Chapter 6

Request for Comments

6.1.1 Notice and Request for Comment - Proposed Repeal and Replacement of National Instrument 44-101 Short Form Prospectus Distributions, Form 44-101F3 Short Form Prospectus and Companion Policy 44-101CP Short Form Prospectus Distributions

NOTICE AND REQUEST FOR COMMENT

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

January 7, 2005

INTRODUCTION

We, the Canadian Securities Administrators ("CSA") are publishing for a 90 day comment period the following draft documents:

- amended and restated National Instrument 44-101 *Short Form Prospectus Distributions* ("Proposed NI 44-101");
- amended and restated Form 44-101F1 *Short Form Prospectus* ("Proposed Form 1"); and
- amended and restated Companion Policy 44-101CP *Short Form Prospectus Distributions* (the "Proposed CP");

(collectively, the "Proposed Rule").

The text of the Proposed Rule is being published concurrently with this notice and can be obtained on websites of CSA members, including the following:

www.albertasecurities.com
www.bcsc.bc.ca
www.msc.gov.mb.ca
www.gov.ns.ca/nssc/
www.osc.gov.on.ca
www.lautorite.qc.ca
www.sfsc.gov.sk.ca

The Proposed Rule is intended to replace the current short form prospectus distribution rule and related forms and companion policy (collectively, the "Current Rule") that came into effect in all CSA jurisdictions on December 31, 2000.

We are also proposing to make consequential amendments to certain other national instruments. Please see the CSA's Notice and Request for Comment "Consequential Amendments Arising from the Proposed Repeal and Replacement of National Instrument 44-101 *Short form Prospectus Distributions*: Amendments to National Instrument 44-102 *Shelf Distributions*, National Instrument 44-103 *Post-Receipt Pricing*, National Policy 43-201 *Mutual Reliance Review System for Prospectuses and Annual Information Forms* and National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*", which is being published concurrently with this notice.

We request comments by April 8, 2005. Target implementation of the Proposed Rule is July 2005. Depending in part on the comments received, the amendments proposed may be adopted in their entirety or in part.

BACKGROUND

Current Short Form Prospectus System

National Instrument 44-101 *Short Form Prospectus Distributions* ("Current NI 44-101") was implemented on December 31, 2000 as a reformulation and replacement of National Policy Statement No. 47 *Prompt Offering Qualification System* ("NP47"). The Current Rule prescribes conditions for the use of a short form prospectus to distribute securities to the public. The system was designed to enable qualifying issuers to respond more quickly and efficiently to market opportunities without diminishing the information and protection available to investors, by reducing the disclosure otherwise required to be included in a prospectus and streamlining the regulatory review of such prospectus. The short form prospectus, Form 44-101F3 (the "Current Form"), incorporates by reference, rather than restates, information contained in the issuer's annual information form ("AIF"), financial statements and other continuous disclosure ("CD"). In addition, Current NI 44-101 sets out qualification criteria that emphasize the filing and review of an initial AIF and prescribes additional requirements meant to enhance and update the CD requirements, as they existed in 2000, including requiring business acquisition financial statement disclosure.

Regulatory and Other Developments

The Current Rule is premised on the securities regulatory environment as it existed in 2000. Since then, there have been a number of important regulatory and technical developments affecting the information available to the public. Key regulatory developments include the following:

1. the adoption on March 30, 2004 of National Instrument 51-102 *Continuous Disclosure Obligations* ("NI 51-102");

2. the anticipated adoption early in 2005 of National Instrument 81-106 *Investment Fund Continuous Disclosure* ("NI 81-106", and together with NI 51-102, the "CD Rules"); and

3. the implementation and continued refinement of the harmonized CD review program (the "CDR Program")[1] by many CSA jurisdictions and the progress made by the CSA to enhance consistency in the scope and level of reviews carried out by staff across Canada.

NI 51-102 has enhanced and harmonized CD requirements for reporting issuers other than investment funds, and NI 81-106 will achieve the same result for investment funds. We anticipate that issuers' CD will improve in response to the CSA's increased focus and allocation of resources on CD review. In addition, advances in technology, including the inception and growth of the Internet and the development of the CSA's *System for Electronic Document Analysis and Retrieval* ("SEDAR"), have enhanced investor access to CD. Because the requirements of and access to CD have been so enhanced, we believe that the public offering system for some issuers could be simplified without diminishing investor protection.

Purpose and Substance of the Proposed Rule

If adopted, the amendments reflected in the Proposed Rule will

- streamline the system established under the Current Rule;
- eliminate duplication and inconsistencies with the CD Rules; and
- modify eligibility, disclosure and other requirements in a manner consistent with other developments and initiatives of the CSA.

The proposed changes represent our attempt to more fully integrate the disclosure regimes for the primary and secondary markets. We have also attempted to address deficiencies or ambiguities in the Current Rule which we have identified over the past four years. Finally, we have proposed revisions to the qualification criteria that would allow more issuers that are compliant with the CD Rules to participate in the system.

Expansion of Eligibility

As part of this publication, the CSA is considering and seeking comment on an alternative and much broader set of basic qualification criteria in the short form prospectus system. This proposal is premised on the view that Toronto Stock Exchange- or TSX Venture Exchange-listed issuers who have an operating business and maintain up-to-date CD relating to this business should, regardless of their market capitalization or the amount of time they have been reporting issuers, be able to access the capital markets in a more efficient and streamlined manner based on their comprehensive public disclosure. This proposal is consistent with the 2000 Concept Proposal discussed below, and is set out in Proposed NI 44-101 as an alternative set of qualification requirements (referred to as "Alternative B").

[1] See CSA Staff Notice 51-312 *Harmonized Continuous Disclosure Review Program*, dated July 16, 2004.

The Integrated Disclosure System Concept Proposal

In January 2000, the CSA published a Concept Proposal (the "2000 Concept Proposal") for an Integrated Disclosure System ("IDS").[2] The 2000 Concept Proposal contemplated a streamlined offering system that was designed to fit within existing provincial securities legislation, but would require participating issuers to significantly enhance their CD. After publishing the 2000 Concept Proposal and receiving and reviewing comments on the proposal, the CSA focussed its attention on the harmonization and enhancement of CD requirements and CD review. This focus has resulted in the implementation of the CD Rules, which have enhanced CD requirements for all issuers. Many of the CD enhancements included in the 2000 Concept Proposal have been implemented through the CD Rules. Other enhancements contemplated in the 2000 Concept Proposal have and will be implemented through Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* and Multilateral Instrument 52-110 *Audit Committees* (the "Audit Committee Rule"), and through the implementation and continued refinement of the CDR Program.

The establishment of this "new" CD regime creates a comprehensive national standard for CD for all reporting issuers in Canada and thereby forms an appropriate foundation on which to build an integrated disclosure system. In publishing the Proposed Rule, and particularly the proposed Alternative B qualification criteria, the CSA is proposing significant changes to the current short form prospectus system. These changes are consistent with, and in some cases derived from, the ideas expressed in the 2000 Concept Proposal and are supported by the comments received on the 2000 Concept Proposal.

Our goal in amending the Current Rule is to harmonize and integrate the short form prospectus regime with the new CD regime and to create, to the extent possible, a universal, seamless, integrated and expedited offering system consistent with the objectives underlying the 2000 Concept Proposal.

We received 23 comment letters on the 2000 Concept Proposal. Attached as Appendix A to this Notice is a summary of those comments together with our responses to the comments. Where applicable, our responses to comments will reference the changes we are proposing in the Proposed Rule. Later in this Notice under the heading "REQUEST FOR COMMENT - Next Steps in Prospectus Regulation" we address other potential changes to our prospectus regimes that are not reflected in the Proposed Rule. These include the potential elimination of the requirements for preliminary prospectuses and regulatory prospectus review as well as changes to the current rules governing the marketing of distributions.

Multijurisdictional Disclosure System

A short form prospectus prepared and filed under the Current Rule would generally qualify as a home jurisdiction document for an offering of securities under the U.S. multijurisdictional disclosure system ("MJDS"). We believe that the proposed changes to the Current Rule will not adversely affect the use of a short form prospectus as a home jurisdiction document under U.S. securities law. An issuer planning to use a short form prospectus as a home jurisdiction document must satisfy the general eligibility requirements of the MJDS registration statement forms in addition to being eligible to use a short form prospectus, and so none of the proposed changes to the qualification criteria in Part 2 of Proposed NI 44-101 should have any impact on the availability to issuers of the MJDS.

SUMMARY OF CHANGES TO THE CURRENT RULE

The Current Rule continues to be in force in all Canadian jurisdictions. If the Proposed Rule is adopted, it will replace the Current Rule. The most significant changes to the Current Rule are summarized as follows:

- Eliminating the AIF filing and acceptance procedure, as all reporting issuers, except *venture issuers* (as defined in NI 51-102), are now or will be subject to a mandatory AIF requirement under the CD Rules. Proposed NI 44-101 retains the requirement that an issuer - including a venture issuer - have a current AIF to be eligible to use the short form prospectus distribution system, but effectively incorporates the AIF form and filing requirements provided for under the CD Rules.

- Eliminating the detailed requirements relating to significant acquisitions, as eligible issuers are now subject to a mandatory Business Acquisition Report ("BAR") requirement under NI 51-102.

- Changing the requirements for auditor's consent letters and compilation reports and eliminating certain auditor's comfort letters as a result of the development of CICA Handbook section 7110 *Auditor Involvement with Offering Documents of Public and Private Entities* and the BAR requirements under NI 51-102.

- Clarifying certain issues and addressing questions that have arisen since the Current Rule came into force.

[2] CSA Notice and Request for Comment 44-401, 51-401.

Summary of Proposed Amendments
The mandatory elements of the Proposed Rule are set out in Proposed NI 44-101 and Proposed Form 1. Proposed Form 1 also contains instructions to guide users. The Proposed CP provides explanation and additional guidance relating to Proposed NI 44-101 and Proposed Form 1.

Proposed NI 44-101
Part 1 Definitions and Interpretation of Proposed NI 44-101 identifies defined terms used in Proposed NI 44-101, Proposed Form 1 and the Proposed CP. A number of defined terms have been redefined with reference to NI 51-102 or, if applicable, NI 81-106, as the short form prospectus offering system is designed to build on the CD Rules. In addition, we have been able to remove a number of defined terms because we deleted a number of the substantive provisions of the Current Rule. Of particular note is the elimination of the significance tests for "significant acquisitions" and related provisions. We added the definition of "short form eligible exchange" in connection with the Alternative B qualification criteria, discussed below.

Part 2 Qualification to File a Prospectus in the Form of a Short Form Prospectus of Proposed NI 44-101 sets out the qualification criteria for issuers wishing to use the short form prospectus distribution system. The transitional provisions relating to NP47 that appear in Current NI 44-101 have been removed, as they became unnecessary with the passage of time.

We have included in Proposed NI 44-101 two alternative versions of Part 2. The first version ("Alternative A") represents a substantive continuation of the qualification requirements in the Current Rule after making amendments to harmonize those requirements with the CD Rules and other regulatory developments. Alternative B represents a significant shift in qualification requirements from the Current Rule.

Alternative A
Section 2.2 sets out the basic qualification criteria for eligibility to participate in the short form distribution system. They include being a SEDAR filer, having been a reporting issuer for the past 12 months in at least one jurisdiction in Canada, having filed all required CD documents, having a current AIF and current annual financial statements, having a minimum market capitalization of $75,000,000 within 60 days of the date of filing the preliminary short form prospectus, and having filed a one-time notice of intention to be qualified to distribute securities under the short form offering system.

The adoption by most Canadian jurisdictions of the reporting issuer concept has allowed us to remove the separate qualification criteria that are included in the Current Rule for issuers who are based in a jurisdiction that does not have that concept. The following changes were also made to the basic eligibility criteria:

1. With the universal adoption of SEDAR, CD documents are accessible electronically to investors in other jurisdictions. SEDAR participation has been added as an eligibility criterion to ensure broad accessibility.

2. We have changed the 12-month "seasoning" requirement to tie into the date of filing the preliminary short form prospectus rather than the date of the most recent AIF. AIF filing deadlines are now imposed under the applicable CD Rule and so most AIFs will be filed once annually, whereas under the Current Rule an issuer could file an AIF at any time throughout the year. Accordingly, for practical purposes, the seasoning period requirement remains the same.

3. We added the requirement that the issuer have filed all required CD documents. This replaces section 10.6 of Current NI 44-101, which prohibits the filing of a preliminary short form prospectus or short form prospectus while the issuer is in default of filing or delivering to the regulator a document required to be filed or delivered under securities legislation. That prohibition is intended to ensure the completeness of the short form issuer's CD record and, in our view, is more appropriately framed as a qualification criterion.

4. We removed the provisions accelerating the filing deadlines for annual financial statements. The CD Rules have shortened the filing deadlines. Having the same filing deadlines for CD and prospectus purposes increases the integration of information available to primary and secondary market participants.

5. We continued the existing requirements to have a current AIF and current annual financial statements, but reframed those requirements to reflect the implementation of NI 51-102 and expected implementation of NI 81-106.

6. We added a one-time notice requirement to address the need for regulators and other market participants to be able to identify which filers are potentially short form issuers. This information is needed to, among other things, monitor the issuer's status under the CDR Program.

These changes to the basic eligibility criteria are generally reflected throughout the various other qualification criteria as well.

Section 2.3 of Proposed NI 44-101, like its counterpart in Current NI 44-101, provides alternative qualification criteria for an issuer that does not have a 12-month reporting issuer history. It allows a "significant issuer" to participate in the short form prospectus system on the basis of a $300 million market capitalization.

Section 2.4 of Proposed NI 44-101 contains the qualification criteria for issuers of approved rating non-convertible securities.

Section 2.5 sets out the alternative qualification criteria for issuers of guaranteed non-convertible debt securities, preferred shares and cash settled derivatives. We amended this provision to permit U.S. credit supporters that do not have a $75,000,000 minimum market capitalization on an exchange in Canada, but who have non-convertible securities that have received an approved rating, to be eligible to act as credit supporters for issuers incorporated in a jurisdiction in Canada. Permitting these U.S. credit supporters to be eligible to act as credit supporters is consistent with the exemptive relief that the securities regulatory authorities or regulators have frequently granted in the past.

Section 2.6 provides the alternative qualification criteria for issuers of guaranteed convertible debt or preferred shares.

Section 2.7 is the alternative qualification criteria for issuers of asset-backed securities.

We removed section 2.8 of Current NI 44-101, which provides alternative qualification criteria following reorganizations. We incorporated its substance into section 2.9 of Proposed NI 44-101, which is discussed below.

Section 2.8 of Proposed NI 44-101 remains unchanged from section 2.9 of Current NI 44-101 and deals with calculation of the aggregate market value of an issuer's securities.

Section 2.9 of Proposed NI 44-101 provides exemptions from the requirements to have current annual financial statements and a current AIF for new reporting issuers and successor issuers. The exemptions further harmonize the Proposed Rule with the CD Rules. The alternative qualification criteria following reorganizations in Current NI 44-101 have led to many applications for exemptive relief and requests of staff for clarifications.

The exemptions are available to those issuers who are not otherwise exempt from the requirements under the CD Rules to file the documents in question, but have not yet been required by the passage of time to file them. The exemptions are conditional on the issuer having filed another disclosure document, such as a prospectus or an information circular, which includes the information that would have been required to be disclosed in the annual financial statements or AIF.

Section 2.9 also provides a successor issuer with an exemption from a portion of the seasoning period provided at least one of the participants to the reorganization that produced the successor issuer was a reporting issuer during the applicable period.

Alternative B

Alternative B in Proposed NI 44-101 would broaden access to the short form prospectus system by eliminating the seasoning requirement and the quantitative (size) requirement from the qualification criteria.

"Seasoning" Requirement

Alternative B is consistent with the CSA view that the other eligibility requirements, particularly compliance with all timely and periodic filing requirements under applicable securities legislation (including the CD Rules), are sufficiently rigorous that a seasoning requirement is not essential.

We note that the 2000 Concept Proposal did not include a seasoning requirement as part of IDS because the proposed IDS would have required issuers to provide an enhanced standard of disclosure to secondary market investors that would also be available to investors in the primary market. With the implementation of the CD Rules and the CDR Program, which have superseded the enhanced standard of disclosure called for in the 2000 Concept Proposal, all reporting issuers are now subject to a level of CD and of CD reviews by their principal regulators that will support short form offering documents without imposing a seasoning period.

Quantitative (Size) Requirement

In developing Alternative B, the CSA rejected quantitative measures, such as an issuer's market capitalization, as a condition of eligibility. This is also consistent with the approach advanced in the 2000 Concept Proposal.

Excluding issuers on the grounds of size alone is inconsistent with the CSA'S objective of broad market efficiency. Given the enhanced disclosure standards under the CD Rules, investors can benefit from the inclusion in the system of issuers of all sizes.

Although the CSA removed the seasoning requirement and the market capitalization requirement from the basic qualification criteria in Alternative B, it maintained a listing requirement. The basic qualification criteria are structured to allow most Canadian listed issuers to participate in the short form prospectus offering system, provided their disclosure record provides investors with satisfactory and sufficient information about the issuer and its business, operations and capital. The system would not, however, be available to an issuer whose principal asset is its exchange listing.

In Alternative B, through the definition of "short form eligible exchange", we have maintained the Canadian listing requirement that is in the Current Short Form Rule. We considered expanding eligibility to reporting issuers whose equity securities are listed only on a foreign exchange, provided that the foreign exchange's listing requirements ensured the issuer had a business and operations. However, we are not, at this time, proposing this additional expansion of eligibility. Based on the CSA's experience with the Current Short Form Rule, we do not believe that reporting issuers who are not listed on a Canadian exchange are likely to want to raise capital using the short form regime.

In Alternative B, the CSA have maintained a minimum approved rating requirement in the alternative qualification criteria based on the types of securities being issued (such as debt or asset-backed securities).

All other changes in Alternative B of section 2 are either consistent with the proposed changes in Alternative A or result from the removal of the seasoning or minimum market capitalization requirement.

We have removed the following portions of Current NI 44-101 from Proposed NI 44-101 for the following reasons:

1. Part 3 *AIF* of Current NI 44-101 mandates the form of AIF and sets out certain requirements and procedures relating to the filing of AIFs and supporting documents, and review and amendment of AIFs. These provisions have been superseded by NI 51-102 and its AIF requirements for reporting issuers other than investment funds, and will be superseded by the corresponding requirements in NI 81-106 for investment funds.

2. Part 4 *Disclosure in a Short Form Prospectus of Financial Statements for Significant Acquisitions* and Part 5 *Financial Statement Disclosure for Multiple Acquisitions That are Not Otherwise Significant or Related* – The financial statement disclosure requirements for significant acquisitions and multiple acquisitions have been replaced by reliance on the BAR requirements set out in the CD Rules. Proposed Form 1 requires the issuer to incorporate by reference any BARs filed since the beginning of the issuer's most recently completed financial year for which an AIF has been filed (either directly or through the incorporation by reference of the issuer's current AIF, which in turn incorporates by reference certain BARs). In some cases, if the issuer was not required to file a BAR, Proposed Form 1 requires comparable disclosure to be included in the short form prospectus. Although Proposed NI 44-101 does not generally accelerate the requirement to file a BAR, Proposed Form 1 requires a summary of significant acquisitions completed within 75 days prior to the short form prospectus for which a BAR has not been filed, and of certain proposed significant acquisitions.

3. Part 6 *Pro Forma Financial Statement Disclosure for Significant Dispositions* of Current NI 44-101 has been removed because the CICA has issued Handbook Section 3475 *Disposals of Long-Lived Assets and Discontinued Operations*, which expands the scope of disposition activities that require discontinued operations disclosure, thus requiring that the issuer's financial statements include the disclosure previously required by Part 6 of Current NI 44-101.

4. Part 7 *GAAP, GAAS, Auditor's Reports and Other Financial Statement Matters* of Current NI 44-101, which deals with generally accepted accounting principles, generally accepted auditing standards and other financial statement matters, has been deleted. These requirements have been included in National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* ("NI 52-107"), which is applicable to all issuers. The Part will be largely eliminated as a result of implementing consequential amendments to Current NI 44-101 relating to NI 52-107. The remaining provisions will become unnecessary under Proposed NI 44-101 because of the new definition of *current financial statements*.

5. Part 8 *Audit Committee Review of Financial Statements Included in a Short Form Prospectus* has been replaced by a similar requirement under the Audit Committee Rule.

Part 3 Deemed Incorporation by Reference of Proposed NI 44-101 remains substantively unchanged from what is presently Part 9 of Current NI 44-101. It addresses the deemed incorporation by reference of filed and subsequently filed documents in a short form prospectus.

Part 4 Filing Requirements for a Short Form Prospectus of Proposed NI 44-101 contains provisions relating to the filing requirements and procedures for a short form prospectus and the distribution of securities under a short form prospectus that are substantially similar to the requirements set out in Part 10 of Current NI 44-101, but does reflect some changes. In particular,

1. We expanded the scope of the qualification certificate filed with the preliminary short form prospectus to certify that all previously unfiled material incorporated by reference into the short form prospectus is being filed with the preliminary short form prospectus. The filing of that material is no longer a qualification criterion but remains a filing requirement. The qualification certificate provides staff with an efficient way of confirming that the filing of the preliminary short form prospectus, including documents incorporated by reference, has been completed. We have also expanded the certificate to require the issuer to specify the qualification criteria it is relying on for eligibility.

2. We added a requirement, in connection with the filing of both a preliminary short form prospectus and a short form prospectus, that effectively accelerates the requirement under the applicable CD Rule to file certain material documents. This replaces the existing requirement to deliver all material contracts to the regulator and harmonizes the filing requirement with the CD Rule.

3. We removed the requirement to file technical reports and certificates prepared in accordance with National Policy Statement 2-B, *Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators*, because that instrument has been replaced by NI 51-101 *Standards of Disclosure for Oil and Gas Activities*. No additional filings are required.

4. We eliminated the requirement to file "other mining reports" with the short form prospectus, as those reports are already required to be filed with the preliminary short form prospectus.

5. We removed the requirement to file an auditor's comfort letter regarding unaudited financial statements with the final short form prospectus. CICA Handbook Section 7110 - *Auditor Involvement with Offering Documents of Public and Private Entities* sets out the auditor's professional responsibilities when the auditor is involved with a prospectus or other securities offering document and requires that the auditor perform various procedures prior to consenting to the use of its report or opinion, including reviewing unaudited financial statements included in the document. Furthermore, the issuer is ultimately responsible for ensuring that the short form prospectus provides full, true and plain disclosure.

6. We added a requirement for the issuer to deliver to the regulators, no later than the filing of a short form prospectus, an undertaking to file the periodic and timely disclosure of certain credit supporters. Although the credit supporter is not, simply by providing the guarantee or alternative credit support, issuing a security, investors will nonetheless need periodic and timely disclosure relating to that credit supporter to make informed investment decisions in the secondary market.

7. We amended the provisions dealing with the language of documents to reflect and clarify current practice.

8. We replaced the prohibition, presently in section 10.6 of Current NI 44-101, against filing a short form prospectus while the issuer is in default of filing any required document under securities legislation, with a qualification requirement that all disclosure filings be up to date, as discussed above.

9. The requirement to make all material contracts available for inspection during the distribution has been eliminated. Material documents are now filed on SEDAR and therefore available for public inspection on a continuous basis.

Part 5 Amendments to a Short Form Prospectus of Proposed NI 44-101 addresses amendments to a short form prospectus, and largely continues the provisions of Part 11 of Current NI 44-101. We clarified the distinction between short form prospectuses and preliminary short form prospectuses for the purpose of that Part. The requirement to file an updated consent letter with an amendment has been revised to be consistent with the changes made to the filing requirements and to clarify that the consent must be dated the same date as the amendment. The provision relating to updated auditor's comfort letters was corrected to refer to the delivery, rather than filing, of a comfort letter.

Part 6, *Non-Fixed Price Offerings and Reduction of Offering Price Under Short Form Prospectus* of Proposed NI 44-101 is unchanged from Part 12 of Current NI 44-101.

Part 13 Circulars of Current NI 44-101 has been removed from Proposed NI 44-101. Part 13 generally provides that certain issuers can include their short form prospectus disclosure in a take-over bid, issuer bid or information circular, to satisfy the disclosure requirements of these circulars. We removed Part 13 because it merely restates what is already permitted under the applicable take-over bid and issuer bid forms when the issuer is entitled to use the short form prospectus system and Form 51-102F5 *Information Circular* permits all issuers to incorporate information by reference.

Part 7 Solicitations of Expressions of Interest of Proposed NI 44-101 provides relief on a national basis from securities legislation so issuers can solicit expressions of interest before filing a preliminary prospectus for a bought deal. It is substantially the same as Part 14 of Current NI 44-101, but extends the period within which the underwriting agreement must require the filing of a preliminary short form prospectus from two business days to up to four business days. This change attempts to address the recurring situation in which issuers are unable to file a preliminary short form prospectus in time to receive a receipt no later than

two business days after the execution of an underwriting agreement. Issuers and underwriters should be able to negotiate an appropriate period (up to a four day period) during which a preliminary prospectus must be filed and receipted. One consequence of this change is to extend the period during which pre-marketing of a bought deal can occur to up to four days. We have also eliminated the distinction between MRRS filings and non-MRRS filings.

Part 8 Exemption of Proposed NI 44-101 sets out the requirements for applications for exemptions and the manner in which the granting of an exemption may be evidenced, and remains substantially unchanged from Part 15 of Current NI 44-101. It has been amended to reflect the ability of the securities regulatory authority in Alberta to grant such exemptions, and to eliminate the transitional provisions relating to NP 47.

Part 9 Effective Date and Transition of Proposed NI 44-101 provides some transitional provisions to assist issuers in determining which version of the instrument to proceed under.

Appendix A has been updated with respect to contact information, the information to be provided for foreign residents, and to comply with new privacy legislation.

Form 44-101F1 ("Proposed Form 1")
Proposed Form 1 is the proposed form for a short form prospectus under the Proposed Rule.

Item 1 Cover Page Disclosure of Proposed Form 1 addresses required cover page disclosure. Several items have been added or moved:

1. We moved the requirement to state that information has been incorporated by reference in the prospectus from Section 12.4 of the Current Form to Section 1.3. This change places the statement on the cover page of the short form prospectus, rather than leaving its placement to the issuer's discretion. We believe that consistency in placement will be useful to readers of the short form prospectus, and reflects developing practice.

2. We moved the requirement, presently in Item 2.1 of the Current Form, to state the full corporate name and address of the issuer, to Item 1.5. This reflects our view that this information should be on the cover page.

