financial statements up to the date of the acquisition.

Two commenters noted that the Commission's position may be unduly onerous when the acquired company was a private entity which did not prepare interim financial statements. Such an entity would be required to prepare financial statements for the most recent interim period and as at the date of the acquisition.

Response

The Commission reconsidered its approach and decided that the Rule should include an option that would permit issuers to include financial statements of an acquired business covering such a pre-acquisition period in lieu of interim financial statements. Sections 6.2, 6.3 and 7.2 of the Rule have been modified to this effect. Explanatory wording has also been included in the Policy. A new definition, "pre-acquisition period" has been introduced in section 2 of the Rule to effect this change. The Rule also provides that a limited gap, between the end of the pre-acquisition period and the date of acquisition, of up to 30 days may exist.

Although the SEC does not permit this approach, the Commission believes that this approach is a practical solution that provides appropriate disclosure to the marketplace.

V. Pro Forma Financial Statements

(i) Comment

One commenter stated that in certain circumstances, the historical and *pro forma* financial statement requirements of the proposed Rule will be too extensive. In the absence of continuous disclosure requirements, the commenter questioned the usefulness of some information, on the basis of its age at the time of the prospectus.

Response

No changes have been made to these basic provisions of the Rule in order to maintain an approach to business acquisition disclosure requirements that is consistent with that of the SEC. The Commission recognizes that the prospectus regime would be clearly relevant to an integrated continuous disclosure regime. As noted above, staff of the Commission are addressing this issue in the context of the IDS proposals.

(ii) Comment

One commenter expressed its view that problems will arise in determining the interim periods for which *pro forma* financial statements are to be provided. By way of example, the commenter indicated that it is unclear how the stub period *pro forma* income statement is to be constructed and suggested that it would be helpful to issuers if some guidance was provided.

The commenter also suggested that guidance be provided as to how *pro forma* financial statements should be prepared when the issuer and significant acquired businesses have different financial year ends.

Response

To address these concerns, the Commission has amended the Rule by adding a new subsection 6.5(4) which prescribes how *pro forma* financial statements are to be prepared when the year ends are not coterminous. Guidance is provided in subsection 3.17(3) of the Policy. This guidance is very similar to the SEC's "93-day" rule.

(iii) Comment

One commenter believes there is a discrepancy in the *pro forma* income statement requirements for significant acquisitions that occurred in the issuer's current and most recently completed financial years. Footnote 34 to the proposed Rule stated that for acquisitions which occurred during the issuer's most recently completed year, a *pro forma* income statement is required for that year only and not for the subsequent period, if any. However, for significant acquisitions that occurred during the issuer's current fiscal period or significant probable acquisitions, section 6.2(1)7(b)(ii) of the proposed Rule required a *pro forma* income statement to be prepared to give effect to those acquisitions as at the beginning of each of the issuer's current financial year and most recently completed financial year.

The commenter recommended that the accounting treatment for acquisitions during the issuer's current financial year be conformed to that for the most recently completed financial year. This would make the requirement consistent with the SEC's.

The commenter stated that notwithstanding the SEC requirements, the commenter consulted U.S. accountants and understands that despite the SEC written guidance, alternative practices have developed. Specifically, the SEC has not objected to preparing *pro forma* income statements on the basis that the acquisition occurred at the beginning of each period presented. Accordingly, the commenter recommended that the proposed Rule omit the detailed description of the method to be used in constructing the *pro forma* financial statements in order to minimize unnecessary conflicts with existing practice.

Response

The Commission has restructured Part 6 of the Rule to provide greater clarity. Paragraph 2 of subsection 6.5(1) of the Rule requires that a *pro forma* income statement give effect to an acquisition as if it had taken place at the beginning of the earliest *pro forma* period presented whether the acquisition occurred in the issuer's current, or most recently completed, year. Staff of the Commission confirmed with senior SEC staff that this approach is consistent with the SEC's approach.

(iv) Comment

The commenter noted that in some cases, *pro forma* financial statements would be required for a period for which accounts of the acquired entity are consolidated in the accounts of the issuer. Such anomalous requirements should be eliminated.

Response

The Rule has been amended to clarify that a *pro forma* balance sheet will not be required where the most recent audited balance sheet of the issuer presented in the prospectus reflects the acquisition. A *pro forma* income statement will be required if the acquisition has not been consolidated into the issuer's income statement for a full year. This is consistent with the SEC's approach.

VI. Acquired Businesses - Additional Financial Statements Filed or Released*(i) Comment*

One commenter expressed support for the provisions of s. 4.7 of the proposed Rule but felt that it was too punitive to compel the issuer to completely overhaul the historical and *pro forma* financial disclosures in the prospectus (not to mention the MD&A, financial summaries etc).

The commenter suggested that except for the rare instance where the release of the annual results is tantamount to reporting a material adverse change, the changes to the prospectus be limited to requiring the inclusion of the most recent financial statements along with a supplement to the MD&A to cover any significant 4th quarter developments.

The commenter then went on to suggest expanding s. 6.4(2) of the proposed Rule to outline alternatives the issuer may choose, i.e., the minimum disclosure standard or the complete overhaul of the financial statements and related disclosures.

Another commenter expressed distress by the requirements for full financial statements to be included in a prospectus when selected information from the statements has been released. The commenter stated that frequently, the information needed to complete the statements (e.g., note disclosures) will not be readily available, and in the case of annual statements, the auditors will have to complete their work after the necessary information has been assembled. This will result in issuers postponing publication of relevant information in order to avoid delay in filing the prospectus.

Response

The Commission is sympathetic to the concerns raised and has modified the Rule as a result. The Commission decided that the bright-line test for inclusion of financial statements, comfort on them and updating of MD&A and *pro formas* would be the actual filing of the financial statements, rather than a press release disclosing results. A summary of the changes follows.

- If an issuer *press releases* financial information pertaining to interim or annual financial periods prior to filing its final prospectus, the final prospectus should include the contents of the press release in the prospectus (perhaps under a caption entitled “Significant Developments” or something similar). No comfort on the numbers disclosed in the narrative will be required (which is the same treatment afforded other non-financial statements numerical information included in a prospectus) and neither updating of *pro forma* financial statements nor MD&A is specifically required. (See subsection 4.7(2) of the Rule)
- If, however, an issuer *files* its interim or annual financial statements prior to filing its final prospectus, the final prospectus should include the contents of the press release as above and in addition, include the financial statements that have been filed. These financial statements will need to be comforted. In addition, *pro forma* financial statements must be updated and MD&A must be updated or supplemented. (See subsection 4.7(1) of the Rule)
- The specific requirement to include financial statements which have been approved by the board of directors for a more recent period but which have not been filed has been deleted.

(ii) Comment

A commenter was of the view that the current drafting suggested that s. 6.4 of the proposed Rule would require more recent financial statements of significant acquired businesses for periods after the date of the acquisition.

The commenter suggested that the section makes sense only for probable acquisitions and for recently completed acquisitions where an interim period or financial year ended shortly before the acquisition and the prospectus is filed before the expiry of the applicable period of 60 or 90 days, respectively.

Response

The Commission agrees with the comment. As a result, changes have been made to subsections 6.7(1) and 7.3(1) of the Rule.

VII. Significant Acquisitions Accounted For Using the Equity Method

(i) Comment

Two commenters recommended that issuers be permitted to derive summary interim information from unaudited information. In their view, if this is not permitted, then the apparent benefit of the exemption is lost by requiring a special audit for such interim information.

Response

The Commission agrees with the comment. Section 6.10 of the Rule has been clarified so that although summary annual financial information should be derived from audited financial statements, there is no requirement that summary interim financial information be derived from audited financial statements or otherwise subjected to audit procedures.

(ii) Comment

One commenter questioned whether there was any intention that interim periods required under this section be derived from financial statements which have been subjected to Handbook Section 7100 auditor review procedures.

Response

The Commission believes that selected financial information derived from interim financial statements should be comforted. Only the selected information needs to be comforted, however, not the complete financial statements from which that information is derived. Requirements for auditor’s comfort on unaudited financial statements are set out in paragraph 1 of subsection 13.3(2)1.

(iii) Comment

The same commenter also wondered if the Commission contemplated receiving consent under Part 11.7 from the “associated” auditor?

Response

The Commission believes that an auditor reporting on the equity investee’s financial statements should be required to provide consent. A new paragraph (b) has been added to subsection 13.4(1) of the Rule.

VIII. Significant Acquisition of Joint Venture Interests*(i) Comment*

One commenter questioned why the proposals do not provide an exemption from the disclosure requirements, similar to that for acquisitions accounted for by the equity method, for the acquisition of joint venture interests accounted for by the proportionate consolidation method.

Response

The Commission is of the view that the concept of joint control differs from the concept of significant influence and the prescribed accounting treatment reflects this. The relief requested would be inconsistent with the accounting for a joint venture going forward. Such relief would also exempt the issuer from preparing *pro forma* financial statements which seems inappropriate. Therefore, no change has been made to the Rule.

IX. Significant Acquisitions Made After Year End Accounted For Using the Purchase Method*(i) Comment*

Three commenters were concerned about the requirement to include details of a purchase equation for significant acquisitions made after the issuer's year end.

One commenter expressed the view that the requirements extended the thinking of EIC-14 beyond reasonable limits. In the commenter's view, the required disclosure, particularly in the case of a probable acquisition, was equivalent to either FOFI or a *pro forma*. The commenter reasoned that if the disclosure was FOFI, it had no place in audited financial statements and, if the disclosure was *pro forma* in nature, it capsulized information already contained in the *pro forma* financial statements but ignored the explanatory notes which accompanied the *pro forma* financial statements and, imposed an auditor's report on information already covered by a compilation report. The commenter stated that the requirement is problematic for completed acquisitions and completely unreasonable for proposed acquisitions.

Another commenter stated that the requirement for an audited purchase equation for significant acquisitions after the year-end is unworkable. The commenter stated that many of the procedures performed to audit a purchase price equation are time-consuming and so it won't be possible for an auditor to complete the work necessary to give a clean opinion in the short time frame for preparing and filing the financial statements.

A third commenter did not believe that the purchase equation for a significant acquisition occurring subsequent to an issuer's year end should be subject to audit. In its view, there are many important transactions which may occur subsequent to an issuer's year end and which are first recorded in interim financial statements, without audit.

Response

The Commission acknowledges that the requirement for an audited purchase price equation has been and continues to be controversial. Based on the comments received and further conversations with the commenters and other professionals, the Commission reconsidered its requirements in this area.

The requirement to disclose a purchase equation when the transaction has not been completed and in all likelihood, the purchase price has not been finalized, has been deleted from section 6.11 of the Rule.

With respect to completed acquisitions, the Commission recognizes that in the majority of cases, it is likely that only a basic allocation will be made and it will be qualified by a statement that the estimate is preliminary and is subject to change. Such a statement is permitted by section 6.11(2)(a)(ii) of the Rule and will not be challenged by staff.

X. Financial Statement Disclosure For Multiple Insignificant Acquisitions*(i) Comment*

The commenter found section 7.2 of the proposed Rule confusing. The wording in subsections (1) and (2) suggested that subsection (2) required individual financial statements for more than one business to be included. In addition, it was unclear to the commenter that the provision in subsection 2.2(1) for the asset and income tests to be applied using only the issuer's proportionate share of the acquirees, carried through to the application of the tests under section 7.2.

Response

The requirement is that the issuer's proportionate share of the acquiree's financial results should be used for the significance test. Clarification has been added in new section 3.15 of the Policy in this regard.

(ii) Comment

One commenter noted that the test in subsection 7.2(2) of the proposed Rule which requires the inclusion of financial statements with respect to those businesses which "represent a majority" of the various tests is unclear. The commenter also expressed its view that since financial statements are required in respect of any business that exceeded the 20% thresholds, the multiple acquisition requirements are unnecessary.

Response

Revisions have been made to the wording in section 7.2 of the Rule and additional clarification has been provided in new section 3.15 of the Policy on how these tests work and how the "represent a majority" test should be applied. The approach to multiple acquisitions is consistent with the SEC's business acquisition disclosure regime and, as such, has been retained.

XI. Application of Significance Tests**1. Different year ends***(i) Comment*

The commenter noted that no guidance was included regarding how the significance test would be performed at the date of the acquisition if the acquired company's fiscal year end is different from the issuer's. The commenter recommended that in this scenario, it should not be necessary to conform the fiscal periods for purposes of the tests.

Response

Guidance has been added to the Policy in new section 3.10 in this respect.

2. Losses in the current period*(i) Comment*

One commenter noted that no guidance was provided regarding how the income test would be applied if the issuer incurred a loss in the current year or if the acquired company incurred a loss. Section 2.3(3) addresses the situation where the issuer had a loss only in the context of calculating the average amount of income.

Response

Staff of the Commission discussed the issue with staff of the SEC. Consequently, it was decided to add a requirement in the Rule (see subsection 2.3(1)) that if either the issuer and/or the acquired business has incurred a loss, the income test should be applied using the absolute value of the loss.

3. Applying the tests at the second date*(i) Comment*

One commenter expressed its view that the second stage of the significance tests should be deleted. The commenter noted that if an issuer fully integrated the acquired business with its own operations, it may be unable to determine the income of the acquired entity post-acquisition. The commenter argued that the disclosure requirements for an issuer who chose to integrate the acquired business' operations with its own, should not be subjected to more onerous reporting requirements than the issuer who left the acquired business intact. The commenter recommended that the tests not be permitted to be performed at the second point in time given the complexities and subjectivities involved.

Another commenter discussed the potential difficulties of applying the tests at the second date and recommended that the application of the test at the second date be optional. The commenter also recommended that the Rule be clarified to provide that the application of the significance tests at the second date does not operate so as to increase the level of significance of an acquisition, thereby requiring additional financial statements to be provided.

Response

The Commission realizes that it may not be possible for all issuers to take advantage of applying the tests at the second point in time. However, the option to perform the tests at a more recent date has been retained. Applying the test at the second stage has been included to provide relief from the financial statements requirements required under Parts 6 and 7 and not to increase the requirements. If an acquisition was not significant at the first, mandatory, stage, then the second stage of the tests need not be applied. If an acquisition was significant at the first stage and becomes more significant at the second stage only the financial statements, determined under the first stage, are required.

Subsection 2.2(5) has been added to the Rule to reflect the Commission's expectation that in order for the tests to be applied at the second stage, the acquired entity must have remained substantially intact and not undergone a significant reorganization or transfer of its assets and liabilities to other entities. Subsection 3.7(4) of the Policy also addresses this issue.

XII. Application of Significance Tests**1. Income Test for Multiple Acquisitions***(i) Comment*

One commenter noted that the use of the combined basis in the income test for multiple acquisitions would appear to result in the netting of any losses from continuing operations of certain businesses against the income from continuing operations of others. The commenter noted that the computational note to SEC Rule 1-02(w) states: "Where the test involves combined entities,entities reporting losses *shall not* be aggregated with entities reporting income."

The commenter did not object to the more lenient approach but wanted to ensure that it represented an intentional departure from the SEC approach.

Response

The Commission appreciates the comment and has added a new subsection 2.3(2) to the Rule to adopt the SEC's wording in 210.1-02(w)(3)3. Guidance has also been added to the Policy in this respect. (See subsection 3.15(2))

2. Investment Test*(i) Comment*

In connection with the application of the Investment test, one commenter was puzzled by the intent of the last sentence in s. 3.5 of the proposed Policy which read, "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."

Response

The Commission agrees that the sentence in section 3.5 of the proposed Policy was confusing. No change has been made to the description of the test in the Rule; however, the problematic sentence in the Policy has been deleted and replaced with guidance (see section 3.11 of the Policy) to the effect that in applying the investment test, the issuer should measure its investment by using the purchase consideration paid.

XIII. Auditor's Letter Filed in Connection with Financial Statements Prepared Using Foreign GAAP or Accompanied by a Foreign Auditor's Report*(i) Comment*

One commenter applauded the recognition of and exemption provided for U.S. GAAS. The commenter was concerned, however, that this exemption will be interpreted more broadly and that non-U.S. auditors conducting audits in accordance with U.S. GAAS will rely on the exemption.

The commenter assumes that the Commission is equally concerned with non-U.S. auditors expertise to conduct an audit in accordance with U.S. GAAS as it is with a foreign auditor's expertise to conduct an audit substantially in accordance with Canadian GAAS.

Response

The Commission agrees with the commenter's concern and has amended paragraph 7 of subsection 13.2(2)7(ii) of the Rule to read as follows: "In the case of foreign GAAS other than U.S. GAAS *applied by a U.S. auditor....*"

(ii) Comment

The same commenter requested that the exemption given to U.S. auditors from having to explain how they made the determination that U.S. GAAS was substantially equivalent to Canadian GAAS, be extended to auditors in the U.K., Australia and New Zealand who conduct audits in accordance with their domestic GAAS. The commenter noted that the SEC accepts audits conducted in accordance with U.S. GAAS by these auditors. The commenter suggested that if the SEC was satisfied with the capacity of auditors from these countries to conduct U.S. GAAS audits, then the Commission should also be satisfied with the capacity of those auditors to conduct Canadian GAAS audits. The commenter also suggested that if the Commission decides not to expand the list of acceptable foreign GAAS, the Commission should consider amending section 4.2 of the proposed Policy to include a statement along the following lines: "Relief from the requirement in s. 11.9(3)(b) of the Rule to discuss the auditor's expertise may be granted in appropriate circumstances such as when the auditor's report is issued by firms familiar to staff from the U.K., Australia, and New Zealand."

Response

Consistent with the response in the December 1999 Notice, the Commission agrees that a list of foreign jurisdictions recognized as having 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 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. As the commenter is likely aware, the Commission along with its international counterparts through IOSCO, is looking at the acceptability of international auditing standards. To the extent IOSCO endorses their use at some point in the future, the Commission will consider revisiting this aspect of the Rule. Given this, the Commission does not think it is appropriate to provide the relief requested by the commenters. Since the Commission has not determined whether the identified foreign GAAS are substantially similar to Canadian GAAS, it would be inappropriate to suggest that relief might be granted. No change has been made to the proposed instruments.

(iii) Comment

Another commenter expressed views similar to those summarized above, but in addition suggested including International Auditing Standards. The commenter also suggested that the list be periodically reviewed and updated so that it is not rigid and unresponsive to changing circumstances. In the commenter's view, the practical difficulty with the proposed Rule is that most foreign auditors are unfamiliar with Canadian GAAS and do not know whether the foreign GAAS are substantially equivalent to Canadian GAAS; while Canadian auditors, being unfamiliar with foreign GAAS, will be unable to help them.

Response

As noted above, the Commission believes that auditors are in the best position to make these assessments.

(iv) Comment

One commenter recommended that relief from the requirement in s. 11.9(3)(b) of the Rule should be provided in circumstances where the foreign auditor is an affiliate of an international firm of auditors and applies the international firm's worldwide auditing standards, provided those standards comply with, or are based on, a body of GAAS recognized by staff, such as U.S. GAAS or International Auditing Standards.

Response

The Commission respectfully disagrees. The Commission has concerns that worldwide firm auditing standards may be tailored, depending upon the country and/or business environment in which the foreign issuer operates. Such modifications may lead to significant departures from what the Commission would consider to be acceptable Canadian GAAS. If the foreign auditor is satisfied in a particular situation that the international standards applied are substantially equivalent to Canadian GAAS, then there should be little difficulty complying with the requirement.

(v) Comment

One commenter noted that in Canada, objectivity is an element of GAAS, and the standards and guidance for this concept (including the independence requirements) are included in provincial institute rules of professional conduct and related interpretations. Independence, however, is not regarded as an element of GAAS in some other countries so the commenter queried whether a reference to independence should be included in the proposed Rule.

Response

The Commission agrees that objectivity is an important element of Canadian GAAS but believes that the issue is adequately addressed by subsection 4.2(4) of the Policy.

(vi) Comment

Part 8.3 of the proposed Rule (Part 9.4 of the Rule) requires a foreign auditor's report to disclose material differences in the form and content of the report as compared to a Canadian auditor's report. One commenter was in doubt as to the meaning of the reference to differences in form and content.

Response

The Commission expects that a foreign auditor's report would address the form and content requirements set out in section 5400 of the Handbook.

XIV. Application of the Significant Acquisition Rules to the Oil, Gas & Extractive Industries

Three commenters expressed concerns about the application of the business acquisition disclosure requirements to the natural resource industry and in particular to acquisitions of oil and gas properties. The following issues were raised.

*Comments***(a) Specific Oil & Gas Properties do not Constitute a Business**

One commenter objected to the characterization of discrete oil and gas properties as a "business," particularly when the issuer has purchased non-core resource properties from another entity, because, in the commenter's view, virtually all of the *indicia* of a stand-alone business are absent insofar as the acquired properties are concerned. In the commenter's view, the mere existence of assets alone is not conclusive evidence of the existence of a business. If there is insufficient continuity of operations before and after the acquisition, then historical financial information is not material to understanding the value of future operations.

(b) Availability and Usefulness of Historical Financial Statements

The three commenters expressed their view that in many instances, financial statements for the acquired oil and gas assets are not available. They stated that larger organizations in particular, do not keep separate sets of financial statements in respect of each oil and gas property owned by them nor is the underlying data maintained for the purpose of creating financial statements if and when necessary. In addition, the commenters stated that it may be impossible to create financial statements since the allocation of many expenses, such as general and administrative, income taxes and interest, cannot be made. Even if the information is available, the cost of preparing the financial statements will exceed the benefits. In the commenters' view, the Commission has ascribed an importance to historical financial statements that is not perceived by purchasers, underwriters or agents. In the commenters' experience, independent engineering reports were generally considered by industry participants to be a compelling valuation tool and the starting point for an analysis of the appropriate price of the asset in question.

One of the commenters suggested that when separate financial statements respecting the acquired properties are unavailable, it is of greater value to an investor to require a prospectus to contain a reserve report only, than it is to: (i) preclude an issuer from accessing the public capital market on a timely basis; or (ii) cause the purchaser and vendor to incur excessive expense and delay in preparing financial statements which do not provide meaningful information to an investor. Alternatively, the commenter suggested that, in addition to the required reserve report disclosure, the purchaser should be required to disclose the production income of the acquired properties to the gross margin level.

One of the commenters submitted that the following information would be more meaningful than historical financial statements:

- an engineering report,
- cash flow and operating cost estimates derived from engineering reports, and
- historical production information for approximately 3 years.

(c) Financial statements requirements and Junior and mid-sized corporations

It was noted by two of the three commenters that property dispositions are frequently handled by third party agents and a potential acquirer must conform to the bid procedures established by a third party agent in order to participate in the process. The commenters expressed their view that in many of these situations, the third party firms principally responsible for conducting disposition transactions do not make historical financial statements available in respect of discrete packages of oil and gas assets. The commenters stated that junior to mid-sized entities would be unable to participate in a competitive bidding process because a bid coupled with a request for historical financial information would not likely conform with the bid procedures or would otherwise be discounted by the third party responsible for the disposition process.

(d) Relevance of Asset and Investment Tests

One of the commenters expressed the view that the asset and investment tests were flawed for the purpose of applying them to the oil and gas industry because they ignore the current value of the issuer's assets at the time an acquisition was made. The commenter submitted that a market price test based on the issuer's market capitalization would be more meaningful, provided that there is an active market for the securities.

Response

The Commission, with its CSA colleagues, carefully considered the comments raised. As stated in the December 1999 Notice, a CSA committee was in the process of reviewing these very issues. The Commission, in consultation with the CSA, has developed an approach that it believes will address the concerns expressed by the commenters and others. Though the Commission takes the view that the acquisition of an oil and gas property will generally constitute the acquisition of a business, potential relief is outlined in section 3.3 of the Policy from the requirement for audited historical financial statements, if certain disclosure related conditions are met. These relief provisions were developed to address the issues outlined in the comment letters described above. The Commission has not extended similar relief provisions to acquisitions of other than oil and gas properties. The Commission believes that given the unique nature of the oil and gas industry, the requirements and the potential relief described in the Policy strikes the right balance between investor protection and fair and efficient capital markets.

XV. Form Requirements*(i) Comment*

One commenter noted that Item 8.2 of the proposed Prospectus Form requires separate quarterly financial information for each of the eight quarters of the two most recently completed financial years, whereas interim financial information for the current year will be provided only on a cumulative basis for the 3, 6 or 9 months, depending on the circumstances.

Response

No change has been made to the requirement, which incidentally is not a new requirement. It is assumed that issuers have prepared quarterly information and that it is available, although it is typically reported on a cumulative basis. Ontario reporting issuers may need to begin reporting their quarters separately in addition to on a cumulative basis on a continuous disclosure basis once proposed Rule 52-501, Financial Statements, is finalized.

(ii) Comment

A commenter noted that Item 8.5 of the proposed Prospectus Form requires the issuer to reproduce the MD&A disclosure to be included in the issuer's Annual Information Form. The commenter was concerned that in the case of an initial public offering, a private entity will not have an AIF from which to reproduce the disclosure.

Response

The Commission believes it has addressed this problem by cross-referencing the MD&A requirements in the Prospectus Form directly to new Form 44-101 F2 MD&A, so that it will be clear that the requirement applies to all issuers.

Rule 41-501
General Prospectus Requirements

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

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**ONTARIO SECURITIES COMMISSION RULE 41-501
GENERAL PROSPECTUS REQUIREMENTS****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 prepared in accordance with Form 41-501F1 and this Rule.
- 1.2 Pro Forma Prospectus** - Except as otherwise provided in the regulations, a *pro forma* prospectus shall be prepared in accordance with Form 41-501F1 and this Rule.

PART 2 DEFINITIONS AND INTERPRETATIONS**2.1 Definitions** - In this Rule

"absolute value" means the positive value of any number;

"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,
- (b) each acquisition was conditional upon the completion of each other acquisition, or
- (c) each acquisition is contingent on a single common event;

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

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

"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;

"auditor's report" means

- (a) a Canadian auditor's report, 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;

"business segment" has the meaning ascribed to that term in the Handbook;

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

"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 rights of, or granting rights to, holders of the securities;

"equity securities" mean securities of an issuer that carry a residual right to participate in the earnings of an issuer and, upon the liquidation or winding up of the issuer, in its assets;

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

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

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

"income from continuing operations" means income or loss, excluding discontinued operations and extraordinary items, before income taxes and after amortization and write-offs of goodwill;

"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 preliminary 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 preliminary 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 preliminary prospectus is less than \$10,000,000; and
4. The average aggregate market value of the issuer's equity securities, if any, for which there is a published market, as calculated in accordance with section 2.7, is less than \$10,000,000,

but, in determining whether criteria 1, 2 and 3 have been satisfied, appropriate adjustments shall be made to reflect the effect of each probable acquisition of a business and each acquisition of a business which has been completed before the date of the preliminary prospectus and after the date of the issuer's most recent balance sheet included in the preliminary prospectus with respect to criteria 1 and 3 and after the last day of the most recent annual income statement of the issuer included in the preliminary prospectus with respect to criterion 2;

"mineral project" means any exploration, development or production activity in respect of natural, solid, inorganic or fossilized organic material including base and precious metals, coal and industrial minerals;

"pre-acquisition period" means the period from the first day of the current financial year to the date of the acquisition of a business or to a day not more than 30 days before the date of the acquisition;

"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) a proposed acquisition of related businesses if each proposed acquisition has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high, 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) if
 - (A) the businesses were under common control or management prior to the date of the acquisition,
 - (B) the proposed acquisition was conditional upon the completed acquisition, or
 - (C) each acquisition is contingent on a single common event;

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

"significance tests" means the tests set out in subsection 2.2(2) and, if applicable, subsection 2.2(3) used to determine if 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 for purposes of this Rule;

"transition year" means the financial year of an issuer or business in which a change in the ending date of its financial year occurs; and

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

2.2 Significant Acquisitions

- (1) **Significant Acquisitions** - 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 significance tests.
- (2) **Required Significance Tests at Date of Acquisition** - 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 tests:
 1. **The Asset Test.** The issuer's proportionate share of the consolidated assets of the business or related businesses exceeds 20 per cent of the consolidated assets of the issuer calculated using the audited financial statements of each of the issuer and the business or the related businesses for the most recently completed financial year of each ended before the date of the acquisition.
 2. **The Investment Test.** The issuer's consolidated investments in and advances to the business or the related businesses as at the date of the acquisition or the proposed date of the acquisition exceeds 20 per cent of the consolidated assets of the issuer as at the last day of the most recently completed financial year of the issuer ended before the date of the acquisition for which audited financial statements are included in the prospectus, excluding any investments in or advances to the business or the related businesses as at that date.
 3. **The Income Test.** The issuer's proportionate share of the consolidated income from continuing operations of the business or related businesses exceeds 20 per cent of the consolidated income from continuing operations of the issuer calculated using the audited financial statements of each of the issuer and the business or related businesses for the most recently completed financial year of each ended before the date of the acquisition.
- (3) **Optional Significance Tests Subsequent to the Date of Acquisition** - If an acquisition of a business, an acquisition of related businesses, a probable acquisition of a business or a probable acquisition of related businesses is significant based on the significance tests in subsection (2), the issuer may re-calculate the significance at a more recent date as follows:
 1. **The Asset Test.** The issuer's proportionate share of the consolidated assets of the business or the related businesses, as at the date of the issuer's most recent balance sheet included in the prospectus, exceeds 20 per cent of the consolidated assets of the issuer, as at the date of the issuer's most recent balance sheet 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 as at the date of the acquisition or the proposed date of the acquisition exceeds 20 per cent of the consolidated assets of the issuer as at the date of the issuer's most recent balance sheet included in the prospectus for a period that ends before the date of the acquisition, excluding any investments in or advances to the business or the related businesses as at that date.
 3. **The Income Test.** The income from continuing operations calculated pursuant to the following clause (a) exceeds 20 per cent of the income from continuing operations calculated pursuant to the following clause (b):
 - (a) The issuer's proportionate share of the consolidated income from continuing operations of the business or the related businesses for the later of
 - (i) 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
 - (ii) 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.
 - (b) The issuer's consolidated income from continuing operations for the later of
 - (i) the most recently completed financial year, without giving effect to the acquisition, or

- (ii) the 12 months ended on the last day of the most recently completed interim period of the issuer for which financial statements are included in the prospectus, without giving effect to the acquisition.
- (4) If an issuer re-calculates the significance of an acquisition of a business, an acquisition of related businesses, a probable acquisition of a business or a probable acquisition of related businesses pursuant to subsection (3) and none of the significance tests in that subsection is met, the acquisition is not a significant acquisition for purposes of this Rule.
- (5) Despite subsection (3), the significance of an acquisition of a business, an acquisition of related businesses, a probable acquisition of a business or a probable acquisition of related businesses may be re-calculated only if, subsequent to the acquisition date, the business or related businesses remained substantially intact, were not significantly reorganized, and no significant assets and liabilities were transferred to other entities.
- (6) Despite subsection (2), the significance of an acquisition of a business, an acquisition of related businesses, a probable acquisition of a business or a probable acquisition of related businesses may be calculated using unaudited financial statements of the business or related businesses prepared in accordance with GAAP if the financial statements of the business or related businesses for the most recently completed financial year prior to the date of the acquisition have not been audited.
- (7) 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.
- (8) If an issuer has accounted for an acquisition as a reverse take-over in accordance with section 4.5 of this Rule, for the purposes of subsections (2) and (3), the legal parent, as that term is used in the Handbook, shall be considered the business.
- (9) For the purposes of the significance tests in subsections (2) and (3), financial statements of the business or the related businesses which are prepared in accordance with foreign GAAP or denominated in a foreign currency shall be reconciled to Canadian GAAP or translated into Canadian dollars, respectively.

2.3 Application of the Income Test

- (1) For the purposes of paragraph 3 of each of subsections 2.2(2) and 2.2(3), if any of the issuer or the business or the related businesses has incurred a loss, the test shall be applied using the absolute value of the loss.
- (2) For the purpose of calculating the significance of individually insignificant unrelated multiple acquisitions, entities reporting losses from continuing operations shall not be aggregated with entities reporting income from continuing operations.
- (3) **Lower than Average Income of the Issuer - Required Significance Tests** - For the purposes of paragraph 3 of subsection 2.2(2), if the issuer's consolidated income from continuing operations for the most recently completed financial year referred to in subsection 2.2(2) was
 - 1. positive, and
 - 2. lower by 20 per cent 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 may, subject to subsection (6), be substituted in determining whether the significance test set out in subsection 2.2(2) is satisfied.
- (4) **Lower than Average Income of the Issuer - Optional Significance Tests Using Most Recently Completed Financial Year** - For the purposes of paragraph 3 of subsection 2.2(3), if the issuer's consolidated income from continuing operations for the most recently completed financial year referred to in subclause 3(b)(i) of subsection 2.2(3) was
 - 1. positive, and
 - 2. lower by 20 per cent 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 may, subject to subsection (6), be substituted in determining whether the significance test set out in paragraph 3 of subsection 2.2(3) is satisfied.

- (5) **Lower than Average Income of the Issuer - Optional Significance Tests Using Most Recently Completed Twelve Months** - For the purposes of paragraph 3 of subsection 2.2(3), if the issuer's consolidated income from continuing operations for the most recently completed 12 month period referred to in subclause 3(b)(ii) of subsection 2.2(3) was
1. positive, and
 2. lower by 20 per cent 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 may, subject to subsection (6), be substituted in determining whether the significance test set out in paragraph 3 of subsection 2.2(3) is satisfied.
- (6) **Loss** - If the issuer's consolidated income from continuing operations for either of the two earlier financial years referred to in subsections (3) and (4), or either of the two earlier 12 month periods referred to in subsection (5), is a loss, the issuer's consolidated 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 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 or a probable acquisition of related businesses that is a significant acquisition under section 2.2.

2.5 Acquisitions - The term "acquisition of a business" includes an acquisition of an interest in a business accounted for using the equity method or an acquisition of an interest in a joint venture accounted for using the proportionate consolidation method.

2.6 Significant Dispositions

- (1) **Dispositions** - Unless the context otherwise requires, the term "disposition" refers to a completed or probable disposition of a business, a business segment or a significant portion of a business, either by sale, abandonment or distribution to shareholders.
- (2) **Required Significance Tests using Most Recently Completed Financial Year** - For the purposes of this Rule, a disposition of a business, a business segment or a significant portion of a business is a significant disposition if it satisfies either of the following tests:
 1. **The Asset Test for Dispositions** - The issuer's proportionate share of the consolidated assets of the business, business segment or significant portion of a business exceeds 20 per cent of the consolidated assets of the issuer as at the date of the audited financial statements of the issuer for its most recently completed financial year ended before the date of the disposition for which financial statements are included in the prospectus, without giving effect to the disposition.
 2. **The Income Test for Dispositions** - The issuer's proportionate share of the consolidated income from continuing operations of the business, business segment or significant portion of a business for the most recently completed financial year of the business, business segment or a significant portion of a business before the date of the disposition exceeds 20 per cent 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 for which audited financial statements are included in the prospectus, without giving effect to the disposition.

2.7 Calculation of Market Capitalization for Junior Issuer

- (1) For the purposes of the definition of "junior issuer", the aggregate market value of the issuer's equity securities is the aggregate of the market value of each class of its equity securities for which there is a published market, 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, the last of which days was no more than five trading days prior to the date of the preliminary prospectus by the simple average number of equity securities of the class outstanding over that 20 trading day period.
- (2) If a class of an issuer's equity securities is traded on more than one published market, the closing price for the market 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.

PART 3 GENERAL REQUIREMENTS

- 3.1 Application of the Rule-** 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, the date of issuance of a receipt for either
 - (i) the preliminary prospectus, or
 - (ii) the final 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 ISSUER

- 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. Statements of income, retained earnings and cash flows for
 - (a) each of the three most recently completed financial years ended more than 90 days before the date of the prospectus; or
 - (b) if the issuer has not completed three financial years, each completed financial year ended more than 90 days before the date of the prospectus; or
 - (c) if the issuer has not completed one financial year, the financial period from the date of formation to a date not more than 90 days before the date of the prospectus.
 - 2. A balance sheet as at
 - (a) the last day of the most recently completed financial year, if any, ended more than 90 days before the date of the prospectus; and
 - (b) the last day of the immediately preceding financial year, if any; or
 - (c) if the issuer has not completed one financial year, as at a date not more than 90 days before the date of the prospectus.
- 4.2 Exception to Annual Statement Requirement if More Recent Annual Financial 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 Financial Statement Requirement if Financial Year End has Changed -Despite section 4.1, if an issuer changed its financial year end once during any of the financial years for which financial statements are required to be included in a prospectus, the issuer may include financial statements for the transition year in satisfaction of the financial statements for one of the years under section 4.1 provided that the transition year is at least nine months.

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 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 be the business acquired by the issuer.
 - (c) 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;
 - (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.
- (2) If restated combined financial statements of an issuer are included in a prospectus under subsection (1)(c) or (1)(d), the issuer may omit from a prospectus the separate financial statements of the issuer and the predecessor entities for periods prior to the date of the business combination or the continuity of interests transaction.

4.5 Reverse Take-Overs - If an issuer has been involved in a business combination accounted for as a reverse take-over, financial statements required under this Part should be provided for the legal subsidiary, as that term is used in the Handbook.

4.6 Interim Financial Statements of the Issuer - Subject to subsection 4.7(3) and section 5.2, an issuer shall include in its prospectus the following interim financial statements of the issuer:

1. Statements of income, retained earnings and cash flows 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 balance sheet as at the last day of the most recently completed interim period referred to in paragraph 1.

4.7 Additional Financial Statements or Financial Information of the Issuer Filed or Released

- (1) An issuer shall include in its prospectus annual and interim financial statements of the issuer for a financial period that is more recent than the periods for which financial statements are required under sections 4.1 or 4.6 if, before the prospectus is filed, the financial statements for the more recent period have been filed.
- (2) If, before the prospectus is filed, financial information about the issuer for a period more recent than the financial period for which financial statements are required under sections 4.1 or 4.6 is publicly disseminated by, or on behalf of, the issuer through news release or otherwise, the issuer shall include in the prospectus the content of the news release or public communication.
- (3) If annual financial statements are included in a prospectus 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.

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 its interim financial statements required to be included under section 4.6 or 4.7.

- 4.10 Exception to Audit Requirement for Financial Statements Included in a Previous Prospectus without an Audit Opinion** - Despite section 4.8, an 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) those financial statements were previously included in a final prospectus without an auditor's report as permitted by this Rule or pursuant to an exemption granted under this Rule; and
 - (b) an auditor has not issued an auditor's report on the financial statements.
- 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 in length.
- 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 *pro forma* prospectus an auditor's report for the financial statements of the issuer included in the *pro forma* prospectus.

PART 5 FINANCIAL STATEMENT DISCLOSURE FOR A CREDIT SUPPORTER

- 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 under the prospectus, the issuer shall include in its prospectus the financial statements of the credit supporter that would be required to be included under Part 4, 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 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 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.
- 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.
- 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 *pro forma* prospectus an auditor's report for the financial statements of a credit supporter included in the *pro forma* prospectus.

PART 6 FINANCIAL STATEMENT DISCLOSURE FOR SIGNIFICANT ACQUISITIONS**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 Completed During the Issuer's Three Most Recently Completed Financial Years

- (1) If an issuer made a significant acquisition during its three most recently completed financial years, the issuer shall include in its prospectus the following financial statements of each business acquired:

Annual Financial Statements

1. Statements of income, retained earnings and cash flows for at least the periods specified in section 6.6.

Interim Financial Statements

2. Statements of income, retained earnings and cash flows for
 - (a) either
 - (i) the most recently completed interim period of the acquired business that ended before the date of the acquisition and more than 60 days before the date of the prospectus; or
 - (ii) the pre-acquisition period; and
 - (b) the comparable period in the preceding financial year of the acquired business.

Pro Forma Income Statement

3. A *pro forma* income statement prepared in accordance with subsection 6.5(1)2(a).
 4. *Pro forma* earnings per share based on the *pro forma* income statement referred to in paragraph 3.
- (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, the financial statements required under subsection (1) shall be presented separately for each business, except that the issuer may present the financial statements of the businesses on a combined basis for the periods during which the businesses were under common control or management.

6.3 Financial Statement Disclosure for Significant Acquisitions Completed During the Issuer's Current Financial Year

- (1) If an issuer has made a significant acquisition during its current financial year, the issuer shall include in its prospectus the following financial statements of each business acquired:

Annual Financial Statements

1. Statements of income, retained earnings and cash flows for at least the periods specified in section 6.6.
2. A balance sheet as at the date on which each of the periods specified in section 6.6 ended, except that, if section 6.6 specifies that separate financial statements of the business are to be included for three financial years, a balance sheet as at the last day of the earliest of the three financial years is not required.

Interim Financial Statements

3. Statements of income, retained earnings and cash flows for
 - (a) either

- (i) the most recently completed interim period of the acquired business that ended before the date of the acquisition and more than 60 days before the date of the prospectus; or
 - (ii) the pre-acquisition period; and
- (b) the comparable period in the preceding financial year of the acquired business
4. A balance sheet as at the date on which the period referred to in paragraph 3(a)(i) or 3(a)(ii) ended.