3. We deleted certain requirements from Section 1.6 (Section 1.4 of the Current Form) relating to disclosure of securities issued or to be issued to the underwriters. They are now included in the proposed new underwriters' position chart in Section 1.10.

4. Section 1.9 (Section 1.7 of the Current Form) has been amended to require expanded disclosure relating to the implications of the absence of a market for the securities being distributed, where applicable.

5. We amended Section 1.10 (Section 1.8 of the Current Form) to include a chart describing the over-allotment, compensation and other options and securities to be distributed under the prospectus or otherwise held by the underwriters and professional group. We believe that this chart will provide investors and other prospectus users with plain disclosure, in one central location, about the underwriters' securities compensation and position, most of which is already required to be disclosed in various parts of the Current Form.

6. We added Section 1.12 to require disclosure, in appropriate circumstances, concerning the ability of holders of restricted securities to participate in a takeover bids. This disclosure is consistent with requirements already in place in some jurisdictions.

Item 2 Name of Issuer and Intercorporate Relationships of the Current Form is deleted as it duplicates information now contained in the form of AIF under the applicable CD Rule.

Item 2 Summary Description of Business of Proposed Form 1 requires a summary description of the business, and is unchanged from Item 3 of the Current Form.

Item 3 Consolidated Capitalization of Proposed Form 1 is updated from Item 4 of the Current Form, and refers to financial statements filed under the applicable CD Rule. We have also removed the requirement in the Current Form to include the content of a news release disseminating financial information, as that requirement duplicates a requirement in Item 11 of Proposed Form 1.

Item 4 Use of Proceeds of Proposed Form 1 is updated from Item 5 of the Current Form, and in Subsection 4.2(2) mandates additional disclosure concerning use of proceeds. If more than 10 percent of the net proceeds of the distribution will be used to reduce or retire indebtedness that was incurred within the two preceding years, the issuer must identify 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.

The language of this new requirement is identical to the language of Section 7.7 of Ontario Securities Commission Form 41-501F1 *Information Required in a Prospectus* and section 7.7 of Schedule 1 to Québec Policy Statement Q-28, *General Prospectus Requirements*. This type of disclosure is relevant for investors because making an informed investment decision requires an understanding of the extent to which a significant amount of the offering proceeds will be used to reduce or retire existing debt. It is also important for investors to be provided with details relating to debt that is incurred with a creditor that is an insider, associate or affiliate of the issuer.

The importance of this type of disclosure has come to our attention particularly in the context of income trust offerings, where investors typically make their investment decisions based on the ability of the issuer to provide a consistent stream of distributable cash. The ability of the issuer to generate that consistent stream may be affected by the amount and terms of existing debt, as well as by the extent to which an issuer will need to renegotiate that debt, or put alternate financing arrangements in place after the offering. An investor will be in a better position to make this evaluation if the information requested in Subsection 4.2(2) is provided. Although this issue came to our attention in the context of income trust offerings, we believe that the disclosure is equally relevant in other offerings, as it will assist investors in all offering scenarios to better evaluate their investment decision.

Item 5 Plan of Distribution is an update of Item 6 of the Current Form and remains substantially unchanged. We have added to the disclosure requirements in respect of an offering with a minimum distribution such that if a minimum amount of funds is required under the issue and the securities are to be distributed on a best efforts basis, the short form prospectus must state that funds received from subscribers before the distribution is complete will be held in trust. If the minimum amount of funds is not raised, the funds will be returned to the subscribers unless the subscribers have given other instructions. We understand this is market practice and this should be disclosed in the short form prospectus. This is consistent with the requirement under long form prospectus offerings.

We have also moved into this item a requirement, presently in Item 8 of the Current Form, to disclose any constraints imposed on ownership of securities of the issuer in relationship to a required level of Canadian ownership.

Item 6 Earnings Coverage Ratios of Proposed Form 1 is amended from Item 7 of the Current Form to reflect the implementation of NI 52-107, to address recent changes to the accounting rules which may require certain debt obligations to be classified as current liabilities, and to clarify the requirements and the transition year expectations where there has been a change in year end.

Item 7 Description of Securities Being Distributed has been updated from Item 8 of the Current Form to harmonize with the CD Rules. In particular, the term “share” has been replaced with “equity security”, and the issuer need not duplicate information concerning particular securities that is already included in a document incorporated by reference in the short form prospectus. Section 7.7 has been added to address disclosure concerning “restricted securities”. These requirements are already part of the legislation in a number of CSA jurisdictions, and are consistent with provisions contained in NI 51-102. Section 7.9 has been expanded to refer specifically to stability ratings for securities, and is consistent with National Policy 41-201 *Income Trusts and Other Indirect Offerings*. Finally, Section 8.8 of the Current Form, which requires disclosure of constraints imposed on the ownership of securities, has been relocated to Item 5 *Plan of Distribution* as Section 5.9 of Proposed Form 1.

Section 7.6 requires issuers to disclose that a contractual right of action for rescission is available to holders of Special Warrants who receive underlying securities under a short form prospectus. Section 7.6 codifies existing requirements in many jurisdictions.

In *Item 8 Selling Securityholder* of Proposed Form 1, we removed paragraphs 6 and 7 from Section 8.1 (9.1 in the Current Form) because we do not consider them to be material information for an investor or prospective investor.

Item 9 Resource Property of Proposed Form 1 is amended to remove from Section 9.1 reference to the “old” form of AIF (current Form 44-101F1) that is being deleted as part of the amendments.

Item 10 Significant Acquisitions of Proposed Form 1 is amended from Item 11 of the Current Form to reflect the incorporation by reference of previously filed BARs. The requirement under NI 51-102 to file a BAR in respect of a significant acquisition is not accelerated. However, this item requires a summary to be provided of any significant acquisition that was completed within 75 days prior to the date of the short form prospectus and for which a BAR has not been filed, and of certain proposed significant acquisitions that meet an objective test of “highly likely”. The issuer is also required to include in the short form prospectus the financial statements that would be required in a BAR if the transaction in question is a reverse takeover, or if the inclusion of the financial statements is necessary in order for the short form prospectus to contain full, true and plain disclosure. The maximum number of years for which historical financial statements must be included in a prospectus for a significant transaction is, accordingly, reduced to two, from the maximum of three years contemplated in the Current Form, consistent with the BAR requirement.

Item 11 Documents Incorporated By Reference is updated from Item 12.1 of the Current Form to provide for the mandatory incorporation by reference of the appropriate CD documents filed under the CD Rules. We also added a requirement in Section 11.1 to incorporate by reference any other disclosure document that the issuer is required to file under an undertaking to securities regulatory authorities. In identifying a gap or potential gap in an issuer's disclosure, either in a prospectus or CD, CSA staff may require the issuer to undertake to file a particular type of disclosure document on a one-time or continuous basis. Issuers are instructed to provide a list of the material change reports and BARs that are incorporated by reference, and a brief description of the subject matter of each report, in the interests of "plain" disclosure.

We added a requirement in Section 11.3 to provide substitute disclosure for issuers who are able to rely on the exemptions in Section 2.9 of Proposed NI 44-101 from the requirement to have a current AIF and current annual financial statements.

We added Section 11.4 to require alternative disclosure by an issuer in respect of a significant acquisition for which no BAR has been required to have been filed because the issuer was not a reporting issuer at the time of the acquisition.

Section 12.3 of the Current Form is deleted and its substantive requirement is addressed in Section 13.1 of Proposed Form 1 (see discussion below). Section 12.4 of the Current Form was moved to the cover page disclosure (Section 1.3). Paragraph 12.1(3) and Sections 12.5, 12.6 and 12.7 of the Current Form are removed. Other developments and amendments have rendered those sections unnecessary or inappropriate.

Item 12 Additional Disclosure for Issues of Guaranteed Securities of Proposed Form 1 requires disclosure about any applicable credit supporter of the securities being distributed, and is based on Section 13.2 of the Current Form. Section 13.1 of the Current Form is deleted because other amendments have rendered it unnecessary.

Item 13 Exemptions for Certain Issues of Guaranteed Securities of Proposed Form 1 is new and provides exemptions from the requirement to include disclosure in a short form prospectus about both the issuer and any applicable credit supporter. These exemptions are similar to the exemptions from the requirement to provide financial statement disclosure relating to credit supporters under U.S. securities law.[3] The exemptions are based on the principle that, in certain circumstances, investors will either require only issuer disclosure or only credit supporter disclosure to make informed investment decisions.

Item 14 Relationship Between Issuer or Selling Securityholder and Underwriter of Proposed Form 1 is updated to reflect the implementation of National Instrument 33-105 *Underwriting Conflicts*.

Item 15 Experts is amended to exempt auditors of acquired businesses and predecessor auditors in certain instances from the requirement to disclose their interest in the issuer. We have eliminated the requirement that the issuer's auditor disclose its interests in the issuer if the auditor is independent of the issuer and there is disclosure of the independence. We have also clarified who the disclosure requirements relate to.

Item 16 Promoters of Proposed Form 1 is updated to harmonize with the corresponding disclosure requirement in NI 51-102.

In *Item 17 Risk Factors* of Proposed Form 1 we added an instruction to Section 17.1 to recognize that risk factors is now a required disclosure item under Form 51-102F2 (AIF).

Item 18 Other Material Facts is changed slightly to harmonize with other changes.

Item 20 Reconciliation to Canadian GAAP of the Current Form is deleted because these requirements, as well as those presently included in Part 7 of Current NI 44-101, have been superseded by the implementation of NI 52-107 and the new definition in Proposed NI 44-101 of *current financial statements*.

Item 20 Certificates of Proposed Form 1 is updated from Item 21 of the Current Form to correct the language of the certificates in light of the amendments and developments elsewhere. We added Section 20.5 to clarify that the rules concerning the dating of prospectuses applicable to other types of prospectuses apply to short form prospectuses.

The Proposed CP

The Proposed CP provides information relating to interpretation of Proposed NI 44-101 by securities regulatory authorities, and its application. It has been updated to reflect the changes made to the Current Rule, as described above. In some cases, changes have been made to the companion policy to reflect experience with the rules over the past four years.

RELATED AMENDMENTS

We are also proposing consequential amendments to a number of national instruments in conjunction with the implementation of the Proposed Rule to make those instruments consistent with the changes we have proposed to the Current Rule. We are publishing a separate Notice relating to those proposed amendments.

[3] Rule 3-10 of Regulation S-X.

AUTHORITY FOR PROPOSED NATIONAL INSTRUMENT - ONTARIO

The following provisions of the Ontario *Securities Act* (the "Ontario Act") provide the Ontario Securities Commission ("OSC") with authority to adopt the proposed National Instrument and Forms.

Paragraph 143(1)13 of the Ontario Act authorizes the OSC to make rules regulating trading or advising in securities to prevent trading or advising that is fraudulent, manipulative, deceptive or unfairly detrimental to investors.

Paragraph 143(1)16 of the Ontario Act authorizes the OSC to make rules varying the application of the Ontario Act to establish procedures for or requirements in respect of the preparation and filing of preliminary prospectuses and prospectuses and the issuing of receipts therefor that facilitate or expedite the distribution of securities or the issuing of the receipts, including, requirements in respect of distribution of securities by means of a prospectus incorporating other documents by reference and requirements in respect of pricing of distributions of securities after the issuance of a receipt for the prospectus filed in relation thereto.

Paragraph 143(1)20 of the Ontario Act authorizes the OSC to make rules providing for exemptions from the prospectus requirements under the Ontario Act and for the removal of exemptions from those requirements.

Paragraph 143(1)39 of the Ontario Act authorizes the OSC to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by the Ontario Act, the regulations or the rules and all documents determined by the regulations or the rules to be ancillary to the documents, including preliminary prospectuses and prospectuses, proxies and information circulars and take-over bid circulars, issuer bid circulars and directors' circulars.

ALTERNATIVES CONSIDERED

The purposes of the amendments contemplated by the Proposed Rule are (i) to streamline the short form system, (ii) to eliminate inconsistencies with the CD Rules, and (iii) to expand eligibility into the short form system and thereby create an even more integrated, simplified and less onerous offering system for reporting issuers. One alternative means of achieving these purposes is to leave the Current Rule unamended but to grant exemptive relief on a case by case basis. Given the extent and breadth of the changes contemplated in the Proposed Rule, we believe that amendment of the Current Rule is the optimal way to achieve these purposes.

Another alternative is to create a separate offering system which issuers could access in the alternative to the Current Rule in the manner contemplated in the 2000 Concept Proposal. We focussed on amending and expanding the short form system because we believe that the continued evolution of the current short form offering regime should be our priority. As discussed above, based on public commentary, we will continue to seek to enhance our prospectus offering regimes, as needed, either through amendments to the short form regime or through the introduction of alternative offering systems.

UNPUBLISHED MATERIALS

In proposing Proposed NI 44-101, Proposed Form 1 and Proposed CP, the CSA have not relied on any significant unpublished study, report or other material.

ANTICIPATED COSTS AND BENEFITS

The CSA expect that the amendments contemplated in the Proposed Rule will further enhance efficiency of accessing capital for short form eligible reporting issuers. Harmonizing the short form system with the CD Rules will eliminate costs of public securities offerings. There will be greater clarity regarding the application of the Proposed Rule and reduced circumstances requiring exemptive relief. To the extent that the amendments require additional disclosure, this disclosure will benefit investors to an extent that the benefit will outweigh the costs of these new requirements.

REQUEST FOR COMMENT ON THE PROPOSED RULE

We request your comments on Proposed 44-101, Proposed Form 1 and the Proposed CP. The comment period expires on April 8, 2005. In addition to any comments you wish to make, we invite comments on the following specific questions:

Proposed Qualification Criteria - Alternative A or Alternative B?

Questions

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

Other Aspects of the Proposed Rule

Questions

2. Is the requirement to deliver an undertaking of the issuer to file the periodic and timely disclosure of applicable credit supporters under paragraph 4.3(b)2 of Proposed NI 44-101 an appropriate response to our concern about the lack of

adequate credit supporter disclosure in the secondary market? If not, why not? Please also suggest alternatives to this requirement.

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

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

REQUEST FOR COMMENT ON POSSIBLE FURTHER CHANGES IN PROSPECTUS REGULATION

Background - Preliminary Prospectuses and Regulatory Review

On a distribution of securities, the securities legislation in all CSA jurisdictions, unless an exemption applies, requires or provides for:

- the filing of a preliminary prospectus;
- the issuance by the regulator of a receipt for the preliminary prospectus;
- the delivery of the preliminary prospectus to potential investors;
- the review of the preliminary prospectus by the regulator to determine if a receipt will be issued for the final prospectus;
- the filing of the final prospectus and the issuance by the regulator of a receipt therefore;
- the delivery of the final prospectus to the investor before the entering into of an agreement of purchase and sale; and
- a right of withdrawal and rights of rescission and damages in respect of any misrepresentation in the prospectus.

As discussed above, the Proposed Rule is our attempt to integrate the CD Rules with the short form prospectus regime within current statutory parameters. The 2000 Concept Proposal, which was also based on current legislation, also required a preliminary prospectus filing and regulatory review. However, we believe that as issuers and other market participants become more accustomed to the new CD Rules and if other proposed enhancements are adopted, including secondary market liability, our prospectus regime could evolve even further and more profoundly.

We are considering an offering system whereby certain eligible issuers could access public capital based solely on the filing of a final prospectus. This system would not require issuers to file a preliminary prospectus or obtain a receipt for their final prospectus. This system would require simply:

- the filing of the final prospectus without the issuance of any receipt by the regulator;
- the delivery of the final prospectus to a potential investor before entering into an agreement of purchase and sale with an investor; and
- a right of withdrawal and rights of rescission and damages if there is a misrepresentation in the prospectus.

The prospectus would still be required, through incorporation by reference or otherwise, to provide full, true and plain disclosure of all material facts relating to the securities proposed to be distributed and would have to comply with a prescribed form.

Such an offering system would further enhance capital markets by allowing issuers quicker and more certain access to capital without regulatory intervention. This type of offering system could not be implemented under the current securities legislation in some jurisdictions. As a result, some jurisdictions would have to make legislative amendments before this system could be implemented.

Questions

General

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

Qualification Criteria

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

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

    Do you think these are appropriate?

Marketing Restrictions

As discussed in the attached summary of comments, the Proposed Rule does not include any substantial changes to the current prospectus offering marketing regime. If the CSA moves forward with a prospectus offering system that does not require the use of a preliminary prospectus, and so eliminates the waiting period between preliminary and final prospectuses, we anticipate that we would permit marketing prior to the filing of a final prospectus regardless of whether the transaction was a bought deal. However, because of our concerns about improper use of undisclosed information about an offering, we would not permit marketing until after public disclosure is made that an offering was pending. The current shelf prospectus regime allows an unallocated prospectus to be utilized to distribute equity securities but requires a press release be issued immediately when the issuer forms a reasonable expectation that an equity offering may proceed. We note that the unallocated shelf system is not significantly utilized for equity offerings other than in cross-border or exchange offerings. We also note the concerns raised in comments to question 11 and question 25 of the 2000 Concept Proposal about the potential for premature disclosure of a pending offering.

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

HOW TO PROVIDE YOUR COMMENTS

Please provide your comments by April 8, 2005 by addressing your submission to the securities regulatory authorities listed below:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission

You do not need to deliver your comments to all of the CSA member commissions. Please deliver your comments to the three addresses that follow, and they will be distributed to all other jurisdictions by CSA staff.

Jo-Anne Bund, Co-Chair of the CSA's Prospectus Systems Committee
Alberta Securities Commission
4th Floor, 300 – 5th Avenue S.W.
Calgary, Alberta T2P 3C4
Fax: (403) 297-6156
e-mail: joanne.bund@seccom.ab.ca

Charlie MacCready, Co-Chair of the CSA's Prospectus Systems Committee
Ontario Securities Commission
20 Queen Street West, Suite 1903, Box 55
Toronto, Ontario M5H 3S8
Fax: (416) 593-3683
e-mail: cmaccready@osc.gov.on.ca

Anne-Marie Beaudoin
Directrice du secretariat
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22e étage
Montréal, Québec H4Z 1G3
Fax: (514) 864-6381
e-mail: consultation-en-cours@autorite.qc.ca

If you are not sending your comments by e-mail, please send a diskette containing your comments (in DOS or Windows format, preferably Word).

We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

QUESTIONS
Please refer your questions to any of:

Michael Moretto
Manager, Corporate Finance
British Columbia Securities Commission
(604) 899-6767
mmoretto@bcsc.bc.ca

Kathy Tang
Securities Analyst
British Columbia Securities Commission
(604) 899-6711
ktang@bcsc.bc.ca

Rosann Youck
Senior Legal Counsel
British Columbia Securities Commission
(604) 899-6656
ryouck@bcsc.bc.ca

Charlotte Howdle
Securities Analyst
Alberta Securities Commission
(403) 297-2990
charlotte.howdle@seccom.ab.ca

Mavis Legg
Manager, Securities Analysis
Alberta Securities Commission
(403) 297-2663
mavis.legg@seccom.ab.ca

Elizabeth Osler
Legal Counsel
Alberta Securities Commission
(403) 297-5167
elizabeth.osler@seccom.ab.ca

Ian McIntosh
Deputy Director, Corporate Finance
Saskatchewan Financial Services Commission
(306) 787-5867
imcintosh@sfsc.gov.sk.ca

Bob Bouchard
Director, Corporate Finance
Manitoba Securities Commission
(204) 945-2555
bbouchard@gov.mb.ca

Sonny Randhawa
Accountant, Corporate Finance
Ontario Securities Commission
(416) 593-2380
Srandhawa@osc.gov.on.ca

Michael Tang
Legal Counsel, Corporate Finance
Ontario Securities Commission
(416) 593-2330
mtang@osc.gov.on.ca

Marcel Tillie
Senior Accountant, Corporate Finance
Ontario Securities Commission
(416) 593-8078
mtillie@osc.gov.on.ca

Rosetta Gagliardi
Conseillère en réglementation
Autorité des marchés financiers
(514) 940-2199 ext. 2405
rosetta.gagliardi@lautorite.qc.ca

Bill Slattery
Deputy Director, Corporate Finance and Administration
Nova Scotia Securities Commission
(902) 424-7355
slattejw@gov.ns.ca

APPENDIX
SUMMARY OF WRITTEN COMMENTS RECEIVED ON THE
CONCEPT PROPOSAL
FOR AN
INTEGRATED DISCLOSURE SYSTEM

Background
On January 28, 2000 the CSA published the 2000 Concept Proposal for comment. The comment period expired on June 1, 2000. The CSA received submissions from the 23 commenters identified in Schedule 1, including three whose submissions were received following the expiry of the comment period.

The questions contained in the Notice to the 2000 Concept Proposal and the CSA responses to the comments are provided below. The CSA responses are in italics. The numbers below correspond to the question numbers in the Notice to the 2000 Concept Proposal.

Generally, our responses to comments reference the proposed changes to Current NI 44-101 that are described in the Notice and Request for Comment (the "Notice") to which this appendix is attached.

A. IDS Eligibility

1. Reporting Issuer in All Jurisdictions

Question
1. Should reporting issuer (or equivalent) status in all CSA jurisdictions be a condition of IDS eligibility? What are the advantages and disadvantages of this approach? Would requiring all-jurisdiction reporting issuer status be a deterrent to IDS participation? If so, why?

Comments
No commenters supported all-jurisdiction reporting issuer status as a condition of IDS eligibility. Seventeen commenters specifically indicated that they opposed this condition.

Their concerns included the following:

- the increased costs of obtaining and maintaining reporting issuer status in all CSA jurisdictions;
- the increased complexity and administrative burden of complying with local reporting issuer requirements in all CSA jurisdictions;
- smaller issuers would be deterred from participating in the system; and
- the possibility of increased translation costs.

Also, seven commenters questioned the need for universal reporting issuer status given that the adoption of SEDAR has resulted in ready access to public documents filed in any one jurisdiction.

Some of the commenters suggested the following alternatives:

- implementing a condition that the issuer be a reporting issuer in any one of four principal jurisdictions: British Columbia, Alberta, Ontario, or Quebec, or in a main jurisdiction;
- amending the condition so that an issuer must be a reporting issuer in at least one Canadian province and file through SEDAR;
- amending the condition so that an issuer must be a reporting issuer only in those jurisdictions in which it distributes securities, but possibly granting the other "non-reporting jurisdictions" the right to "opt-in" to any IDS review undertaken by a jurisdiction, in which an issuer is reporting; and
- permitting an issuer to obtain reporting issuer status in each jurisdiction by filing its last two years of public disclosure documentation previously filed in a "Uniform Act" jurisdiction or in the United States, together with an AIF or a Form 10-K, and not mandating translation in Quebec except in those circumstances where it is currently required.

One commenter, although opposed to the condition, noted that this condition would recognize the reality that physical boundaries cannot contain secondary market activities. However, on balance, the commenter thought that issuers should be able to choose the jurisdictions in which they report without being denied access to IDS.

Response

The reasons for an all-jurisdiction reporting issuer status condition have largely been addressed by the implementation of the CD Rules, which harmonizes CD requirements across all Canadian jurisdictions. Accordingly, the CSA believe that all-jurisdiction reporting issuer status is not a necessary qualification criterion for an expedited offering system. Proposed NI 44-101 eliminates the qualification criterion under Current NI 44-101 to be a reporting issuer or equivalent in each local jurisdiction and replaces it with criteria that an issuer: (1) be a reporting issuer in at least one jurisdiction in Canada; (2) be an electronic filer under National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR) *("NI 13-101"); and (3) have filed with the securities regulatory authority in each jurisdiction in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction under applicable securities legislation.*

Question

2. Do you agree with the CSA's approach to language requirements under the IDS? If not, why not? Should IDS issuers be obligated to translate all continuous disclosure filings in jurisdictions in which they have previously filed a prospectus (IDS or otherwise) or in which they have a substantial investor base? If so, how would you suggest the CSA define "substantial investor base" for this purpose? Would the imposition of such a requirement be a significant disincentive to IDS participation? Do issuers normally provide investors on a voluntary basis with translated continuous disclosure documents to accommodate their language preferences?

Comments

Two commenters supported the proposal to adopt the approach taken under the short form prospectus system with respect to translation, whereby the prospectus and CD incorporated by reference are filed in the language(s) appropriate to the jurisdictions in which the IDS prospectus is filed.

Five commenters opposed requiring translation of CD, due to the costs.

One commenter suggested that companies should be required to provide translations only when they have a minimum percentage of shareholders being of a language group (French or English) to warrant it.

With respect to the CSA defining "substantial investor base," one commenter believed that because Canadian fund managers, other than mutual fund managers, are not required to identify the companies they have invested in (contrary to the situation in the United States), companies do not know the identity of many of their shareholders.

One commenter recommended, in the event that the CSA determines that a "substantial investor base" test is necessary, the adoption of the test utilized by the SEC in regard to "foreign private issuers," which is that 50% of the beneficial shareholders are resident in the jurisdiction.

One commenter recommended that the requirements to translate CD documents be subject to exemptions depending upon the size of the issuer, the overall size of the offering, or the size of the portion of the offering in the province(s) requiring translation. The commenter was concerned about costs and translation resources of smaller issuers.

One commenter suggested that obligating an IDS issuer to translate all CD filings in jurisdictions in which they have previously filed a prospectus or in which they have a substantial investor base would be a significant disincentive to IDS participation and such decisions should remain at the discretion of the IDS issuer. This commenter argued that many larger issuers and issuers with a substantial investor base voluntarily provide investors with translated CD documents to accommodate their language preferences.

One commenter stated that unless there is a substantial investor base in Quebec, there is little benefit in requiring translation of documentation. If an issuer is not already a reporting issuer in Quebec, it is unlikely that it will have a substantial investor base there and translation is less important.

Response

The CD Rules now prescribe the language of documents required to be filed under those instruments. Proposed NI 44-101 amends the provisions in Current NI 44-101 dealing with the language of documents to reflect and clarify current practice. Generally, a short form prospectus and any CD documents incorporated by reference must be filed in the language(s) appropriate to the jurisdictions in which the offering is made.

Question

3. Although the proposed IDS would harmonize the continuous disclosure requirements for participating issuers across Canada, differences in other reporting issuer requirements would continue to exist. Would this pose a significant burden on issuers? If so, why?

Comments

Three commenters stated that a significant burden would be placed on participating issuers. The following key points were raised:

- The impact of differences in exemptions, hold periods and required documentation is even more significant in the case of junior issuers because these issuers often suffer from limited financial resources and will therefore be unable to opt into the IDS. This would be counter to the IDS goal of encouraging broad participation.

- Given the added disclosure provided by issuers participating in the IDS, and that this information is available nationally via SEDAR, it would not be prejudicial to amend the current securities legislation and rules to allow hold periods to commence running provided that the issuer is either a reporting issuer in that particular jurisdiction or is an IDS participant. This will encourage IDS participation and improve public disclosure levels without imposing unnecessary additional burdens on issuers.