Pro Forma Financial Statements

5. *Pro forma* financial statements prepared in accordance with subsection 6.5
6. *Pro forma* earnings per share based on the *pro forma* financial statements referred to in paragraph 5.
- (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 the issuer may present the financial statements of the businesses on a combined basis for the periods during which the businesses have been under common control or management.

6.4 Financial Statement Disclosure for Significant Probable Acquisitions

- (1) If an issuer is proposing to make a significant probable acquisition, the issuer shall include in its prospectus the following financial statements of each business to be acquired:

Annual Financial Statements

1. Statements of income, retained earnings and cash flows for at least the periods specified in section 6.6.
2. A balance sheet as at the date on which each of the periods specified in section 6.6 ended, except that, if section 6.6 specifies that separate financial statements of the business are to be included for three financial years, a balance sheet as at the last day of the earliest of the three financial years is not required.

Interim Financial Statements

3. Statements of income, retained earnings and cash flows for
- (a) the most recently completed interim period of the business to be acquired that ended more than 60 days before the date of the date of the prospectus; and
 - (b) the comparable period in the preceding financial year.
4. A balance sheet as at the date on which the interim period referred to in paragraph 3(a) ended.

Pro Forma Financial Statements

5. *Pro forma* financial statements prepared in accordance with subsection 6.5.
6. *Pro forma* earnings per share based on the *pro forma* financial statements referred to in paragraph 5.
- (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 the issuer may present the financial statements of the businesses on a combined basis for periods during which the businesses have been under common control or management.

6.5 Pro Forma Financial Statements

- (1) If an issuer is required to include *pro forma* financial statements in the prospectus under sections 6.2, 6.3, 6.4 or 7.2, the issuer shall prepare *pro forma* financial statements as follows:

1. **Pro forma balance sheet** - A *pro forma* balance sheet of the issuer shall be prepared as at the date of the issuer's most recent balance sheet included in the prospectus to give effect to, as if they had taken place as at the date of the *pro forma* balance sheet,
 - (a) significant acquisitions that have been completed, but are not reflected in the issuer's most recent balance sheet included in the prospectus; and
 - (b) significant probable acquisitions.
 2. **Pro forma income statement** - A *pro forma* income statement of the issuer shall be prepared to give effect to
 - (a) significant acquisitions completed during the most recently completed financial year of the issuer as if they had taken place at the beginning of the most recently completed financial year of the issuer for which audited financial statements are included in the prospectus; and
 - (b) the acquisitions referred to in clauses (i) and (ii)
 - (i) significant acquisitions completed during the issuer's current financial year; and
 - (ii) significant probable acquisitions,for each of the financial periods referred to in the following paragraphs
 - A. the most recently completed financial year of the issuer for which audited financial statements are included in the prospectus; and
 - B. the most recently completed interim period of the issuer for which financial statements are included in the prospectus,as if they had taken place at the beginning of the most recently completed financial year of the issuer for which audited financial statements are included in the prospectus.
- (2) If an issuer includes in a prospectus a *pro forma* financial statement prepared in accordance with subsection (1) which gives effect to more than one significant acquisition or significant probable acquisition, the *pro forma* financial statement shall separately identify each significant completed or probable acquisition.
 - (3) If an issuer is required to include *pro forma* financial statements in a prospectus, the issuer shall include in the *pro forma* financial statements a description of the underlying assumptions on which the *pro forma* financial statements are prepared, cross-referenced to each related *pro forma* adjustment.
 - (4) If an issuer is required under paragraph 2 of subsection (1) to include a *pro forma* income statement in a prospectus for the most recently completed financial year of the issuer and both of the following conditions are satisfied:
 - (a) the *pro forma* income statement is not prepared using the income statement of the business for the pre-acquisition period, and
 - (b) the financial year end of the business differs from the issuer's year end by more than 93 days,then despite paragraph 2 of subsection (1), for purposes of preparing the *pro forma* income statement, the income statement of the business shall be for a period of twelve consecutive months ending no more than 93 days from the issuer's year end.
 - (5) Subject to subsection (4), if an issuer is required to prepare the *pro forma* income statements referred to in clauses (1)2(b)A and (1)2(b)B, and the *pro forma* income statement referred to in clause A includes results of the business which are also included in the *pro forma* income statement referred to in clause B, there shall be disclosed in a note to the *pro forma* financial statements of the revenue, expenses, gross profit and income from continuing operations included in each *pro forma* income statement for the overlapping period.

6.6 Reporting Periods

- (1) **Exception to Requirement to Include Financial Statements** - 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 significance tests would be satisfied if the 20 per cent threshold in the significance tests was changed to 100 per cent.
- (2) **Acquisitions at the 100% Significance Level** - 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 significance tests would be satisfied if the 20 per cent threshold in the significance tests was changed to 100 per cent, separate financial statements of the 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 issuer's financial statements in the prospectus include 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 each of the completed financial years of the business, if the business has not been in existence for three completed financial years.
- (3) Subject to subsections (1) and (2), the periods for which the financial statements are required under paragraphs 1 and 2 of subsections 6.2(1), 6.3(1) and 6.4(1) to be included in a prospectus shall be determined by reference to the significance tests as follows:
- 1. **Acquisitions Significant between 20% and 40%** - If none of the significance tests is satisfied if the 20 per cent threshold is changed to 40 per cent, financial statements shall be included for
 - (a) the most recently completed financial year of the business ended more than 90 days before the date of the prospectus; or
 - (b) if the business has not completed one financial year, the financial period from the date of formation to a date not more than 90 days before the date of the prospectus.
 - 2. **Acquisitions Significant between 40% and 50%** - If any of the three significance tests are satisfied if the 20 per cent threshold is changed to 40 per cent, but none of the three significance tests are satisfied if the 20 per cent threshold is changed to 50 per cent, financial statements shall be included for
 - (a) each of the two most recently completed financial years of the business ended more than 90 days before the date of the prospectus;
 - (b) if the business has not completed two financial years, each completed financial year ended more than 90 days before the date of the prospectus; or
 - (c) if the business has not completed one financial year, the financial period from the date of formation to a date not more than 90 days before the date of the prospectus.
 - 3. **Acquisitions Significant at 50% or greater** - If any of the three significance tests are satisfied if the 20 per cent threshold is changed to 50 per cent, financial statements shall be included for
 - (a) each of the three most recently completed financial years of the business ended more than 90 days before the date of the prospectus;
 - (b) if the business has not completed three financial years, each completed financial year ended more than 90 days before the date of the prospectus; or
 - (c) if the business has not completed one financial year, the financial period from the date of formation to a date not more than 90 days before the date of the prospectus.

6.7 Additional Financial Statements or Financial Information of the Business Filed or Released

- (1) An issuer shall include in its prospectus annual and interim financial statements of a business for a financial period that ended before the date of the acquisition and is more recent than the periods for which financial statements are required under subsections 6.2(1), 6.3(1) or 6.4(1) if, before the prospectus is filed, the financial statements of the business for the more recent period have been filed.
- (2) If, before the prospectus is filed, financial information of a business for a period more recent than the period for which financial statements are required under subsections 6.2(1), 6.3(1) or 6.4(1), is publicly disseminated by news release or otherwise by or on behalf of the issuer, the issuer shall include in the prospectus the content of the news release or public communication.

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

- (1) Despite subsection 6.6(3), an issuer may omit separate financial statements of a business for the earliest financial year otherwise required under subsection 6.6(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.
- (2) Despite subsection 6.6(3), an issuer may omit separate financial statements of a business for the earliest financial year otherwise required under subsection 6.6(3) if
 - (a) separate financial statements of a business are required under subsection 6.6(3) for more than one financial year;
 - (b) 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 6.6(3);
 - (c) the issuer has not relied upon the exception in section 6.9; and
 - (d) the business is not seasonal.
- (3) Despite subsections 6.2(1), 6.3(1) and 6.4(1), an issuer may omit from a prospectus the financial statements of a business for the interim period otherwise required under subsections 6.2(1), 6.3(1) and 6.4(1) if annual 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.

6.9 Exception to Disclosure Requirements for Significant Acquisitions if Financial Year End Changed - Despite section 6.6, if a business changed its financial year end once during any of the financial years for which financial statements are required to be included in the prospectus, the issuer may include financial statements for the transition year in satisfaction of the financial statements for one of the years under section 6.6 provided that the transition year is at least nine months.

6.10 Exception to Disclosure Requirements for Significant Acquisitions Accounted for Using the Equity Method - Despite subsections 6.2(1), 6.3(1) and 6.4(1), an issuer may omit from its prospectus the financial statements of a business and the *pro forma* financial statements of an issuer otherwise required under subsections 6.2(1), 6.3(1) and 6.4(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) the prospectus includes disclosure for the periods for which financial statements are otherwise required under subsections 6.2(1), 6.3(1) and 6.4(1) that
 - (i) summarizes 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 information provided under paragraph (b) for any completed financial year
 - (i) has been derived from audited financial statements of the business, or
 - (ii) has been audited;
- (d) the prospectus
 - (i) identifies the financial statements referred to in paragraph (c)(i) from which the disclosure provided under paragraph (b) has been derived; or
 - (ii) discloses that the financial information provided under paragraph (b), if not derived from audited financial statements, has been audited; and
 - (iii) discloses that the audit opinion with respect to the financial statements referred to (i), or the financial information referred to in (ii), was issued without a reservation of opinion.

- 6.11 Additional Disclosure for Significant Acquisitions Completed After Financial Year End Accounted for Using the Purchase Method**
- (1) An issuer shall include in a subsequent event note to its financial statements included in a prospectus the information referred to in subsection (2), if
 - (a) the issuer has completed a significant acquisition since its most recent financial year end, and
 - (b) the purchase method is used to account for the acquisition.
 - (2) The information required under subsection (1) is
 - (a) if
 - (i) determined by the date of the subsequent event 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 subsequent event note, the issuer's reasonable estimate of the allocation; and
 - (b) the terms and status of the acquisition.
- 6.12 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.
- 6.13 Exception to Audit Requirement for Interim Financial Statements of a Business** - Despite section 6.12, an issuer may omit from its prospectus an auditor's report for the interim financial statements of a business included in a prospectus under this Part.
- 6.14 Exception to Audit Requirement for Recent Financial Statements of a Business** - Despite section 6.12, an issuer may omit from its prospectus an auditor's report for the annual financial statements of a business required under subsection 6.8(3), if the auditor has not issued an auditor's report on the financial statements.
- 6.15 Exception to Audit Requirement for Financial Statements of a Business Included in a Previous Prospectus without an Audit Opinion** - Despite section 6.12, an issuer may omit from its prospectus an auditor's report for the annual financial statements of a business included in the prospectus, other than for the most recently completed financial year of the business for which financial statements are included in the prospectus, if
- (a) those financial statements were previously included in a final prospectus of the issuer without an auditor's report as permitted by this Rule or pursuant to an exemption granted under this Rule; and
 - (b) an auditor has not issued an auditor's report on the financial statements.
- 6.16 Exception to Audit Requirement for Financial Statements of a Business that is a Junior Issuer** - Despite section 6.12, 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 recently completed year for which audited financial statements of the business are included, if
- (a) an 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.
- 6.17 Exception to Audit Requirement for Financial Statements of a Business in a Pro Forma Prospectus** - Despite section 6.12, 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.
- 6.18 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 RELATED**7.1 Scope** - This Part applies only to an issuer that

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

excluding, in each case, acquisitions that individually meet the significance tests.

7.2 Historical Financial Statement Disclosure

- (1) **Application of the Significance Tests** - 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 significance tests would be satisfied if
 - (a) the 20 per cent threshold in the significance tests was changed to 50 per cent;
 - (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 for the most recently completed financial year of each business ended prior to the acquisition date of each business, were considered on a combined basis.
- (2) **Significant Businesses for Reporting Purposes** - An issuer shall include in a prospectus the financial statements for a majority of the businesses that satisfy the asset, investment, or income test at the highest percentage and which on a combined basis, 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.
- (3) An issuer shall include the following financial statements for each business required under subsection (2):

Annual Financial Statements

- 1. Statements of income, retained earnings, and cash flows 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) if a business has not completed one financial year, the financial period from the date of formation to a date not more than 90 days before the date of the prospectus.
- 2. A balance sheet as at the date on which the periods referred to in paragraph 1 ended.

Interim Financial Statements

3. Statements of income, retained earnings and cash flows for
 - (a) the most recently completed interim period of the business ended before the date of the acquisition or the proposed date of the acquisition and more than 60 days before the date of the prospectus; or
 - (b) the pre-acquisition period.
4. A balance sheet as at the date on which the period referred to in paragraph 3 ended.

Pro Forma Financial Statements

5. *Pro forma* financial statements prepared in accordance with section 6.5.
 6. *Pro forma* earnings per share based on the financial statements referred to in paragraph 5.
- (4) Despite subsection (3), if the business was acquired before the date of the most recent audited balance sheet of the issuer included in the prospectus, the issuer may omit from the prospectus the balance sheets of the business referred to in paragraphs 2 and 4.

7.3 Additional Financial Statements or Financial Information of the Business Filed or Released

- (1) An issuer shall include in its prospectus annual and interim financial statements of a business for a financial period that ended before the date of the acquisition and is more recent than the period for which financial statements are required under section 7.2 if, before the prospectus is filed, the financial statements for the more recent period have been filed.
- (2) If, before the prospectus is filed, financial information of a business for a period more recent than the period for which financial statements are required under section 7.2 is publicly disseminated by news release or otherwise by, or on behalf of, the issuer, the issuer shall include in the prospectus the content of the news release or public communication.

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

- (1) Despite section 7.2, an issuer may omit from a prospectus the financial statements of a business for the financial year otherwise required under subsection 7.2(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.
- (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 subsection 7.2(3) if annual 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.

7.5 Exception to Disclosure Requirements for Multiple Acquisitions if Financial Year End Changed - Despite section 7.2, if a business changed its financial year end during the year for which financial statements are required to be included in the prospectus, the issuer may include financial statements for the transition year in satisfaction of the financial statements for the year under paragraphs 1(a) and 1(b) of subsection 7.2(3) provided that the transition year is at least nine months.

7.6 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.

7.7 Exception to Audit Requirement for Interim Financial Statements of a Business - Despite section 7.6, an issuer may omit from its prospectus an auditor's report for the interim financial statements of a business included under this Part.

7.8 Exception to Audit Requirement for Recent Financial Statements of a Business - Despite section 7.6, an issuer may omit from its prospectus an auditor's report for the annual financial statements of a business referred to under subsection 7.4(2) if the auditor has not issued an auditor's report on the financial statements.

7.9 Exception to Audit Requirement for Financial Statements of a Business in a Pro Forma Prospectus - Despite section 7.6, an issuer may omit from its prospectus an auditor's report for the separate financial statements included in a *pro forma* prospectus under this Part.

- 7.10 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 *PRO FORMA* FINANCIAL STATEMENT DISCLOSURE FOR SIGNIFICANT DISPOSITIONS

8.1 Scope - This Part applies only to

- (a) significant dispositions completed during an issuer's most recently completed financial year; and
- (b) significant dispositions completed during an issuer's current financial year;

but not to significant dispositions of business segments.

8.2 *Pro Forma* Financial Statements - If an issuer has made a significant disposition referred to in clauses (a) or (b) of section 8.1, the issuer shall include in its prospectus the following *pro forma* financial statements:

- (1) ***Pro Forma* Balance Sheet** - A *pro forma* balance sheet of the issuer prepared as at the date of the issuer's most recent balance sheet included in the prospectus to give effect to, as if they had taken place as at the date of the *pro forma* balance sheet, significant dispositions that have been completed, but are not reflected in the issuer's most recent balance sheet included in the prospectus.
- (2) ***Pro Forma* Income Statement** -*Pro forma* income statements of the issuer prepared to give effect to significant dispositions completed during
 - (a) the most recently completed financial year of the issuer as if they had taken place at the beginning of the most recently completed financial year of the issuer for which audited financial statements are included in the prospectus; and
 - (b) the issuer's current financial year for each of the financial periods referred to in clauses (i) and (ii)
 - (i) the most recently completed financial year of the issuer for which audited financial statements are included in the prospectus; and
 - (ii) the most recently completed interim period of the issuer for which financial statements are included in the prospectus,

as if they had taken place at the beginning of the most recently completed financial year of the issuer for which audited financial statements are included in the prospectus
- (3) If an issuer includes in a prospectus a *pro forma* financial statement prepared in accordance with subsection (2) which gives effect to more than one significant disposition, the *pro forma* financial statement shall separately identify each significant disposition.
- (4) If an issuer is required under this Part to include *pro forma* financial statements in a prospectus, the issuer shall include in the *pro forma* financial statements a description of the underlying assumptions on which the *pro forma* financial statements are prepared, cross-referenced to each related *pro forma* adjustment.
- (5) ***Pro Forma* Earnings per Share** - If an issuer is required under this Part to include in a prospectus *pro forma* financial statements, the prospectus shall include *pro forma* earnings per share based on the *pro forma* financial statements referred to in this Part.
- (6) **Presentation of *Pro Forma* Financial Statements for Significant Dispositions** - Despite subsection (2), if an issuer is required to include in its prospectus *pro forma* financial statements prepared under section 6.5 and subsection (2) of this Part, the issuer shall prepare one set of *pro forma* financial statements which give effect to the significant acquisitions referred to in section 6.5 and the significant dispositions referred to section 8.1.

PART 9 GAAP, GAAS AND AUDITORS' REPORTS**9.1 Generally Accepted Accounting Principles**

- (1) The financial statements of a person or company incorporated or organized in a jurisdiction that are included in a prospectus shall be prepared in accordance with Canadian GAAP.
- (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.
- (3) If the financial information included in a prospectus in accordance with section 6.10 has been derived from financial statements of a person or company incorporated or organized in a foreign jurisdiction that have been prepared in accordance with foreign GAAP, the information shall be accompanied by a note which explains and quantifies the effect of material differences between Canadian GAAP and foreign GAAP.

9.2 Exception to the Requirement to Reconcile Financial Statements Prepared in Accordance with Foreign GAAP - Despite subsection 9.1(2)(b), if an issuer has made a significant acquisition or is proposing to make a significant acquisition, and is required to provide financial statements of the business under subsection 6.6(2) or paragraph 6.6(3)3 and those financial statements have been prepared in accordance with a foreign GAAP, the reconciliation to Canadian GAAP may be excluded for the earliest of the three years presented.

9.3 Generally Accepted Auditing Standards

- (1) The financial statements of a person or company incorporated or organized in a jurisdiction that are included in a prospectus shall be audited in accordance with Canadian GAAS and accompanied by a Canadian auditor's report.
- (2) The financial statements of a person or company incorporated or organized in a foreign jurisdiction that are included in a prospectus shall be audited in accordance with
 - (a) Canadian GAAS; or
 - (b) foreign GAAS provided the foreign GAAS is substantially equivalent to Canadian GAAS.

9.4 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.

PART 10 AUDIT COMMITTEE REVIEW OF FINANCIAL STATEMENTS INCLUDED IN A PROSPECTUS

10.1 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 included 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, and approved by the board of directors.

PART 11 NON-FIXED PRICE OFFERINGS AND REDUCTION OF OFFERING PRICE UNDER A PROSPECTUS**11.1 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 security holders or by the issuer and selling security holders are disclosed in the prospectus as being fixed; and
 - (c) the underwriters have made a reasonable effort to sell all of the securities distributed under the prospectus at the initial offering price disclosed in the prospectus.
- (4) Despite subsections (2) and (3), the price at which securities may be acquired on exercise of rights shall be fixed.

PART 12 CERTIFICATION

12.1 Certificate of Related Credit Supporter - If disclosure of a credit supporter is prescribed by this Rule or the required form of prospectus and the credit supporter is a related credit supporter, 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 of the credit supporter or, if no such officers have been appointed, a person acting on behalf of the related credit supporter in a capacity similar to the chief executive officer and a person acting on behalf of the related credit supporter in a capacity similar to that of a chief financial officer; and
- (b) on behalf of the board of directors of the credit supporter, any two directors of the credit supporter duly authorized to sign, other than the persons referred to in paragraph (a).

12.2 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.

12.3 Pro Forma Prospectus - A certificate required under section 58 or section 59 of the Act or section 12.1 of this Rule may be omitted from a *pro forma* prospectus.

PART 13 GENERAL REQUIREMENTS AS TO FILING

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

13.2 Required Documents for Filing a Preliminary Prospectus or a Pro Forma Prospectus - An issuer that files a preliminary prospectus or a *pro forma* prospectus shall

- (1) file the following with the preliminary prospectus or *pro forma* prospectus:
 1. **Signed Copy** - In the case of a preliminary prospectus, a signed copy of the preliminary prospectus.
 2. **Mining Reports** - If the issuer has a mineral project, the technical reports required to be filed with a preliminary prospectus pursuant to National Instrument 43-101 Standards of Disclosure for Mineral Projects. Until National Instrument 43-101 comes into force, file for each property material to the issuer, a technical report prepared

in accordance with National Policy 2-A Guide for Engineers, Geologists and Prospectors Submitting Reports on Mining Properties to Canadian Provincial Securities Administrators.

3. **Oil and Gas Reports** - If the issuer has oil and gas operations, 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
- (2) deliver to the Commission, concurrently with the filing of the preliminary prospectus or *pro forma* prospectus, the following:
1. **Personal Information** - For each director and executive officer of an issuer, each promoter of the issuer or, if the promoter is not an individual, each director and executive officer of the promoter, for whom the issuer has not previously delivered the following information, a statement containing that individual's
 - (i) full name;
 - (ii) position with or relationship to the issuer;
 - (iii) employer's name and address, if other than the issuer;
 - (iv) full residential address;
 - (v) date and place of birth; and
 - (vi) citizenship.
 2. **Authorization to Collect Information** - A completed Form 41-501F2 authorizing the collection of personal information.
 3. **Calculation of Earnings Coverage** - 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 setting out the calculation of the earnings coverage.
 4. **Material Contracts** - Copies of all material contracts to which the issuer is a party that have not previously been filed.
 5. **Reports and Valuations** - A copy of each report or valuation referred to in the preliminary prospectus for which a consent is required to be filed under section 13.4 and that has not previously been filed, other than a technical report that
 - (i) deals with a mineral project or oil and gas operations; and
 - (ii) is not otherwise required to be filed under paragraphs 2 and 3 of subsection 13.2(1);
 6. **Auditor's Comfort Letter regarding Audited Financial Statements** - A signed letter to the Commission from the auditor of the issuer or of the business, as applicable, prepared in accordance with the form suggested for this circumstance by the Handbook, if a financial statement of an issuer or a business included in a preliminary prospectus or *pro forma* prospectus is accompanied by an unsigned auditor's report.
 7. **Comfort Letter regarding 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, a letter to the Commission from the foreign auditor that discusses the auditor's expertise
 - (i) to audit the reconciliation of foreign GAAP to Canadian GAAP; and
 - (ii) in the case of foreign GAAS, other than U.S. GAAS applied by a U. S. auditor, to make the determination that the auditing standards applied are substantially equivalent to Canadian GAAS.

13.3 Required Documents for Filing a Final Prospectus - An issuer that files a final prospectus shall

- (1) file the following with the prospectus:
 1. **Signed Copy** - A signed copy of the prospectus.

2. **Issuer's Submission to Jurisdiction** - A submission to jurisdiction and appointment of agent for service of process of the issuer in Form 41-501F3, if an issuer is incorporated or organized in a foreign jurisdiction and does not have an office in Canada.
 3. **Non-Issuer's Submission to Jurisdiction** - A submission to jurisdiction and appointment of agent for service of process of the selling security holder, promoter or credit supporter, as applicable, in Form 41-501F4, if a selling security holder, promoter or credit supporter of an issuer is incorporated or organized under a foreign jurisdiction and does not have an office in Canada or is an individual who resides outside of Canada.
 4. **Expert's Consent** - The consents required to be filed under section 13.4.
 5. **Credit Supporter's Consent** - The written consent of the credit supporter to the inclusion of its financial statements in the prospectus, if financial 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 12.1 to be included in the prospectus.
 6. **Material Contracts** - Copies of all material contracts to which the issuer is a party that have not previously been delivered.
 7. **Other Mining Reports** - If the issuer has a mineral project, any technical report, certificate or consent required to be filed with a prospectus under National Instrument 43-101 once in force and not previously filed, and until National Instrument 43-101 comes into force, unless previously filed, a technical report, certificate or consent on each property material to the issuer prepared in accordance with National Policy 2-A.
 8. **Other Oil and Gas Reports** - If the issuer has oil and gas operations, any technical report or certificate required to be filed with a prospectus under the successor instrument to National Policy No. 2-B once in force, and until that time, unless previously filed, a technical report or certificate on each property material to the issuer prepared in accordance with National Policy 2-B.
 9. **Other Reports and Valuations** - A copy of each report or valuation referred to in the prospectus, for which a consent is required to be filed under section 13.4 and that has not previously been delivered, other than a technical report that
 - (i) deals with a mineral project of an issuer or oil and gas operations; and
 - (ii) is not otherwise required to be filed under paragraphs 7 and 8; and
- (2) deliver to the Commission, no later than the filing of the prospectus,
1. **Auditor's Comfort Letter regarding Unaudited Financial Statements** -
 - (i) 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, if an unaudited financial statement of an issuer or a business is included in a prospectus.
 - (ii) a comfort letter to the Commission from the auditor of the business, prepared in accordance with the relevant standards in the Handbook, if the prospectus includes unaudited financial information of a business that has been derived from financial statements of a business that are not included in the prospectus.
 - (iii) a comfort letter to the Commission from the auditor of the business, prepared in accordance with the relevant standards in the Handbook, if a *pro forma* income statement of the issuer included in the prospectus includes results of the business that have been prepared in accordance with subsection 6.5(4).
 - (iv) a comfort letter to the Commission from the auditor of the issuer, prepared in accordance with the relevant standards of the Handbook, if a *pro forma* financial statement of the issuer included in the prospectus reflects the results of a significant disposition in accordance with Part 8 of the Rule.
 2. **Blacklined Prospectus** - A copy of the prospectus, blacklined to show changes from the preliminary prospectus.

13.4 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;
 - (b) as having opined on financial statements from which selected information included in the prospectus has been derived and which audit opinion is referred to in the prospectus; or
 - (c) as having prepared or certified a report or valuation referred to in the prospectus or the amendment,the issuer shall file no later than the time the prospectus or the amendment to the prospectus is filed, the written consent of the person or company to being named and to that use of the report or valuation.
- (2) The consent referred to in subsection (1) shall
 - (a) refer to the report, valuation, statement or opinion stating the date of the report, valuation, statement or opinion, and
 - (b) contain a statement that the person or company referred to in subsection (1)
 - (i) has read the prospectus, and
 - (ii) has no reason to believe that there are any misrepresentations in the information contained in it that are
 - (A) derived from the report, valuation, statement or opinion, or
 - (B) within the knowledge of the person or company as a result of the services performed by the person or company in connection with the report, financial statements, valuation, statement or opinion.
- (3) In addition to any other requirement of this section, the consent of an auditor or accountant shall also state
 - (a) the dates of the financial statements on which the report of the person or company is made, and
 - (b) that the person or company has no reason to believe that there are any misrepresentations in the information contained in the prospectus that are
 - (i) derived from the financial statements on which the person or company has reported, or
 - (ii) within the knowledge of the person or company as a result of the audit of the financial statements.
- (4) Subsection (1) does not apply to an approved rating organization that issues a rating to the securities being distributed under the preliminary prospectus or prospectus.

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

13.6 Material Contracts - 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.

13.7 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 12.1 and by sections 58 and 59 of the Act and, in the case of an amendment that does not restate the text of the preliminary prospectus or prospectus, shall be numbered and dated as follows:

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

- (3) An issuer that files 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;
 - (c) file or deliver any supporting documents required under this Rule or other provisions of securities legislation to be filed or delivered with a preliminary prospectus or prospectus, as the case may be, unless the documents originally filed or delivered with the preliminary prospectus or prospectus, as the case may be, are correct as of the date the amendment is filed; and
 - (d) file any consent letter required under this Rule to be filed with a preliminary prospectus or prospectus, as the case may be.
- (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, an auditor's letter delivered under section 13.2 or 13.3, the issuer shall deliver with the amendment a new auditor's letter.

13.8 Amendment to Preliminary Prospectus

- (1) The Director shall issue a receipt for an amendment to a preliminary prospectus as soon as reasonably possible after the amendment is filed.
- (2) Subsection 65(1) of the Act does not apply where an amendment to a preliminary prospectus has been filed.

13.9 Amendment to Final Prospectus

- (1) If, after a receipt is issued for a prospectus but prior to the completion of the distribution under such prospectus, securities in addition to the securities previously disclosed in the prospectus are to be distributed, the person or company making the distribution must file an amendment to the prospectus disclosing the additional securities, as soon as practicable, and in any event no later than 10 days after the decision to increase the number of securities offered is made.
- (2) Subject to subsection (3), the Director shall issue a receipt for an amendment to a final prospectus required to be filed under this section or subsection 57(1) of the Act unless the Director considers that it is not in the public interest to do so.
- (3) The Director shall not issue a receipt for an amendment to a final prospectus if it appears to the Director that any of the circumstances set out in subsection 61(2) of the Act are present.
- (4) The Director shall not refuse to issue a receipt under subsections (2) or (3) without giving the person or company who filed the prospectus an opportunity to be heard.
- (5) Subject to subsection (6), a distribution or an additional distribution must not proceed until a receipt for an amendment to a prospectus that is required to be filed under this section or section 57(1) of the Act is issued by the Director.
- (6) Subsection (5) does not apply to mutual funds subject to National Instrument 81-101 Mutual Fund Prospectus Disclosure, labour-sponsored venture capital corporations, commodity pools, or scholarship plans.

PART 14 PROCEDURES AND REQUIREMENTS FOR GRANTING RECEIPTS

14.1 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 90 days after the date of the receipt for the preliminary prospectus.

PART 15 EXEMPTION

15.1 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.

15.2 Evidence of Exemption

- (1) Without limiting the manner in which an exemption under section 15.1 may be evidenced, the granting of the exemption under section 15.1 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 15.1 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 acknowledgment from the Director that the exemption may be evidenced in the manner set out in subsection (1); and
 - (b) the Director has not before, or concurrently with, the issuance of the receipt, sent notice to the person or company that sought the exemption that the exemption sought may not be evidenced in the manner set out in subsection (1).

PART 16 EFFECTIVE DATE

16.1 Effective Date - The Rule shall come into force on December 31, 2000.

Forms
General Prospectus Requirements

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INFORMATION REQUIRED IN A PROSPECTUS
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**ONTARIO SECURITIES COMMISSION 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) *In determining the degree of detail required a standard of materiality should be applied. Materiality is a matter of judgment in particular circumstance, and should generally be determined in relation to an item's significance to investors, analysts and other users of the information. An item of information, or an aggregate of items, is considered material if it is probable that its omission or misstatement would influence or change an investment decision with respect to the issuer's securities. In determining whether information is material, take into account both quantitative and qualitative factors. The potential significance of items should be considered individually rather than on a net basis, if the items have an offsetting effect. This concept of materiality is consistent with the financial reporting notion of materiality contained in the Handbook.*
- (4) *Unless an item specifically requires disclosure only in the preliminary 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.*
- (5) *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.*
- (6) *No reference need be made to inapplicable items and, unless otherwise required in this Form, negative answers to items may be omitted.*
- (7) *Where the term "issuer" is used, it may be necessary, in order to meet the requirement for full, true and plain disclosure of all material facts, to also include disclosure with respect to the issuer's subsidiaries and investees. If it is more likely than not that a person or company will become a subsidiary or investee, it may be necessary to also include disclosure with respect to the person or company. 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.*
- (8) *An issuer that is a special purpose vehicle may have to modify the disclosure items to reflect the special purpose nature of its business.*
- (9) *If disclosure is required as of a specific date and there has been a material change or change that is otherwise significant in the required information subsequent to that date, present the information as of the date of the change or a date subsequent to the change instead.*
- (10) *If the term "class" is used in any item to describe securities, the term includes a series of a class.*

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 and in italics 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 the sale of securities. Information contained in this preliminary prospectus may not be complete and may have to be amended. The securities may not be sold until a receipt for the prospectus is obtained from the securities regulatory authority(ies)."

INSTRUCTION

Issuers shall complete the bracketed information by

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

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.*
- (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 Policy Statement No. 14 Acceptability of Currencies in Material Filed with Securities Regulatory Authorities, or any successor instrument.*

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 security holders (c)
Per security			
Total			

- (2) If there is an over-allotment option, describe the terms of the option and the fact that the 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 security holder and discounts granted. Set out in a note to the table
 - (a) commissions or other consideration paid or payable by persons or companies other than the issuer or selling security holder;
 - (b) consideration other than discounts granted and cash paid or payable by the issuer or selling security holder, including warrants and options; and
 - (c) any finder's fees or similar required payment.
- (7) If a security is being distributed for the account of a selling security holder, state the name of the security holder and a cross-reference to the applicable section in the prospectus where further information about the selling security holder is provided. State the portion of the expenses of the distribution to be borne by the selling security holder and, if none of the expenses of the distribution are being borne by the selling security holder, include a statement to that effect and discuss the 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 security holder;
- (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 security holder.

1.6 Reduced Price Distributions - If an underwriter wishes to be able to decrease the price at which securities are distributed for cash from the initial offering price 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 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 security holder, 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 security holder, credit supporter and/or promoter] is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada. Although [the issuer, selling security holder, credit supporter and/or promoter] has appointed [name(s) and 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 security holder, 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 security holder, 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) *In addition, provide appropriate cross-references to additional information respecting these items 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 constituting 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 restricted shares 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 per cent 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 per cent 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 per cent in those paragraphs was changed to 20 per cent.*

Item 5: General Development of the Business

5.1 Three Year History - Describe the general development of the issuer's business over its three most recently completed financial years and any subsequent period. Include only major events or conditions that have influenced the general development of the issuer's business. 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 Significant Acquisitions and Significant Dispositions

- (1) Disclose
 - (a) any significant acquisition completed by the issuer or any significant probable acquisition proposed by the issuer, for which financial statements are 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 for which *pro forma* financial statements are required under Part 8.
- (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 significant acquisition or significant 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 significant acquisition or significant disposition agreement in good standing;
 - (e) the effect of the significant acquisition or significant 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 with an insider, associate, or affiliate of the issuer and if so, disclose 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. **Stated Business Objectives** - State the business objectives that the issuer expects to accomplish using the net proceeds of the distribution described under Item 7.1, or in the case of a junior issuer, using the funds available described under Item 7.2
 2. **Milestones** - Describe each significant event that must occur for the business objectives described under Item 6.1(1)1 to be accomplished and state the specific time period in which each event is expected to occur and the costs related to each event.
 3. **Principal Products or Services** - For principal products or services,
 - (a) the methods of their distribution and their principal markets;
 - (b) as dollar amounts or as percentages, for each of the two most recently completed financial years, the revenues for each category of principal products or services that accounted for 15 per cent or more of total consolidated revenues for the applicable financial year derived from
 - (i) sales to customers, other than investees, outside the consolidated entity,
 - (ii) sales or transfers to investees; and
 - (iii) sales or transfers to controlling shareholders; 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 per cent 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.
 4. **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.
- 5. 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.
- 6. 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 three most recently completed financial years or the current financial year.
 - (3) Disclose the nature and results of any material reorganization of the issuer or any of its subsidiaries within the three most recently completed financial years or the current financial year.

INSTRUCTIONS

- (1) *The description of the issuer's business objectives provided under paragraph 1 of subsection (1) should be more general than the description of the Use of Proceeds required by Item 7. Proceeds are generally expended in the course of achieving a broader objective. The description of the business objectives should also provide the context for the description of the milestones which is required under subsection (1)2. For example, one business objective of an issuer may be to commence marketing and licensing technology nationally through direct sales and a network of agents; a milestone may be to conduct four feasibility studies over the next ten months to facilitate marketing of the technology; the proceeds raised might, in part, be used to conduct feasibility studies.*
- (2) *The issuer's stated business objectives must not include any prospective financial information with respect to sales, whether expressed in terms of dollars or units, unless the information is derived from a financial forecast or financial projection prepared in accordance with National Policy Statement No. 48 or any successor instrument and is included in the prospectus.*
- (3) *Where sales performance is considered to be an important objective, it must be stated in general terms. For example, the issuer may state that it anticipates generating sufficient cash flow from sales to pay its operating cost for a specified period following completion of the offering.*
- (4) *For the purposes of paragraph (1)2 of Item 6.1, examples of significant events would include hiring of key personnel, making major capital acquisitions, obtaining necessary regulatory approvals, implementing marketing plans and strategies and commencing production and sales.*

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

- (a) a description of any events, covenants, standards or preconditions that may reasonably be expected to affect the timing or amount of any payments or distributions to be made under the asset-backed securities;
- (b) for the three most recently completed financial years of the issuer or the 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 an annual basis or such shorter period as is reasonable given the nature of the underlying pool of financial assets,

- (iii) the payment, prepayment and collection experience of the pool on at least an annual basis or such shorter period as is reasonable given the nature of the underlying pool of financial assets,
- (iv) servicing and administrative fees, and
- (v) any significant variances experienced in the matters referred to in clauses (i), (ii), (iii) and (iv);
- (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 three most recently completed financial years 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 to, or with the passage of time could lead to, the accelerated payment of principal, interest 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 security holders.*
- (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 whether, 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)*
 - (i) *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; or*
 - (ii) *in the case of a new issuer, where the underlying pool of financial assets will be randomly selected from a larger pool of the same assets such that the performance of the larger pool will be representative of the performance of the pool of securitized assets to be created,*

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 Mineral Projects** -For issuers with a mineral project, disclose the following information for each property material to the issuer:

1. **Property Description and Location**

- (a) The area (in hectares or other appropriate units) and location of the property.
- (b) The nature and extent of the issuer's title to or interest in the property, including surface rights, obligations that must be met to retain the property and the expiration date of claims, licences 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.
- (e) The location of all known mineralized zones, mineral resources, mineral reserves and mine workings, existing tailings ponds, waste deposits and important natural features and improvements.
- (f) To the extent known, the permits that must be acquired to conduct the work proposed for the property and whether permits have been obtained.

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 sufficiency of surface rights for mining operations, the availability and sources of power, water, mining personnel, potential tailings storage areas, potential waste disposal areas, heap leach pads areas and potential processing plant sites.
- (e) The topography, elevation and vegetation.

3. History

- (a) The prior ownership of the property and ownership changes and the type, amount, quantity and results of the exploration work undertaken by previous owners, and any previous production on the property, to the extent known.
- (b) If a property was acquired within the three most recently completed financial years of the issuer or during its current financial year from, or is intended to be acquired by the issuer from, an insider or promoter of the issuer or an associate or affiliate of an insider or promoter, the name and address of the vendor, the relationship of the vendor to the issuer, and the consideration paid or intended to be paid to the vendor.
- (c) To the extent known, the name of every person or company that has received or is expected to receive a greater than five per cent interest in the consideration received or to be received by the vendor referred to in subparagraph (b).

4. Geological Setting - The regional, local and property geology.

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

- (a) the results of all surveys and investigations and the procedures and parameters relating to surveys and investigations ;
- (b) an interpretation of the exploration information;
- (c) whether the surveys and investigations have been carried out by the issuer or a contractor and if by a contractor, identifying the contractor; and
- (d) a discussion of the reliability or uncertainty of the data obtained in the program.

6. Mineralization - The mineralization encountered on the property, the surrounding rock types and relevant geological controls, detailing length, width, depth and continuity together with a description of the type, character and distribution of the mineralization.

7. Drilling -The type and extent of drilling including the procedures followed and an interpretation of all results.

8. **Sampling and Analysis** - The sampling and assaying including
 - (a) a description of sampling methods and the location, number, type, nature, spacing and density of samples collected;
 - (b) identification of any drilling, sampling or recovery factors that could materially impact the accuracy or reliability of the results;
 - (c) a discussion of sample quality and whether the samples are representative of any factors that may have resulted in sample biases;
 - (d) rock types, geological controls, widths of mineralized zones, cut-off grades and other parameters used to establish the sampling interval; and
 - (e) quality control measures and data verification procedures.
9. **Security of Samples** - The measures taken to ensure the validity and integrity of samples taken.
10. **Mineral Resources and Mineral Reserves** - The mineral resources and mineral reserves, if any, including
 - (a) the quantity and grade or quality of each category of mineral resources and mineral reserves;
 - (b) the key assumptions, parameters and methods used to estimate the mineral resources and mineral reserves; and
 - (c) the extent to which the estimate of mineral resources and mineral reserves may be materially affected by metallurgical, environmental, permitting, legal, title, taxation, socio-economic, marketing, political and other relevant issues.
11. **Mining Operations** - For development properties and production properties, the mining method, metallurgical process, production forecast, markets, contracts for sale of products, environmental conditions, taxes, mine life and expected payback period of capital.
12. **Exploration and Development** - A description of the issuer's current and contemplated exploration or development activities, to the extent they are material.