- The CSA should establish national standard forms for CD, such as a national standard form of information circular or form for disclosure of sales from control persons, as well as a national standard in regard to the timing of filing of such forms, and for the timing of filing of insider reports.

- The CSA should hasten their efforts to harmonize all reporting issuer obligations in all CSA jurisdictions in anticipation of the introduction of the proposed IDS.

- The mere fact that an IDS issuer must comply with the regulatory rules of thirteen individual jurisdictions will be a consideration for potential participants.

One commenter did not believe that issuers currently find the differing CD requirements across Canada to be a significant burden and, in any event, did not see why this would be more of a problem under IDS than at present.

Response

Most of the concerns raised by the commenters have been addressed through the implementation of the CD Rules, which have harmonized the CD requirements for all issuers across Canada. Other concerns have been addressed through the implementation of Multilateral Instrument 45-102 Resale of Securities *("MI 45-102").*

2. "Seasoning" Requirement

Question

4. Should "seasoning" be included as a condition of IDS eligibility? If so, what would be an appropriate seasoning period? Should the imposition of a seasoning requirement be dependent upon an issuer's revenues, assets or market capitalization?

Comments

No commenters supported the inclusion of seasoning as a condition of IDS eligibility. Eight commenters agreed with the CSA proposal not to impose seasoning as a condition.

One commenter agreed that, given advances in information technology and the high disclosure standard under the IDS, there is no significant additional benefit to be derived from imposing seasoning as a condition.

Another commenter stated that one advantage of the IDS is that investors are provided with more timely and complete information about the issuer; this information should be available for all issuers, not only the ones who have been reporting for a prescribed period.

Two commenters mentioned that requiring a fixed time period prior to IDS eligibility provides no certainty that an issuer will become better known in the market as there is no certainty that the issuer will develop an analyst or institutional following.

Response

Alternative A of Proposed NI 44-101 does not substantively change the seasoning qualification criterion under Current NI 44-101.

Alternative B of Proposed NI 44-101 eliminates seasoning as a qualification criterion. The Notice includes general questions relating to Alternative B.

Question
5. Are there any advantages or disadvantages of a seasoning requirement not discussed above?

Comments
One commenter suggested that an advantage could potentially be created in the area of due diligence. A seasoning period in which the issuer proves its ability to release timely, accurate information may increase the comfort level of underwriters and professional advisors. Despite this, however, the commenter felt that seasoning should not be imposed as an IDS eligibility criterion.

Response
Please see the response to question 4 above.

3. Quantitative (Size) Requirement

Question
6. Should the IDS impose quantitative IDS eligibility criteria? If so, what should these criteria be, and why?

Comments
No commenters were in favour of imposing quantitative eligibility criteria. Ten commenters supported the CSA proposal not to impose any quantitative eligibility criteria in IDS.

One commenter stated that imposing quantitative eligibility criteria would present problems with respect to compliance and monitoring for junior resource issuers whose business is characterized by changes in asset positions based on periodic acquisitions and dispositions of property, as well as changes in commodity prices. In general, this commenter stated, it is very important that information about junior issuers be available to the public.

The same commenter suggested that, in lieu of a size test, courses regarding CD obligations be available to educate smaller issuers regarding the standard of CD which is expected.

One commenter stated that smaller issuers have much more incentive to participate in IDS than a prompt offering qualification system ("POP") issuer because the relative advantage is greater.

Response
Alternative A of Proposed NI 44-101 does not substantively change the quantitative qualification criterion under Current NI 44-101.

Alternative B of Proposed NI 44-101 eliminates size as a qualification criterion. The Notice includes general questions relating to Alternative B.

Question
7. Do larger issuers provide a higher quality of disclosure than smaller ones? Please explain.

Comments
Four commenters stated that larger issuers generally do have a higher quality of disclosure. Reasons given were that larger issuers tend to have more experienced and qualified accounting departments, tend to be followed by financial analysts, have greater resources and may be required to meet higher standards by sophisticated investors. One of these commenters cited a Toronto Stock Exchange ("TSX") survey supporting this position and said that the quality of disclosure may be improved by imposing higher standards. Another commenter cited a Canadian Investor Relations Institute member survey suggesting that larger issuers have superior disclosure standards and submitted a Survey Report as an appendix to its comments. One of the commenters did not believe that the smaller issuers are incapable of compliance, particularly if measures are taken to harmonize the rules nationally and rationalize filing fees. This commenter added that issuers under the IDS will have an incentive to maintain a strong and up-to-date disclosure base in order to be in position to act quickly on capital market opportunities.

One commenter stated that issuer size is one of a number of factors affecting the quality of issuer disclosure. Other factors include issuers' financial and human resources and reliance on capital markets to meet ongoing financing needs. The quality of issuer disclosure does not correspond directly to issuer size.

Another commenter suggested that disclosure for smaller issuers might in fact be superior to that of larger issuers, simply because all relevant details about a smaller issuer are much easier to provide than for a larger issuer. For example, in the natural resources sector, an issuer's asset base might well consist of a single, or relatively few, mines, projects or properties.

Response
We acknowledge the comments received and have considered them in developing Alternative B of Proposed NI 44-101.

Question
8. Do you believe that the "analyst following" argument is relevant in today's markets? Please explain.

Comments
Two commenters indicated that analyst following is important. One of these commenters remarked that it will become even more critical in the future as securities regulations move away from requirements for physical delivery of documents. The second commenter stated that analyst reports offer comparative industry analysis which is not available as part of an IDS issuer's disclosure base and can provide a useful "filter" of the vast amount of information available in respect of an issuer.

Another commenter stated that, while analyst following may encourage issuers to maintain and improve their disclosure, the analyst following argument should not lead to size restrictions on IDS eligibility.

Another commenter indicated that there is some logic to the analyst following argument since empirical studies carried out in the United States indicate that the two most important factors in creating an efficient market for an issuer's securities are the number of analysts following the issuer and the liquidity of the issuer's securities. However, analyst following is not necessarily related to market capitalization or size. There is also a correlation between the type of industry and the number of analysts following an issuer.

Another commenter stated that, since only about 1,000 of about 3,500 listed companies in Canada have an analyst following them, if an analyst-following quantitative IDS eligibility standard were used, about two-thirds of listed companies would be ineligible; the same fraction of the listed company population that would benefit most from initiatives to foster better disclosure practices.

One commenter suggested that investors are increasingly directly seeking and analyzing information themselves rather than relying on analysts. Some market participants have expressed concern that analysts are not always objective and are often not providing timely information. This commenter submitted that the IDS could be viewed as an alternative to or an improvement upon analyst following, minimizing the necessity of analyst following so that it should not be used as an eligibility requirement for IDS participation.

Response
We believe that the presence or absence of analyst following should not influence policy development given advances in information technology that facilitate widespread and timely dissemination of CD to investors.

B. IDS Continuous Disclosure

Question
9. Are there any disclosure items that should, or should not be, included in the proposed IDS AIF or QIF?

Comments
One commenter generally supported the upgrading of the disclosure requirements of reporting issuers and the proposed modifications to the AIF. This commenter also generally supported the requirement to file a quarterly information form (the "QIF"). However, this commenter also noted that the QIF requirement for a reconciliation to Canadian generally accepted accounting principles ("GAAP") would be more onerous than the current SEC requirements and recommended that the proposed reconciliation requirement be dropped.

Two other commenters were also of the view that the reconciliation of interim financial statements to Canadian GAAP should not be required. One of these commenters said that the reconciliation of annual financial statements to Canadian GAAP and GAAS is adequate to meet the needs of Canadian investors. The other opined that reconciliation of interim financial statements to Canadian GAAP is of limited use to investors and represents a substantial cost to issuers, as well as being more onerous than the U.S. requirements for foreign private issuers.

Another commenter supported the requirement for reconciliation to Canadian GAAP.

One commenter was not in favour of an MD&A or an ongoing update of supplementary information forms ("SIFs") in the quarterlies, since this constitutes a significant increase in administrative time and cost and involvement of internal and external

accountants and lawyers. This ultimately hinders the involvement and thoughts of management on important information to be given to the public.

One commenter suggested that the IDS AIF and QIF should include items that are relevant to junior issuers, and emphasized that the System for Shorter Hold Periods for Issuers Filing an AIF (the "SHAIF System") and the accompanying AIF form do not. This commenter recommended that the following items be included:

- disclosure requirements in relation to available funds and proposed use of funds;
- disclosure of milestones or significant events required to accomplish the business objectives of the issuer together with a comparison of performance with previously stated milestones;
- risk factor disclosure, such as reliance on a limited number of customers or suppliers, reliance on key employees, environmental, economic or political conditions, significant competition and illiquidity or instability in the trading of the issuer's securities;
- disclosure in relation to any current relationships or relationships within the last 12 months between the issuer and any investment dealer or registrant and any investor relations consultant or market maker;
- summary tabular disclosure of the number and type of securities outstanding at the end of the last fiscal year and all sales of securities outstanding at the end of the most recent fiscal year; and
- disclosure of securities outstanding that are subject to resale restrictions, including hold periods, escrow and pooling arrangements.

Response
The AIF and MD&A content requirements are now prescribed in the CD Rules. Neither the CD Rules nor Proposed NI 44-101 require QIFs. However, the CD Rules do impose certain interim reporting requirements.

Under NI 51-102, all non-investment fund reporting issuers are required to file interim and annual MD&A, and non-investment fund/non-venture issuers are required to file an AIF. The AIF requirements in NI 51-102 have been upgraded from the requirements of Form 44-101F1 AIF, and include disclosure of risk factors and escrowed securities. Also, disclosure of outstanding share data is required in MD&A under NI 51-102.

Under NI 81-106, investment funds are required to file AIFs and Management Reports of Fund Performance. The AIF requirements of NI 81-106 have been drawn from the requirements of Form 44-101F1 AIF and adapted to address disclosure issues appropriate to investment funds.

Canadian GAAP reconciliation requirements are now prescribed in NI 52-107.

The SHAIF System has been revoked and replaced by MI 45-102.

Question
10. Are there any other continuous disclosure enhancements that should be included as part of the IDS? If so, should these enhancements be extended to all issuers?

Comments
One commenter suggested that, if a restructuring is in progress, each QIF filed prior to completion of the restructuring activities should contain current period, year-to-date and cumulative analyses of exit costs, impairment provisions, other costs relating to restructuring, and remaining accruals.

One commenter stated that aside from the adoption of standard national forms, the proposed CD enhancements in the IDS system are adequate. This commenter stated that these enhancements should not be extended to all issuers until the pilot period has expired and the effects on issuers who have chosen to participate have been ascertained.

Another commenter recommended that the CSA carefully monitor whether the IDS leads to enhanced disclosure in Canada's capital markets during the proposed pilot period and beyond.

Response
Most of the CD enhancements proposed in the 2000 Concept Proposal are now required under the CD Rules, Multilateral Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings *("MI 52-109") where applicable, and the Audit Committee Rule where applicable. These instruments apply to all reporting issuers, subject to certain exemptions. With respect to the comment on restructurings, NI 51-102 requires disclosure (including financial statement disclosure) of business*

acquisitions. Also, if a restructuring involves securities being changed, exchanged, issued or distributed, Form 51-102F5 Information Circular *requires the same disclosure as required in a prospectus (including financial statement disclosure).*

Question
11. Are there any specified events that should, or should not, trigger the filing of an SIF?

Comments
Three commenters suggested the following additional events should trigger the filing of an SIF:

- restructuring, debt defaults, substantial modifications of debt agreements, violations of debt covenants, issuance of securities or options to acquire securities via private placements or other prospectus exemptions, events that raise questions as to the ability of the issuer to continue as a going concern; and

- listing of an issuer on an exchange or market or the quotation or trading by an issuer in a particular market, including the NASD OTC Bulletin Board or the NQB Pink Sheets; the suspension, delisting, or removal of quotation of an issuer from such market.

One commenter stated that some of the events listed would fall within the definition of "material information" under National Policy Statement 40 *Timely Disclosure* and the timely disclosure requirements of the TSX, both of which require issuers to send press releases about material information. This commenter added that the extent of an issuer's operations, the maturity of an issuer, the size of an issuer's balance sheet and other factors are important in assessing the value of filing a SIF to disclose many of the events listed in the IDS proposal.

Five commenters offered the following suggestions as to which events should *not* trigger the filing of an SIF:

- a probable prospectus offering or business combination, since the thresholds of "reasonable expectation" and "probable" are ambiguous and because, in many cases the disclosure may be premature, or may jeopardize negotiations with the target; premature announcement of an offering may also affect the reputation of the issuer; announcement should be deferred until an agreement in principle is struck;

- change in an issuer's chairperson; and

- the imposition of a penalty by a Canadian securities regulatory authority (at a minimum there should be a de minimis exception to the SIF filing requirement for penalties of this nature).

Four commenters recommended that triggering events for filing an SIF be restricted to those events which constitute a "material change" in respect of the issuer. One of these commenters noted that, by introducing a prescribed list of triggering events, the IDS may lead to unnecessary expense for issuers and create "noise" in the marketplace by requiring the public dissemination of non-material information.

One commenter said that they found no good reason to depart from the current materiality standard and had concerns with "probable" acquisition or disposition standard.

One commenter asked whether these could be tied into the material change requirement to make it just one issue for companies to deal with.

One commenter suggested that the SIF should be excluded and made part of the QIF. They stated that if the SIF is not going to replace the material change report, it's a duplication of filing.

One commenter stated that this is an enforcement problem that cannot be solved by forcing issuers to make "too fine" or "too early" a judgment, particularly in the context of business combinations and dispositions of assets or a business.

One commenter stated that it is imperative that a clear, more definitive explanation of what constitutes materiality be developed, and recommended that the definition adopted by the U.S. Supreme Court in TSC Industries Inc. v. Northway Inc. be utilized. Specifically, the commenter recommends that the definition include a change in the business, operations, capital assets or affairs of the issuer that, when considered in the total mix of the information made available, would be important to a reasonable investor in making an investment decision. According to this commenter, the concept of materiality should not, as the definition in most Canadian securities legislation currently does, encompass information that in effect results in change when that change was not reasonably foreseeable. Two commenters supported the immediate introduction of the SIF.

One commenter indicated that press releases are a quicker, more effective way of disseminating information to the public and are required under the TSX rules for disclosure of material information.

Response
The CD Rules do not require SIFs, but do require reporting issuers to file a news release and a material change report if a material change occurs in their affairs. Guidance concerning what constitutes a material change may now be found in National Policy 51-201 Disclosure Standards.

We believe the definition of "material change" and requirements to issue news releases are addressed in the CD Rules or though other CD requirements. Our goal is simply to integrate the short form offering regime with our CD regime. Proposed Form 1 requires an issuer to incorporate by reference into a short form prospectus all material change reports since the end of the financial year in respect of which the issuer's current AIF is filed. Proposed Form 1, like other prospectus forms, requires that a short form prospectus contain full, true and plain disclosure of all material facts relating to, and in Quebec not to make any misrepresentation likely to affect the value or market price of, the securities to be distributed. We have not included in Proposed NI 44-101 a separate requirement for SIFs because imposing disclosure requirements beyond the material change disclosure obligations imposed under the CD Rules would be inconsistent with our objective of creating a seamless, integrated and expedited offering system that is harmonized with the requirements of the new CD regime.

Question
12. As an alternative to requiring the filing of an SIF for changes in an IDS issuer's name and auditor as outlined in Part III.C.1(a)(iii) of the Concept Proposal, should an IDS issuer's SEDAR profile (which could include such information) be included in its IDS disclosure base? Given that an issuer's SEDAR profile is a changing document, an IDS issuer would disclose these changes by filing an amended copy of its SEDAR profile under cover of an SIF.

Comments
One commenter said that an SIF with an amended SEDAR profile is adequate for a change in name. This commenter, however, did not think this approach would suffice for a change in auditor. This commenter anticipated that proposed National Instrument 52-103 *Change of Auditor* ("Proposed NI 52-103") would carry forward the disclosure requirements of National Policy Statement 31 *Change of Auditor of a Reporting Issuer*.

One commenter said that the issuer should be given a choice whether to file a SIF disclosing its change of name or auditor and an amended SEDAR profile under cover of a SIF.

One commenter supported including an issuer's SEDAR profile in its IDS disclosure base and commented that such inclusion would be a practical way to update changes in corporate information and increase the reliability of issuers' SEDAR profiles.

One commenter supported this method for disclosure of changes to an issuer's name and auditor, but stressed that if the SEDAR profile is to become part of an IDS issuer's disclosure base generally, the contents of the profile should be examined to ensure that no unintended consequences result.

Response
An issuer's SEDAR profile is not part of its CD base under the CD Rules and the CSA have concluded that it is not appropriate to incorporate it by reference into a short form prospectus. Nevertheless, we remind issuers of their obligations under NI 13-101 to promptly amend their SEDAR profiles and under National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI) *to amend their SEDI profiles when there is a change in the information provided. The CSA acknowledge the general comment concerning the reliability of issuers' SEDAR profiles. We have undertaken some steps, and may consider other regulatory action, to ensure compliance with the requirements of NI 13-101.*

Proposed NI 52-103 has been superseded; change of auditor requirements are now set out in the CD Rules.

Question
13. The CSA propose to require IDS issuers to file SIFs containing prospectus-level disclosure about all completed business combinations within 75 days. Is the 75 day deadline appropriate? Are there business combinations for which the 75 day deadline or the prospectus-level disclosure requirement cannot be met?

Comments
One commenter stated that, based largely on experience with similar Form 8-K filing requirements in the United States, the 75 day time period seems sufficient.

One commenter supported the proposal, but only for pro forma financial information concerning the completed business acquisition; any higher standard of disclosure in such a short time period could impose an undue and unjustified burden on the issuer.

One commenter supported the 75 day deadline but stated that the CSA should grant relief upon reasonable requests by IDS issuers requiring additional time to prepare such disclosure.

One commenter suggested that the 75 day deadline may be too short for significant transactions involving certain business combinations, and would likely be problematic where transactions involve foreign issuers.

Two commenters expressed that the requirement for a post-closing SIF is unnecessary, since the issuer will almost certainly prepare and file a QIF for a fiscal quarter which ends during the 75 day period. The current standard that only material changes should be made mandatory for all reporting issuers should be maintained to avoid redundancy and confusion.

Response
NI 51-102 now requires disclosure of significant acquisitions in a BAR, not a SIF. The time period for filing a BAR is 75 days after the date of acquisition. The CSA agree with the commenters who suggested the 75 day period for filing a BAR is appropriate and will be sufficient in most circumstances. Also, the 75 day filing period represents a further move toward harmonization of Canadian and U.S. requirements.

Proposed Form 1 does not specifically require an issuer to incorporate a BAR by reference in respect of significant acquisitions completed within 75 days prior to the date of the short form prospectus, unless the issuer has already filed a BAR in respect of the acquisition. Proposed Form 1 also does not require an issuer to incorporate a BAR by reference for probable significant acquisitions. However, the issuer must include a summary of these significant acquisitions or probable significant acquisitions in the short form prospectus. The issuer must also include applicable financial statements if the acquisition or proposed acquisition is a reverse takeover or if inclusion is necessary to ensure the short form prospectus contains full, true and plain disclosure of all material facts relating to, and in Quebec, disclosure of all material facts likely to affect the value or the market price of, the securities being distributed. The CSA generally presume that issuers must include financial statements to satisfy these disclosure standards if any of the significance tests set out in NI 51-102 is satisfied at the 40% level.

Question
14. The CSA believe that IDS AIFs and QIFs should be delivered to investors in compliance with existing statutory requirements. As discussed in Part III.E of the Concept Proposal, the CSA would permit the delivery of all IDS disclosure documents by electronic means in accordance with the principles set out in National Policy 11-201 *Delivery of Documents by Electronic Means*. Should alternative methods of delivery of IDS AIFs and QIFs be permitted under the IDS? If so, which methods would you suggest?

Comments
Five commenters supported the continued advancement of delivery by electronic means. The following suggestions were made:

- Hard copies should also be available upon request, even to those who have consented to receive or access documents through electronic means.

- This permitted means of delivery should be extended to the posting of the documents on the company's website provided that the documents are also available on SEDAR, and provided that the shareholders obtaining delivery in this manner have specifically agreed to accept delivery in such form.

- National Policy 11-201 *Delivery of Documents by Electronic Means* ("NP 11-201") should be drafted broadly enough to permit new delivery means as they evolve.

Two commenters expressed a belief that a good portion of the financial statements and reports mailed to shareholders go directly to the waste basket. One of these commenters also suggested that issuers should only be required to mail each year to each registered and beneficial shareholder a communication, together with a stamped and addressed return envelope, by which the shareholder can request to be sent the relevant disclosure materials.

Another commenter, with respect to delivery mechanisms, strongly supported all efforts to add flexibility and to allow procedures to adapt to new technologies provided they do not compromise investor protection.

Response
NI 51-102 requires issuers other than investment funds to file quarterly financial statements and MD&A rather than QIFs. Similarly, proposed NI 81-106 will require investment funds to file interim financial statements and a Management Report on Fund Performance. These documents only have to be delivered if securityholders request them. The CD Rules require all issuers to file an AIF but do not require delivery to securityholders. Electronic delivery of CD documents is permitted under NP 11-201, subject to certain conditions.

Question

15. The CSA propose to require that interim financial statements filed as part of an issuer's continuous disclosure record have been reviewed by the issuer's audit committee and approved by the issuer's board of directors or equivalent. The CSA are also considering requiring that interim financial statements have been reviewed by an auditor, as required in the United States. Would such a requirement be appropriate? If not, why not?

Comments

Three commenters supported the proposed requirements for audit committee review and board director approval of interim financial statements prior to the release of any interim financial information. The following reasons were given:

- This will ensure that timely attention is given to the accounting and disclosure issues related to high profile events and transactions and reduce the need for significant "fourth quarter" adjustments arising from the annual audit.

- The competitiveness of Canadian capital markets is enhanced by raising Canadian CD standards to U.S. levels.

Three commenters expressed concern over the requirement that financial statements be both reviewed by the audit committee or equivalent and approved by the board of directors. Factors considered were the added cost of requiring board approval, the difficulties associated with scheduling another meeting, the significant risk that companies would be unable to meet the proposed abbreviated reporting deadlines, the fact that unaudited (reviewed) statements are permitted with a prospectus, and the appearance of duplication of effort. Two of these commenters recommended limiting the requirement to a requirement for either audit committee or board review and approval. One commenter said that the 45 day period to provide interim financial statements may be too short, especially if an auditor is to be involved and must provide a comment letter.

Five commenters opposed mandatory auditor review of interims. All of these cited the cost involved and two argued that auditor involvement should be left to the discretion of the board. One commenter was particularly concerned about the additional cost burden for smaller companies. Another commenter stated that unaudited statements are permitted with a prospectus and that the standards for IDS should be no higher.

Four commenters supported mandatory auditor review of interims. These commenters noted that the capital markets have demonstrated a significant sensitivity to interim reporting, that auditor involvement in interims would help the issuer anticipate year-end accounting and reporting problems and avoid unnecessary adjustments in subsequent reporting periods, and that the competitiveness of Canadian capital markets is enhanced by raising the Canadian CD standards to U.S. levels.

However, although they supported the auditor review requirement, two of these commenters expressed concern that retail investors do not understand that a review provides a significantly lower level of assurance than an audit, and suggested the following:

- The QIF should contain a disclaimer advising that a review is not an audit.

- The CSA should adopt the practice used with prospectuses, where a comfort letter is filed with regulators and the review engagement report is not publicly reported or filed.

Response

The CD Rules now require that an issuer's board of directors approve its interim financial statements, though approval may be delegated to the audit committee. The CD Rules also require that an issuer disclose if its auditor has not reviewed its interim financial statements. Where applicable, the Audit Committee Rule now requires audit committee review of interim financial statements.

1. Certification

Question

16. Would the proposed certification requirements materially affect the extent to which signatories participate in the preparation of IDS continuous disclosure documents? Are there practical impediments to the certification of such documents?

Comments

One commenter stated that the proposed certification requirement would have a positive impact on the disclosure process.

One commenter did not believe that the proposed certification requirements would materially affect the extent to which signatories participate in the preparation of CD documents. In particular, this commenter thought that smaller issuers would gladly accept the requirements to provide enhanced disclosure and to certify the disclosure if, as a result, such issuers were able to participate in IDS.

One commenter strongly opposed the introduction of a certification requirement, since it raises the possibility of liability for secondary market disclosure, without any consideration being given to when such liability should actually be incurred, by whom, to whom, in what amount, and the defences which would be available. Six commenters questioned how the certification requirements would interact with the civil remedies proposal. One of these commenters said that the certificate requirement creates an undue burden on officers and directors to perform sufficient due diligence within the proposed shortened time frame. One commenter questioned whether the certification of each SIF was necessary, while commenting that certification of the QIF and the AIF would likely enhance the accuracy and quality of disclosure. Two others suggested deferring any requirement for certification until the civil remedies proposal was finalized. One commenter said that, assuming the requirements for audit committee review and board of director approval of interim financial statements are adopted, that a certified statement by a senior officer of the company stating that this review and approval have been done would be sufficient "certification."

Response

Although the CD Rules do not impose any certification requirement, MI 52-109, where applicable, does. It requires the chief executive officer or person who performs similar functions (the "CEO") and the chief financial officer or person who performs similar functions (the "CFO") of all issuers to certify the issuer's annual and interim filings, subject to certain exemptions.

Question

17. Is the "full, true and plain disclosure of all material facts" standard of disclosure attainable on a timely basis in connection with IDS continuous disclosure filings? If not, why not? What alternative disclosure standard would be appropriate given the objectives of the integrated disclosure system? Would an alternative misrepresentation standard be more appropriate for some continuous disclosure documents (i.e. "The foregoing does not make a statement that, in a material respect and in the light of the circumstances is misleading or untrue and does not omit a fact that is required to be stated or that is necessary to make the foregoing not misleading")?

Comments

Five commenters had difficulty seeing under IDS how the sum of the various documents placed on the public record would at all times measure up to a "full, true and plain" disclosure standard. The following points were raised:

- CD filings under the existing short form prospectus system already fall short of this standard (due to intense time pressures and lack of rigorous CD requirements).

- Imposing a "full, true and plain" disclosure standard on all CD filings would place a significant burden on the existing reporting processes of companies.

- This standard is particularly onerous for ongoing CD, particularly in relation to SIFs and probably not practically possible. If imposed, issuers will likely be spending a disproportionate amount of time preparing and verifying documents without a commensurate regulatory purpose being served.