INSTRUCTIONS

- (1) *Issuers are reminded that disclosure regarding mineral exploration development or production activities on material properties is required to comply with National Instrument 43-101 once in force, including the use of the appropriate terminology to describe mineral reserves and mineral resources.*
- (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 per cent of the book value of the total of the issuer's mineral properties and related plant and equipment.*
- (3) *Once National Instrument 43-101 is in force, the information required under these items is required to be based upon a technical report or other information prepared by or under the supervision of a qualified person, as that term is defined in National Instrument 43-101.*
- (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.
7. **Reconciliation of Reserves** - A reconciliation of the reserve volumes by categories and types that conform to the classifications, definitions and disclosure requirements of National Policy Statement No. 2-B or any successor instrument, as at the financial year end immediately preceding the most recently completed financial year to the reserve volume information furnished under paragraph 5, with the effects of production, acquisitions, dispositions, discoveries and revision of estimates shown separately, if material.
8. **History** - For each quarter of the most recently completed financial year of the issuer, with comparative data for the same periods in the preceding financial year,
 - (a) the average daily production volume, before deduction of royalties, 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 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 security holder or, in the case of a non-fixed price distribution or a distribution to be made on a best efforts basis, the minimum amount, if any, of net proceeds to be received by the issuer or selling security holder from the sale of the securities distributed 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 Funds Available - For junior issuers, disclose the total funds available and the following breakdown of those funds:

- (a) the net proceeds from the sale of the securities offered under the prospectus;
- (b) the estimated consolidated working capital (deficiency) as at the most recent month end prior to filing the prospectus; and
- (c) the total other funds available to be used in connection with the use of proceeds as set out in Item 7.1 to achieve the principal purposes in Item 7.3.

7.3 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, or for which the funds available as required under Item 7.2 will be used by a junior 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.

7.4 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.

7.5 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.

7.6 Acquisition - If more than 10 per cent 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, associate or affiliate 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.

- 7.7 Retirement or Repayment of Debt** - If more than 10 per cent of the net proceeds will be used to reduce or retire indebtedness and the indebtedness was incurred within the two preceding years, describe the principal purposes for which the proceeds of the indebtedness were used and, if the creditor is an insider, associate or affiliate of the issuer, identify the creditor and the nature of the relationship to the issuer and the outstanding amount owed.
- 7.8 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 7.3 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 significant dispositions and major changes in the direction of the issuer's 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.

INSTRUCTIONS

- (1) *The issuer is not required to update the information provided under Item 8.1 if more recent financial information has been included in the prospectus under section 4.7(2) of the Rule since the corresponding financial statements are not required to be included in the prospectus.*

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.
- (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.

INSTRUCTIONS

- (1) *If 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) *If 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 GAAP principles used, the name of the auditors, the date of the report, and the nature of the opinion expressed.*
- (3) *The derivation of ratios included in the prospectus in notes should be disclosed in notes to the prospectus.*
- (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).*

8.5 Management's Discussion and Analysis

- (1) Provide MD&A for the annual financial statements of the issuer included in the prospectus prepared in accordance with the requirements of Form 44-101F2.
- (2) If the issuer is incorporated, organized or continued under the laws of Canada or a jurisdiction and has based the discussion in the MD&A on financial statements prepared in accordance with foreign GAAP, provide a restatement of those parts of the MD&A that would read differently if they were based on financial statements of the issuer prepared in accordance with Canadian GAAP.
- (3) If an issuer has securities registered under the 1934 Act, the issuer may satisfy the requirement in paragraph (1) by including disclosure that is required under the item requirements applicable to it under the 1934 Act for management's discussion and analysis.
- (4) If an issuer's primary financial statements have been prepared using foreign GAAP and the issuer is required under securities legislation to have reconciled its financial statements to Canadian GAAP at the time of filing its financial statements, or has otherwise done so at that time, then provide a cross-reference in the MD&A to the notes to the financial statements containing the reconciliation.
- (5) Include an interim MD&A for the interim financial statements of the issuer included in the prospectus, prepared in accordance Rule 51-501 AIF and MD&A, once it comes into force.

INSTRUCTIONS

- (1) *The two-year comparisons required may be presented as a single three-year comparison.*
- (2) *If the issuer is required to include more recent financial information in the prospectus under section 4.7(2), 6.7(2) or 7.3(2) of the Rule, the issuer is not required to update the MD&A already included in the prospectus. However, the prospectus should include the content of the news release or public communication.*

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

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 may reasonably be expected to impact on the timing or amount of payments or distributions to be made under the asset-backed securities, including those that are dependent or based on the economic performance of the underlying pool of financial assets;
- (b) information on the underlying pool of financial assets for
 - (i) the last three completed financial years of the issuer ended more than 90 days before the date of the prospectus, or if the issuer has not completed three financial years, each completed financial year ended more than 90 days before the date of the prospectus; and
 - (ii) the most recently completed interim period that ended more than 60 days before the date of the prospectus and the comparable period in the immediately preceding financial year; or
 - (iii) if the issuer has not had asset-backed securities outstanding for at least one financial year, the lesser period commencing on the first date on which the issuer had asset-backed securities outstanding and ending on a date not more than 90 days before the date of the issuance the preliminary prospectus, including a discussion and analysis of
 - 1. the composition of the pool as of the end of the period,
 - 2. income and losses from the pool for the financial years presented on at least an annual basis or such shorter period as is reasonable given the nature of the underlying pool of assets,
 - 3. the payment, prepayment and collection experience of the pool for the period on at least an annual basis or such shorter period as is reasonable given the nature of the underlying pool of assets,
 - 4. servicing and other administrative fees, and
 - 5. any significant variances experienced in the matters referred to in clauses 1, 2, 3, or 4;
- (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 not merely restate the text of the contracts to which reference is made. The use of diagrams to illustrate the roles of, and the relationship among, the persons or 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 the information required under paragraph (b) is not compiled specifically on the underlying pool of financial assets, but is compiled from a larger pool of the same assets from which the securitized assets are randomly selected such that the performance of the 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 Derivatives** - If derivatives are being distributed, describe fully the material attributes and characteristics of the derivatives, including
- (a) the calculation of the value or payment obligations under the derivatives;
 - (b) the exercise of the derivatives;
 - (c) the settlement of exercises of the derivatives;
 - (d) the underlying interest of the derivatives;
 - (e) the role of a calculation expert in connection with the derivatives;
 - (f) the role of any credit supporter of the derivatives; and
 - (g) the risk factors associated with the derivatives.
- 10.5 Other Securities** - If securities other than shares, debt securities, asset-backed securities or derivatives are being distributed, describe fully the material attributes and characteristics of those securities.
- 10.6 Modification of Terms** - Describe provisions as to modification, amendment or variation of any rights attached to the securities being distributed. If the rights of holders of securities may be modified otherwise than in accordance with the provisions attached to the securities or the provisions of the governing statute relating to the securities, explain briefly.
- 10.7 Constraints**
- (1) If there are constraints imposed on the ownership of securities of the issuer to ensure that the issuer has a required level of Canadian ownership, describe the mechanism, if any, by which the level of Canadian ownership of the securities of the issuer will be monitored and maintained.
 - (2) If the shares are restricted shares for purposes of Rule 56-501 Restricted Shares, comply with the applicable disclosure requirements of that rule.
- 10.8 Ratings** - If one or more ratings, including provisional ratings, have been received from one or more approved rating organizations for the securities 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 options to purchase securities of the issuer or a subsidiary of the issuer that are held or will be held upon completion of the distribution by

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

INSTRUCTION

- (1) *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.*
- (2) *For the purposes of item (f) of Item 12.1, provide the information required for all options except warrants and special warrants.*

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 security holder 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 security holder, 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 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.

INSTRUCTION *For purposes of this item, escrow includes securities subject to a pooling agreement.*

Item 15: Principal Shareholders and Selling Security holders

15.1 Principal Shareholders and Selling Security holders

- (1) Provide the following information for each principal shareholder of the issuer and, if any securities are being distributed for the account of a security holder, for each selling security holder, 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 security holder.
 - 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 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 security holder and those securities were purchased by the selling security holder within the two years preceding the date of the prospectus or *pro forma* prospectus, as applicable, state the date the selling security holder 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 security holder 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 per cent 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 security holder 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.
- (6) In addition to the above, include in a footnote to the table, the required calculation(s) on a fully-diluted basis.

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

Item 16: Directors and Officers

16.1 Name, Address, Occupation and Security Holding

- (1) List the name and municipality of residence of each director and 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.
- (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.

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, or a personal holding company of any such persons 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.

16.6 Management of Junior Issuers - In addition to the above, for an issuer which is a junior issuer provide the following information for each member of management:

- (a) state the individual's name, age, position and responsibilities with the issuer and relevant educational background,
- (b) state whether the individual works full time for the issuer or what proportion of the individual's time will be devoted to the issuer,
- (c) state whether the individual is an employee or independent contractor of the issuer,
- (d) state the individual's principal occupations or employment during the five years prior to the date of the prospectus, disclosing with respect to each organization as of the time such occupation or employment was carried on:
 - (i) its name and principal business;
 - (ii) if applicable, that the organization was an affiliate of the issuer;
 - (iii) positions held by the individual; and
 - (iv) whether it is still carrying on business, if known to the individual;
- (e) describe the individual's experience in the issuer's industry; and
- (f) state whether the individual has entered into a non-competition or non-disclosure agreement with the issuer.

INSTRUCTIONS

- (1) For purposes of this Item "management" means all directors, officers, employees and contractors whose expertise is critical to the issuer, its subsidiaries and proposed subsidiaries in providing the issuer with a reasonable opportunity to achieve its stated business objectives.
- (2) The description of the principal occupation of a member of management must be specific. The terms "businessman" or "entrepreneur" are not sufficiently specific.

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 security holder] 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 security holder] against delivery. The obligations of the underwriter[s] under the agreement may be terminated at [its/their] discretion on the basis of [its/their] assessment of the state of the financial markets and may also be terminated upon the occurrence of certain stated events. The underwriter[s] [is/are], however, obligated to take up and pay for all of the securities if any of the securities are purchased under the agreement."
- 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 security holder or an underwriter knows or has reason to believe that there is an intention to over-allot or that the price of any security may be stabilized to facilitate the distribution of the securities, disclose this information.
- 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 from the date of receipt; 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 underwriter 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 security holder.

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 security holders.]"

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.

19.11 Special Warrants acquired by Underwriters - Disclose the number and dollar value of any special warrants acquired by the underwriters or agents and the percentage of the distribution represented by those special warrants

Item 20: Risk Factors

20.1 Risk Factors

- (1) Describe the risk 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 security holder 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 security holder.
- (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 and equity 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.
- (5) If a promoter or past promoter referred to in paragraph (1), or a personal holding company of such promoter, has, within the 10 years before the date of the prospectus or *pro forma* prospectus, as applicable, become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency, or been subject to or instituted any proceedings, arrangement or compromise with creditors, or had a receiver, receiver manager or trustee appointed to hold the assets of the director or officer, state the fact.

Item 22: Legal Proceedings

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

INSTRUCTION *No information need be given with respect to any proceeding that involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 per cent of the current assets of the issuer and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same legal and factual issues as other proceedings pending or known to be contemplated, the amount involved in the other proceedings shall be included in computing the percentage.*

Item 23: Interest of Management and Others in Material Transactions

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

1. Any director or executive officer of the issuer.
2. A security holder 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 security holder 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; or*
 - (d) *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 per cent 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 per cent 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 Security Holder and Underwriter

24.1 Relationship Between Issuer or Selling Security Holder and Underwriter - If the issuer or selling security holder is a connected issuer of an underwriter of the distribution, or if the issuer or selling security holder 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 in Ontario 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.*

27.2 Project Financing and Limited Partnership Offering - Attach a copy of the co-tenancy, unitholders' or limited partnership agreement, if applicable, to both the preliminary and final prospectus.

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 per cent, 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 security holders, 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, 7 and 8 of Rule 41-501.

Item 33: Certificates

- 33.1 Certificates** - Include the certificates required under the Act and under Part 12 of Rule 41-501.

**ONTARIO SECURITIES COMMISSION 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 his/her 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 security holders, and
 - (iv) that 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:

Administrative Assistant to the Director of Corporate Finance
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
(416) 597-0681

- (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]

Name and Position with or Relationship to Issuer	Name and Address of Employer, if other than Issuer	Residential Address	Date and Place of Birth	Citizenship

ONTARIO SECURITIES COMMISSION FORM 41-501F3

ISSUER FORM OF SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

- 1. Name of issuer (the "Issuer"): _____
- 2. Jurisdiction of incorporation of Issuer: _____
- 3. Address of principal place of business of Issuer: _____
- 4. Description of securities (the "Securities"): _____
- 5. Date of prospectus (the "Prospectus") under which the Securities are offered: _____
- 6. Name of agent for service of process (the "Agent"): _____
- 7. Address for service of process of Agent in Canada (the address may be anywhere in Canada): _____
- 8. The Issuer designates and appoints the Agent at the address of the Agent stated above as the Issuer's agent. The Agent may be served with a notice, pleading, subpoena, summons or other process in an action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of, relating to or concerning the distribution of the Securities made or purported to be made under the Prospectus or the obligations of the Issuer as a reporting issuer under Ontario securities law and the Issuer irrevocably waives any right to raise as a defence in a Proceeding an alleged lack of jurisdiction to bring the Proceeding.
- 9. The Issuer irrevocably and unconditionally submits to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario, in a Proceeding arising out of, related to or concerning or in any other manner connected with the distribution of the Securities made or purported to be made under the Prospectus or the obligations of the Issuer as a reporting issuer under Ontario securities law.
- 10. Until six years after it has ceased to be a reporting issuer in Ontario, the Issuer shall file a new Submission to Jurisdiction and Appointment of Agent for Service of Process in this form at least 30 days before termination, for any reason, of this Submission to Jurisdiction and Appointment of Agent for Service of Process.
- 11. Until six years after it has ceased to be a reporting issuer in Ontario, the Issuer shall file an amended Submission to Jurisdiction and Appointment of Agent for Service of Process at least 30 days before a change in the name or address of the Agent.
- 12. This Submission to Jurisdiction and Appointment of Agent for Service of Process shall be governed by and construed in accordance with the laws of [insert province of above address of Agent].

Dated: _____ Signature of Issuer

_____ Print name and title of signing officer of Issuer

AGENT

The undersigned accepts the appointment as agent for service of process of [insert name of Issuer] under the terms and conditions of the preceding Submission to Jurisdiction and Appointment of Agent for Service of Process.

Dated: _____

Signature of Agent

Print name of person signing and, if Agent is not an individual, the title of the person

ONTARIO SECURITIES COMMISSION FORM 41-501F4

NON-ISSUER FORM OF SUBMISSION TO JURISDICTION AND APPOINTMENT OF
AGENT FOR SERVICE OF PROCESS

1. Name of issuer (the "Issuer"):

2. Jurisdiction of incorporation of Issuer:

3. Address of principal place of business of Issuer:

4. Description of securities (the "Securities"):

5. Date of prospectus (the "Prospectus") under which the Securities are offered:

6. Name of person filing this form (the "Filing Person") and Filing Person's relationship to Issuer:

7. Jurisdiction of incorporation of Filing Person, if applicable, or jurisdiction of residence of Filing Person:

8. Address of principal place of business of Filing Person:

9. Name of agent for service of process (the "Agent"):

10. Address for service of process of Agent in Canada (which address may be anywhere in Canada):

11. The Filing Person designates and appoints the Agent at the address of the Agent stated above as the Filing Person's agent. The Agent may be served with a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of, relating to or concerning the distribution of the Securities made or purported to be made under the Prospectus, and the Filing Person irrevocably waives any right to raise as a defence in a Proceeding an alleged lack of jurisdiction to bring the Proceeding.
12. The Filing Person irrevocably and unconditionally submits to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario, in a Proceeding arising out of, related to or concerning or in any other manner connected with the distribution of the Securities made or purported to be made under the Prospectus.
13. Until six years after completion of the distribution of the Securities made under the prospectus, the Filing Person shall file a new Submission to Jurisdiction and Appointment of Agent for Service of Process in this form at least 30 days before termination, for any reason, of this Submission to Jurisdiction and Appointment of Agent for Service of Process.
14. Until six years after completion of the distribution of the Securities under the prospectus, the Filing Person shall file an amended Submission to Jurisdiction and Appointment of Agent for Service of Process at least 30 days before a change in the name or address of the Agent.

15. This Submission to Jurisdiction and Appointment of Agent for Service of Process shall be governed by and construed in accordance with the laws of [insert province of above address of Agent].

Dated: _____
Signature of Filing Person

Print name of person signing and, if the Filing Person is not an individual, the title of the person

AGENT

The undersigned accepts the appointment as agent for service of process of [insert name of Filing Person] under the terms and conditions of the preceding Submission to Jurisdiction and Appointment of Agent for Service of Process.

Dated: _____
Signature of Agent

Print name of person signing and, if the Agent is not an individual, the title of the person

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Companion Policy 41-501CP
General Prospectus Requirements

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

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**COMPANION POLICY
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 Security holders** - 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 security holder who purchased those securities within two years before the date of the prospectus, the name of the security holder and the number or amount of the securities of the class being distributed that are owned by the security holder, shall be included in the prospectus. In some cases, particularly if there are a large number of selling security holders 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 security holder, 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, or are a derivative of, or otherwise linked to, other securities, a description of the material attributes of the underlying securities will generally 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

A. ISSUERS AND SIGNIFICANT ACQUISITIONS

2.1 Financial Statement Requirements - Explanation of the 60 and 90 Day References

- (1) The financial statement disclosure requirements for an issuer and any business acquired or to be acquired are described with reference to 60 or 90 day periods. A company that is or will be a reporting issuer once a final receipt for its prospectus is issued, is required to file interim financial statements 60 days after the last day of an interim period on a continuous disclosure basis. The interim financial statement disclosure requirements in the Rule are based on these continuous disclosure reporting timeframes. Annual audited financial statements are required to be filed 140 days after year end on a continuous disclosure basis. However, if a prospectus is filed more than 90 days after year end, the audited financial statements are required to be included in the prospectus.

- (a) For example, assume an issuer's current year is year one and its most recently completed years are years two, three, four and five, two being the year immediately preceding one. If the issuer has a calendar year end and files a preliminary prospectus on June 15 of year one (which is more than 90 days after year end), the following financial statements of the issuer would be required to be included in the prospectus:

Annual financial statements: for years two, three and four, in accordance with section 4.1 of the Rule which requires inclusion in the prospectus of the issuer's annual financial statements for the three most recently completed financial years ended more than 90 days before the date of the prospectus.

Comparative Interim financial statements: for the first quarter ended March 31 of year one, in accordance with section 4.6 of the Rule which requires comparative interim financial statements for the most recently completed interim period ended more than 60 days before the date of the prospectus.

- (b) As another example, if the same issuer filed its preliminary prospectus sometime between January 1 and March 31 of year one, it would not be required to include audited financial statements for year two since that year ended less than 90 days before the date of the prospectus unless those financial statements had been filed with the Commission. In this situation, assuming the year two financial statements had not been filed, the issuer would be required to include audited financial statements for years three, four and five, and unaudited interim financial statements for the nine months ended September 30 in year two. If, however, audited financial statements for year two were included in a prospectus filed less than 90 days from the end of year two, section 4.2 of the Rule would permit the issuer to exclude the audited financial statements for year five. In addition, subsection 4.7(3) of the Rule would permit the interim financial statements for the nine months ended September 30, year 2, to be excluded.

- (2) Section 2.8 of the Rule states that unless otherwise stated, a reference to a prospectus in the Rule includes a preliminary prospectus. Consequently, the 60 and 90 day period references discussed in subsection (1) should be considered as at the date the preliminary prospectus is filed and again at the date of the final prospectus is filed for both the issuer and any business acquired or to be acquired. Depending on the period of time between the dates of the preliminary and final prospectuses, an issuer may have to include more recent financial statements.

For example, if the issuer in subsection (1)(a) filed its final prospectus on September 10, the issuer would be required to include its comparative financial statements for the interim period ended June 30, because by September 10 the last day of the interim period ended June 30 would be more than 60 days before the date of the final prospectus.

The examples in subsections (1) and (2) are not comprehensive. For simplicity, they address only the issuer's requirements and do not take into account exceptions provided for in the Rule.

2.2 Additional Financial Statements or Financial Information Filed or Released

- (1) If annual or interim financial statements, more recent than those that would otherwise be required to be included in a prospectus, have been filed before a prospectus is filed, sections 4.7, 6.7 and 7.3 of the Rule require those financial statements to be included in the prospectus and the prospectus to be updated accordingly. However, if information derived from more recent annual or interim financial statements is released to the public by the issuer before the financial statements are filed, the prospectus should include the information included in the news release or public communication. There is no specific requirement in the Rule to otherwise update the prospectus or *pro forma* financial statements to reflect the more recent information.
- (2) 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 the directors of an issuer should endeavour to consider and approve financial statements in a timely manner and should not delay the approval and filing of the statements for the purpose of avoiding their inclusion in a prospectus.