- In the past, the CSA have indicated that they are considering imposing civil liability in connection with an issuer's CD. In conjunction with the proposed AIF, QIF and SIF requirements under the IDS, one must consider the likelihood of honest oversights or delays in the recognition and reporting of significant developments. In this context, it is questionable whether "full, true and plain disclosure of all material facts" is a realistic standard.

- This standard of disclosure is too onerous for SIFs unless the certification is limited to the SIF itself. It is not realistic to force issuers to consider whether a "full, true and plain" disclosure standard is met on a day-to-day basis. The alternative "no misrepresentation" standard would be more appropriate for the filing and certification of all interim documents such as an SIF.

Eight commenters suggested that since neither the SIF nor the QIF will by its nature contain prospectus level disclosure, a "full, true and plain" certification requirement would not be appropriate for these forms. Two of these commenters stated that the proposed alternative "no misrepresentation" standard would be appropriate for both SIFs and QIFs, while four of these commenters suggested variations to the "no misrepresentation" certificate, as follows:

- One commenter proposed that, although a "no misrepresentation" certificate would be appropriate for a QIF, since the SIF is required to be filed at times when an issuer may not have full information, the certification standard for SIFs should be lower. The commenter suggested that SIFs be certified as follows: "The Issuer believes the information in this form to be accurate and has no reason to believe that there are material facts relating to this information which have been omitted."

- One commenter suggested using the following form of certificate for QIFs: "The contents of this QIF have been reviewed by the Company's audit committee and have been approved for release by the Company's board of directors."

- One commenter suggested that the proposed "no misrepresentation" standard be prefaced by the following phrase: "To the best of our knowledge and belief."

- One commenter indicated that the proposed "no misrepresentation" standard should be extended solely to misrepresentations of material facts and applied only in the context of the issuer's CD base. This commenter proposed the following alternative "no misrepresentation" standard to address their concerns: "The foregoing when read with the issuer's CD base does not make an untrue statement of a material fact relating to securities of the issuer and does not omit a material fact that is required to be stated or that is necessary to make a statement not misleading in a material respect and at the time and in the light of the circumstances in which it is made."

One commenter stated that the misrepresentation standard would be appropriate for documents such as SIFs.

One commenter stated that when a prospectus offering is conducted, the certificate page required in connection with the prospectus will require the issuer to verify the previously disclosed information to prospectus standards and will ensure that the standards of disclosure as compared to the current regime are not impaired.

One commenter stated that the requirement for each annual and quarterly disclosure filed to meet prospectus standards of completeness, accuracy, quality and regulatory scrutiny may simply add cost and inefficiency to the system.

Response
The CD Rules do not impose a "full, true and plain disclosure of all material facts" standard for CD documents, for many of the reasons given by the commenters. However, a short form prospectus, when combined with CD documents incorporated by reference must give "full, true and plain disclosure of all material facts". Most of the comments received relate specifically to QIFs and SIFs. Neither the CD Rules nor Proposed NI 44-101 require QIFs or SIFs. Please see our responses to questions 9 and 11 above

Where applicable, MI 52-109 now requires the CEOs and CFOs of all issuers to certify that the issuer's annual or interim filing, as applicable, does not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of circumstances under which it was made, with respect to the period covered by the annual or interim filing, subject to certain exemptions. Where applicable, MI 52-109 also requires the CEOs and CFOs of all issuers to certify that, based on their knowledge, the annual or interim financial statements, as applicable, together with the other financial information included in the annual or interim filings fairly present in all material respects the financial condition, results of operations and cash flows of the issuer, as of the date and for the periods presented in the annual or interim filings, subject to certain exemptions.

2. Involvement of Advisors in Continuous Disclosure

Question
18. Is it realistic to expect that advisors will become more involved in continuous disclosure in order to address increased time pressure at the time of an IDS prospectus? Alternatively, will the expedited offering process result in a deterioration of the due diligence conducted by advisors in respect of information incorporated by reference in a prospectus? If so, how would this affect the ability of underwriters to certify the prospectus?

Comments
Four commenters suggested it would be unreasonable to expect that advisors will become significantly involved in CD to avoid having a deterioration in due diligence as a consequence of the expedited offering process under IDS. Two commenters cited a perceived deterioration of due diligence under the POP system to support their contention, while the other two commenters suggested that introducing civil liability for CD would be needed to increase advisor involvement in these filings.

One commenter said that it is unclear whether the IDS contemplates that securities might be offered without the involvement of an underwriter or other intermediary. This commenter said that this would almost certainly have a negative impact on the quality of offering documents in that it might eliminate two levels of due diligence – that performed by an underwriter or agent and that performed by the underwriter's legal counsel.

One commenter suggested that the CSA identify those practices which would constitute competent due diligence to assist underwriters in carrying out due diligence and managing the task effectively under the expedited IDS offering timetable. The commenter referred to the list of specified procedures included by the SEC in the "aircraft carrier" proposal, as follows:

- review of the [registration statement] and reasonable inquiry into any fact or circumstance that would cause a reasonable person to question the contents;

- discussion with management (including, at a minimum the chief financial and accounting officers) and receipt of certification as to compliance from those officers;

- receipt of a "comfort letter";
- receipt of a favourable opinion from issuer's counsel;
- receipt of a favourable opinion from underwriters' counsel; and
- employment of and consultation with an appropriately experienced and informed research analyst.

This commenter also proposed that underwriters should not be held to the standard of "full, true and plain" disclosure of all material facts as is the case for senior officers and directors of the issuer, but instead proposed the following alternate certification: "[T]o the best of the underwriter's knowledge, the underwriter is unaware of any misstatement of a material fact relating to the securities offered hereby in the prospectus or disclosure documents incorporated by reference."

One commenter said that the enhanced disclosure standard will likely require greater involvement of professional advisers than is currently the case, but that this may only be an added cost and inefficiency to the system.

Another commenter disagreed that an "aircraft carrier" style list of due diligence procedures should be produced by the CSA, stating that this is an area in which it makes more sense to let the industry deal with the practicalities of due diligence rather than try to deal with this through regulation. The commenter believed that, what was then proposed Regulation FD in the United States, simply states what is the current law in Ontario in the case of intentional disclosures and what is the current practice in the case of non-intentional disclosures.

Response
The CD Rules, MI 52-109 where applicable, and MI 52-110 where applicable, together with proposals to introduce secondary market civil liability, represent a fundamental shift in regulatory focus from primary to secondary market disclosure. The CSA believe that their combined effect will encourage issuers to seek the counsel of their advisors when preparing their CD. We also believe that by expanding the expedited offering procedures under Proposed NI 44-101 to more issuers, more issuers will seek increased involvement by underwriters, as well as other advisors, in their CD to ensure that they will be able to access the market as quickly as possible.

The CSA believe that we should not prescribe due diligence practices. What constitutes appropriate due diligence in any particular case will depend on the specific circumstances at the time and with respect to the individual issuer. The professionals involved in the conduct of due diligence are best able to make such decisions.

C. IDS Prospectuses

1. Delivery of the Preliminary IDS Prospectus

Question
19. Do preliminary and final prospectuses assist investors in making their investment decisions and is it relied upon for this purpose today? If not, on what basis are investors in the primary market currently making their investment decisions?

Comments
Four commenters suggested that most recipients of these documents at best give them a cursory reading, and that investment professionals, including financial analysts and brokers, are the prime users.

Four commenters stated that retail investors typically rely on their brokers in making investment decisions, rather than on the prospectus. Another commenter asserted that, although the preliminary prospectus continues to serve an important function in investors' decision-making process, the final prospectus adds little additional value for primary market investors as it is delivered after the investment decision has been made.

Response
The CSA note the commenters' views that the preliminary and final prospectuses may only be given a cursory reading by some investors. Nevertheless, our securities legislation continues to require preliminary and final prospectuses. We believe that, in a non-exempt offering, a final prospectus with full, true and plain disclosure of all material facts relating to, and, in Québec, not making any misrepresentation likely to affect the value or market price of, the securities to be distributed, and from which purchasers' rights of withdrawal, rescission and damages flow, is an appropriate regulatory requirement.

In the Notice, we have asked your views on whether we should seek legislative change in order to eliminate the preliminary prospectus, prospectus receipts and prospectus review.

Question

20. As discussed in Part III.D.4(a) of the Concept Proposal, the CSA considered specifying the timing of delivery of the preliminary IDS prospectus to ensure that a prescribed minimum period of time would be available to an investor before an investment decision becomes binding. Would a prescribed minimum preliminary IDS prospectus delivery period (for example, a specified number of days before pricing or the signing of a subscription agreement) be suitable for all investors and all situations? If so, what would be an appropriate period of time? If not, why not?

Comments

Several commenters did not believe that a prescribed minimum preliminary prospectus delivery period would be suitable for all investors and all situations. Comments were as follows:

- Investors are not concerned about lack of time to review a prospectus: The timing should be geared to the needs of the investment community.

- The prescribed waiting period triggered off the delivery of the preliminary prospectus would be administratively difficult to manage and would not provide additional investor protection provided the rights of rescission and withdrawal are retained upon delivery of the final prospectus.

- The time required to evaluate the purchase of a security depends largely on the nature of the offering. The commenter was of the view that the prospectus delivery period will be driven largely by marketing considerations and that market forces, together with the statutory rescission period, offer investors sufficient protection.

- A prescribed minimum preliminary IDS prospectus delivery period would unduly interfere with the distribution process. In particular, it would be impractical to either exclude investors identified as "late" in the distribution process or, alternatively, stop the process to allow newly identified investors to "catch up." Further, the availability of the preliminary prospectus on SEDAR would provide investors with ready access to this document.

Response

The CSA do not believe a minimum delivery period for a preliminary short form prospectus is necessary. Under Proposed NI 44-101, as with Current NI 44-101, the implementing law of applicable jurisdictions removes the statutory minimum period of time between the issuance of a receipt for a preliminary short form prospectus and the issuance of a receipt for a short form prospectus as it would otherwise apply to a distribution.

Question

21. Should the IDS require filing and delivery of the preliminary IDS prospectus? Should alternative methods of delivering the preliminary IDS prospectus be permitted? If so, how?

Comments

One commenter said that, if a prospective investor can easily obtain a copy of the prospectus, this should be sufficient.

Another commenter suggested that the preliminary prospectus should be available to investors electronically (not in hard copy unless requested) and should also be included in any marketing communications. The final prospectus should be required to be delivered to investors no later than the delivery of the confirmation of purchase to ensure investors are provided with statutory withdrawal rights.

Three commenters stated that an IDS preliminary prospectus should be delivered to investors. One of these commenters said that this would give investors the opportunity to review the information and advise them as to where the disclosure incorporated by reference in the prospectus may be obtained and reviewed. Two commenters also recommended that delivery by electronic means be permitted. One commenter added that if alternative prospectus delivery methods are introduced, they should be available to all offerings and not just IDS offerings.

One commenter recommended that the delivery requirement be eliminated because the issuer's preliminary prospectus is readily available on SEDAR and marketing communications must include a statement regarding how a potential investor may obtain the preliminary IDS prospectus.

Response

Proposed NI 44-101 does not change the statutory requirements to deliver a preliminary prospectus to potential investors. Electronic delivery of prospectuses is permitted under NP 11-201, subject to certain conditions.

*In the Notice, we have asked your views on whether we should seek legislative change in order to eliminate the preliminary prospectus, prospectus receipts and prospectus revie*w.

2. Content of IDS Prospectuses

Question
22. Are the preliminary IDS prospectus disclosure items outlined in Part III.D.2(a) of the Concept Proposal appropriate to ensure that an investor can make an informed investment decision? Please explain.

Comments
Two commenters suggested the addition of a "Current Developments" or "Recent Developments" category, which would require the issuer to provide any information necessary to update documents incorporated by reference to reflect more recent developments. One of these commenters suggested that the new requirement extend to capture recent developments that may not otherwise be required to be disclosed in an SIF.

One commenter voiced the need for a mechanism whereby a proposed acquisition cannot take place until an exchange has accepted the transaction, conditional only on the completion of the financing; otherwise there is a risk that a prospectus will be receipted for an offering where the proceeds are not allocated to what is disclosed and the issuer is raising money for a non-existent project.

Two commenters stated that the proposed IDS prospectus disclosure items are generally appropriate. One of these commenters stated that there should be certain exceptions to those documents which are incorporated by reference in the prospectus.

Another commenter strongly supported allowing issuers to incorporate by reference all of its IDS disclosure base filings, including marketing communications, in the prospectus. This would result in more readable marketing document formats and increased reliability of information, since incorporated documents must be certified. The same commenter also recommended that issuers be required to provide investors with any information that is incorporated by reference on request and in a timely manner. This would involve attaching incorporated information as an electronic file to the AIF. As well, this commenter recommended that when incorporating by reference, issuers should be required to: (1) provide specific information on how to access the referenced information; and (2) provide a hyperlink from the issuer's Web site to these reports.

Response
Proposed Form 1 generally requires a short form prospectus contain full, true and plain disclosure of all material facts relating to, and in Quebec not to make any misrepresentation likely to affect the value or market price of, the securities to be distributed. While we have not specifically required a "Recent Developments" section, we expect that issuers will include previously undisclosed material facts in such a section.

The disclosure items outlined in Proposed Form 1 are consistent with the disclosure items set out in Part III.D.2(a) of the 2000 Concept Proposal. Under Proposed Form 1, any information required in a short form prospectus may generally be incorporated by reference in the short form prospectus.

Question
23. What are the advantages and disadvantages of a streamlined form of final IDS prospectus? Which form of final IDS prospectus would issuers and investors prefer? Should the traditional form of final IDS prospectus be mandatory? If so, why?

Comments
Three commenters supported the streamlined form of final prospectus, stating that it would be of much greater utility to investors since it would highlight new information from the date of the preliminary prospectus. One of these commenters stated that the streamlined form would also be welcomed by issuers, who would benefit from reduced printing and distribution costs. Both the streamlined and the traditional alternatives should not be available to issuers; there should be only one permitted form of final prospectus. Two commenters expressed concern over the streamlined approach and made the following points:

- It may be cumbersome to clearly distinguish what portions of the preliminary prospectus have been carried forward and what portions have been deleted or superseded. As well, the final document may be construed as a formal notice of the deficiencies in the preliminary disclosures, since it highlights necessary updates.

- The streamlined final prospectus only works if the preliminary prospectus must be delivered to potential investors, and would not necessarily reduce costs or preparation time for the issuers, since it requires the preparation of two different documents rather than simply updating the preliminary. This commenter recommended that investors be provided with the final prospectus and be advised of the existence, location and availability of a blacklined version of the final prospectus which shows all changes from the preliminary prospectus.

Response
Though some commenters support this proposal, the CSA has decided not to adopt a streamlined form of final short form prospectus which would incorporate a preliminary prospectus. We recognize the concerns raised by the commenters. Given that investors' prospectus rights flow from the final prospectus, we believe it should, through incorporation by reference of CD, be a comprehensive disclosure document.

D. IDS Marketing Regime

Question
24. Is the proposed definition of "marketing communication" in the IDS appropriate? What types of communications should be excluded from the definition, and why?

Comments
One commenter was of the view that "green sheets" should not be included in the category of marketing documents, since "green sheets" typically contain financial information of other companies in the issuer's industry, along with numerous financial ratios and calculations.

Another commenter suggested that the IDS instrument clarify that the issuer is not responsible for documents prepared by underwriters and that these documents are not considered to be incorporated by reference.

Two commenters emphasized that the broad definition of "marketing communications" requires more exceptions, and recommended that the CSA consider a definition which specifically excludes communications which indicate that they are internal or confidential.

One commenter generally supported the proposed removal of existing pre-marketing restrictions, but suggested that the proposed definition of "marketing communication" coupled with the requirement that an IDS prospectus incorporate by reference all written marketing communications disseminated by or on behalf of the issuer during the course of distribution of securities may have an unintended "chilling" effect, e.g., underwriters conducting road shows without written materials to avoid the filing and certification requirements. The CSA should not confuse the responsibility of the issuer to provide equal access to all disclosed material information with: (i) a responsibility of the issuer to provide equal access to all information; or (ii) a responsibility of the underwriter to provide equal access to its proprietary materials.

The same commenter stated that research reports and other written commentary on the issuer, published in the ordinary course, should be excluded from the definition of marketing communications and the certification requirement, unless the issuer or the issuer's agent makes specific reference to, or widely disseminates, such materials during the distribution period. Subjecting research reports and commentary to the due diligence process and "full, true and plain" disclosure standard would be a costly, time-consuming and possibly problematic exercise. This commenter also suggested that guidance should be given to assist interpretation in the context of electronic media – for example, the criteria that would be examined in determining whether a hyperlink or other reference to third party materials on the issuer's website would constitute "dissemination" of such materials by the issuer.

Response
The CSA recognize the concerns relating to incorporating certain marketing materials into a prospectus. This question is not relevant at this time given the CSA's decision not to presently adopt the marketing restrictions set out in the 2000 Concept Proposal. See the response to item 25 below.

Question
25. What are your views concerning the proposed IDS marketing restrictions? Are others necessary for investor protection purposes? Would the proposed IDS marketing restrictions restrict valid corporate communications?

Comments
One commenter stated that the IDS marketing restrictions appear to provide issuers with more flexibility in their investor communications; the restrictions appear to strike a reasonable balance between investor protection and business expediency.

One commenter supported the elimination of the pre-marketing restrictions in the context of the proposed IDS regime based on the view that it provides greater flexibility in the capital raising process and acknowledges the diminished role of the prospectus and the increased emphasis on CD. This commenter went on to highlight two further issues:

- There is potential for abuse and pre-marketing should be closely monitored, particularly with regard to the elimination of the existing pre-marketing rules in the absence of the formulation, adoption and enforcement of a new framework to address pre-marketing issues and potential abuses under the IDS regime. Regulators should remind IDS issuers that they have an obligation to make timely disclosure of material information (by the SIF), once issuers have formed a

reasonable expectation of proceeding with the offering. Regulators should also ensure enforcement of these obligations.

- Market distortion resulting from the misuse of information concerning the existence of a proposed offering is possible – for example, an institutional investor learning of a proposed equity offering may anticipate ensuing weakness in the market price of the security and sell the security placing downward pressure on its market price. Alternatively, institutional investors may not sell after learning of a proposed equity offering but may not buy either if it anticipates a pricing fallout or announcement.

One commenter emphasized the view that existing pre-marketing rules are confusing, anomalous (given that private placements for public companies can now be pre-marketed), and favour the large, well-capitalized dealers over the smaller dealers who specialize in financing smaller issuers. It is far better, said this commenter, to rely on available enforcement remedies rather than to continue to anticipate the worst and thereby limit options.

One commenter stated that marketing materials should not be incorporated by reference in an IDS prospectus. According to the commenter, the inappropriate use of marketing material should be policed separately by the securities regulatory authorities. A requirement to incorporate marketing materials by reference could cause issuers to inadvertently make misrepresentations. Many marketing communications, because of their necessary brevity, do not contain full, true and plain disclosure. It is also becoming increasingly difficult for issuers to monitor the dissemination of marketing information that occurs through media such as bulletin boards and chat rooms. An alternative would be to require that materials produced by the issuer contain a disclaimer that the information is not complete, with a cross-reference to the prospectus and its location on SEDAR or the issuer's website.

Response
With the implementation of the CD Rules and other CSA CD initiatives, we continue to believe that the current pre-marketing restrictions could be revisited in order to allow more flexible capital-raising by issuers with less focus placed on the preliminary prospectus. However, the CSA is not currently prepared to propose any change to the prospectus regime that would permit marketing of a prospectus offering prior to public disclosure that the offering is pending. Without the prior public disclosure about a pending offering, we are concerned about the potential improper use of undisclosed information about an offering, including insider trading and tipping.

The CSA recognizes the tension, as reflected in the comments on this question as well as to question 11 above (where significant concerns were raised with the "reasonable expectation" test for disclosure of a potential offering) between an issuer's obligations to provide timely disclosure of pending offerings and concern about premature disclosure of pending offerings. Generally, issuers do not disclose a proposed prospectus offering until a bought deal is agreed upon, or, for a marketed offering, at or about the time a preliminary prospectus is filed. Recent discussions with our advisory committees suggest that the current marketing regime, particularly for bought deals, is generally sufficient. Consequently, given the current regulatory framework, it is not apparent that issuers would publicly disclose a pending prospectus offering any earlier than they are currently disclosing such offerings in order to initiate legal marketing of the offering.

Accordingly, Proposed NI 44-101 does not include any of the proposed changes to the pre-marketing regime set out in the 2000 Concept Proposal. However, as discussed in the Notice, the Proposed Rule does include a minor amendment which allows issuers and underwriters to agree to file a preliminary prospectus up to four business days after entering into a bought deal agreement. As also discussed in the Notice, to the extent that the CSA moves forward in the future with the prospectus offering regime that does not require preliminary prospectuses, a new prospectus marketing regime will be considered. See question 7 under the heading "Marketing Restrictions" in the Notice.

Question
26. How should "distribution period" be defined for purposes of determining which written marketing materials must be incorporated by reference in an IDS prospectus? Should it be defined as commencing a specified number of days (e.g. 15 days) before the first offer of the securities, upon the filing of the preliminary IDS prospectus or some other event? When should the distribution period be considered terminated for this purpose?

Comments
One commenter welcomed efforts to more clearly define this period, but deferred to the underwriting community as to what limits should be imposed.

One commenter stated that the distribution period should be commenced from the receipt of the prospectus to such time as the offering has been sold and the contractual rights of rescission and withdrawal have expired.

One commenter supported a bright line test commencing at the time the issuer determines to effect an offering and terminating upon the cessation of offers and sales under the final IDS prospectus. An issuer should not be required to incorporate by reference, and assume liability for, any document prepared prior to its determination to effect an offering and without its prior review and approval.

Another commenter proposed that the distribution period extend from the earlier of the filing of the SIF (disclosing the proposed offering of securities) and the filing of the preliminary IDS prospectus to the filing of the final IDS prospectus. This definition would have the advantage of providing certainty to market participants.

Response
Since we are no longer considering requiring marketing communications to be incorporated into a prospectus, this question is no longer relevant. See the responses to items 24 and 25 above.

E. Proposals for Changes Outsides the IDS

Question
27. Should the IDS continuous disclosure enhancements be broadly applied to all issuers?

Comments
Four commenters were opposed to broadly applying IDS enhancements to all issuers. Four commenters cited considerable additional burdens and increased expenses, particularly for smaller issuers. One of these commenters suggested that transitional provisions are required to allow time for such smaller companies to meet any new reporting requirements. One of the commenters stated that those issuers who do not benefit from the system should not have to pay the price inherent in complying with the higher standards of disclosure. This commenter argued the following concessions for smaller issuers: more time to prepare and file the required disclosures; exemption from audit committee requirements; exemption from auditor review of interim financial statements; and exemption from interim MD&A requirements. One commenter felt that the changes proposed would impose considerable burdens on issuers and increased expense. In the event that any of the CSA participants determine to adopt any of the IDS initiatives as mandatory requirements prior to completion of the pilot project, the commenter strongly recommended that an intensive educational and feedback process be conducted prior to implementation.

One commenter observed that companies considered small by U.S. standards are much larger than their Canadian counterparts. Additional latitude needs to be provided for Canadian juniors.

One commenter strongly supported the extension of certain IDS disclosure enhancements to all issuers, particularly the proposed upgraded content of annual and interim reports and accelerated filing periods for annual and interim reports.

One commenter stated that the requirement for a review engagement report in regard to interim financial statements should not be extended to non-IDS participants. This commenter encouraged the introduction of the requirement of MD&A in regard to the interim financial statements in regard to all issuers.

Response
The CSA acknowledge the comments of those who argued that IDS enhancements should not apply to all issuers. The CD Rules, MI 52-109 where applicable, and the Audit Committee Rule where applicable, now apply to all issuers, subject to certain exemptions. However, the CSA has recognized that smaller issuers may be disproportionately burdened by these enhanced requirements and has provided for somewhat less onerous requirements for venture issuers.

Question
28. The CSA propose to extend to non-IDS issuers the IDS certification requirements discussed in Part III.B.1 of this Notice and Part III.C.2.(c) of the Concept Proposal. Does this raise concerns unique to non-IDS issuers? If so, what are they?

Comments
One commenter saw no reason to exempt non-IDS issuers from this requirement if the certification requirements are adopted. Smaller issuers should make the same assertions as IDS issuers if allowed more time for filing and preparation.

One commenter concluded that certification by senior management and the directors will have a positive impact on the disclosure process and therefore the commenter supported the proposed extension to non-IDS issuers.

Another commenter stated that, given the predominance of secondary market trading over primary market, the main purpose of IDS should be to provide the marketplace in general with enhanced and expanded disclosure. Accordingly, IDS disclosure should logically apply to all reporting issuers. As well, broad-based IDS disclosure standards might also permit the elimination or substantial reduction of much of the complexity of current securities regulation.

Response
Where applicable, MI 52-109 now requires the CEOs and CFOs of all issuers to certify the issuer's annual and interim filings, subject to certain exemptions.

Question
29. Should the IDS marketing restrictions discussed in Part IV.B be broadly applied to non-IDS offerings?

Comments
One commenter stated that, as it believes that the creation of an enhanced disclosure base in respect of an IDS issuer is essential to the functioning of the proposed regime, it does not support the removal of pre-marketing restrictions in respect of non-IDS issuers.

One commenter supported a broad application of the prohibition on misrepresentation in marketing materials, stating that this would assist in regulating communications which potentially mislead the investing public.

Response
Please see the response to item 25 above.

Question
30. Are there any other elements of the IDS that should be broadly applied to all issuers?

Comments
One commenter recommended that more frequent and extensive regulatory review of CD materials be applied to all issuers.

Response
The CSA agree with the commenter's recommendation. The CDR Program is intended to complement the CD Rules by enhancing consistency in the scope and level of reviews carried out by CSA staff. We believe that greater consistency in the treatment of issuers will improve the overall quality and timeliness of CD.

F. Pilot Introduction of the IDS

Question
31. Would issuers be interested in participating in the pilot introduction of the IDS? If not, why not?

Comments
One commenter stated that it is not certain that issuers will be willing to participate in a pilot introduction of the IDS because of the cost of complying with the IDS and the increased exposure as a result of the certification requirements contained in the IDS.

One commenter did not think that issuer interest would be very strong, based on MRRS pilot test experience. The non-POP issuers with the imminent need to raise capital, stated this commenter, will have the most to gain by opting into the IDS pilot program.

Another commenter believed that many junior issuers would be interested in participating, provided that the costs are not prohibitive. According to the commenter, the primary deterrent to participating in IDS is the requirement to become a reporting issuer in all jurisdictions. If this provision was removed, junior issuer participation would likely be significant. This commenter's experience with issuers utilizing the SHAIF system and the short form prospectus distributions system would appear to indicate that a system emphasizing CD and an ability to access the market quickly will be widely utilized by issuers.

Another commenter stated that exchange-listed non-POP system issuers may be particularly interested in improving their speed of access to the markets. Possible deterrents could be the additional costs of preparing the enhanced disclosure and reporting on a national basis, the reduced period in which to file annual and interim financials and the regulatory uncertainty surrounding a new system.

Response
A pilot period is not necessary with respect to Proposed NI 44-101. The CD Rules will have been in effect for a period of time prior to the implementation of Proposed NI 44-101, and Proposed NI 44-101 is a revision to rules that have been in place since 2000.

Question
32. Would issuers who are currently eligible to use the prompt offering qualification system be interested in participating in the pilot introduction of the IDS? If not, why not?

Comments
One commenter speculated that if the benefits currently enjoyed by Canadian SEC registrants under the MJDS are removed, there would be little or no benefit to the IDS prospectus system, let alone the short form prospectus distributions system, because the more rigorous U.S. form requirements will prevail. The CD enhancements, however, will put both IDS and short form prospectus issuers in a better position to make U.S. filings.

One commenter indicated that IDS is primarily attractive to issuers that do not qualify for the short form prospectus distributions system. This commenter said that IDS introduces additional disclosure requirements that do not exist in the short form prospectus distributions system without providing any benefits for issuers eligible under that system.

Another commenter stated that there may be less incentive for POP system issuers to migrate to the new system as timing advantages would not be significant. Under National Policy 43-201 *Mutual Reliance Review System for Prospectuses and Annual Information Forms*, regulators will use their best efforts to review and provide comments on short form prospectuses within three and a half days.

One commenter believed that relatively few issuers will perceive the IDS to offer significant advantages over the existing short form prospectus and shelf distribution procedures when compared with a significant increase in reporting issuers' compliance burden. Accordingly, there will be little incentive for issuers to participate in the pilot introduction of the IDS unless and until the CD requirements in the proposal are extended to non-IDS offerings. This commenter emphasized that investors should be entitled to receive the same quality of disclosure, regardless of whether the issuer is an IDS participant. In the event that the CD enhancements set forth in the 2000 Concept Proposal are applied universally and take effect simultaneously, the IDS will offer several compelling advantages. Issuers who are not eligible to use the short form prospectus or shelf distribution procedures will be eligible to use streamlined procedures under the IDS. Issuers who are eligible to use short form prospectus or shelf distribution procedures would benefit from faster and more predictable timing when qualifying a prospectus distribution.

Response
The CSA thank the commenters for their comments. As noted above, however, given the CSA's decision to proceed with the liberalization of existing rules rather than the development of a separate IDS, no pilot period is required.

Question
33. What do you perceive as the main benefits of the IDS, as compared with the existing distribution procedures?

Comments
Four commenters listed the following benefits:

- The main benefits of the IDS would be the speed at which the capital markets could be accessed by the issuers.
- A National Instrument will most likely be adopted as a rule in all Canadian jurisdictions, which will be a major step towards creating a virtual national securities commission and which will narrow the gap between information on the public record at any point in time and the "full, true and plain" prospectus disclosure.
- The extent of disclosure in the prospectus document, short form included, will be significantly reduced, and mid-sized issuers will be able to obtain benefits similar to those presently enjoyed by POP issuers.
- IDS will allow all investors, not just those participating in primary offerings, to make informed investment decisions. This commenter also listed as a benefit the ability of issuers to access the market in a timely manner, which is particularly important in the current market environment.
- IDS will allow faster and more predictable access to the capital markets as an IDS prospectus would be subject to only limited review by regulators. The IDS has the potential to provide issuers with greater flexibility to go to the market more often, in lesser amounts, and at lower transaction costs. The main benefit for investors under the IDS is the potential for more complete and timely disclosure information.

Response
The CSA believe that these comments apply equally to Proposed NI 44-101. The CD Rules have enhanced CD requirements, accomplishing a significant component of IDS, and Proposed NI 44-101 generally permits more issuers to access the short form prospectus system than Current NI 44-101 does. Even more issuers will be able to access the short form prospectus system if the seasoning and quantitative size qualification criteria are eliminated as proposed under Alternative B of Proposed NI 44-101.

Question
34. If the IDS proves to be a successful alternative to the short form prospectus and shelf distribution systems, the CSA will consider eliminating the short form and shelf distribution procedures for IDS-eligible issuers. Is this appropriate? If not, why not?

Comments
One commenter suggested waiting until the results of the pilot test are known.

Another commenter wished to clarify with the CSA that the MTN program (as defined in National Instrument 44-102 *Shelf Distributions*) shelf procedures, or analogous procedures permitting the use of one-page pricing supplements, would be continued under the IDS.

Another commenter opposed elimination of short form and shelf because of the recognized efficiency of these systems. This commenter believes the better approach would be to allow IDS as an alternative offering regime.

Another commenter believed that if the IDS proves to be a successful alternative to the short form prospectus and shelf distribution systems (and following an appropriate industry consultation), the CSA should consider eliminating the short form and shelf distribution procedures for IDS-eligible issuers.

Response
The CSA are not considering eliminating the short form and shelf distribution procedures. IDS, as described in the 2000 Concept Proposal, and Proposed NI 44-101 are quite similar to one another, with the exception of the marketing restriction proposals.

G. Other Comments

(a) Reduced filing periods for financial statements

Comments
Two commenters stated that the change requiring the filing of annual and interim financial statements to within 90 days of year end and 45 days of quarter end, respectively, is a positive change.

One commenter generally opposed the reduced filing periods because they would take away the buffer that companies have to cope with emergencies, day-to-day business and the ever-increasing regulatory burden. Another commenter opposed the requirement other than in the context of a voluntary system, but suggested that, if the requirement were adopted, consideration should be given to providing additional time for the delivery of materials to shareholders.

Two commenters, although not opposed to the requirement, recommended providing a transition period. One of these commenters suggested that current filing deadlines be maintained for two years to conform with the pilot introduction for IDS until issuers become familiar with the increased content requirements.

Four commenters believed that junior issuers would experience difficulties in meeting the new deadlines and proposed that some form of relief be provided.

One of these commenters raised the following specific concerns:

- Smaller companies are already poorly served by their auditors and rarely get their financials more than a day before the print deadline. A reduction for the annuals to 90 days would greatly increase the difficulty and costs.
- 60 days for quarterlies is generally easy to keep track of, being roughly 2 months from the quarter end, whereas the odd 45 day requirement will lead to a lot of wasted time and administrative difficulties.
- Current management time is already at a premium.
- Even if the new time frames are tied only to the IDS there is a strong incentive to apply them to all filers eventually, and the commenter was against this.
- Junior companies in Canada (unlike their U.S. counterparts) do not have the resources that would enable them to meet the new time constraints.

Suggested forms of relief that could be granted to junior issuers include:

- setting the annual filing deadline to 120 days after year end, rather than 90 days, in view of the complexities of completing a year end audit; and
- providing an exemption.

One commenter requested that the CSA clarify that the deadline for submission of the MD&A which discusses the fourth quarter financial results is 90 days after the issuer's year end. Quarterly submissions are due within 45 days after the relevant interim period, however the fourth quarter MD&A is to be included in the AIF which is due 90 days after the issuer's year end.

Response
The CD Rules have reduced the filing period for various CD documents. This was subject to extensive comment when the CD Rules were published for comment. The financial statement filing periods in NI 51-102 for annual financial statements is 120 days after year-end for venture issuers, and 90 days for non-venture issuers. The deadline for filing interim financial statements remains at 60 days for venture issuers and is reduced to 45 days after period end for non-venture issuers. The new filing deadlines apply to financial years starting on or after January 1, 2004.

(b) Eligibility criteria

Comments
One commenter said that the listing requirement needs to be clarified in order to confirm whether "recognized market" includes the junior tier of the Canadian Venture Exchange.

Response
Under the basic qualification criteria of Alternative B of Proposed NI 44-101, the issuer's securities must be listed or posted for trading on a short form eligible exchange. Alternative B of Proposed NI 44-101 defines a short form eligible exchange to be the TSX, Tier 1 and Tier 2 of the TSX Venture Exchange, and their respective successors

(c) Measures to ensure quality of disclosure

Comments
Two commenters emphasized the importance of strong regulatory review, subsequent audit and enforcement where necessary, in ensuring the quality of disclosure under IDS.

Response
The CSA agree with these comments and has implemented the CDR Program. Please see the response to item 30 above.

(d) Use of plain language

Comments
Another commenter noted that, because of the growth in the retail investor market, Canadian regulators should encourage "plain language" disclosure as in the United States.

Response
The CSA encourage the use of plain language in disclosure documents.

(e) Support for Concept Proposal

Comments
Six commenters generally supported the 2000 Concept Proposal, subject to individual concerns.

Response
The CSA note the comments. We believe that many of the benefits of the IDS as set out in the 2000 Concept Proposal are now in place under the CD Rules, MI 52-109 where applicable, and MI 52-110 where applicable, and with the implementation of other CSA initiatives. Proposed NI 44-101 harmonizes Current NI 44-101 with these new requirements.

(f) Other market developments

Comments
One commenter observed that IDS should take into account other developments in North American securities markets, such as the proposed association of stock exchanges.

Response
The CSA will continue to consider the impact of any other developments in North American securities markets.

SCHEDULE 1

LIST OF COMMENTERS
(listed according to the comment letter date)

Jonathan McCullough
McCullouch O'Connor Irwin
April 17, 2000

Andrew D. Grasby, Co-Chair and Philippa P.B. Hughes, Associate, Advocacy
Canadian Advocacy Council
Association for Investment Management and Research (AIMR)
May 19, 2000

Maria Casano, Partner
BDO Dunwoody LLP
May 26, 2000

Mark Fields
Vice President and Director
Copper Ridge Exploration Inc.
May 26, 2000

Kenneth G. Hanna
May 28, 2000

John H. Deacon
Vice President, General Counsel and Corporate Secretary
NAV Canada
May 29, 2000

Maria V. Casano, Member
Task Force of the Accounting and Assurance Standards Boards
Canadian Institute of Chartered Accountants
June 1, 2000

Lezlie Oler
Executive Director
Canadian Society of Corporate Secretaries
June 1, 2000

Stewart Lockwood
slockwood@canarc.net
June 2, 2000

Michelle Caturay
Canadian Imperial Bank of Commerce
June 5, 2000

Richard A. Lococo
Securities Subcommittee
CBAO Business Law Section
June 5, 2000

Gordon C. Fowler, Partner, and Alan G. Van Weelden, Senior Principal
KPMG LLP
June 5, 2000

Lawson Lundell Lawson & McIntosh
June 6, 2000

Christopher Begy
Bank of Montreal
June 7, 2000

Gerald A. Romanzin
Executive Vice President
Canadian Venture Exchange
June 7, 2000

Ron Blunn, Chair, and David Mills, Past Chair
CIRI Issues Committee
Canadian Investor Relations Institute
June 9, 2000

Osler Hoskin & Harcourt
June 13, 2000

Peter McCarter
Aur Resources Inc.
June 17, 2000

Nelson Smith
Head of Investment Banking
Yorkton Securities Inc.
June 19, 2000

Joseph J. Oliver
President and Chief Executive Officer
Investment Dealers Association of Canada
June 22, 2000

Duane Poliquin
President
Almaden Resources and Fairfield Minerals
June 23, 2000

John Kruzick
President
DRC Resources
June 23, 2000

Brooke Campbell
Manager Corporate Finance and Director
Odlum Brown Limited
September 20, 2000

NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS

TABLE OF CONTENTS

NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions - In this Instrument

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

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

(a) obliges the person or company providing the support to provide the issuer with funds sufficient to enable the issuer to make the stipulated payments, or

(b) entitles the holder of the securities to receive, from the person or company providing the support, payment if the issuer fails to make a stipulated payment;

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

"**approved rating**" has the same meaning as in NI 51-102;

"**approved rating organization**" has the same meaning as in NI 51-102;

"**asset-backed security**" has the same meaning as in NI 51-102;

"**business acquisition report**" has the same meaning as in NI 51-102;

"**cash equivalent**" means an evidence of indebtedness that has a remaining term to maturity of 365 days or less and that is issued, or fully and unconditionally guaranteed as to principal and interest, by

(a) the government of Canada or the government of a jurisdiction,

(b) the government of the United States of America, the government of one of the states of the United States of America, the government of another sovereign state or a permitted supranational agency, if, in each case, the evidence of indebtedness has an approved rating, or

(c) a Canadian financial institution, or other entity that is regulated as a banking institution, loan corporation, trust company, or insurance company or credit union by the government, or an agency of the government, of the country under whose laws the entity is incorporated or organized or a political subdivision of that country, if, in either case, the Canadian financial institution or other entity has outstanding short term debt securities that have received an approved rating from any approved rating organization;

"**cash settled derivative**" means a derivative, the terms of which provide for settlement only by means of cash or cash equivalent, the amount of which is determinable by reference to the underlying interest of the derivative;

"**connected issuer**" has the same meaning as in National Instrument 33-105 *Underwriting Conflicts* and, in Québec, the applicable securities legislation;

"**control person**" means any person or company that holds or is one of a combination of persons or companies that holds

(i) a sufficient number of any of the securities of an issuer so as to affect materially the control of that issuer, or

(ii) more than 20% of the outstanding voting securities of an issuer except where there is evidence showing that the holdings of those securities does not affect materially the control of that issuer;

"**convertible**" means, if used to describe securities, that the rights and attributes attached to the securities include the right or option to purchase, convert into or exchange for or otherwise acquire equity securities of an issuer, or any other security that itself includes the right or option to purchase, convert into or exchange for or otherwise acquire equity securities of an issuer;

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

"**current AIF**" means

(a) if the issuer has filed an AIF for its most recently completed financial year, that AIF; or

(b) if

(i) the issuer has not filed an AIF for its most recently completed financial year; and

(ii) the issuer is not yet required under the applicable CD rule to have filed its annual financial statements for its most recently completed financial year;

its AIF filed for the financial year immediately preceding its most recently completed financial year;

"current annual financial statements" means

(a) if the issuer has filed its comparative annual financial statements in accordance with the applicable CD rule for its most recently completed financial year, those financial statements together with the auditor's report accompanying the financial statements and, if there has been a change of auditors since the comparative period, an auditor's report on the financial statements for the comparative period; or

(b) if

(i) the issuer has not filed its comparative annual financial statements for its most recently completed financial year; and

(ii) the issuer is not yet required under the applicable CD rule to have filed its annual financial statements for its most recently completed financial year;

its comparative annual financial statements filed for the financial year immediately preceding its most recently completed financial year, together with the auditor's report accompanying the financial statements and, if there has been a change of auditors since the comparative period, an auditor's report on the financial statements for the comparative period;

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

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

"**executive officer**" has the same meaning as in NI 51-102;

"full and unconditional credit support" means

(a) alternative credit support that

(i) entitles the holder of the securities to receive payment from the credit supporter, or enables the holder to receive payment from the issuer within 15 days of any failure by the issuer to make a payment as stipulated; and

(ii) results in the securities receiving the same credit rating as, or a higher credit rating than, the credit rating they would have received if payment had been fully and unconditionally guaranteed by the credit supporter, or would result in the securities receiving such a rating if they were rated; or

(b) a guarantee of the payments to be made by the issuer of securities as stipulated in the terms of the securities or in an agreement governing rights of, or granting rights to, holders of the securities such that the holder of the securities is entitled to receive payment from the guarantor within 15 days of any failure by the issuer to make a payment as stipulated;

"**information circular**" has the same meaning as in NI 51-102;

"**interim period**" has the same meaning as in the applicable CD rule;

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

"**Form 44-101F1**" means Form 44-101F1 *Short Form Prospectus*;

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

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

"**MI 52-109**" means Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*;

"**mineral project**" has the same meaning as in NI 51-102;

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

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

"**NI 44-102**" means National Instrument 44-102 *Shelf Distributions*;

"**NI 51-101**" means National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities;*

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

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

"**non-convertible**" means, if used to describe a security, a security that is not convertible;

"**non-voting security**" has the same meaning as in NI 51-102;

"parent credit supporter" means a credit supporter of which the issuer is a subsidiary;

"**participant**" means an issuer that is a party to a reorganization;

"**permitted supranational agency**" means the International Bank for Reconstruction and Development, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the Caribbean Development Bank, the European Bank for Reconstruction and Development, the African Development Bank and any person or company prescribed under paragraph (g) of the definition of "foreign property" in subsection 206(1) of the ITA;

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

"**reorganization**" means

(a) a statutory amalgamation,

(b) a statutory merger, or

(c) a statutory arrangement;

"**restricted security**" has the same meaning as in NI 51-102;

"**short form eligible exchange**" means each of the Toronto Stock Exchange, Tier 1 and Tier 2 of the TSX Venture Exchange, and their respective successors;

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

"subsidiary credit supporter" means a credit supporter that is a subsidiary of the parent credit supporter;

"**successor issuer**" means an issuer existing as a result of a reorganization, other than, in the case where the reorganization involved a divestiture of a portion of a participant's business, an issuer that succeeded to or otherwise acquired the portion of the business divested;

"**underlying interest**" means, for a derivative, the security, commodity, financial instrument, currency, interest rate, foreign exchange rate, economic indicator, index, basket, agreement, benchmark or any other reference, interest or variable, and, if applicable, the relationship between any of the foregoing, from, to or on which the market price, value or any payment obligation of the derivative is derived, referenced or based; and

"U.S. credit supporter" means a credit supporter that:

(a) is incorporated or organized under the laws of the United States of America or any state or territory of the United States of America or the District of Columbia;

(b) either

(i) has a class of securities registered under section 12(b) or section 12(g) of the 1934 Act; or

(ii) is required to file reports under section 15(d) of the 1934 Act;

(c) has filed with the SEC all 1934 Act filings for a period of 12 calendar months immediately before the filing of the preliminary short form prospectus;

(d) is not registered or required to be registered as an investment company under the 1940 Act; and

(e) is not a commodity pool issuer.

1.2 References to Information Included in a Document - References in this Instrument to information included in a document refer to both information contained directly in the document and information incorporated by reference in the document.

1.3 References to Information to be Included in a Document - Provisions of this Instrument that require an issuer to include information in a document require an issuer either to insert the information directly in the document or to incorporate the information in the document by reference.

1.4 Incorporation by Reference - A document deemed by this Instrument to be incorporated by reference in another document is conclusively deemed for purposes of securities legislation to be incorporated by reference in the other document.

1.5 Interpretation of "Short Form Prospectus" - In this Instrument, unless otherwise stated, a reference to a short form prospectus includes preliminary short form prospectus.

1.6 Interpretation of "Payments to be Made"- For the purposes of the definition of "full and unconditional credit support", payments to be made by an issuer of securities as stipulated in the terms of the securities include any amounts to be paid as dividends in accordance with, and on the dividend payment dates stipulated in, the provisions of the securities, whether or not the dividends have been declared.

PART 2 QUALIFICATION TO FILE A PROSPECTUS IN THE FORM OF A SHORT FORM PROSPECTUS [*ALTERNATIVE A*]

2.1 Short Form Prospectus

(1) An issuer shall not file a prospectus in the form of Form 44-101F1 unless the issuer is qualified under any of sections 2.2 through 2.7 to file a prospectus in the form of a short form prospectus.

(2) An issuer that is qualified under any of sections 2.2 through 2.7 to file a prospectus in the form of a short form prospectus for a distribution may file, for that distribution,

(a) a preliminary prospectus, prepared and certified in the form of Form 44-101F1; and

(b) a prospectus, prepared and certified in the form of Form 44-101F1.

2.2 Basic Qualification Criteria - An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of any of its securities in the local jurisdiction, if all of the following criteria are satisfied:

1. The issuer is an electronic filer under NI 13-101.

2. The issuer is, and has been throughout the 12 calendar months immediately preceding the date of the filing of the preliminary short form prospectus, a reporting issuer in at least one jurisdiction in Canada.

3. The issuer has filed with the securities regulatory authority in each jurisdiction in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction under applicable securities legislation.

4. The issuer has

(a) current annual financial statements; and

(b) a current AIF;

in at least one jurisdiction in which it is a reporting issuer.

5. The aggregate market value of the issuer's equity securities, listed and posted for trading on an exchange in Canada, is $75,000,000 or more on a date within 60 days before the date of the filing of the issuer's preliminary short form prospectus.

6. The issuer has filed, at least 10 business days prior to filing the preliminary short form prospectus, a notice declaring the issuer’s intention to be qualified to file a short form prospectus under this Instrument, and has not withdrawn the notice prior to filing the preliminary short form prospectus.

2.3 Alternative Qualification Criteria for Substantial Issuers - An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of any of its securities in the local jurisdiction, if all of the following criteria are satisfied:

1. The issuer is an electronic filer under NI 13-101.

2. The issuer is a reporting issuer in at least one jurisdiction in Canada.

3. The issuer has filed with the securities regulatory authority in each jurisdiction in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction under applicable securities legislation.

4. The issuer has

(a) current annual financial statements; and

(b) a current AIF;

in at least one jurisdiction in which it is a reporting issuer.

5. The aggregate market value of the issuer's equity securities, listed and posted for trading on an exchange in Canada, is $300,000,000 or more on a date within 60 days before the date of the filing of the issuer's preliminary short form prospectus.

6. The issuer has filed, at least 10 business days prior to filing the preliminary short form prospectus, a notice declaring the issuer’s intention to be qualified to file a short form prospectus under this Instrument, and has not withdrawn the notice prior to filing the preliminary short form prospectus.

2.4 Alternative Qualification Criteria for Issuers of Approved Rating Non-Convertible Securities

(1) An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of non-convertible securities in the local jurisdiction, if all of the following criteria are satisfied:

1. The issuer is an electronic filer under NI 13-101.

2. The issuer is, and has been throughout the 12 calendar months immediately preceding the date of the filing of the preliminary short form prospectus, a reporting issuer in at least one jurisdiction in Canada.

3. The issuer has filed with the securities regulatory authority in each jurisdiction in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction under applicable securities legislation.

4. The issuer has

   (a) current annual financial statements; and

   (b) a current AIF;

   in at least one jurisdiction in which it is a reporting issuer.

5. The issuer has filed, at least 10 business days prior to filing the preliminary short form prospectus, a notice declaring the issuer's intention to be qualified to file a short form prospectus under this Instrument, and has not withdrawn the notice prior to filing the preliminary short form prospectus.

6. The securities to be distributed

   (a) have received an approved rating on a provisional basis;

   (b) are not the subject of an announcement by an approved rating organization of which the issuer is or ought reasonably to be aware that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating; and

   (c) have not received a provisional or final rating lower than an approved rating from any approved rating organization.

(2) Item 6 of subsection (1) does not apply to an issuer filing a short form prospectus that is a base shelf prospectus under NI 44-102.

2.5 Alternative Qualification Criteria for Issuers of Guaranteed Non-Convertible Debt Securities, Preferred Shares and Cash Settled Derivatives

(1) An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of non-convertible debt securities, non-convertible preferred shares or non-convertible cash settled derivatives in the local jurisdiction, if all of the following criteria are satisfied:

1. A credit supporter has provided full and unconditional credit support for the securities being distributed.

2. At least one of the following is true:

   (a) the credit supporter satisfies the criteria in items 1, 2, 3, 4 and 6 of section 2.2 if the word "issuer" is replaced with "credit supporter" wherever it occurs; or

   (b) the credit supporter satisfies both

      (i) the criteria in items 1, 2, 3, 4 and 6 of section 2.3 if the word "issuer" is replaced with "credit supporter" wherever it occurs; and

      (ii) the criterion that the credit supporter have equity securities, listed and posted for trading on an exchange in Canada, the aggregate market value of which is

$300,000,000 or more on a date within 60 days before the date of the filing of the issuer's preliminary short form prospectus; or

(c) the credit supporter is a U.S. credit supporter and the issuer is incorporated or organized under the laws of Canada or of a jurisdiction.

3. Unless the aggregate market value of the credit supporter's equity securities listed and posted for trading on an exchange in Canada is $75,000,000 or more on a date within 60 days before the date of the filing of the issuer's preliminary short form prospectus, then at the time the preliminary short form prospectus was filed,

(a) the credit supporter has outstanding non-convertible securities that

(i) have received an approved rating,

(ii) have not been the subject of an announcement by an approved rating organization of which the issuer is or ought reasonably to be aware that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, and

(iii) have not received a rating lower than an approved rating from any approved rating organization; and

(b) the securities to be issued by the issuer

(i) have received an approved rating on a provisional basis,

(ii) have not been the subject of an announcement by an approved rating organization of which the issuer is or ought reasonably to be aware that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, and

(iii) have not received a provisional or final rating lower than an approved rating from any approved rating organization.

4. The issuer has filed, at least 10 business days prior to filing the preliminary short form prospectus, a notice declaring the issuer's intention to be qualified to file a short form prospectus under this Instrument, and has not withdrawn the notice prior to filing the preliminary short form prospectus.

(2) Item 3(b) of subsection (1) does not apply to an issuer filing a short form prospectus that is a base shelf prospectus under NI 44-102.

2.6 Alternative Qualification Criteria for Issuers of Guaranteed Convertible Debt Securities or Preferred Shares - An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of convertible debt securities or convertible preferred shares in the local jurisdiction, if all of the following criteria are satisfied:

1. The debt securities or the preferred shares are convertible into securities of a credit supporter that has provided full and unconditional credit support for the securities being distributed.

2. The credit supporter satisfies at least one of the following:

(a) both

(i) the criteria in items 1, 2, 3, 4 and 6 of section 2.2 if the word “issuer” is replaced with “credit supporter” wherever it occurs, and

(ii) the criterion that the credit supporter have equity securities, listed and posted for trading on an exchange in Canada, the aggregate market value of which is $75,000,000 or more on a date within 60 days before the date of the filing of the issuer's preliminary short form prospectus; or

(b) both

(i) the criteria in items 1, 2, 3, 4 and 6 of section 2.3 if the word “issuer” is replaced with “credit supporter” wherever it occurs, and

(ii) the criterion that the credit supporter have equity securities, listed and posted for trading on an exchange in Canada, the aggregate market value of which is $300,000,000 or more on a date within 60 days before the date of the filing of the issuer's preliminary short form prospectus.

3. The issuer has filed, at least 10 business days prior to filing the preliminary short form prospectus, a notice declaring the issuer's intention to be qualified to file a short form prospectus under this Instrument, and has not withdrawn the notice prior to filing the preliminary short form prospectus.