2.3 Auditor's Report for All Financial Statements Included in the Prospectus - 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 exempted 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.

2.4 Exemption from Auditor's Report if not Previously Included in a Prospectus - If an issuer received a receipt for a final prospectus that included financial statements of the issuer for a financial year that were not accompanied by an auditor's report, section 4.10 of the Rule provides that if the issuer includes any of those unaudited financial statements in a subsequent prospectus, the issuer will not be expected to include an auditor's report on those financial statements unless they were audited subsequent to obtaining the final receipt for the previous prospectus. The corresponding exception for a business acquired or to be acquired is in section 6.15 of the Rule. The Commission recognizes that requesting an issuer to obtain an auditor's report that it was permitted to exclude from a previous final prospectus could create undue hardship for the issuer.

2.5 Timing of Requests for Exemptions from the Financial Statement Requirements - Requests for exemptions from Parts 4, 6 and 7 of the Rule should be made in accordance with Part 15 of the Rule which requires the issuer to make submissions in writing along with the reasons for the request and the proposed alternative disclosure. Written submissions should be filed at, or preferably before, the time the preliminary prospectus is filed, in order to permit the issue to be resolved in a timely manner. Issuers filing a prospectus in more than one jurisdiction are encouraged to consult National Policy 43-201 Mutual Reliance Review System for Prospectuses and Annual Information Forms for more guidance on pre-filing applications.

B. ISSUERS

2.6 Sufficiency of Financial History Included in a Prospectus - Part 4 of the Rule prescribes the minimum financial statement disclosure requirements for an issuer. The Commission recognizes that an issuer, at the time of filing a prospectus, may have been in existence for less than one year. The Commission expects that in many situations the limited historical financial statement information that is available for such an issuer may be adequately supplemented by other relevant information disclosed in the prospectus. However, if the issuer is unable to provide financial statements for a period of at least twelve months and the prospectus does not otherwise contain information concerning the business conducted, or to be conducted, by the issuer that is sufficient to enable an investor to make an informed investment decision, the Commission is of the view that the Director may refuse to issue a receipt for the prospectus.

2.7 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 is the reduction to three years, from five, for historical financial statements of the issuer. In addition, a new category of junior issuer was introduced for which only the financial statements for the most recently completed financial year must be audited. As a result of these changes, the Commission is of the view that relief from the requirement to provide audited historical financial statements should be granted only in unusual circumstances not related to cost or the time involved in preparing or 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 statements of income or cash flows, financial statements accompanied by audit reports containing a reservation of opinion or audited statements of net operating income.
- (2) In view of the Director's reluctance to grant exemptions from the requirement to include audited historical financial statements, issuers seeking relief should consult with staff on a pre-filing basis.

- (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 granting an 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, before 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.
- (5) Considerations relevant to granting an exemption from the requirement to include financial statements, generally for the years immediately preceding the issuer's most recently completed financial year, may include the following:
- (a) The issuer's historical accounting records have been destroyed and cannot be reconstructed. In this case, as a condition of granting the exemption, the issuer may be requested by the Commission to
- (i) represent in writing to the Commission, no later than the time the preliminary prospectus is filed, that the issuer made every reasonable effort to obtain copies of, or reconstruct, the historical accounting records necessary to prepare and audit the financial statements, but such efforts were unsuccessful; and
- (ii) disclose in the prospectus the fact that the historical accounting records have been destroyed and cannot be reconstructed.
- (b) The issuer has emerged from bankruptcy and current management is denied access to the historical accounting records necessary to audit the financial statements. In this case, as a condition of granting the exemption, the issuer may be requested by the Commission to
- (i) represent in writing to the Commission, no later than the time the preliminary prospectus is filed, that the issuer has made every reasonable effort to obtain access to, or copies of, the historical accounting records necessary to audit the financial statements but that such efforts were unsuccessful; and
- (ii) disclose in the prospectus the fact that the issuer has emerged from bankruptcy and current management is denied access to the historical accounting records.
- (c) The issuer has undergone a fundamental change in the nature of its business or operations affecting a majority of its operations and all, or substantially all, of the executive officers and directors of the company have changed. The evolution of a business or progression along a development cycle will not be considered to be a fundamental change in an issuer's business or operations. Relief from the requirement to include financial statements of the issuer required by the Rule for the year in which the change occurred, or for the most recently completed financial year if the change in operations occurred during the issuer's current financial year, generally will not be granted.

2.8 Reverse Take-overs - When an issuer has been involved in a business combination accounted for as a reverse take-over, section 4.5 of the Rule requires that financial statements referred to in Part 4 of the Rule be provided for the legal subsidiary which is the accounting parent, as those terms are used in the Handbook.

2.9 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); and
- (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.

PART 3 FINANCIAL STATEMENT DISCLOSURE FOR SIGNIFICANT ACQUISITIONS, SIGNIFICANT DISPOSITIONS AND MULTIPLE ACQUISITIONS**A. GENERAL**

3.1 Financial Statement Disclosure of Significant Acquisitions and Multiple Acquisitions - Appendix A to this Policy is a chart outlining the key obligations for financial statement disclosure of significant acquisitions and multiple acquisitions. Appendix B includes examples which illustrate the application of certain Parts of the Rule related to financial reporting requirements.

3.2 Acquisition of a Business - Part 6 of the Rule requires 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 related or individually significant. For this purpose, the term "business" should be evaluated in light of the facts and circumstances involved. The Commission generally considers that a separate entity, a subsidiary or a division is 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 prepared financial statements. 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 Acquisition of an Interest in an Oil and Gas Property

(1) The Commission considers the acquisition of an interest in an oil and gas property ("property") to constitute the acquisition of a business as discussed in section 3.2 of the Policy. However, it is recognized that in certain situations, limited availability of, or access to, audited financial statements or financial information of the acquired property makes it difficult to comply with the financial statement disclosure requirements outlined in Parts 6 and 7 of the Rule. The Commission has also considered that, unique to the oil and gas industry, relevant operating information is often publicly available. Accordingly, the Director may consider granting an exemption from certain of the disclosure requirements in Parts 6 and 7 of the Rule if

- (a) the prospectus was not filed in connection with an issuer's initial public offering;
- (b) the issuer has not accounted for the acquisition as a reverse take-over;
- (c) the property does not constitute a "reportable segment" of the vendor, as defined in section 1701 of the Handbook, at the time of the acquisition; and
- (d) the prospectus includes acceptable alternative disclosure in respect of the property as outlined in subsection (2).

(2) Alternative Disclosure

(a) The Commission is of the view that alternative disclosure in a prospectus, to be acceptable for the purposes of subsection (1)(d), should include at least an audited operating statement of the property acquired or to be acquired for each of the years required by Parts 6 and 7 of the Rule. The operating statements should each present, at a minimum, the following line items:

- gross revenue;
- royalty expenses;
- production costs; and
- operating income.

In applying Parts 6 and 7 of the Rule for purposes of this paragraph, the significance of an acquired property or of a probable acquisition of a property shall be determined based on the investment and income tests outlined in section 2.2 of the Rule, except that for purposes of the income test, "operating income" should be substituted for "consolidated income from continuing operations".

- (b) In addition to the information in paragraph (a), the following information may also be required to be included in the prospectus.
 - (i) Information with respect to reserve estimates and estimates of future net revenue and production volumes and other relevant information regarding the property, if material.
 - (ii) Actual production volumes of each of the properties for each of the three most recently completed years.
 - (iii) Estimated production volumes of each of the properties for each of the next three years, based on information in the respective reserve reports.
- (3) **Relief from the Requirement to Audit Operating Statements** -Despite paragraph (2)(a), the Director may permit an issuer to exclude an audit opinion on the operating statements referred to in subsection (2)(a) if
 - (a) the property was acquired prior to December 31, 2000 and the issuer provides written submissions prior to filing the final prospectus which establish to the satisfaction of the Director that, despite making reasonable efforts, the issuer was unable to obtain audited operating statements because the vendor refused to provide such audited statements or to permit access to the information necessary to audit the statements; or
 - (b) during the 12 months preceding the date of the acquisition or the proposed date of the probable acquisition, the daily average production of the property on a barrel of oil equivalent basis (with gas converted to oil in the ratio of six thousand cubic feet of gas being the equivalent of one barrel of oil), is less than 20 per cent of the total daily average production of the vendor for the same or similar periods and
 - (i) the issuer provides written submissions prior to filing the final prospectus that establish to the satisfaction of the Director, that despite reasonable efforts during the purchase negotiations, the issuer was prohibited from including in the purchase agreement the rights to obtain an audited operating statement of the property;
 - (ii) the purchase agreement includes representations and warranties by the vendor that the amounts presented in the operating statement agree to the vendor's books and records; and
 - (iii) the issuer discloses in the prospectus its inability to obtain an audited operating statement, the reasons therefore, the fact that the representations and warranties referred to item (ii) have been obtained, and a statement that the results presented in the operating statements may have been materially different if the statements had been audited.

3.4 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 interprets 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 an adjudicator to decide whether a reasonable person would believe in the circumstances that the likelihood of an acquisition being completed was high. By contrast, if the

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.

- (3) A completed acquisition of a business and a proposed acquisition of a business will constitute a probable acquisition of related businesses defined in section 2.1 of the Rule if, among other things, each acquisition is contingent on a single common event. Common financing is one example of a single common event contemplated by the definition.

3.5 Significant Acquisitions Completed During the Issuer's Three Most Recently Completed Financial Years - If an issuer made a significant acquisition during its three most recently completed financial years for which audited financial statements are required to be included in the prospectus under Part 6 of the Rule, the balance sheets of the business as at a date prior to the date of the acquisition will be reflected in the issuer's most recent audited balance sheet included in the prospectus. In addition, the allocation of the purchase price to the assets acquired and liabilities assumed should also be disclosed in the issuer's audited financial statements. Accordingly, there is no requirement under subsection 6.2(1) for the financial statements of the business included in the prospectus to include a balance sheet. The corresponding exception for individually insignificant, unrelated acquisitions is provided in subsection 7.2(4) of the Rule. The Commission recognizes that a balance sheet will normally have been prepared and the Director will not object if the financial statements of a business included in the prospectus include a balance sheet.

3.6 Significant Acquisitions Completed During the Issuer's Current Financial Year - If an issuer has made a significant acquisition during its current financial year, and the acquisition is accounted for using the purchase method, section 6.11 of the Rule requires an issuer to include disclosure about the acquisition, including a purchase price allocation, in a subsequent event note to the issuer's financial statements. At the time the prospectus is filed, the allocation of the purchase price may not yet be finalized so it may be impracticable to provide a detailed purchase equation. However, the issuer will know the assets and liabilities it has acquired and is expected to estimate an allocation of the purchase price to those assets and liabilities, at least on an aggregate basis.

B. APPLICATION OF THE SIGNIFICANCE TESTS

3.7 Timing of Significance Tests

- (1) Section 2.2 of the Rule sets out the significance tests for determining whether an acquisition of a business by an issuer is a "significant acquisition". The first test measures the assets of the acquired business against the assets of the issuer. The second test measures the issuer's investments in and advances to the acquired business against the assets of the issuer. The third test measures the income from continuing operations of the acquired business against the income from continuing operations of the issuer. If any one of these three tests is satisfied at the 20 per cent level, the acquisition is considered "significant" to the issuer. The tests must be applied as at the time of the acquisition using the most recent audited financial statements of the issuer and the business. This is consistent with the requirements of the Securities and Exchange Commission of the United States of America and provides issuers with certainty that if an acquisition is not significant at the time of the acquisition, then no financial statements of the business will be required to be included in the prospectus.
- (2) If an acquisition is determined under subsection 2.2(2) of the Rule to be significant on the date of acquisition, an issuer has the option under subsection 2.2(3) of the Rule of applying the tests using the more recent financial statements for the 12 months ended on the last day of the most recent interim period financial statements included in the prospectus and the financial statements of the business for a coterminous period ending on the same day as the issuer's financial statements. However, for the purposes of applying the investment test under subsection 2.2(3)2 of the Rule, the issuer's investments in and advances to the business should be the amount used to calculate the significance as at the date of the acquisition and not the amount as at the date of the issuer's financial statements used to re-calculate the significance.
- (3) The option under subsection 2.2(3) of the Rule has been included in order to recognize the possible growth of an issuer between the date of acquisition and the date of a prospectus offering and the corresponding potential decline in significance of the acquisition to the issuer. If the significance of an acquisition increases at the second date under subsection 2.2(3), only the financial statements required when the tests are applied at the first stage under subsection 2.2(2) of the Rule, are required to be included in the prospectus. Applying the significance tests at the second date is not intended to increase the level of significance of an acquisition and thereby the number of years of financial statements.

- (4) The significance tests at the second date are an option available to all issuers. However, depending on how or when an issuer integrates the acquired business into its existing operations and the nature of post-acquisition financial records it maintains for the acquired business, it may not be possible for an issuer to apply the tests at the second date.

3.8 Acquisition of a Business when the Financial Statements of the Business are Prepared in Accordance with a Foreign GAAP - Subsection 2.2(9) of the Rule states that where the financial statements of the business or related businesses are prepared in accordance with foreign GAAP, for purposes of applying the significance tests, the relevant financial statements should be reconciled to Canadian GAAP. It is unnecessary for the reconciliation to be audited for the purpose of the test as the Commission recognizes that this could be onerous, particularly if the business or related businesses are determined not to be a significant acquisition.

3.9 Acquisition of a Previously Unaudited Business - Section 2.2(2) of the Rule requires the significance of an acquisition to be determined using the most recently audited financial statements of the issuer and the business acquired or to be acquired. If the business was a private company prior to the acquisition and it did not engage an auditor to audit its annual financial statements then, for the purpose of applying the significance tests, subsection 2.2(6) of the Rule permits use of the unaudited financial statements of the business prepared in accordance with GAAP. If the acquisition is determined to be significant, then the financial statements for the number of periods required by Parts 6 and 7 of the Rule must be audited.

3.10 Application of the Significance Tests when the Financial Year Ends of the Issuer and the Acquired Business are Non-Coterminous - Subsection 2.2(2) of the Rule requires the significance of an acquired business to be determined using the most recent audited financial statements of both the issuer and the acquired business. For the purpose of applying the tests under this subsection, the year ends of the issuer and the acquired business need not be coterminous. Accordingly, neither the audited financial statements of the issuer or the business should be adjusted for the purposes of applying the significance tests. However, if an acquired business is determined to be significant and *pro forma* income statements are prepared in accordance with Part 6 or 7 of the Rule and, if the last day of the business' year end is more than 93 days from the last day of the issuer's year end, the business' reporting period required under subsection 6.5(4) of the Rule should be adjusted to reduce the gap to 93 days or less. Reference is made to section 3.17 of this Companion Policy for further guidance.

3.11 Application of Investment Test for Significance of an Acquisition - Subsections 2.2(2) and, if applicable, 2.2(3) of the Rule set 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 per cent of the consolidated assets of the issuer as at the date of the audited financial statements of the issuer for the most recently completed financial year ended prior to the date of 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 or payable and the costs of the acquisition. If the acquisition agreement includes a provision for contingent consideration, for the purpose of applying the test, the contingent consideration should be included in the total cost of the purchase unless the likelihood of payment is considered remote at the date of the acquisition. In addition, any payments made in connection with the acquisition which would not constitute purchase consideration but which would not have been paid unless the acquisition had occurred, should be considered part of investments in and advances to the business for the purpose of applying the significance tests. Examples of such payments include loans, royalty agreements, lease agreements and agreements to provide a pre-determined amount of future services.

3.12 Application of Income Test for Significance of an Acquisition -

- (1) The third significance test set out in subsection 2.2(2)3 of the Rule is whether the issuer's proportionate share of the consolidated income from continuing operations of the business or related businesses exceeds 20 per cent of the consolidated income from continuing operations of the issuer based on the audited financial statements of the issuer and the acquired business for the most recently completed financial year ended before the date of the acquisition. Subsection 2.2(3)3 of the Rule sets out an optional calculation using more recent financial statements. In applying the income test, the income from continuing operations of the business should be determined using the accounting policies applied by the issuer.
- (2) Subsections 2.3(3), (4) and (5) 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 per cent 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(6) 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.

C. FINANCIAL STATEMENTS OF ACQUIRED BUSINESSES

3.13 Financial Statements for Interim and Pre-acquisition Periods - Subsections 6.2(1), 6.3(1) and 6.4(1) of the Rule require that a prospectus include financial statements for the most recently completed interim period of the acquired business that ended prior to the date of acquisition, in the case of a completed acquisition, and in any case, more than 60 days before the date of the prospectus. In some circumstances, the acquired business may not have been a reporting issuer and therefore may not have prepared financial statements for the required interim periods. In connection with its sale, a business may prepare financial statements for the period commencing with the first day of its current year up to the date of the acquisition or a day prior to the date of the acquisition. Subsections 6.2(1)2(a)(ii) and 6.3(1)3(a)(ii) of the Rule permit an issuer to satisfy the requirement for interim financial statements by filing financial statements for a period longer than an interim period provided that period ends no more than 30 days before the date of the acquisition. The period covered by these financial statements is defined in the Rule as the "pre-acquisition period". If the issuer elects to include pre-acquisition period financial statements in the prospectus, it is not also required to include the interim financial statements for the most recently completed interim period ended more than 60 days prior to the date of the prospectus. The pre-acquisition period financial statements may be used to prepare the *pro forma* financial statements of the issuer required under Part 6 of the Rule.

3.14 Acquisition of Related Businesses - Subsections 6.2(2), 6.3(2) and 6.4(2) of the Rule require that if an issuer is required to include in its prospectus financial statements 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 these subsections should be presented 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 on a combined basis. Although one or more of the related businesses may be insignificant relative to the others, separate financial statements of each business for the same number of periods required must be presented. Relief from the requirement to include financial statements of the least significant related business or businesses may be granted depending on the facts and circumstances.

3.15 Financial Statement Disclosure for Unrelated Individually Insignificant Acquisitions

- (1) When an issuer acquires unrelated businesses that are determined by the significance tests to be individually insignificant, section 7.2 of the Rule requires the significance of the acquisitions to be tested again by combining the results of the businesses. The significance tests should be applied using the financial results of the businesses on a combined basis. If the businesses satisfy any of the significance tests at a threshold of 50 per cent or more, then financial statements shall be provided for the businesses that constitute more than 50 per cent of the test satisfied at the highest level of significance. For example, if the acquisitions satisfy the asset, investment and income tests at thresholds of 40 per cent, 80 per cent and 60 per cent respectively, then the investment test is the most significant. Accordingly, financial statements of the individual businesses which comprise 50 per cent of the dollar value of the combined investments in and advances to the businesses must be included in the prospectus. Audited financial statements must be presented for the most recently completed financial year of each business plus interim financial statements. Depending upon the number of acquisitions, there may be several combinations of businesses whose financial statements would satisfy the requirement. Any combination may be included in the prospectus. For further guidance, refer to example 4 in Appendix B to this Companion Policy.
- (2) Subsection 2.3(2) of the Rule states that if one or more of the unrelated businesses have incurred losses from continuing operations while others have earned income from continuing operations, the losses should not offset the income. Instead, the businesses with losses should be evaluated separately from those with income for the purpose of applying the income test. The absolute value of the aggregate losses should be used to calculate the significance. For further guidance, refer to example 5 in Appendix B to this Companion Policy.

3.16 Preparation of Divisional and Carve-out Financial Statements

- (1) As discussed in section 3.2 of this Companion Policy, the Commission generally considers the acquisition of a division of a business and in certain circumstances, a lesser component of a person or company, as constituting a business for purposes of the Rule, whether or not the subject of the acquisition previously prepared financial statements. In order to determine the significance of the acquisition and comply with the requirements in Parts 6 and 7 of the Rule, financial statements must be prepared. This section provides guidance on preparing these financial statements.
- (2) The guidance in this section also applies to the preparation of the financial statements of a completed significant disposition for the purpose of preparing *pro forma* financial statements in accordance with Part 8 of the Rule.
- (3) **Interpretations** - In this section of this Companion Policy, unless otherwise stated, the following interpretations apply:
 - (a) A reference to "a business" means a division or some lesser component of another business acquired by an issuer which constitutes a significant acquisition.