2.7 Alternative Qualification Criteria for Issuers of Asset-Backed Securities

(1) An issuer established in connection with a distribution of asset-backed securities is qualified to file a prospectus in the form of a short form prospectus for a distribution of asset-backed securities in the local jurisdiction, if all of the following criteria are satisfied:

1. The issuer is an electronic filer under NI 13-101.

2. The issuer has

(a) current annual financial statements; and

(b) a current AIF;

in at least one jurisdiction in Canada.

3. The asset-backed securities to be distributed

(a) have received an approved rating on a provisional basis;

(b) have not been the subject of an announcement by an approved rating organization of which the issuer is or ought reasonably to be aware that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating; and

(c) have not received a provisional or final rating lower than an approved rating from any approved rating organization.

4. The issuer has filed, at least 10 days prior to filing the preliminary short form prospectus, declaring the issuer’s intention to be qualified to file a short form prospectus under this Instrument, and has not withdrawn the notice prior to filing the preliminary short form prospectus.

(2) Item 3 of subsection (1) does not apply to an issuer filing a short form prospectus that is a base shelf prospectus under NI 44-102.

2.8 Calculation of the Aggregate Market Value of an Issuer's Securities

(1) For the purposes of this Part,

(a) the aggregate market value of the equity securities of an issuer on a date is the aggregate of the market value of each class of its equity securities on the date, calculated by multiplying

(i) the total number of equity securities of the class outstanding on the date, by

(ii) the closing price on the date of the equity securities of the class on the exchange in Canada on which that class of equity securities is principally traded; and

(b) instalment receipts may, at the option of the issuer, be deemed to be equity securities if

(i) the instalment receipts are listed and posted for trading on an exchange in Canada, and

(ii) the outstanding equity securities, the beneficial ownership of which is evidenced by the instalment receipts, are not listed and posted for trading on an exchange in Canada.

(2) For the purposes of subsection (1), in calculating the total number of equity securities of a class outstanding, an issuer shall exclude those equity securities of the class that are beneficially owned, or over which control or direction is exercised, by persons or companies that, alone or together with their respective affiliates and associated parties, beneficially own or exercise control or direction over more than 10 per cent of the outstanding equity securities of the issuer.

(3) Despite subsection (2), if a portfolio manager of a pension fund or investment fund, alone or together with its affiliates and associated parties, exercises control or direction in the aggregate over more than 10 per cent of the outstanding equity securities of an issuer, and the fund beneficially owns or exercises control or direction over 10 per cent or less of the issued and outstanding equity securities of the issuer, the securities that the fund beneficially owns or exercises control or direction over are not excluded unless the portfolio manager is an affiliate of the issuer.

2.9 Exemptions for New Reporting Issuers and Successor Issuers

(1) An issuer is exempt from the requirement in section 2.2 to satisfy the criteria in item 4 of that section, the requirement in section 2.3 to satisfy the criteria in item 4 of that section, the requirement in section 2.4 to satisfy the criteria in item 4 of that section, or the requirement in subsection 2.7(1) to satisfy the criteria in item 2 of that subsection, as applicable, if

(a) the issuer is not exempt from the requirement in the applicable CD rule to file annual financial statements within a prescribed period after its financial year end, but the issuer has not yet been required under the applicable CD rule to file annual financial statements; and

(b) unless the issuer is seeking qualification under section 2.7, the issuer has filed and obtained a receipt for a final prospectus that included the issuer's comparative annual financial statements for its most recently completed financial year or the financial year immediately preceding its most recently completed financial year, together with the auditor's report accompanying those financial statements and, if there has been a change of auditors since the comparative period, an auditor's report on the financial statements for the comparative period.

(2) A successor issuer is exempt from the requirement in section 2.2 to satisfy the criteria in item 4 of that section, the requirement in section 2.3 to satisfy the criteria in item 4 of that section, the requirement in section 2.4 to satisfy the criteria in item 4 of that section and the requirement in subsection 2.7(1) to satisfy the criteria in item 2 of that subsection if

(a) the successor issuer is not exempt from the requirement in the applicable CD rule to file annual financial statements within a prescribed period after its financial year end but the successor issuer has not yet, since the completion of the reorganization that resulted in the successor issuer, been required under the applicable CD rule to file annual financial statements; and

(b) an information circular relating to the reorganization that resulted in the successor issuer was filed by the successor issuer or a participant in the reorganization and such information circular:

(i) complied with applicable securities legislation; and

(ii) included disclosure in accordance with Item 14.2 of Form 51-102F5 for the successor issuer.

(3) A successor issuer is exempt from the requirement in section 2.2 to satisfy the criteria in item 2 of that section if

(a) the successor issuer is, and has been throughout the period since the date of the reorganization that resulted in the successor issuer, a reporting issuer in at least one jurisdiction in Canada; and

(b) at least one of the participants in the reorganization was, throughout the period beginning 12 months prior to the date of the filing of the successor issuer's preliminary short form prospectus and ending on the date of the reorganization, a reporting issuer in at least one jurisdiction in Canada.

2.10 Transition - For the purposes of this Part, if, as of [the day immediately prior to the date this Instrument came into force], an issuer had a "current AIF" under NI 44-101 as it then was, that issuer is conclusively deemed, as of [the date this Instrument came into force], to have filed a notice at least 10 days prior to that date declaring the issuer's intention to be qualified to file a short form prospectus.

PART 2 QUALIFICATION TO FILE A PROSPECTUS IN THE FORM OF A SHORT FORM PROSPECTUS *[ALTERNATIVE B*]

2.1 Short Form Prospectus

(1) An issuer shall not file a prospectus in the form of Form 44-101F1 unless the issuer is qualified under any of sections 2.2 through 2.6 to file a prospectus in the form of a short form prospectus.

(2) An issuer that is qualified under any of sections 2.2 through 2.6 to file a prospectus in the form of a short form prospectus for a distribution may file, for that distribution,

(a) a preliminary prospectus, prepared and certified in the form of Form 44-101F1; and

(b) a prospectus, prepared and certified in the form of Form 44-101F1.

2.2 Basic Qualification Criteria - An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of any of its securities in the local jurisdiction, if all of the following criteria are satisfied:

1. The issuer is an electronic filer under NI 13-101.

2. The issuer is a reporting issuer in at least one jurisdiction in Canada.

3. The issuer has filed with the securities regulatory authority in each jurisdiction in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction under applicable securities legislation.

4. The issuer has

(a) current annual financial statements; and

(b) a current AIF;

in at least one jurisdiction in which it is a reporting issuer.

5. The issuer's equity securities are listed and posted for trading on a short form eligible exchange and the issuer is not an issuer

(a) whose operations have ceased; or

(b) whose principal asset is cash, cash equivalents, or its exchange listing.

6. The issuer has filed, at least 10 business days prior to filing the preliminary short form prospectus, a notice declaring the issuer's intention to be qualified to file a short form prospectus under this Instrument, and has not withdrawn the notice prior to filing the preliminary short form prospectus.

2.3 Alternative Qualification Criteria for Issuers of Approved Rating Non-Convertible Securities

(1) An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of non-convertible securities in the local jurisdiction, if all of the following criteria are satisfied:

1. The issuer is an electronic filer under NI 13-101.

2. The issuer is a reporting issuer in at least one jurisdiction in Canada.

3. The issuer has filed with the securities regulatory authority in each jurisdiction in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction under applicable securities legislation.

4. The issuer has

(a) current annual financial statements; and

(b) a current AIF;

in at least one jurisdiction in which it is a reporting issuer.

5. The issuer has filed, at least 10 business days prior to filing the preliminary short form prospectus, a notice declaring the issuer's intention to be qualified to file a short form prospectus under this Instrument, and has not withdrawn the notice prior to filing the preliminary short form prospectus.

6. The securities to be distributed

(a) have received an approved rating on a provisional basis;

(b) are not the subject of an announcement by an approved rating organization of which the issuer is or ought reasonably to be aware that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating; and

(c) have not received a provisional or final rating lower than an approved rating from any approved rating organization.

(2) Item 6 of subsection (1) does not apply to an issuer filing a short form prospectus that is a base shelf prospectus under NI 44-102.

2.4 Alternative Qualification Criteria for Issuers of Guaranteed Non-Convertible Debt Securities, Preferred Shares and Cash Settled Derivatives

(1) An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of non-convertible debt securities, non-convertible preferred shares or non-convertible cash settled derivatives in the local jurisdiction, if all of the following criteria are satisfied:

1. A credit supporter has provided full and unconditional credit support for the securities being distributed.

2. At least one of the following is true:

(a) the credit supporter satisfies the criteria in items 1, 2, 3, 4 and 6 of section 2.2 if the word "issuer" is replaced with "credit supporter" wherever it occurs; or

(b) the credit supporter is a U.S. credit supporter and the issuer is incorporated or organized under the laws of Canada or a jurisdiction.

3. Unless the credit supporter's equity securities are listed and posted for trading on a short form eligible exchange, at the time the preliminary short form prospectus is filed

(a) the credit supporter has outstanding non-convertible securities that

(i) have received an approved rating,

(ii) have not been the subject of an announcement by an approved rating organization of which the issuer is or ought reasonably to be aware that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, and

(iii) have not received a rating lower than an approved rating from any approved rating organization; and

(b) the securities to be issued by the issuer

(i) have received an approved rating on a provisional basis,

(ii) have not been the subject of an announcement by an approved rating organization of which the issuer is or ought reasonably to be aware that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, and

(iii) have not received a provisional or final rating lower than an approved rating from any approved rating organization.

4. The issuer has filed, at least 10 business days prior to filing the preliminary short form prospectus, a notice declaring the issuer's intention to be qualified to file a short form prospectus under this Instrument, and has not withdrawn the notice prior to filing the preliminary short form prospectus.

(2) Item 3(b) of subsection (1) does not apply to an issuer filing a short form prospectus that is a base shelf prospectus under NI 44-102.

2.5 Alternative Qualification Criteria for Issuers of Guaranteed Convertible Debt Securities or Preferred Shares - An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of convertible debt securities or convertible preferred shares in the local jurisdiction, if all of the following criteria are satisfied:

1. The debt securities or the preferred shares are convertible into securities of a credit supporter that has provided full and unconditional credit support for the securities being distributed.

2. The credit supporter satisfies all of the criteria in section 2.2 if the word "issuer" is replaced with "credit supporter" wherever it occurs.

3. The issuer has filed, at least 10 business days prior to filing the preliminary short form prospectus, a notice declaring the issuer's intention to be qualified to file a short form prospectus under this Instrument, and has not withdrawn the notice prior to filing the preliminary short form prospectus.

2.6 Alternative Qualification Criteria for Issuers of Asset-Backed Securities

(1) An issuer established in connection with a distribution of asset-backed securities is qualified to file a prospectus in the form of a short form prospectus for a distribution of asset-backed securities in the local jurisdiction, if all of the following criteria are satisfied:

1. The issuer is an electronic filer under NI 13-101.

2. The issuer has

(a) current annual financial statements; and

(b) a current AIF;

in at least one jurisdiction in Canada.

3. The asset-backed securities to be distributed

(a) have received an approved rating on a provisional basis;

(b) have not been the subject of an announcement by an approved rating organization of which the issuer is or ought reasonably to be aware that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating; and

(c) have not received a provisional or final rating lower than an approved rating from any approved rating organization.

4. The issuer has filed, at least 10 days prior to filing the preliminary short form prospectus, a notice declaring the issuer's intention to be qualified to file a short form prospectus under this Instrument, and has not withdrawn the notice prior to filing the preliminary short form prospectus.

(2) Item 3 of subsection (1) does not apply to an issuer filing a short form prospectus that is a base shelf prospectus under NI 44-102.

2.7 Exemptions for New Reporting Issuers and Successor Issuers

(1) An issuer is exempt from the requirement in section 2.2 to satisfy the criteria in item 4 of that section, the requirement in section 2.3 to satisfy the criteria in item 4 of that section, or the requirement in subsection 2.6(1) to satisfy the criteria in item 2 of that subsection, as applicable, if

(a) the issuer is not exempt from the requirement in the applicable CD rule to file annual financial statements within a prescribed period after its financial year end, but the issuer has not yet been required under the applicable CD rule to file annual financial statements; and

(b) unless the issuer is seeking qualification under section 2.6, the issuer has filed and obtained a receipt for a final prospectus that included the issuer's comparative annual financial statements for its most recently completed financial year or the financial year immediately preceding its most recently completed financial year, together with the auditor's report accompanying those financial statements and, if there has been a change of auditors since the comparative period, an auditor's report on the financial statements for the comparative period.

(2) A successor issuer is exempt from the requirement in section 2.2 to satisfy the criteria in item 4 of that section, the requirement in section 2.3 to satisfy the requirement in item 4 of that section, or the requirement in subsection 2.6(1) to satisfy the requirement in item 2 of that subsection, as applicable, if

(a) the successor issuer is not exempt from the requirement in the applicable CD rule to file annual financial statements within a prescribed period after its financial year end, but the issuer has not yet, since the completion of the reorganization which resulted in the successor issuer, been required under the applicable CD rule to file annual financial statements; and

(b) an information circular relating to the reorganization that resulted in the successor issuer was filed by the successor issuer or a participant in the reorganization, and such information circular:

(i) complied with applicable securities legislation; and

(ii) included disclosure in accordance with Item 14.2 of Form 51-102F5 for the successor issuer.

2.8 Transition - For the purposes of this Part, if, as of [the day immediately prior to the date this Instrument came into force], an issuer had a "current AIF" under NI 44-101 as it then was, that issuer is conclusively deemed, as of [the date this Instrument came into force], to have filed a notice at least 10 days prior to that date declaring the issuer's intention to be qualified to file a short form prospectus.

PART 3 DEEMED INCORPORATION BY REFERENCE

3.1 Deemed Incorporation by Reference of Filed Documents - If an issuer does not incorporate by reference in its short form prospectus a document required to be incorporated by reference under Items 11.1 or 12.1(1) of Form 44-101F1, the document is deemed for purposes of securities legislation to be incorporated by reference in the issuer's short form prospectus as of the date of the short form prospectus to the extent not otherwise modified or superseded by a statement contained in the short form prospectus or in any other subsequently filed document that also is, or is deemed to be, incorporated by reference in the short form prospectus.

3.2 Deemed Incorporation by Reference of Subsequently Filed Documents - If an issuer does not incorporate by reference in its short form prospectus a subsequently filed document required to be incorporated by reference under Items 11.2 or 12.1(1) of Form 44-101F1, the document is deemed for purposes of securities legislation to be incorporated by reference in the issuer's short form prospectus as of the date the issuer filed the document to the extent not otherwise modified or superseded by a statement contained in the short form prospectus or in any other subsequently filed document that also is, or is deemed to be, incorporated by reference in the short form prospectus.

PART 4 FILING REQUIREMENTS FOR A SHORT FORM PROSPECTUS

4.1 Interpretation of "Short Form Prospectus" - In this Part, a reference to a short form prospectus does not include a preliminary short form prospectus.

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

(a) file the following with the preliminary short form prospectus:

1. **Signed Copy** - A signed copy of the preliminary short form prospectus.

2. **Qualification Certificate** - A certificate, dated as of the date of the preliminary short form prospectus, executed on behalf of the issuer by one of its executive officers

   (i) specifying which of the qualification criteria set out in Part 2 the issuer is relying on in order to be qualified to file a prospectus in the form of a short form prospectus; and

   (ii) certifying that

      (A) all of those qualification criteria have been satisfied; and

      (B) all of the material incorporated by reference in the preliminary short form prospectus and not previously filed is being filed with the preliminary short form prospectus.

3. **Material Incorporated by Reference** - Copies of all material incorporated by reference in the preliminary short form prospectus and not previously filed.

4. **Material Documents** - Copies of all documents referred to in subsection 12.1(1) or 12.2(1) of NI 51-102 or section 16.4 of NI 81-106, as applicable, that relate to the securities being distributed, that have not previously been filed.

5. **Mining Reports** - If the issuer has a mineral project, the technical reports required to be filed with a preliminary short form prospectus under NI 43-101.

6. **Reports and Valuations** - A copy of each report or valuation referred to in the preliminary short form prospectus for which a consent is required to be filed under section 4.4 and that has not previously been filed, other than a technical report that

   (i) deals with a mineral project or oil and gas activities; and

   (ii) is not otherwise required to be filed under paragraph 5; and

(b) deliver to the regulator, concurrently with the filing of the preliminary short form prospectus, the following:

1. **Authorization to Collect, Use and Disclose Personal Information** - An authorization in the form set out in Appendix A to the indirect collection, use and disclosure of personal information including, for each director and executive officer of an issuer, each promoter of the issuer or, if the promoter is not an individual, each director and executive officer of the promoter, for whom the issuer has not previously delivered the information.

2. **Auditor's Comfort Letter regarding Audited Financial Statements** - A signed letter to the regulator from the auditor of the issuer or of the business, as applicable, prepared in accordance with the form suggested for this circumstance by the Handbook, if a financial statement of an issuer or a business included in a preliminary short form prospectus is accompanied by an unsigned audit report.

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

(a) file the following with the short form prospectus:

1. **Signed Copy** - A signed copy of the short form prospectus.

2. **Material Incorporated by Reference** - Copies of all material incorporated by reference in the short form prospectus and not previously filed.

3. **Material Documents** - Copies of all documents referred to in subsection 12.1(1) or 12.2(1) of NI 51-102 or section 16.4 of NI 81-106, as applicable, that relate to the securities being distributed, that have not previously been filed.

4. **Other Reports and Valuations** - A copy of each report or valuation referred to in the short form prospectus, for which a consent is required to be filed under section 4.4 and that has not previously been filed, other than a technical report that

   (i) deals with a mineral project or oil and gas activities of the issuer; and

   (ii) is not otherwise required to be filed under paragraph 4.2(a)5.;

5. **Issuer's Submission to Jurisdiction** - A submission to jurisdiction and appointment of agent for service of process of the issuer in the form set out in Appendix B, if an issuer is incorporated or organized in a foreign jurisdiction and does not have an office in Canada.

6. **Non-Issuer's Submission to Jurisdiction** - A submission to jurisdiction and appointment of agent for service of process of the selling security holder, promoter or credit supporter, as applicable, in the form set out in Appendix C, 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.

7. **Expert's Consents** - The consents required to be filed under section 4.4.

8. **Credit Supporter's Consent** - The written consent of the credit supporter to the inclusion of its financial statements in the short form prospectus, if financial statements of a credit supporter are required under Item 12.1 of Form 44-101F1 to be included in a short form prospectus and a certificate of the credit supporter is not required under Item 20.3 of Form 44-101F1 to be included in the short form prospectus; and

(b) deliver the following to the regulators, no later than the filing of the short form prospectus:

1. **Blacklined Prospectus** - A copy of the short form prospectus, blacklined to show changes from the preliminary short form prospectus.

2. **Undertaking in Respect of Credit Supporter Disclosure** – If disclosure about a credit supporter is required to be included in the short form prospectus under Item 12.1 of Form 44-101F1, an undertaking of the issuer, in a form acceptable to the regulators, to file the periodic and timely disclosure of the credit supporter for so long as the securities being distributed are issued and outstanding.

4.4 Consents of Experts

(1) If any solicitor, auditor, accountant, engineer or appraiser, or any other person or company whose profession or business gives authority to a statement made by that person or company, is named in a short form prospectus or an amendment to a short form prospectus, either directly or in a document incorporated by reference

(a) as having prepared or certified any part of the short form prospectus or the amendment;

(b) as having opined on financial statements from which selected information included in the short form prospectus has been derived and which audit opinion is referred to in the short form prospectus either directly or in a document incorporated by reference; or

(c) as having prepared or certified a report or valuation referred to in the short form prospectus or the amendment, either directly or in a document incorporated by reference;

the issuer shall file no later than the time the short form prospectus or the amendment is filed, the written consent of the person or company to being named and to the use of that report, valuation, statement or opinion.

(2) The consent referred to in subsection (1) shall

(a) refer to the report, valuation, statement or opinion stating the date of the report, valuation, statement or opinion, and

(b) contain a statement that the person or company referred to in subsection (1)

(i) has read the short form prospectus, and

(ii) has no reason to believe that there are any misrepresentations in the information contained in it that are

(A) derived from the report, valuation, statement or opinion, or

(B) within the knowledge of the person or company as a result of the services performed by the person or company in connection with the report, financial statements, valuation, statement or opinion.

(3) In addition to any other requirement of this section, the consent of an auditor or accountant shall also state

(a) the dates of the financial statements on which the report of the person or company is made, and

(b) that the person or company has no reason to believe that there are any misrepresentations in the information contained in the short form prospectus that are

(i) derived from the financial statements on which the person or company has reported, or

(ii) within the knowledge of the person or company as a result of the audit of the financial statements.

(4) Subsection (1) does not apply to an approved rating organization that issues a rating to the securities being distributed under the preliminary short form prospectus or short form prospectus.

4.5 Language of Documents

(1) A person or company must file a document required to be filed under this Instrument in the French language or in the English language.

(2) Despite subsection (1), if a person or company files a document only in the French language or only in the English language but delivers to an investor or prospective investor a version of the document in the other language, the person or company must file that other version not later than when it is first delivered to the investor or prospective investor.

(3) In Québec, the preliminary short form prospectus, the short form prospectus and any document incorporated by reference must be in the French language or in the French language and the English language.

PART 5 AMENDMENTS TO A SHORT FORM PROSPECTUS

5.1 Interpretation of "Short Form Prospectus" – In this Part, a reference to a short form prospectus does not include a preliminary short form prospectus.

5.2 Form of Amendment

(1) An amendment to a preliminary short form prospectus or a short form prospectus shall consist of either an amendment that does not fully restate the text of the preliminary short form prospectus or short form prospectus or an amended and restated preliminary short form prospectus or short form prospectus.

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

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

5.3 Required Documents for Filing an Amendment - An issuer that files an amendment to a preliminary short form prospectus or short form prospectus shall

(a) file a signed copy of the amendment;

(b) deliver to the regulator a copy of the preliminary short form prospectus or short form prospectus blacklined to show the changes made by the amendment, if the amendment is also a restatement of the preliminary short form prospectus or short form prospectus;

(c) file or deliver any supporting documents required under this Instrument or other provisions of securities legislation to be filed or delivered with a preliminary short form prospectus or a short form prospectus, as the case may be, unless the documents originally filed or delivered with the preliminary short form prospectus or short form prospectus as the case may be, are correct as of the date the amendment is filed; and

(d) in case of an amendment to a short form prospectus, file any consent letter required under this Instrument to be filed with a short form prospectus, dated as of the date of the amendment.

5.4 Auditor's Comfort Letter- If an amendment to a preliminary short form prospectus materially affects, or relates to, an auditor's comfort letter delivered under section 4.2, the issuer shall deliver with the amendment a new auditor's comfort letter.

5.5 Forwarding Amendments - An amendment to a preliminary short form prospectus shall be forwarded to each recipient of the preliminary short form prospectus according to the record of recipients to be maintained under securities legislation.

5.6 Amendment to Preliminary Short Form Prospectus - The regulator shall issue a receipt for an amendment to a preliminary short form prospectus as soon as reasonably possible after the amendment is filed.

5.7 Amendment to Short Form Prospectus

(1) If, after a receipt is issued for a short form prospectus but prior to the completion of the distribution under such short form prospectus, securities in addition to the securities previously disclosed in the prospectus are to be distributed, the person or company making the distribution must file an amendment to the short form prospectus disclosing the additional securities, as soon as practical, and in any event no later than 10 days after the decision to increase the number of securities offered is made.

(2) The regulator shall issue a receipt for an amendment to a short form prospectus required to be filed under this section or under securities legislation unless the regulator considers that it is not in the public interest to do so, or unless otherwise required by securities legislation.

(3) The regulator shall not refuse to issue a receipt under subsection (2) without giving the person or company who filed the short form prospectus an opportunity to be heard.

(4) A distribution or an additional distribution must not proceed until a receipt for an amendment to a short form prospectus that is required to be filed is issued by the regulator.

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

6.1 Non-Fixed Price Offerings and Reduction of Offering Price under Short Form Prospectus

(1) Every security distributed under a short form prospectus shall be distributed at a fixed price.

(2) Despite subsection (1), securities for which the issuer is qualified under Part 2 to file a prospectus in the form of a short form prospectus may be distributed for cash at non-fixed prices under a short form prospectus if, at the time of the filing of the preliminary short form prospectus, the securities have received a rating, on a provisional or final basis, from at least one approved rating organization.

(3) Despite subsection (1), if securities are distributed for cash under a short form prospectus, the price of the securities may be decreased from the initial offering price disclosed in the short form prospectus and, after such a decrease, changed from time to time to an amount not greater than the initial offering price, without filing an amendment to the short form prospectus to reflect the change, if

(a) the securities are distributed through one or more underwriters that have agreed to purchase all of the securities at a specified price;

(b) the proceeds to be received by the issuer or selling security holders or by the issuer and selling security holders are disclosed in the short form prospectus as being fixed; and

(c) the underwriters have made a reasonable effort to sell all of the securities distributed under the short form prospectus at the initial offering price disclosed in the short form prospectus.

(4) Despite subsections (2) and (3), the price at which securities may be acquired on exercise of rights shall be fixed.

PART 7 SOLICITATIONS OF EXPRESSIONS OF INTEREST

7.1 Solicitations of Expressions of Interest - The prospectus requirement does not apply to solicitations of expressions of interest before the filing of a preliminary short form prospectus for securities to be qualified for distribution under a short form prospectus in accordance with this Instrument, if

(a) the issuer has entered into an enforceable agreement with an underwriter who has, or underwriters who have, agreed to purchase the securities;

(b) the agreement referred to in paragraph (a) has fixed the terms of the distribution and requires that the issuer file a preliminary short form prospectus for the securities and obtain from the regulator a receipt, dated as of a date that is not more than four business days after the date that the agreement is entered into, for the preliminary short form prospectus;

(c) the issuer has issued and filed a news release announcing the agreement immediately upon entering into the agreement;

(d) upon issuance of a receipt for the preliminary short form prospectus, a copy of the preliminary short form prospectus is sent to each person or company who has expressed an interest in acquiring the securities; and

(e) except as provided in paragraph (a), no agreement of purchase and sale for the securities is entered into until the short form prospectus has been filed and a receipt obtained.

PART 8 EXEMPTION

8.1 Exemption

(1) The regulator or the securities regulatory authority may grant an exemption from the provisions of this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.

(3) An application made to the securities regulatory authority or regulator for an exemption from the provisions of this Instrument shall include a letter or memorandum describing the matters relating to the exemption, and indicating why consideration should be given to the granting of the exemption.

8.2 Evidence of Exemption

(1) Subject to subsection (2) and without limiting the manner in which an exemption under this Part may be evidenced, the granting under this Part of an exemption, other than an exemption, in whole or in part, from Part 2, may be evidenced by the issuance of a receipt for a short form prospectus or an amendment to a short form prospectus.