- (b) The term “parent” refers to the vendor from whom the issuer purchased a business.
- (4) **Divisional and Carve-out Financial Statements** - The terms “divisional” and “carve-out” financial statements are often used interchangeably although a distinction is possible. Some companies maintain separate financial records and prepare financial statements for a business activity or unit which is operated as a division. Financial statements prepared from these financial records are often referred to as “divisional” financial statements. In certain circumstances, no separate financial records for a business activity are maintained; they are simply consolidated with the parent’s records. In these cases, if the parent’s financial records are sufficiently detailed, it is possible to extract or “carve-out” the information specific to the business activity in order to prepare separate financial statements of that business. Financial statements prepared in this manner are commonly referred to as “carve-out” financial statements. The guidance in this section applies to the preparation of both divisional and carve-out financial statements unless otherwise stated.
- (5) **Preparation of Divisional and Carve-out Financial Statements**
- (a) When complete financial records of the business acquired or to be acquired have been maintained, those records should be used for preparing and auditing the financial statements of the business. For the purposes of this section, it is presumed that the parent maintains separate financial records for its divisions.
- (b) When complete financial records of the business acquired or to be acquired do not exist, carve-out financial statements should generally be prepared in accordance with the following guidelines:
1. **Allocation of Assets and Liabilities** - A balance sheet should include all assets and liabilities directly attributable to the business.
 2. **Allocation of Revenues and Expense** - Income statements should include all revenues and expenses directly attributable to the business. Some fundamental expenditures may be shared by the business and its parent in which case the parent’s management must determine a reasonable basis for allocating a share of these common expenses to the business. Examples of such common expenses include salaries, rent, depreciation, professional fees, general and administration.
 3. **Allocation of Income and Capital Taxes** - Income and capital taxes should be calculated as if the entity had been a separate legal entity and filed a separate tax return for the period presented.
 4. **Disclosure of Basis of Preparation** - The financial statements should include a note describing the basis of preparation. If expenses have been allocated as discussed in paragraph 2, the financial statements should include a note describing the method of allocation for each significant line item, at a minimum.
- (6) **Statements of Assets Acquired, Liabilities Assumed, and Statements of Operations** - When it is impracticable to prepare carve-out financial statements of a business, an issuer may be required to include in its prospectus for the business an audited statement of assets acquired and liabilities assumed and a statement of operations. Such a statement of operations should exclude only those indirect operating costs, such as corporate overhead, not directly attributable to the business. If these costs were previously allocated to the business and there is a reasonable basis of allocation, they should not be excluded. Issuers are encouraged to submit a pre-filing application when this circumstance arises.

3.17 Preparation of *Pro forma* Financial Statements Giving Effect to Significant Acquisitions

- (1) **Objective and Basis of Preparation** - The objective of *pro forma* financial statements is to illustrate the impact of a transaction on an issuer’s financial position and results of operations by adjusting the historical financial statements of the issuer to give effect to the transaction. Accordingly, the *pro forma* financial statements should be prepared on the basis of the issuer’s financial statements as they appear elsewhere in the prospectus. No adjustment should be made to eliminate extraordinary items or discontinued items.
- (2) ***Pro forma* Balance Sheets and Income Statements** - Subsection 6.5(1) of the Rule does not require a *pro forma* balance sheet to be prepared to give effect to significant acquisitions which are reflected in the issuer’s most recent audited or interim balance sheet included in the prospectus. Similarly, if a significant acquisition was completed during the issuer’s most recently completed financial year, subsection 6.5(1)2 of the Rule does not require a *pro forma* income statement to be prepared for the issuer’s most recent interim period for which financial statements are included in the prospectus because the results of the acquired business have been consolidated with the issuer’s for the entire interim period.

- (3) **Non-coterminous year-ends**
- (a) **Reducing the Gap to 93 Days** - For the purpose of preparing a *pro forma* income statement, if the financial year of the business ends on a day which is more than 93 days from the last day of the issuer's financial year, subsection 6.5(4) of the Rule requires the income statement of the business to be adjusted to reduce this gap to less than 93 days. Reducing the gap may be accomplished by adding a subsequent interim period to the results of the most recent fiscal year of the acquired business and deducting the comparable interim results for the immediately preceding year.
 - (b) **Consecutive Months** - The adjusted financial period of the business should be comprised of consecutive months. For example, if the adjusted reporting period is 12 months and ends on June 30, the 12 months should commence on July 1 of the immediately preceding year; it should not begin on March 1 of the immediately preceding year with three of the following 15 months omitted, such as the period from October 1 to December 31, since this would not be a consecutive 12 month period.
 - (c) **Disclosure of the Adjusted Financial Period** - The adjusted financial period should be clearly disclosed on the face of the *pro forma* financial statements. In addition, there should be disclosure in a note to the *pro forma* financial statements stating that the financial statements of the business used to prepare the *pro forma* financial statements were prepared for this purpose and do not conform with the financial statements included elsewhere in the prospectus.
 - (d) **Disclosure of Results Reported in Two *Pro forma* Income Statements** - If the financial statements of the business are adjusted in accordance with paragraph (a), it is possible that the results for one or more months may be included in the twelve month and interim period financial statements of the business which are used by the issuer to prepare *pro forma* income statements for its most recently completed financial year and interim period. In this situation, disclosure should be made of the revenue and income for any periods excluded or included in both *pro forma* income statements.
- (4) **Financial Statements of a Business Prepared for the Purpose of Preparing *Pro Forma* Financial Statements** - If, in accordance with subsection (3), an income statement of an acquired business is constructed for the purpose of preparing a *pro forma* income statement, the constructed income statement need not be audited or otherwise included in the prospectus except as a separate column in the *pro forma* income statement. However, a comfort letter addressed to the Commission must be delivered in accordance with subsection 13.3(2)1 of the Rule.
- (5) **Effective Date of Adjustments**
- (a) ***Pro forma* balance sheet** - Paragraph 1 of subsection 6.5(1) of the Rule requires a *pro forma* balance sheet to be prepared to give effect to significant acquisitions as if they occurred on the date of the issuer's most recent balance sheet included in the prospectus
 - (b) ***Pro forma* income statement** - Paragraph 2 of subsection 6.5(1) of the Rule requires a *pro forma* income statement to be prepared to give effect to significant acquisitions as if they had taken place at the beginning of the issuer's current financial year or its most recently completed financial year, depending on when the acquisition occurred. If a prospectus includes *pro forma* income statements for the issuer's most recently completed financial year and a subsequent interim period, the acquisition and most of the adjustments should be computed as if the acquisition had occurred at the beginning of the most recently completed financial year of the issuer only and carried through the most recent interim period presented, if any. However, those adjustments related to the allocation of the purchase price, including the amortization of fair value increments and intangibles, should be based on the purchase price allocation arising from giving effect to the acquisition as if it occurred on the date of the issuer's most recent balance sheet included in the prospectus.
- (6) **Acceptable Adjustments** - *Pro forma* adjustments shall be limited to those which are directly attributable to a specific completed or proposed transaction for which there are firm commitments and for which the complete financial effects are objectively determinable.
- (7) **Multiple Acquisitions** - If the *pro forma* financial statements give effect to more than one significant acquisition or other event, the *pro forma* adjustments may be grouped by line item on the face of the *pro forma* financial statements provided the details for each transaction are disclosed in the notes.
- (8) **Intervening Periods** - If the issuer prepares a *pro forma* financial statement using a pre-acquisition interim financial statement of the acquired business and that period ends prior to the date of the acquisition, the *pro forma* financial statements should include any significant adjustments necessary to account for the intervening period.

D. SIGNIFICANT DISPOSITIONS**3.18 Significant Dispositions**

- (1) Section 2.6 of the Rule states that the term “significant disposition” refers to a disposition of a business, a business segment or a significant portion of a business, either by sale, abandonment or distribution to shareholders. A disposition is determined to be significant in subsection 2.6(2) of the Rule if it satisfies the asset or income test at at least the 20 per cent significance level.
- (2) Separate financial statements of a significant disposition are not required to be included in the prospectus. If an issuer decides to include the financial statements, they should be prepared following the guidance in section 3.15 of this Companion Policy and should not be for more periods than the most recently completed financial year and interim period of the issuer for which financial statements are included in the prospectus.

3.19 Preparation of *Pro Forma* Financial Statements Giving Effect to Significant Dispositions

- (1) **Businesses and Business Segments** - Part 8 of the Rule requires inclusion in an issuer’s prospectus of *pro forma* financial statements which give effect to significant dispositions completed during an issuer’s most recently completed financial year or current financial year. The disposition of a business segment, as defined by section 3475 of the Handbook, is excluded from the *pro forma* requirements because the financial statement presentation of a discontinued business segment is addressed by the Handbook.
- (2) **Objective and Basis of preparation** - The basis for preparing *pro forma* financial statements which give effect to a significant disposition is very similar to the guidance outlined in section 3.17 of this Companion Policy which discusses the preparation of *pro forma* financial statements which give effect to significant acquisitions. The *pro forma* financial statements should be prepared using the issuer’s financial statements as if the significant disposition occurred at the beginning of an issuer’s current or most recently completed financial year, as appropriate.
- (3) ***Pro Forma* Balance Sheet** - Section 8.2(1) of the Rule does not require a *pro forma* balance sheet if the significant disposition is reflected in the issuer’s most recent balance sheet included in the prospectus.
- (4) ***Pro Forma* Income Statements**
 - (a) If a significant disposition was completed during the issuer’s most recently completed financial year, subsection 8.2(2)(a) of the Rule does not require inclusion of a *pro forma* income statement for the most recent interim period for which financial statements are included in the prospectus because the results of the disposed business have been excluded from the issuer’s results for the entire interim period.
 - (b) A *pro forma* income statement prepared to give effect to significant dispositions should not present results below the level of income from continuing operations.
- (5) **Constructed Financial Statements of the Business for the Purpose of Preparing *Pro Forma* Financial Statements** - If an income statement of the disposed business is constructed or otherwise carved out from the issuer’s financial statements in accordance with the guidance in section 3.16 of this Companion Policy, for the purpose of preparing a *pro forma* income statement, the constructed income statement need not be audited or otherwise included in the prospectus except as a separate column in the *pro forma* income statement. However, a comfort letter addressed to the Commission must be delivered in accordance with subsection 13.3(2)1 of the Rule with respect to the separate column.
- (6) **Effective Date of Adjustments** - *Pro forma* balance sheets should be prepared as if the disposition had occurred on the date of each balance sheet presented. If a prospectus includes *pro forma* income statements for the issuer’s most recently completed financial year and a subsequent interim period, the acquisition and adjustments should be computed as if the disposition had occurred at the beginning of the most recently completed financial year of the issuer only and carried through the most recent interim period presented, if any.
- (7) **Acceptable Adjustments** - *Pro forma* adjustments should be limited to those which are directly attributable to a specific completed or proposed transaction for which there are firm commitments and for which the complete financial effects are objectively determinable.
- (8) **Multiple Dispositions** - If the *pro forma* financial statements give effect to more than one significant disposition, the *pro forma* adjustments may be grouped by line item on the face of the *pro forma* financial statements provided the details for each transaction are disclosed in the notes.

E. EXEMPTIONS**3.20 Exemptions from Parts 6 and 7 of the Rule**

- (1) Despite Parts 6 and 7 of the Rule, an issuer may be permitted by the Director to exclude an audit opinion on the financial statements of an acquired business for any of the years for which financial statements are required other than the most recently completed year of the acquired business if
 - (a) the business was acquired prior to December 31, 2000;
 - (b) the issuer provides written submissions prior to filing the final prospectus which establish to the satisfaction of the Director that, despite making reasonable efforts, the issuer was unable to obtain audited financial statements because the vendor refused to provide such audited financial statements or to permit access to the information necessary to audit the financial statements; and
 - (c) the issuer discloses in the prospectus that despite making reasonable efforts, the issuer was unable to obtain audited financial statements because the vendor refused to provide such audited financial statements or to permit access to the information necessary to audit the financial statements.
- (2) 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.
- (3) If relief is granted from the requirements of Parts 6 and 7 of the Rule to include in a prospectus audited financial statements of an acquired business, 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 an auditor's report containing a reservation of opinion such as an inventory qualification or an audited statement of net operating income for a business.
- (4) 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. In certain situations, such as when any of the significance tests are satisfied at 40 per cent or higher, the issuer may be requested to include in the prospectus audited financial statements of the business for a subsequent period of at least six months on which the auditor's report contains no reservation of opinion and the business is not seasonal.
- (5) Considerations relevant to granting an 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.
- (6) If an issuer acquired a business or is proposing to acquire a business, considerations relevant to granting an exemption from the requirement to include financial statements of the business for one or more years required to be included in the prospectus may include the following:
 - (a) The business's historical accounting records have been destroyed and cannot be reconstructed. In this case, as a condition of granting the exemption, the issuer may be requested by the Commission to
 - (i) represent in writing to the Commission, no later than the time the preliminary prospectus is filed, that the issuer made every reasonable effort to obtain copies of, or reconstruct, the historical accounting records necessary to prepare and audit the financial statements, but such efforts were unsuccessful; and
 - (ii) disclose in the prospectus the fact that the historical accounting records have been destroyed and cannot be reconstructed.
 - (b) The business has recently emerged from bankruptcy and current management of the business and the issuer is denied access to the historical accounting records necessary to audit the financial statements. In this case, as a condition of granting the exemption, the issuer may be requested by the Director to
 - (i) represent in writing to the Commission, no later than the time the preliminary prospectus is filed, that the issuer has made every reasonable effort to obtain access to, or copies of, the historical accounting records necessary to audit the financial statements but that such efforts were unsuccessful;

- (ii) disclose in the prospectus the fact that the business has recently emerged from bankruptcy and current management of the business and the issuer are denied access to the historical accounting records.
- (c) The business has undergone a fundamental change in the nature of its business or operations affecting a majority of its operations and all, or substantially all, of the executive officers and directors of the company have changed. The evolution of a business or progression along a development cycle will not be considered to be a fundamental change in an issuer's business or operations. Relief from the requirement to include audited financial statements of the business for the year in which the change in operations occurred, or for the most recently completed financial year if the change in operations occurred during the business's current financial year, generally will not be granted.

PART 4 GAAP, GAAS AND AUDITOR'S REPORTS

4.1 Foreign GAAP

- (1) Subsection 9.1(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 Canadian GAAP or 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 are as comprehensive as Canadian GAAP if the foreign GAAP cover 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 permits the financial statements of foreign issuers to be audited in accordance with generally accepted auditing standards 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 connection with a prospectus is not acceptable. Therefore, under section 9.4 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 audit work that is comparable in scope, nature and timing to the work required in connection with an audit in accordance with Canadian GAAS. For example, 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 auditing 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 of 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 should 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.

- (5) Subsection 13.2(2)7 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 deliver 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 applied by a U.S. auditor, to make the determination that foreign GAAS applied are substantially equivalent to Canadian GAAS. This provision requires that this comfort letter be delivered with the preliminary prospectus to better facilitate timely resolution of any issues.

- 4.3 Auditor's Comfort Letters** - Subparagraph 1(i) of subsection 13.3(2) of the Rule requires a comfort letter to be delivered to the Commission from the auditor of the issuer or the business, as applicable, if an unaudited financial statement of an issuer or a business is included in a final prospectus. If unaudited financial statements of the issuer or the business for more than one interim period are included in the prospectus, a comfort letter with respect to each unaudited financial statement must be delivered. If an unaudited financial statement presents the results of the issuer or the business for the most recently completed interim period and the cumulative results for the current financial year up to the last day of the most recently completed interim period, a comfort letter with respect to both the interim and cumulative periods, including any comparative periods presented, must be delivered.

PART 5 GENERAL REQUIREMENTS AS TO FILING AND AMENDMENTS

- 5.1 Certificate by Issuer** - Subsection 58(1) of the Act provides that a prospectus must contain a certificate in the prescribed form signed by the chief executive officer, the chief financial officer and, on behalf of the board of directors, any two directors of the issuer (other than the chief executive officer and the chief financial officer) duly authorized to sign. Where an issuer has only three directors, two of whom are the chief executive officer and the chief financial officer, subsection 58(3) provides that the certificate may be signed by all the directors. The Commission is of the view that section 58 requires that the positions of the chief executive and chief financial officers must be held by two individuals.
- 5.2 Consents of Lawyers** - The names of lawyers or legal firms frequently appear in prospectuses in two ways. First, the underwriters, the issuer and selling security holders 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 13.4(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 13.4(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 13.4(1) applies and the consent is required.
- 5.3 Material Contracts** - Section 13.6 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.
- 5.4 Filed or Delivered** - The Act makes a distinction between material that is required to be "filed" with the Commission and material that is required to be "delivered" to the Commission. Section 140 of the Act requires that material filed pursuant to Ontario securities law be made available by the Commission for public inspection, unless the Commission decides to hold the material in confidence because the material "discloses intimate financial, personal or other information"; and the desirability of avoiding disclosure in the interests of any person or company affected outweighs the desirability of adhering to the principle that material filed with the Commission be available to the public for inspection. 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 2.2, Public Availability of Material Filed Under the Securities Act, discusses the views of the Commission regarding this matter. This policy is under review and may be subject to change.

Subsection 13.2(2)4 of the Rule requires that an issuer "deliver" to the Commission concurrently with the filing of the preliminary prospectus copies of all material contracts to which the issuer is a party and a copy of each report or valuation referred to in the preliminary prospectus for which a consent is required to be filed under the Rule (other than technical reports dealing with a mineral project or oil and gas operations of an issuer which are required to be filed with the preliminary prospectus). Subject to requests for confidentiality, each of these documents will be made public at the end of the filing process when a receipt is issued for a final prospectus.

5.5 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.

5.6 Disclosure of Investigations or Proceedings

(1) Subsection 61(1) of the Act provides that, subject to subsections 61(2) and 63(4), the Director shall issue a receipt for a prospectus unless it appears that it would not be in the public interest to do so. The existence of an ongoing or recently concluded investigation or proceeding relating to an issuer, a promoter, a controlling shareholder, director or officer of the issuer or an underwriter or other person or company involved in a proposed distribution will be considered by the Director in determining if the Director should refuse to issue a receipt for the prospectus. That decision will be made on a case by case basis and will depend upon the facts known at the time.

(2) If the facts and circumstances do not warrant the denial of a receipt for a prospectus, the Act nonetheless imposes a statutory obligation to provide full, true and plain disclosure of all material facts relating to the securities issued or proposed to be issued by the prospectus. Disclosure of an ongoing or recently concluded investigation or proceeding relating to a person or company involved in a proposed distribution may be necessary to meet this standard. The circumstances in which disclosure will be required and the nature and extent of the disclosure will also be determined on a case by case basis. In making this determination, all relevant facts, including the allegations that gave rise to the investigation or proceeding, the status of the investigation or proceeding, the seriousness of the alleged breaches that are the subject of the investigation or proceeding and the degree of involvement in the proposed distribution by the person or company under investigation will be considered.

5.7 Filing of Advertising and Sales Literature - The Director may request that an issuer file a copy of all advertising and sales literature that will be used in connection with the distribution in Ontario of the securities distributed under the prospectus.

5.8 Amendments to a Preliminary Prospectus

(1) 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 13.7 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.

(2) In the Commission's view, if, after filing a preliminary prospectus, an issuer decides to attach or add to the securities offered under a prospectus a right to convert into, or a warrant to acquire, the security of the issuer being offered under the preliminary prospectus, the attachment or addition of the conversion feature or warrant is, absent unusual circumstances, unlikely to constitute a material adverse change requiring an amendment to the preliminary prospectus.

(3) Subsection 53(1) provides that no person or company shall trade in a security where such a trade would be a distribution of such security, unless a preliminary prospectus and a prospectus have been filed and receipts therefor obtained from the Director. The Commission is of the view that if an issuer intends to add a new class of securities to the distribution being effected by the prospectus after the preliminary prospectus has been filed and receipted, an issuer must file an amended and restated preliminary prospectus.

5.9 Changes to the Offering - Issuers are reminded that any changes to the terms or conditions of the security being distributed, such as the deletion of a conversion feature, may constitute a material adverse change requiring an amendment to the preliminary prospectus.