(2) An exemption under this Part may be evidenced in the manner set out in subsection (1) only if

(a) the person or company that sought the exemption

(i) sent to the regulator the letter or memorandum referred to in subsection 8.1(3) on or before the date of the filing of the preliminary short form prospectus, or

(ii) sent to the regulator the letter or memorandum referred to in subsection 8.1(3) after the date of the filing of the preliminary short form prospectus and received a written acknowledgement from the regulator that the exemption may be evidenced in the manner set out in subsection (1); and

(b) the regulator has not before, or concurrently with, the issuance of the receipt sent notice to the person or company that sought the exemption, that the exemption sought may not be evidenced in the manner set out in subsection (1).

PART 9 TRANSITION, REPEAL AND EFFECTIVE DATE

9.1 Applicable Rules - A short form prospectus may, at the issuer's option be prepared in accordance with securities legislation in effect at either the date of issuance of a receipt for the preliminary short form prospectus or the date of issuance of a receipt for the short form prospectus.

9.2 Repeal - National Instrument 44-101 *Short Form Prospectus Distributions* that came into force on December 31, 2000 is repealed on ●, 2005.

9.3 Effective Date - This Instrument comes into force on ●, 2005.

NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS

APPENDIX A
AUTHORIZATION OF INDIRECT COLLECTION,
USE AND DISCLOSURE OF PERSONAL INFORMATION

The attached Schedule 1 contains information concerning the full name, position with or relationship to the issuer named below (the "Issuer"), name and address of employer, if other than the Issuer, full residential address, date and place of birth and citizenship (the "Information") of each director, executive officer, promoter, if any, and each director and executive officer of the promoter, if any, of the Issuer as required by securities legislation, unless previously delivered to the regulator. 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 regulator 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 regulator under the authority granted to it in securities legislation,

(iii) that such Information is being collected and used for the purpose of enabling the regulator to discharge its obligations under the provisions of securities legislation, including those obligations that, among other things, require or permit the regulator to refuse to issue a receipt for a prospectus if it appears to the regulator that the past conduct of management or promoters of the Issuer affords reasonable grounds for belief that the business of the Issuer will not be conducted with integrity and in the best interests of its securityholders, and

(iv) of the title, business address and business telephone number of the public official in the local jurisdiction as set out in the attached Schedule 2, who can answer questions about the regulator's indirect collection of the Information; and

(b) has read and understands and has signed the Notice of Collection, Use and Disclosure of Personal Information by Regulators attached hereto as Schedule 3; and

(c) has, by his/her signature on the Notice, authorized the indirect collection of the Information and the use and disclosure thereof by the regulator as contemplated in the attached Schedule 3.

Date:_____

_____
Name of Issuer

Per:_____

_____
Name

_____
Official Capacity

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

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

Personal Information

[Name of Issuer]

Part 1

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

Part 2

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

Full Name	Previous Address(es) (5-year history)	Dates Residing in Foreign Country	Height and Weight	Eye Colour	Hair Colour	Passport Nationality and Number

Schedule 2 to Appendix A
Authorization of Indirect
Collection, Use and Disclosure of Personal Information

Public Official

Local Jurisdiction	Public Official
Alberta	Executive Director Alberta Securities Commission Suite 400 300 - 5th Avenue S.W Calgary, Alberta T2P 3C4 Telephone: (403) 297-4228 E-mail: inquiries@seccom.ab.ca www.albertasecurities.com
British Columbia	Information Officer British Columbia Securities Commission P.O. Box 10142 Pacific Centre 701 West Georgia Street Vancouver, British Columbia V7Y 1LZ Telephone: (604) 899-6854 Toll Free within British Columbia and Alberta: (800)373-6393 E-mail: inquiries@bcsc.bc.ca www.bcsc.bc.ca
Manitoba	Director, Corporate Finance The Manitoba Securities Commission 1130 - 405 Broadway Winnipeg, Manitoba R3C 3L6 Telephone: (204) 945-2548 E-mail: securities@gov.mb.ca www.msc.gov.mb.ca
New Brunswick	Director – Market Regulation New Brunswick Securities Commission Suite 606, 133 Prince William Street Saint John, New Brunswick E2L 4Y9 Telephone: (506) 658-3060 Fax: (506) 658-3059 E-mail: information@nbsc-cvmnb.ca
Newfoundland and Labrador	Director of Securities Department of Government Services and Lands P.O. Box 8700 West Block, 2nd Floor, Confederation Building St. John's, Newfoundland A1B 4J6 Telephone: (709) 729-4189 www.gov.nf.ca/gsl/cca/s
Northwest Territories	Securities Registries Department of Justice Government of the Northwest Territories P.O. Box 1320, Yellowknife, Northwest Territories X1A 2L9 www.justice.gov.nt.ca/SecuritiesRegistry/SecuritiesRegistry.html
Nova Scotia	Deputy Director, Compliance and Enforcement Nova Scotia Securities Commission P.O. Box 458 Halifax, Nova Scotia B3J 2P8

	Telephone: (902)424-5354 www.gov.ns.ca/nssc
Nunavut	Government of Nunavut Legal Registries Division P.O. Box 1000 – Station 570 Iqaluit, Nunavut X0A 0H0 Telephone: (867) 975-6590
Ontario	Administrative Assistant to the Director of Corporate Finance Ontario Securities Commission 19th Floor, 20 Queen Street West Toronto, Ontario M5H 2S8 Telephone: (416) 597-0681 E-mail: Inquiries@osc.gov.on.ca www.osc.gov.on.ca
Prince Edward Island	Deputy Registrar, Securities Division Shaw Building 95 Rochford Street, P.O. Box 2000, 4th Floor Charlottetown, Prince Edward Island C1A 7N8 Telephone: (902) 368-4550 www.gov.pe.ca/securities
Quebec	Autorité des marchés financiers Stock Exchange Tower P.O. Box 246, 22nd Floor 800 Victoria Square Montréal Québec H4Z 1G3 Attention: Responsable de l'accès à l'information Telephone: (514) 395-0337 Toll Free in Québec: (877) 525-0337 www.lautorite.qc.ca
Saskatchewan	Director Saskatchewan Financial Services Commission 6th Floor, 1919 Saskatchewan Drive Regina, Saskatchewan S4P 3V7 Telephone: (306) 787-5842 www.sfsc.gov.sk.ca
Yukon	Registrar of Securities Department of Justice Andrew A. Philipsen Law Centre 2130 - 2nd Avenue, 3rd Floor Whitehorse, Yukon Territory Y1A 5H6 Telephone: (867) 667-5005

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

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

The public officials listed in Schedule 2 (the "Regulators") collect the personal information in Schedule 1 to the Authorization of Indirect Collection, Use and Disclosure of Personal Information (the "Authorization") and use it in the administration and enforcement of provincial securities legislation. The Regulators collect such information under the authority granted to them under provincial securities legislation and do not, under that legislation, make public any of the information provided.

By consenting to the submission of the personal information set out in Schedule 1 to the Authorization (the “Information”), you consent to the collection by the Regulators of such Information, and of any other records and information about you from any other source, including, but not limited to, police records, information from other government or non-governmental regulatory authorities, self-regulatory organizations, exchanges, quotation and trade reporting systems, law enforcement agencies, private bodies, agencies, individuals, corporations, and other organizations in any jurisdictions, credit records and employment records as may be necessary for Regulators to carry out their duties and exercise their powers under provincial securities legislation.

You understand and agree that, in carrying out those duties and exercising those powers, the Regulators will use the Information in the Authorization, and any other information about you from any other source, including those listed above, to conduct background checks, verify the Information you have provided, perform investigations and conduct enforcement proceedings as required by and to ensure compliance with provincial securities legislation, and you further consent to such use by the Regulators by virtue of your submission of such Information to the Regulators.

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

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

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

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

Date: _____

_____
Signature

_____
Name

NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS

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

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

_____

2. Jurisdiction of incorporation, or equivalent, of Issuer:

_____

3. Address of principal place of business of Issuer:

_____

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

_____

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

_____

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

_____

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

_____

8. The Issuer designates and appoints the Agent at the address of the Agent stated above as its agent upon whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the "Proceeding") arising out of, relating to or concerning the distribution of the Securities made or purported to be made under the Short Form Prospectus or the obligations of the Issuer as a reporting issuer, and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring such Proceeding.

9. The Issuer irrevocably and unconditionally submits to the non-exclusive jurisdiction of

   (a) the judicial, quasi-judicial and administrative tribunals of each of the provinces [and territories] of Canada in which the securities are distributed under the Short Form Prospectus; and

   (b) any administrative proceeding in any such province [or territory],

   in any Proceeding arising out of or related to or concerning the distribution of the Securities made or purported to be made under the Short Form Prospectus or the obligations of the issuer as a reporting issuer.

10. Until six years after it has ceased to be a reporting issuer in any Canadian province or territory, the Issuer shall file a new submission to jurisdiction and appointment of agent for service of process in this form at least 30 days before termination of this submission to jurisdiction and appointment of agent for service of process.

11. Until six years after it has ceased to be a reporting issuer in any Canadian province or territory, the Issuer shall file an amended submission to jurisdiction and appointment of agent for service of process at least 30 days before any change in the name or above address of the Agent.

12. This submission to jurisdiction and appointment of agent for service of process shall be governed by and construed in accordance with the laws of [insert province or territory of above address of Agent].

Dated: _____

_____
Signature of Issuer

_____
Print name and title of signing officer of Issuer

AGENT

The undersigned accepts the appointment as agent for service of process of [insert name of Issuer] under the terms and conditions of the appointment of agent for service of process stated above.

Dated: _____

_____
Signature of Agent

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

NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS

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

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

_____

2. Jurisdiction of incorporation, or equivalent, of Issuer:

_____

3. Address of principal place of business of Issuer:

_____

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

_____

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

_____

6. Name of person filing this form (the "Filing Person"):

_____

7. Filing Person's relationship to Issuer:

_____

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

_____

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

_____

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

_____

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

_____

12. The Filing Person designates and appoints the Agent at the address of the Agent stated above as its agent upon whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the "Proceeding") arising out of, relating to or concerning the distribution of the Securities made or purported to be made under the Short Form Prospectus, and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring the Proceeding.

13. The Filing Person irrevocably and unconditionally submits to the non-exclusive jurisdiction of

    (a) the judicial, quasi-judicial and administrative tribunals of each of the provinces [and territories] of Canada in which the securities are distributed under the Short Form Prospectus; and

    (b) any administrative proceeding in any such province [or territory],

    in any Proceeding arising out of or related to or concerning the distribution of the Securities made or purported to be made under the Short Form Prospectus.

14. Until six years after completion of the distribution of the Securities made under the Short Form Prospectus, the Filing Person shall file a new submission to jurisdiction and appointment of agent for service of process in this form at least 30 days before termination of this submission to jurisdiction and appointment of agent for service of process.

15. Until six years after completion of the distribution of the Securities under the Short Form Prospectus, the Filing Person shall file an amended submission to jurisdiction and appointment of agent for service of process at least 30 days before a change in the name or above address of the Agent.

16. This submission to jurisdiction and appointment of agent for service of process shall be governed by and construed in accordance with the laws of [insert province or territory of above address of Agent].

Dated: _____

_____
Signature of Filing Person

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

AGENT

The undersigned accepts the appointment as agent for service of process of [insert name of Filing Person] under the terms and conditions of the appointment of agent for service of process stated above.

Dated: _____

_____
Signature of Agent

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

NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS

FORM 44-101F1
SHORT FORM PROSPECTUS

TABLE OF CONTENTS

NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS

FORM 44-101F1
SHORT FORM PROSPECTUS

INSTRUCTIONS

(1) The objective of the short form prospectus is to provide information concerning the issuer that an investor needs in order to make an informed investment decision. This Form sets out specific disclosure requirements that are in addition to the general requirement under securities legislation to provide full, true and plain disclosure of all material facts relating to, and, in Québec, not to make any misrepresentation likely to affect the value or market price of, the securities to be distributed. Certain rules of specific application impose prospectus disclosure obligations in addition to those described in this Form.

(2) Terms used and not defined in this Form that are defined or interpreted in NI 44-101 shall bear that definition or interpretation. Other definitions are set out in National Instrument 14-101 Definitions*.*

(3) In determining the degree of detail required, a standard of materiality should be applied. Materiality is a matter of judgement in the particular circumstance, and should generally be determined in relation to an item's significance to investors, analysts and other users of information. An item of information, or an aggregate of items, is considered material if it is probable that its omission or misstatement would influence or change an investment decision with respect to the issuer's securities. In determining whether information is material, take into account both quantitative and qualitative factors. The potential significance of items should be considered individually rather than on a net basis, if the items have an offsetting effect. This concept of materiality is consistent with the financial reporting notion of materiality contained in the Handbook.

(4) Unless an item specifically requires disclosure only in the preliminary short form prospectus, the disclosure requirements set out in this Form apply to both the preliminary short form prospectus and the short form prospectus. Details concerning the price and other matters dependent upon or relating to price, such as the number of securities being distributed, may be left out of the preliminary short form prospectus, along with specifics concerning the plan of distribution, to the extent that these matters have not been decided.

(5) Any information required in a short form prospectus may be incorporated by reference in the short form prospectus, other than confidential material change reports. Clearly identify in a short form prospectus any document incorporated by reference. If an excerpt of a document is incorporated by reference, clearly identify the excerpt in the short form prospectus by caption and paragraph of the document. Any material incorporated by reference in a short form prospectus is required under sections 4.2 and 4.3 of National Instrument 44-101 to be filed with the short form prospectus unless it has been previously filed.

(6) The disclosure must be understandable to readers and presented in any easy to read format. The presentation of information should comply with the plain language principles listed in section 4.2 of Companion Policy 44-101CP Short Form Prospectus Distributions*. If technical terms are required, clear and concise explanations should be included.*

(7) No reference need be made to inapplicable items and, unless otherwise required in this Form, negative answers to items may be omitted.

(8) Where the term "issuer" is used, it may be necessary, in order to meet the requirement for full, true and plain disclosure of all material facts, and in Québec, disclosure of all material facts likely to affect the value or the market price of the securities to be distributed, to also include disclosure with respect to the issuer's subsidiaries and investees. If it is more likely than not that a person or company will become a subsidiary or investee, it may be necessary to also include disclosure with respect to the person or company.

(9) An issuer that is a special purpose entity may have to modify the disclosure items to reflect the special purpose nature of its business.

(10) If disclosure is required as of a specific date and there has been a material change or change that is otherwise significant in the required information subsequent to that date, present the information as of the date of the change or a date subsequent to the change instead.

(11) If the term "class" is used in any item to describe securities, the term includes a series of a class.

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

Item 1 Cover Page Disclosure

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

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

1.2 Preliminary Short Form Prospectus Disclosure - Every preliminary short form prospectus shall have printed in red ink and italics on the top of the cover page the following, with the bracketed information completed:

"A copy of this preliminary short form prospectus has been filed with the securities regulatory authority(ies) in [each of/certain of the provinces/provinces and territories of Canada] but has not yet become final for the purpose of the sale of securities. Information contained in this preliminary short form prospectus may not be complete and may have to be amended. The securities may not be sold until a receipt for the short form prospectus is obtained from the securities regulatory authority(ies)."

INSTRUCTION Issuers shall complete the bracketed information by

(i) inserting the names of each jurisdiction in which the issuer intends to offer securities under the short form 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 jurisdiction]).

1.3 Disclosure Concerning Documents Incorporated by Reference - State the following in italics [at the top of/on] the cover page, with the first sentence in **bold type** and the bracketed information completed:

"**Information has been incorporated by reference in this prospectus from documents filed with securities commissions or similar authorities in Canada.** Copies of the documents incorporated herein by reference may be obtained on request without charge from the secretary of the issuer at [insert complete address and telephone number], and are also available electronically at www.sedar.com."

1.4 Basic Disclosure about the Distribution - State the following, immediately below the disclosure required under sections 1.1, 1.2 and 1.3, with the bracketed information completed:

[PRELIMINARY] SHORT FORM PROSPECTUS

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

(Date)

[Name of Issuer]

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

INSTRUCTION

If the offering price is in a currency other than the Canadian dollar or the U.S. dollar, comply with the exchange rate disclosure requirements of National Instrument 52-107 Acceptable Principles, Auditing Standards and Reporting Currency, *or any successor instrument.*

1.5 Name and Address of Issuer - State the full corporate name of the issuer or, if the issuer is an unincorporated entity, the full name under which the entity exists and carries on business and the address(es) of the issuer's head and registered office.

1.6 Distribution

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

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

(2) If there is an over-allotment option, describe the terms of the option [and the fact that the short form prospectus qualifies both the grant of the option and the issuance or transfer of securities that will be issued or transferred if the option is exercised.]

(3) If the distribution of the securities is to be on a best efforts basis, provide totals for both the minimum and maximum subscriptions, if applicable.

(4) If debt securities are distributed at a premium or a discount, state in **bold type** the effective yield if held to maturity.

(5) Disclose separately those securities that are underwritten, those under option and those to be sold on a best efforts basis and, in the case of a best efforts distribution, the latest date that the distribution is to remain open.

(6) In column (b) of the table, disclose only commissions paid or payable in cash by the issuer or selling security holder and discounts granted. Set out in a note to the table

(a) commissions or other consideration paid or payable by persons or companies other than the issuer or selling security holder;

(b) consideration other than discounts granted and cash paid or payable by the issuer or selling security holder, other than securities described in section 1.10 below; and

(c) any finder's fees or similar required payment.

(7) If a security is being distributed for the account of a selling security holder, state the name of the selling security holder and a cross-reference to the applicable section in the short form prospectus where further information about the selling security holder is provided. State the portion of expenses of the distribution to be borne by the selling security holder and, if none of the expenses of the distribution are being borne by the selling security holder, include a statement to that effect and discuss the reasons why this is the case.

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

(a) the discount allowed or commission payable to the underwriter;

(b) any other compensation payable to the underwriter and, if applicable, that the underwriter's compensation will be increased or decreased by the amount by which the aggregate price paid for the securities by the purchasers exceeds or is less than the gross proceeds paid by the underwriter to the issuer or selling security holder;

(c) that the securities to be distributed under the short form prospectus will be distributed, as applicable, at

(i) prices determined by reference to the prevailing price of a specified security in a specified market,

(ii) market prices prevailing at the time of sale, or

(iii) prices to be negotiated with purchasers;

(d) that prices may vary as between purchasers and during the period of distribution;

(e) if the price of the securities is to be determined by reference to the prevailing price of a specified security in a specified market, the price of the specified security in the specified market at the latest practicable date;

(f) if the price of the securities will be the market price prevailing at the time of sale, the market price at the latest practicable date; and

(g) the net proceeds or, if the distribution is to be made on a best efforts basis, the minimum amount of net proceeds, if any, to be received by the issuer or selling security holder.

1.8 Reduced Price Distributions - If an underwriter wishes to be able to decrease the price at which securities are distributed for cash from the initial offering price disclosed in the short form prospectus, include in **bold type** a cross-reference to the section in the short form prospectus where disclosure concerning the possible price decrease is provided.

1.9 Market for Securities

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

(2) Disclose any intention to stabilize the market and provide a cross-reference to the section in the short form prospectus where further information about market stabilization is provided.

(3) If no market for the securities being distributed under the short form prospectus exists or is to exist after the distribution, state the following in **bold type**:

"There is no market through which these securities may be sold and purchasers may not be able to resell securities purchased under the short form prospectus. This may affect the pricing of the securities in the secondary market, the transparency and availability of trading prices, the liquidity of the securities, and the extent of issuer regulation. See Risk Factors."

1.10 Underwriter(s)

(1) State the name of each underwriter.

(2) If applicable, comply with the requirements of National Instrument 33-105 *Underwriting Conflicts* and, in Québec, the applicable securities legislation, for cover page prospectus disclosure**.**

(3) If an underwriter has agreed to purchase all of the securities being distributed at a specified price and the underwriter's obligations are subject to conditions, state the following, with the bracketed information completed:

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

(4) If an underwriter has agreed to purchase a specified number or principal amount of the securities at a specified price, state that the securities are to be taken up by the underwriter, if at all, on or before a date not later than 42 days after the date of the receipt for the short form prospectus.

(5) If there is no underwriter involved in the distribution, provide a statement in **bold type** to the effect that no underwriter has been involved in the preparation of the short form prospectus or performed any review of the contents of the short form prospectus.

(6) Provide the information called for below, in substantially the following tabular form or in a note to the table:

Underwriters' Position	Maximum size or number of securities held	Exercise period/ Acquisition date	Exercise price or average acquisition price
Over-allotment option			
Compensation option			

Any other option granted by issuer or insider of issuer			
Total securities under option			
Other compensation securities			

INSTRUCTIONS

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

(2) If debt securities are being distributed, express the information as a percentage.

1.11 International Issuers - If the issuer, a selling security holder, a credit supporter of the securities being distributed under the short form prospectus or a promoter of the issuer is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada, 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 short form prospectus, with the bracketed information completed:

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

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

Item 2 Summary Description of Business

2.1 Summary of Description of Business - Provide a brief summary on a consolidated basis of the business carried on and intended to be carried on by the issuer.

Item 3 Consolidated Capitalization

3.1 Consolidated Capitalization - Describe any material change in, and the effect of the material change on, the share and loan capital of the issuer, on a consolidated basis, since the date of the issuer's financial statements most recently filed in accordance with the applicable CD rule, including any material change that will result from the issuance of the securities being distributed under the short form prospectus.

Item 4 Use of Proceeds

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

4.2 Principal Purposes

(1) Describe in reasonable detail and, if appropriate, using tabular form, each of the principal purposes, with approximate amounts, for which the net proceeds will be used by the issuer. If the closing of the distribution is subject to a minimum subscription, provide disclosure of the use of proceeds for the minimum and maximum subscriptions.

(2) If more than 10 percent of the net proceeds will be used to reduce or retire indebtedness and the indebtedness was incurred within the two preceding years, describe the principal purposes for which the proceeds of the indebtedness were used and, if the creditor is an insider, associate or affiliate of the issuer, identify the creditor and the nature of the relationship to the issuer and the outstanding amount owed.

Item 5 Plan of Distribution

5.1 Disclosure of Market Out - If securities are distributed by an underwriter that has agreed to purchase all of the securities at a specified price and the underwriter's obligations are subject to conditions, include a statement in substantially the following form, with the bracketed information completed and with modifications necessary to reflect the terms of the distribution:

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

5.2 Best Efforts Offering - Outline briefly the plan of distribution of any securities being distributed other than on the basis described in section 5.1.

5.3 Determination of Price - Disclose the method by which the distribution price has been or will be determined and, if estimates have been provided, explain the process for determining the estimates.

5.4 Over-Allotments - If the issuer, a selling security holder or an underwriter knows or has reason to believe that there is an intention to over-allot or that the price of any security may be stabilized to facilitate the distribution of the securities, disclose this information.

5.5 Minimum Distribution - If a minimum amount of funds is required under the issue and the securities are to be distributed on a best efforts basis, state the minimum amount required to be raised and the maximum that could be raised. Also indicate that the distribution will not continue for a period of more than 90 days after the date of the receipt for the short form prospectus if subscriptions representing the minimum amount of funds are not obtained within that period, unless each of the persons and companies who subscribed within that period has consented to the continuation. State that during that period funds received from subscriptions will be held by a depository who is a registrant, bank or trust company and if the minimum amount of funds is not raised, the funds will be returned to the subscribers unless the subscribers have otherwise instructed the depository.

5.6 Reduced Price Distributions - If an underwriter wishes to be able to decrease the price at which securities are distributed for cash from the initial offering price disclosed in the short form prospectus and thereafter change, from time to time, the price at which securities are distributed under the short form prospectus in accordance with the procedures permitted by National Instrument 44-101, disclose that, after the underwriter has made a reasonable effort to sell all of the securities at the initial offering price disclosed in the short form prospectus, the offering price may be decreased, and further changed from time to time, to an amount not greater than the initial offering price disclosed in the short form prospectus and that the compensation realized by the underwriter will be decreased by the amount that the aggregate price paid by purchasers for the securities is less than the gross proceeds paid by the underwriter to the issuer or selling security holder.

5.7 Listing Application - If application has been made to list or quote the securities being distributed, include a statement in substantially the following form with the bracketed information completed:

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

5.8 Conditional Listing Approval - If application has been made to list or quote the securities being distributed and conditional listing approval has been received, include a statement in substantially the following form, with the bracketed information completed:

> "[name of exchange or other market] has conditionally approved the [listing/quotation] of these securities. [Listing/Quotation] is subject to the [name of the issuer] fulfilling all of the requirements of the [name of exchange or market] on or before [date], [including distribution of these securities to a minimum number of public security holders.]"

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

Item 6 Earnings Coverage Ratios

6.1 Earnings Coverage Ratios

(1) If the securities being distributed are debt securities having a term to maturity in excess of one year or are preferred shares, disclose the following earnings coverage ratios adjusted in accordance with paragraph (2):

(a) The earnings coverage ratio based on the most recent 12 month period included in the issuer's current annual financial statements. If there has been a change in year end and the issuer's most recent financial year is less than nine months in length, also disclose the earnings coverage calculation for its old financial year. If the issuer's financial year is less than 12 months in length, the earnings coverage should be calculated on an annualized basis.

(b) The earnings coverage ratio based on the 12 month period ended on the last day of the most recently completed period for which interim financial statements of the issuer have been, or are required to have been, incorporated by reference into the short form prospectus.

(2) Adjust the ratios referred to in paragraph (1) to reflect

(a) the issuance of the securities being distributed under the short form prospectus, based on the price at which these securities are expected to be distributed;

(b) in the case of a distribution of preferred shares,

(i) the issuance of all preferred shares issued since the date of the annual or interim financial statements, and

(ii) the repurchase, redemption or other retirement of all preferred shares repurchased, redeemed, or otherwise retired since the date of the annual or interim financial statements and of all preferred shares to be repurchased, redeemed, or otherwise retired from the proceeds to be realized from the sale of securities under the short form prospectus;

(c) the issuance of all long-term financial liabilities, as defined in accordance with the issuer's GAAP;

(d) the repayment, redemption or other retirement of all long-term financial liabilities, as defined in accordance with the issuer's GAAP, since the date of the annual or interim financial statements and all long-term financial liabilities to be repaid or redeemed from the proceeds to be realized from the sale of securities distributed under the short form prospectus; and

(e) the servicing costs that were incurred, or are expected to be incurred, in relation to the adjustments.

(3) If the issuer is distributing, or has outstanding, debt securities that are accounted for, in whole or in part, as equity, disclose in notes to the ratios required under 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), calculated as though those securities had been accounted for as debt.