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

- 5.11 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

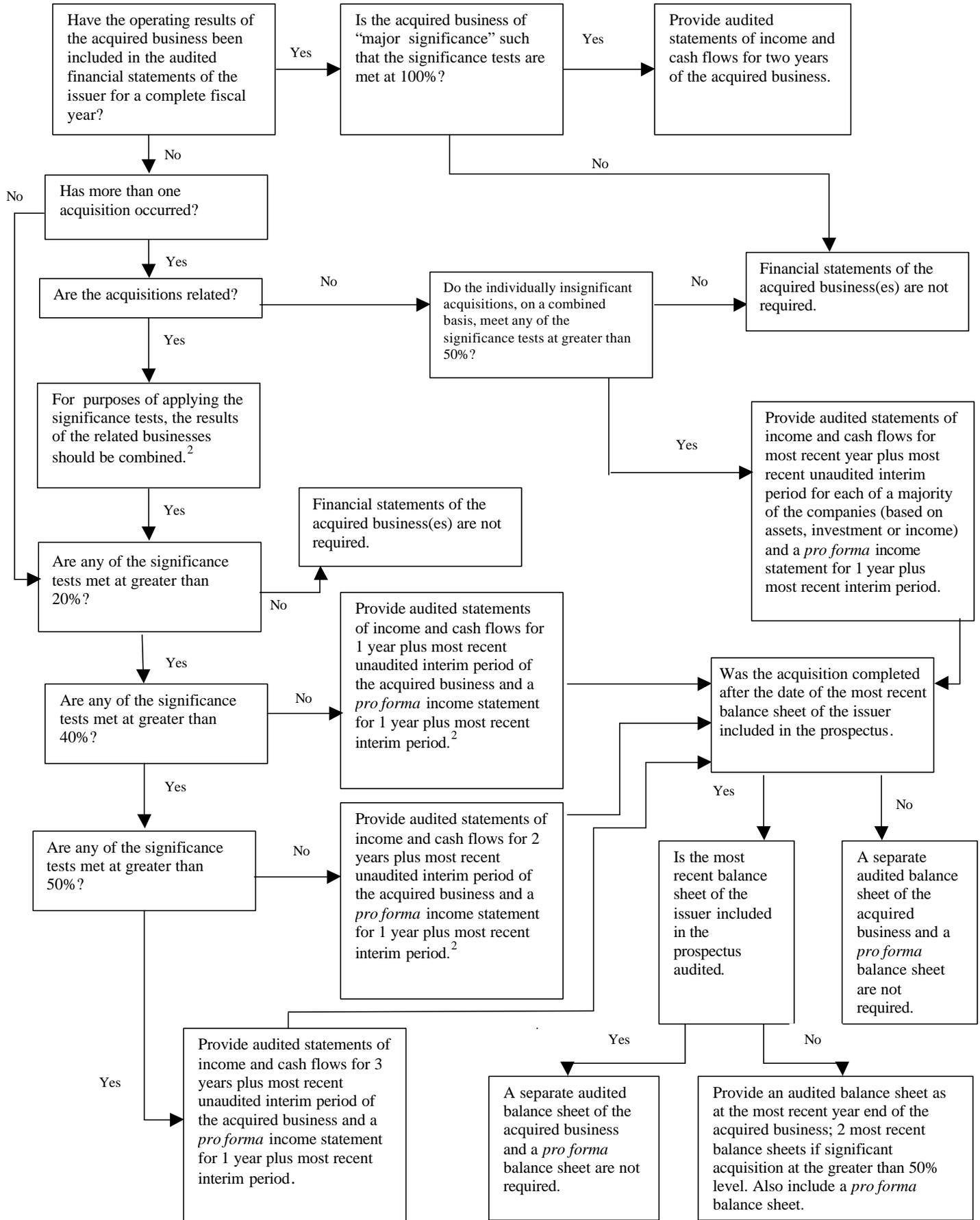
6.1 Extension of 90 Day Period for Issuance of Final Receipt

- (1) The effect of subsection 14.1(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 15 of the Rule gives the Director discretion to exempt the issuer from compliance with any provision of section 14.1 of the Rule if the Director is satisfied that there is sufficient justification for so doing.
- (2) If the period between the issuance of the receipt for the preliminary prospectus and the prospectus exceeds 90 days by more than a few days, the Director 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.
- (3) The Commission is of the view that the Director should not permit an amended preliminary prospectus to be used to extend the 90 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 security holders. In the view of the Commission, it is not appropriate for an unincorporated association or co-tenancy comprised of security holders 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



Notes

- ¹ This decision chart provides general guidance and should be read in conjunction with Rule 41-501 and Companion Policy 41-501CP. No reference is made to pre-acquisition periods for the sake of simplicity.
- 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.

APPENDIX B - ILLUSTRATIVE EXAMPLES

The following examples illustrate the application of certain parts of the Rule in determining the financial statements which should be included in a prospectus based on the specific facts and circumstances of the example. Selected explanations are provided to clarify the outcome or results in some cases. The subheading “variations” describes how the requirements would change given a change in certain facts.

Unless otherwise stated, the Issuer is assumed to have a December 31 year end.
Unless otherwise stated, neither the Issuer nor a business is a junior issuer.

Terms and references used throughout the examples are defined as follows:

Year 1 - refers to the current year.

Year 2 - refers to the year immediately preceding Year 1.

Year 3 - refers to the year immediately preceding Year 2.

Year 4 - refers to the year immediately preceding Year 3.

Q1 - refers to the first quarter or 3-month period of a year.

Q2 - refers to the second quarter or 3-month period of a year.

Q3 - refer to the third quarter or 3-month period of a year.

Company A or B or C, etc - refers to a completed or probable acquisition of a business.

EXAMPLE 1 - SIGNIFICANT ACQUISITION OF A COMPANY IN YEAR 1**Assumptions:**

The Issuer files a prospectus on June 15, Year 1.

The Issuer acquired Company A on April 15, Year 1.

Company A has a December 31 year end.

Company A's financial statements for the year ended December 31, Year 2 have been audited.

Company A's financial statements for Q1-Year 1 were filed before the preliminary prospectus is filed.

The significance tests under subsection 2.2(2) of the Rule are applied using the audited financial statements of the Issuer and Company A for the year ended December 31, Year 2. Company A is determined to be significant at 65%, 55% and 35% based on the income test, the investment test, and the asset test, respectively.

Financial Statement Requirements:

The preliminary prospectus filed on June 15 should include the following financial statements:

Issuer:

Audited statements of income, retained earnings and cashflows for years 2, 3 and 4.

Audited balance sheets for years 2 and 3.

Unaudited statements of income, retained earnings and cashflows for Q1 of years 1 and 2.

Unaudited balance sheet as at March 30, Year 1.

Pro forma income statements for Year 2 and Q1- Year 1. Each *pro forma* income statement is prepared to give effect to the acquisition of Company A as if it had occurred on January 1, Year 2.

Pro forma balance sheet to give effect to the acquisition of Company A as if it had occurred on March 30 -Year1.

Company A

Audited financial statements for Years 2, 3 and 4.

Unaudited statements of income, retained earnings and cash flows for Q1 - Years 1 and 2.

Unaudited balance sheet as at March 30, Year 1.

Explanations:

1. Financial statements would be required for three years which corresponds the level of significance, as outlined in section 6.6 of the Rule.
2. A *pro forma* balance sheet is required because the March 30, Year 1 balance sheet of the Issuer does not reflect the acquisition.

Variations:

1. If the Issuer filed its prospectus on April 15, it would be unnecessary to include the Q1 financial statements of the Issuer, including the *pro forma* financial statements, unless those financial statements had been filed, because April 15 is not more than 60 days from March 30, the last day of Q1.
2. If the Issuer filed its final prospectus on September 10th, the Rule would require it to include in the prospectus its unaudited financial statements for Q2-Year1 because the interim period ended more than 60 days from the date of the prospectus. The Issuer would be required to update all disclosure in the prospectus, including the *pro forma* financial statements for the interim period, to reflect the Q2 results.
3. Junior Issuer - If Company A was a junior issuer and its financial statements for Years 3 and 4 had not been audited, then the financial statements for those years could be included in the prospectus without an auditor's report. If, however, an auditor had been engaged to audit Year 3 or 4, then the Issuer must include in its prospectus the auditor's report issued on those financial statements, regardless of the fact that Company A is a junior issuer.

EXAMPLE 2 - RE-CALCULATING THE SIGNIFICANCE OF AN ACQUISITION AND PREPARING *PRO FORMA* FINANCIAL STATEMENTS WHEN THE YEAR END OF THE ISSUER AND THE BUSINESS DIFFER BY MORE THAN 93 DAYS.**Assumptions:**

The Issuer files a prospectus on April 15, Year 1.

The Issuer acquired Company A on November 15, Year 2.

Company A is a public company.

Company A's year end is June 30.

Company A's financial statements for the year ended June 30, Year 2 have been audited.

Company A filed its Q1-Year 2 financial statements on October 31.

Note: Company A's fiscal Year 1 begins on July 1 of the Issuer's fiscal Year 2 which is also the calendar year. For simplicity, reference is made to calendar years only. For example, Company A's Q1 financial statements for its fiscal Year 1 are referred to as its Q1-Year 2 financial statements.

The significance tests are applied using the Issuer's audited financial statements for the year ended December 31, Year 3 and Company A's audited financial statements for the year ended June 30, Year 2. Company A is determined to be significant at 55% based on the Income test.

Company A became the Issuer's Subsidiary A following the acquisition. Subsidiary A operates much as it did prior to the acquisition and has not been restructured by the Issuer. Separate financial records are maintained.

The Issuer recalculated the significance of Subsidiary A based on the Issuer's financial statements for the year ended December 31, Year 2 after deconsolidating the results of Subsidiary A from the date of acquisition. For the purpose of applying the significance tests at this second date, December 31, Year 2, the financial results of Subsidiary A for the period January 1 to December 31, Year 2 were used. As a result of the calculations, Subsidiary A is significant at 46% based on the income test.

Financial Statement Requirements:

The prospectus filed on April 15 should include the following financial statements:

Issuer:

Audited statements of income, retained earnings and cash flows for the years ended Years 2, 3 and 4.
Audited balance sheets as at December 31, Years 2 and 3.

Company A:

Audited statements of income, retained earnings and cash flows for the years ended June 30, Years 2 and 3.
Audited balance sheets as at June 30, Years 2 and 3.
Unaudited statements of income, retained earnings and cash flows for Q1- Years 2 and 3.
Unaudited balance sheet as at June 30, Year 2.

***Pro forma* Income Statement**

In addition to the financial statements listed above, a *pro forma* income statement of the Issuer must be included in the prospectus. A *pro forma* balance sheet is not required because the acquisition occurred prior to December 31, Year 2, the most recent balance sheet of the Issuer included in the prospectus. The December 31 year end of the Issuer and the June 30 year end of Company A (prior to the acquisition) differ by more than 93 days. The following alternatives are some of those available to the Issuer for the purpose of preparing a *pro forma* income statement:

- (1) Prepare an income statement for Company A for the period January 1, Year 2 to November 14 and compile these results with the Issuer's audited consolidated income statement for the year ended December 31, Year 2. A comfort letter would be filed with the Securities Regulator(s) in connection with Company A's income statement
- (2) Prepare an income statement for Company A for the period October 1, Year 3 to September 30, Year 2 which period ends not more than 93 days from December 31. This may be accomplished by starting with Company A's income statement for the year ended June 30, Year 2, deducting Q1 of that year (July 1 to September 30, Year 3) and adding Q1 of fiscal year 1 (July 1 to September 30, Year 2). Deduct the post-acquisition results of Subsidiary A from the Issuer's consolidated income statement for the year ended December 31, Year 2. Compile the two income statements. A comfort letter would be filed with the securities regulators with respect to both the Issuer's deconsolidated income statement and Company A's constructed income statement.
- (3) Prepare an income statement for Company A for the period January 1, Year 2 to September 30, Year 2 and add this to the Issuer's consolidated income statement for the year ended December 31, Year 2. The results of Company A for the period October 1 to October 31 would have to be included as a separate column in the *pro forma* income statement. A comfort letter would be filed with the Securities Regulator(s) in connection with Company's A income statement for the period January 1 to September 30 and with respect to the results for the stub period October 1 to November 14, either separately or on a combined basis.
- (4) Prepare an income statement for Company A for the period April 1, Year 2 to March 30, Year 2 and add this to the Issuer's consolidated income statement for the year ended December 31, Year 3. A comfort letter would be filed with the securities regulator(s) in connection with Company's A income statement for the 12 months ended March 30, Year 2.

Variations:

1. Historical Financial Statements of Company A to be included in the Prospectus - If Company A's year end was December 31 and pre-acquisition financial statements for the period January 1 to November 14, Year 2 were prepared and audited, assuming Company A is significant at the 46% threshold, the audited financial statements for the 10.5 month period ended November 14 would have satisfied the requirement for one of the two years of audited financial statements otherwise required because they are audited and for a period greater than 9 months. The prospectus would also include audited financial statements of Company A for the year ended December 31, Year 3 however, no interim financial statements would be required.
2. *Pro forma* Income Statement - If Company A's year end was December 31, a pre-acquisition income statement for the period January 1 to November 14 could have been prepared and compiled with the Issuer's audited consolidated

income statement for the year ended December 31, Year 2. No other interim financial statements would be required, other than the Year 3 comparative financial statements.

EXAMPLE 3 - PREPARING *PRO FORMA* FINANCIAL STATEMENTS TO GIVE EFFECT TO A BUSINESS ACQUIRED DURING THE ISSUER'S CURRENT YEAR WHEN THE YEAR ENDS OF THE ISSUER AND THE BUSINESS DIFFER BY MORE THAN 93 DAYS.

Assumptions:

The Issuer files a prospectus June 10, Year 1.

The Issuer acquired Company A on April 5, Year 1.

The Issuer filed its Q1-Year 1 interim financial statements on May 30.

Company A is a public company.

Company A's year end is May 30.

Company A's financial statements for the year ended April 30, Year 1 are not audited as at the time the prospectus is filed.

Company A filed its Q3-Year 1 interim financial statements on April 29, Year 1.

Company A is determined to be significant at 44%.

Financial Statement Requirements:

The preliminary prospectus filed on June 10 should include the following financial statements:

Issuer:

Audited statements of income, retained earnings and cash flows for the years ended December 31, Years 2, 3 and 4.

Audited balance sheets as at December 31, Years 2 and 3.

Unaudited statements of income, retained earnings and cash flows for Q1- Years 1 and 2.

Unaudited balance sheet as at March 31, Year 1.

Company A:

Audited statements of income, retained earnings and cash flows for the years ended April 30, Years 2 and 3.

Audited balance sheets as at April, Years 2 and 3.

Unaudited statements of income, retained earnings and cash flows for Q3-Years 1 and 2.

Unaudited balance sheet as at February 28, Year 1.

***Pro forma* Financial Statements**

In addition to the financial statements listed above, the following *pro forma* financial statements of the Issuer are required to be included in the prospectus because the acquisition occurred subsequent to the date of the most recent financial statements of the Issuer included in the prospectus:

A *pro forma* balance sheet as at March 31, Year 1.

A *pro forma* income statement for the year ended December 31, Year 2.

A *pro forma* income statement for the 3 months ended March 31, Year 1.

The December 31 year end of the Issuer and the April 30 year end of Company A (prior to the acquisition) differ by more than 93 days. The *pro forma* balance sheet should be prepared as follows:

Pro forma balance sheet - Combine the Issuer's balance sheet as at March 30, Year 1 with Company A's balance sheet as at February 28, Year 1.

The following is one alternative available to the Issuer for preparing the *pro forma* income statements:

Pro forma income statement for the year ended December 31, Year 2 - Combine the Issuer's audited income statement for the year ended December 31, Year 2 with the 12 month income statement of Company A for the period March 1, Year 2 to February 28, Year 1.

Pro forma income statement for the 3 months ended March 31, Year 1 - Combine the Issuer's Q1- Year 1 income statement with the income statement of the Issuer for the three month period ended February 28, Year 1.

The 12 month and 3 month *pro forma* income statements should be prepared to give effect to the acquisition of Company A as if it occurred on January 1, Year 2. Each *pro forma* income statement includes results of Company A for the period December 1, Year 2 to February 28, Year 1. The notes to the *pro forma* financial statements should disclose the fact that the results of Company A for the 3 months ended February 28, Year 1, which were used to prepare the 3 month *pro forma* income statement, are also included in the 12 month *pro forma* income statement. The overlapping period is Company A's third quarter, the results of which are fully disclosed in the 3 month *pro forma* income statement therefore, it is unnecessary to provide additional disclosure about the revenue, expenses, gross profit or income from continuing operations.

EXAMPLE 4 - APPLICATION OF THE SIGNIFICANCE TESTS FOR INDIVIDUALLY INSIGNIFICANT ACQUISITIONS - ALL COMPANIES HAVE INCOME FROM CONTINUING OPERATIONS

Assumptions

The Issuer acquired five companies, A, B, C, D and E, during Year 2, its most recently completed financial year. The Issuer files a prospectus on April 15, Year 1. Each company reported net income from continuing operations during its most recently completed year ended before the date of the acquisition.

Discussion

Section A of the following table presents the consolidated assets and consolidated net income from continuing operations of each company as reported on the audited financial statements of each company for its most recently completed financial year ended prior to the date of its acquisition by the Issuer. The "investment" column presents the Issuer's consolidated investments in and advances to each company as at the date of its acquisition by the Issuer. Section B presents the individual significant of each acquisition as a results of applying the significance tests. Each company acquired is individually insignificant. However, on a combined basis, the acquisitions are significant, satisfying the asset, income and investment tests at 40%, 50% and 75%, respectively.

Company	Section A \$ Millions			Section B % of Issuer's Results		
	Assets	Income	Investment	Assets	Income	Investment
A	300	30	550	8%	8%	14%
B	200	20	500	5%	5%	13%
C	400	35	700	10%	9%	17%
D	500	55	600	13%	14%	15%
E	200	60	650	5%	15%	16%
	<u>1,600</u>	<u>200</u>	<u>3,000</u>	<u>40%</u>	<u>50%</u>	<u>75%</u>
Issuer's Dec. 31 balance	\$4,000	\$400				
Aggregate Significance of Companies' Combined Results	40%	50%	75%			
Highest significance			75%			

The investment test is satisfied at the highest percentage. As a result, the Issuer should include in its prospectus audited financial statements of those companies which comprise at least 50% of the total investment in all five companies acquired - i.e. 50% of \$3,000 or \$1,500.

The following table shows some of the combinations of the companies' financial statements which the Issuer may include in its prospectus. Column B shows the Issuer's combined investments in and advances to the companies identified in column A. Column C shows that the combined investments in and advances to each combination of companies represents more than 50% of the Issuer's investments in and advances to all five companies acquired. The Issuer should include in its prospectus audited financial statements for each of the companies in the selected combination for the most recently completed financial year and the most recently completed interim period of the company, which ended more than 90 and 60 days before the date of the prospectus, respectively, and before the date of the acquisition.

A	B	C
Companies	Combined Investments in and Advances to the Companies \$ Greater than \$1,500	Combined Purchase Price of Selected Companies as a % of \$3,000
A+B+C	1,750	58%
A+B+D	1,650	55%
A+D+E	1,800	60%
B+C+D	1,800	60%
C+D+E	1,950	65%

EXAMPLE 5 - APPLICATION OF THE SIGNIFICANCE TESTS FOR INDIVIDUALLY INSIGNIFICANT ACQUISITIONS WHEN SOME OF THE COMPANIES HAVE LOSSES FROM CONTINUING OPERATIONS

Assumptions

The Issuer acquired seven companies, A, B, C, D, E, F and G during Year 2, its most recently completed financial year. The Issuer files a prospectus on May 20, Year 1. Companies A, C, E, and G reported net income from continuing operations during its most recently completed year ended before the date of the acquisition while companies B, D and F reported net losses from continuing operations.

Discussion

Section A of the following table shows the consolidated net income or net loss reported by each company acquired by the Issuer during the most recently completed financial year of the company ended before the date of the acquisition. For the purposes of calculating the significance of each company, the companies have been segregated. Section B includes the companies which reported consolidated net income while section C includes those companies which reported net losses. The second column of sections B and C illustrate that each company is individually insignificant based on the income test. However, in aggregate, the companies reporting net income are significant at 65% while those reporting net losses are significant at 46%, based on the absolute value of the aggregate net losses. As a result, companies A through G inclusive, are significant at 65% and financial statements should be provided for any combination of companies whose aggregate net income is at least \$485 (ie. 50% of \$970). The combination of companies should be selected using the absolute value of any net losses.

The Issuer should include in its prospectus audited financial statements for each of the companies in the selected combination for the most recently completed financial year and the most recently completed interim period of the company, which ended more than 90 and 60 days before the date of the prospectus, respectively, and before the date of the acquisition.

Note that if the aggregate significance under both sections B and C was less than 50%, then no financial statements of any of the companies would be required.

Company	Section A	Section B		Section C	
	Net Income(Loss) from Continuing Operations	Net Income	Significance	Net Loss	Significance
A	\$ 235	\$235	16%		
B	(200)			\$ (200)	-16%
C	210	210	14%		
D	(245)			(245)	-18%
E	250	250	17%		
F	(250)			(250)	-18%
G	275	275	18%		
	<u>\$ 275</u>	<u>\$970</u>		<u>\$ (695)</u>	
Absolute Value		\$ 970		\$ 695	
Issuer's Net Income	<u>\$1,500</u>				
Aggregate significance based on the absolute value of the companies net income(loss) as a % of Issuer's net income		<u>65%</u>		<u>46%</u>	