(4) If the earnings coverage ratio is less than one-to-one, disclose in the prospectus the dollar amount of the earnings required to achieve a ratio of one-to-one.

(5) If the short form prospectus includes a pro forma income statement, calculate the pro forma earnings coverage ratio and disclose it in the prospectus.

INSTRUCTIONS

(1) Cash flow coverage may be disclosed but only as a supplement to earnings coverage and only if the method of calculation is fully disclosed.

(2) Earnings coverage is calculated by dividing an entity's earnings (the numerator) by its interest and dividend obligations (the denominator).

(3) For the earnings coverage calculation

(a) the numerator should be calculated using consolidated net income before interest and income taxes;

(b) imputed interest income from the proceeds of a distribution should not be added to the numerator;

(c) an issuer may also present, as supplementary disclosure, a coverage calculation based on earnings before discontinued operations and extraordinary items;

(d) for distributions of debt securities, the appropriate denominator is interest expense determined in accordance with the issuer's GAAP, after giving effect to the new debt issue and any retirement of obligations, plus the amount of interest that has been capitalized during the period;

(e) for distributions of preferred shares

(i) the appropriate denominator is dividends declared during the period, together with undeclared dividends on cumulative preferred shares, after giving effect to the new preferred share issue, plus the issuer's annual interest requirements, including the amount of interest that has been capitalized during the period, less any retirement of obligations, and

(ii) dividends should be grossed-up to a before-tax equivalent using the issuer's effective income tax rate, and

(f) for distributions of both debt securities and preferred shares, the appropriate denominator is the same as for a preferred share issue, except that the denominator should also reflect the effect of the debt being offered pursuant to the short form prospectus.

(4) The denominator represents a pro forma calculation of the aggregate of an issuer's interest obligations on all long-term debt and dividend obligations (including both dividends declared and undeclared dividends on cumulative preferred shares) with respect to all outstanding preferred shares, as adjusted to reflect

(a) the issuance of all long-term debt and, in addition in the case of an issuance of preferred shares, all preferred shares issued, since the date of the annual or interim financial statements;

(b) the issuance of the securities that are to be distributed under the short form prospectus, based on a reasonable estimate of the price at which these securities will be distributed;

(c) the repayment or redemption of all long-term debt since the date of the annual or interim financial statements, all long-term debt to be repaid or redeemed from the proceeds to be realized from the sale of securities under the short form prospectus and, in addition, in the case of an issuance of preferred shares, all preferred shares repaid or redeemed since the date of the annual or interim financial statements and all preferred shares to be repaid or redeemed from the proceeds to be realized from the sale of securities under the short form prospectus; and

(d) the servicing costs that were incurred, or will be incurred, in relation to the above adjustments.

(5) In certain circumstances, debt obligations may be classified as current liabilities because such obligations, by their terms, are due on demand, are due within one year, or are callable by the creditor. If the issuer is distributing, or has outstanding, debt securities that are classified as current liabilities, disclose

(a) in the notes to the ratios required under subsection 6.1(1) that the ratios have been calculated excluding the carrying charges for those debt securities reflected as current liabilities;

(b) that if those debt securities had been classified in their entirety as long term debt for the purposes of calculating the ratios under Item 6.1(1), the entire amount of the annual carrying charges for such debt securities would have been reflected in the calculation of the issuer's interest and dividend obligations; and

(c) the earnings coverage ratios for the periods referred to in Item 6.1(1), calculated as though those debt securities had been classified as long term debt.

(6) For debt securities, disclosure of earnings coverage shall include language similar to the following:

[Name of the issuer]'s interest requirements, after giving effect to the issue of [the debt securities to be distributed under the short form prospectus], amounted to $• for the 12 months ended •. [Name of the issuer]'s earnings before interest and income tax for the 12 months then ended was $•, which is • times [name of the issuer]'s interest requirements for this period."

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

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

(8) Other earnings coverage calculations may be included as supplementary disclosure to the required earnings coverage calculations outlined above as long as their derivation is disclosed and they are not given greater prominence than the required earnings coverage calculations.

Item 7 Description of Securities Being Distributed

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

(a) dividend rights;

(b) voting rights;

(c) rights upon dissolution or winding up;

(d) pre-emptive rights;

(e) conversion or exchange rights;

(f) redemption, retraction, purchase for cancellation or surrender provisions;

(g) sinking or purchase fund provisions;

(h) provisions permitting or restricting the issuance of additional securities and any other material restrictions; and

(i) provisions requiring a securityholder to contribute additional capital.

7.2 Debt Securities - If debt securities are being distributed, describe all material attributes and characteristics of the indebtedness and the security, if any, for the debt that are not described elsewhere in a document incorporated by reference in the short form prospectus, including

(a) provisions for interest rate, maturity and premium, if any;

(b) conversion or exchange rights;

(c) redemption, retraction, purchase for cancellation or surrender provisions;

(d) sinking or purchase fund provisions;

(e) the nature and priority of any security for the debt securities, briefly identifying the principal properties subject to lien or charge;

(f) provisions permitting or restricting the issuance of additional securities, the incurring of additional indebtedness and other material negative covenants including restrictions against payment of dividends and restrictions against giving security on the assets of the issuer or its subsidiaries and provisions as to the release or substitution of assets securing the debt securities;

(g) the name of the trustee under any indenture relating to the debt securities and the nature of any material relationship between the trustee or any of its affiliates and the issuer or any of its affiliates; and

(h) any financial arrangements between the issuer and any of its affiliates or among its affiliates that could affect the security for the indebtedness.

7.3 Asset-backed Securities - If asset-backed securities are being distributed, describe

(a) the material attributes and characteristics of the asset-backed securities, including

(i) the rate of interest or stipulated yield and any premium,

(ii) the date for repayment of principal or return of capital and any circumstances in which payments of principal or capital may be made before such date, including any redemption or pre-payment obligations or privileges of the issuer and any events that may trigger early liquidation or amortization of the underlying pool of financial assets,

(iii) provisions for the accumulation of cash flows to provide for the repayment of principal or return of capital,

(iv) provisions permitting or restricting the issuance of additional securities and any other material negative covenants applicable to the issuer,

(v) the nature, order and priority of the entitlements of holders of asset-backed securities and any other entitled persons or companies to receive cash flows generated from the underlying pool of financial assets, and

(vi) any events, covenants, standards or preconditions that may reasonably be expected to affect the timing or amount of payments or distributions to be made under the asset-backed securities, including those that are dependent or based on the economic performance of the underlying pool of financial assets;

(b) information on the underlying pool of financial assets, for the period from the date as at which the following information was presented in the issuer's current AIF to a date not more than 90 days before the date of the issuance of a receipt for the preliminary short form prospectus, of

(i) the composition of the pool as of the end of the period,

(ii) income and losses from the pool for the period, presented on an at least an annual basis or such shorter period as is reasonable given the nature of the underlying pool of assets, and

(iii) the payment, prepayment and collection experience of the pool for the period on at least an annual basis or such shorter period as is reasonable given the nature of the underlying pool of assets,

(c) the type or types of the financial assets, the manner in which the financial assets originated or will originate and, if applicable, the mechanism and terms of the agreement governing the transfer of the financial assets comprising the underlying pool to or through the issuer, including the consideration paid for the financial assets;

(d) any person or company who

(i) originated, sold or deposited a material portion of the financial assets comprising the pool, or has agreed to do so,

(ii) acts, or has agreed to act, as a trustee, custodian, bailee or agent of the issuer or any holder of the asset-backed securities, or in a similar capacity,

(iii) administers or services a material portion of the financial assets comprising the pool or provides administrative or managerial services to the issuer, or has agreed to do so, on a conditional basis or otherwise, if

(A) finding a replacement provider of the services at a cost comparable to the cost of the current provider is not reasonably likely,

(B) a replacement provider of the services is likely to achieve materially worse results than the current provider,

(C) the current provider of the services is likely to default in its service obligations because of its current financial condition, or

(D) the disclosure is otherwise material,

(iv) provides a guarantee, alternative credit support or other credit enhancement to support the obligations of the issuer under the asset-backed securities or the performance of some or all of the financial assets in the pool, or has agreed to do so, or

(v) lends to the issuer in order to facilitate the timely payment or repayment of amounts payable under the asset-backed securities, or has agreed to do so;

(e) the general business activities and material responsibilities under the asset-backed securities of a person or company referred to in paragraph (d);

(f) the terms of any material relationships between

(i) any of the persons or companies referred to in paragraph (d) or any of their respective affiliates, and

(ii) the issuer;

(g) any provisions relating to termination of services or responsibilities of any of the persons or companies referred to in paragraph (d) and the terms on which a replacement may be appointed; and

(h) any risk factors associated with the asset-backed securities, including disclosure of material risks associated with changes in interest rates or prepayment levels, and any circumstances where payments on the asset-backed securities could be impaired or disrupted as a result of any reasonably foreseeable event that may delay, divert or disrupt the cash flows dedicated to service the asset-backed securities.

INSTRUCTIONS

(1) Present the information required under paragraph (b) in a manner that will enable a reader to easily determine whether, and the extent to which, the events, covenants, standards and preconditions referred to in clause (a)(vi) have occurred, are being satisfied or may be satisfied.

(2) If the information required under paragraph (b) is not compiled specifically from the underlying pool of financial assets, but is compiled from a larger pool of the same assets from which the securitized assets are randomly

selected such that the performance of the larger pool is representative of the performance of the pool of securitized assets, then an issuer may comply with paragraph (b) by providing the information required based on the larger pool and disclosing that it has done so.

(3) Issuers are required to summarize contractual arrangements in plain language and may not merely restate the text of the contracts referred to. The use of diagrams to illustrate the roles of, and the relationship among, the persons and companies referred to in paragraph (d) and the contractual arrangements underlying the asset-backed securities is encouraged.

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

(a) the calculation of the value or payment obligations under the derivatives;

(b) the exercise of the derivatives;

(c) the settlement of exercises of the derivatives;

(d) the underlying interest of the derivatives;

(e) the role of a calculation expert in connection with the derivatives;

(f) the role of any credit supporter of the derivatives; and

(g) the risk factors associated with the derivatives.

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

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

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

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

7.7 Restricted Securities

(1) If the issuer has outstanding, or proposes to distribute under the short form prospectus, restricted securities, or securities that are directly or indirectly convertible into or exercisable or exchangeable for restricted securities or subject securities, provide a detailed description of:

(a) the voting rights attached to the restricted securities and the voting rights, if any, attached to the securities of any other class of securities of the issuer that are the same or greater on a per security basis than those attached to the restricted securities;

(b) any significant provisions under applicable corporate and securities law that do not apply to the holders of the restricted securities but do apply to the holders of another class of equity securities,

and the extent of any rights provided in the constating documents or otherwise for the protection of holders of restricted securities; and

(c) any rights under applicable corporate law, in the constating documents or otherwise, of holders of restricted securities to attend, in person of by proxy, meetings of holders of equity securities of the issuer and to speak at the meetings to the same extent that holders of equity securities are entitled.

(2) If holders of restricted securities do not have all of the rights referred to in subsection 7.7(1) the detailed description referred to in that subsection shall include, in **bold type**, a statement of the rights the holders do not have.

(3) If the issuer is required to include the disclosure referred to in subsection (1), state the percentage of the aggregate voting rights attached to the issuer's securities that will be represented by restricted securities after giving effect to the issuance of the securities being offered.

7.8 Modification of Terms - Describe provisions as to modification, amendment or variation of any rights or other terms attached to the securities being distributed. If the rights of holders of securities may be modified otherwise than in accordance with the provisions attached to the securities or the provisions of the governing statute relating to the securities, explain briefly.

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

(a) each security rating, including a provisional rating or stability rating, received from an approved rating organization;

(b) the name of each approved rating organization that has assigned a rating for the securities to be distributed;

(c) a definition or description of the category in which each approved rating organization rated the securities to be distributed and the relative rank of each rating within the organization's classification system;

(d) an explanation of what the rating addresses and what attributes, if any, of the securities to be distributed are not addressed by the rating;

(e) any factors or considerations identified by the approved rating organization as giving rise to unusual risks associated with the securities to be distributed;

(f) a statement that a security rating or a stability rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time by the rating organization; and

(g) any announcement made by, or any proposed announcement known to the issuer to be made by, an approved rating organization that the organization is reviewing or intends to revise or withdraw a rating previously assigned and required to be disclosed under this paragraph.

7.10 Other Attributes

(1) If the rights attaching to the securities being distributed are materially limited or qualified by the rights of any other class of securities, or if any other class of securities ranks ahead of or equally with the securities being distributed, include information about the other securities that will enable investors to understand the rights attaching to the securities being distributed.

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

INSTRUCTION

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

Item 8 Selling Security Holder

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

1. The name of the security holder.

2. The number or amount of securities owned by the security holder of the class being distributed.

3. The number or amount of securities of the class being distributed for the account of the security holder.

4. The number or amount of securities of the issuer of any class to be owned by the security holder after the distribution, and the percentage that number or amount represents of the total outstanding.

5. Whether the securities referred to in paragraph 2, 3 or 4 are owned both of record and beneficially, of record only, or beneficially only.

Item 9 Resource Property

9.1 Resource Property – If a material part of the proceeds of the distribution is to be expended on a particular resource property and if the current AIF does not contain the disclosure required under section 5.4 or 5.5, as appropriate, of Form 51-102F2, for the property or that disclosure is inadequate or incorrect due to changes, disclose the information required under section 5.4 or 5.5 of Form 51-102F2.

Item 10 Significant Acquisitions

10.1 Significant Acquisitions

(1) Provide a brief summary of

(a) any acquisition that is a significant acquisition for the purposes of Part 8 of NI 51-102 and that was completed by the issuer within the 75 days prior to the date of the short form prospectus, other than a significant acquisition for which a business acquisition report has been filed under NI 51-102; and

(b) any proposed acquisition that has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high and which, if it was completed as of the date of the preliminary short form prospectus, would be a significant acquisition for the purposes of Part 8 of NI 51-102.

(2) Under paragraph (1), include particulars, if known, of

(a) the nature of the assets acquired or to be acquired;

(b) the actual date of each significant acquisition or the likely date of completion of each proposed acquisition;

(c) the consideration, both monetary and non-monetary, paid or to be paid, or proposed to be paid, by the issuer;

(d) how the significant acquisition or proposed acquisition will impact the operating results and financial position of the issuer;

(e) any valuation opinion obtained by the acquired business, the business proposed to be acquired, or the issuer within the last 12 months required under provincial and territorial securities legislation or a requirement of a Canadian marketplace, as defined in National Instrument 21-101 *Marketplace Operation*, to support the consideration paid, to be paid, or proposed to be paid, by the issuer, including the name of the author, the date of the opinion, the business to which the opinion relates, the value attributed to the business and the valuation methodologies used; and

(f) whether the transaction is, or likely will be, with an informed person, associate or affiliate of the issuer and, if so, the identity and relationship of the other parties to the issuer.

(3) If a summary of any acquisition or proposed acquisition is required to be provided under subsection (1), include the financial statements that would be required by Part 8 of NI 51-102 to be included in a business acquisition report filed in respect of the acquisition, or in respect of the proposed acquisition if it were completed as of the date of the preliminary short form prospectus, if

(a) the acquisition or proposed acquisition is a reverse takeover; or

(b) the acquisition or proposed acquisition is not a reverse takeover but the inclusion of such financial statements is necessary in order for the short form prospectus to contain full, true and plain disclosure of all material facts relating to, and in Québec, disclosure of all material facts likely to affect the value or the market price of, the securities being distributed.

Item 11 Documents Incorporated by Reference

11.1 Mandatory Incorporation by Reference

(1) In addition to any other document that an issuer may choose to incorporate by reference, specifically incorporate by reference in the short form prospectus, by means of a statement in the short form prospectus to that effect, the documents set forth below:

1. The issuer's current AIF, if it has one.

2. The issuer's current annual financial statements, if any, and related MD&A.

3. The issuer's interim financial statements most recently filed or required to have been filed under the applicable CD rule in respect of an interim period, if any, subsequent to the financial year in respect of which the issuer has filed its current annual financial statements or has included annual financial statements in the short form prospectus, and the related interim MD&A.

4. If, before the prospectus is filed, financial information about the issuer for a financial period more recent than the period for which financial statements are required under paragraphs 2 and 3 is publicly disseminated by, or on behalf of, the issuer through news release or otherwise, the content of the news release or public communication.

5. Any material change report, except a confidential material change report, filed under Part 7 of NI 51-102 or Part 11 of NI 81-106 since the end of the financial year in respect of which the issuer's current AIF is filed.

6. Any business acquisition report filed by the issuer under Part 8 of NI 51-102 for acquisitions completed since the end of the financial year in respect of which the issuer's current AIF is filed.

7. Any information circular filed by the issuer under Part 9 of NI 51-102 or Part 12 of NI 81-106 since the end of the financial year in respect of which the issuer's current AIF is filed.

8. Any other disclosure document which the issuer has filed, or has undertaken to file pursuant to an undertaking to a provincial or territorial securities regulatory authority, since the beginning of the financial year in respect of which the issuer's current AIF is filed.

(2) In the statement incorporating the documents listed in paragraph (1) by reference in a short form prospectus, clarify that the documents are not incorporated by reference to the extent their contents are modified or superseded by a statement contained in the short form prospectus or in any other subsequently filed document that is also incorporated by reference in the short form prospectus.

INSTRUCTIONS

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

(2) Issuers must provide a list of the material change reports and business acquisition reports required under paragraphs 5 and 6 of subsection (1), giving the date of filing and briefly describing the material change or acquisition, as the case may be, in respect of which the report was filed.

(3) Any material incorporated by reference in a short form prospectus is required under sections 4.2 and 4.3 of National Instrument 44-101 to be filed with the short form prospectus unless it has been previously filed.

11.2 Mandatory Incorporation by Reference of Future Documents - State that any documents, of the type described in section 11.1, if filed by the issuer after the date of the short form prospectus and before the termination of the distribution, are deemed to be incorporated by reference in the short form prospectus.

11.3 Issuers without a Current AIF or Current Annual Financial Statements

(1) If the issuer does not have a current AIF or current annual financial statements and is relying on the exemption in subsection 2.10(1) *[2.7(1)]* of NI 44-101, include the disclosure, including financial statements, that would otherwise have been required to have been included in a current AIF and current annual financial statements under section 11.1.

(2) If the issuer does not have a current AIF or current annual financial statements and is relying on the exemption in subsection 2.10(2) *[2.7(2)]* of NI 44-101, include the disclosure, including financial statements, provided in accordance with Item 14.2 of Form 51-102F5 in the information circular referred to in paragraph 2.10(2)(a) *[2.7(2)(a)]* of NI 44-101.

INSTRUCTION

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

11.4 Significant Acquisition for Which No Business Acquisition Report is Filed

(1) If the issuer has,

(a) since the beginning of the most recently completed financial year in respect of which annual financial statements are included in the short form prospectus; and

(b) more than 75 days prior to the date of filing the preliminary short form prospectus;

completed a transaction that would have been a significant acquisition for the purposes of Part 8 of NI 51-102 if the issuer had been a reporting issuer at the time of the transaction, and the issuer has not filed a business acquisition report in respect of the transaction, include the financial statements and other information in respect of the transaction that is prescribed by Form 51-102F4.

(2) If the issuer was exempt from the requirement to file a business acquisition report in respect of a transaction because the disclosure that would normally be included in a business acquisition report was included in another document, include that disclosure in the short form prospectus.

INSTRUCTION

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

Item 12 Additional Disclosure for Issues of Guaranteed Securities

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

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

2. If the credit supporter is not a reporting issuer and has a class of securities registered under section 12(b) or 12(g) of the 1934 Act, or is required to file reports under section 15(d) of the 1934 Act, incorporating by reference into the short form prospectus all 1934 Act filings that would be required to be incorporated by reference in a Form S-3 or Form F-3

registration statement filed under the 1933 Act if the securities distributed under the short form prospectus were being registered on Form S-3 or Form F-3.

3. If neither paragraph 1 nor paragraph 2 applies to the credit supporter, providing directly in the short form prospectus the same disclosure that would be contained in the short form prospectus through the incorporation by reference of the documents referred to in Item 11 if the credit supporter were the issuer of the securities and those documents had been prepared by the credit supporter.

4. Providing such other information about the credit supporter as is necessary to provide full, true and plain disclosure of all material facts concerning, and in Québec, disclosure of all material facts likely to affect the value or the market price, of the securities to be distributed, including the credit supporter's earnings coverage ratios under Item 6 as if the credit supporter were the issuer of the securities.

Item 13 Exemptions for Certain Issues of Guaranteed Securities

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

(a) a credit supporter has provided full and unconditional credit support for the securities being distributed;

(b) the credit supporter satisfies the criterion in paragraph 2.5(1)2 *[2.4(1)2]* of NI 44-101;

(c) the securities being distributed are non-convertible debt securities, non-convertible preferred shares, or convertible debt securities or convertible preferred shares that are convertible, in each case, into securities of the credit supporter;

(d) the issuer is a wholly owned subsidiary of the credit supporter;

(e) no other subsidiary of the credit supporter has provided a guarantee or alternative credit support for all or substantially all of the payments to be made under the securities being distributed; and

(f) the issuer includes the following information in the short form prospectus:

(i) if

(A) the issuer has no operations or only minimal operations that are independent of the credit supporter, and

(B) the impact of any subsidiaries of the credit supporter on a combined basis, excluding the issuer, on the consolidated financial results of the credit supporter is minor;

a statement that the financial results of the issuer are included in the consolidated financial results of the credit supporter; or

(ii) for the periods covered by the credit supporter's financial statements included in the short form prospectus under section 12.1, consolidating summary financial information for the credit supporter presented with a separate column for each of the following:

(A) the credit supporter;

(B) the issuer;

(C) any other subsidiaries of the credit supporter on a combined basis;

(D) consolidating adjustments; and

(E) the total consolidated amounts.

13.2 The Issuer and One or More Subsidiary Credit Supporters are Wholly Owned Subsidiaries of the Parent Credit Supporter - Despite Items 6, 11 and 12, an issuer is not required to incorporate by reference into the short form

prospectus any of its documents under paragraphs 1 through 4, 6 and 7 of subsection 11.1(1), include in the short form prospectus its earnings coverage ratios under section 6.1, or include in the short form prospectus the disclosure of one or more subsidiary credit supporters required by section 12.1, if

(a) a parent credit supporter and one or more subsidiary credit supporters have each provided full and unconditional credit support for the securities being distributed;

(b) the parent credit supporter satisfies the criterion in paragraph 2.5(1)2 *[2.4(1)2]* of NI 44-101;

(c) the guarantees or alternative credit supports are joint and several;

(d) the securities being distributed are non-convertible debt securities, non-convertible preferred shares, or convertible debt securities or convertible preferred shares that are convertible, in each case, into securities of the parent credit supporter;

(e) the issuer and each subsidiary credit supporter is wholly owned by the parent credit supporter; and

(f) the issuer includes the following information in the short form prospectus:

(i) if

(A) each of the issuer and each subsidiary credit supporter has no operations or only minimal operations that are independent of the parent credit supporter; and

(B) the impact of any subsidiaries of the parent credit supporter on a combined basis, excluding the issuer and all subsidiary credit supporters, on the consolidated financed results of the parent credit supporter is minor;

a statement that the financial results of the issuer and all subsidiary credit supporters are included in the consolidated financial results of the parent credit supporter; or

(ii) for the periods covered by the parent credit supporter's financial statements included in the short form prospectus under section 12.1, consolidating summary financial information for the parent credit supporter presented with a separate column for each of the following:

(A) the parent credit supporter;

(B) the issuer;

(C) each subsidiary credit supporter on a combined basis;

(D) any other subsidiaries of the parent credit supporter on a combined basis;

(E) consolidating adjustments; and

(F) the total consolidated amounts.

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

(a) one or more credit supporters have each provided full and unconditional credit support for the securities being distributed;

(b) if there is more than one credit supporter, the guarantee or alternative credit supports are joint and several;

(c) the securities being distributed are non-convertible debt securities or non-convertible preferred shares;

(d) each credit supporter is a wholly owned subsidiary of the issuer; and

(e) the issuer includes the following information in the short form prospectus:

(i) if

(a) the issuer has no operations or only minimal operations that are independent of the credit supporter(s); and

(b) the impact of any subsidiaries of the issuer on a combined basis, excluding the credit supporter(s) but including any subsidiaries of the credit supporter(s) that are not themselves credit supporters, on the consolidated financial results of the issuer is minor;

a statement that the financial results of the credit supporter(s) are included in the consolidated financial results of the issuer; or

(ii) for the periods covered by the issuer's financial statements included in the short form prospectus under Item 11, consolidating summary financial information for the issuer, presented with a separate column for each of

(A) the issuer;

(B) the credit supporters on a combined basis;

(C) any other subsidiaries of the issuer on a combined basis;

(D) consolidating adjustments; and

(E) the total consolidated amounts.

INSTRUCTIONS

(1) Summary Financial Information

(a) Summary financial information includes the following line items:

1. Sales or revenues.
2. Net earnings from continuing operations before extraordinary items.
3. Net earnings.
4. Currents assets.
5. Non-current assets.
6. Current liabilities.
7. Non-current liabilities.

If GAAP permits the preparation of an entity's balance sheet without classifying assets and liabilities between current and non-current then the following items may be omitted from the entity's summary financial information if alternative meaningful financial information is provided which is more appropriate to the industry:

(i) current assets;

(ii) non-current assets;

(iii) current liabilities; and

(iv) non current liabilities.

(b) The summary financial information of an entity for a financial period should be derived from the entity's comparative financial statements for the corresponding period. Interim summary financial information should be derived from the entity's interim comparative financial statements. Annual summary financial information should be derived from the entity's audited annual comparative financial statements.

(c) The summary financial information of subsidiary entities should be derived from the subsidiary's comparative financial statements that are audited for the same periods that the parent entity's financial statements are required to be audited.

(d) The parent entity column should account for investments in all subsidiaries under the equity method.

(e) All subsidiary entity columns should account for investments in non-credit supporter subsidiaries under the equity method.

(2) For the purposes of Item 13, an entity is considered to be a wholly owned subsidiary if the parent entity owns voting securities representing 100 per cent of the votes attached to the outstanding voting securities of the subsidiary.

(3) For the purposes of Item 13, the impact of subsidiaries, on a combined basis, on the financial results of the parent is minor if each item of the summary financial information of the subsidiaries, on a combined basis, represents less than 3% of the total consolidated amounts.

Item 14 Relationship between Issuer or Selling Securityholder and Underwriter

14.1 Relationship between Issuer or Selling Securityholder and Underwriter - If the issuer or selling security holder is a connected issuer or related issuer of an underwriter of the distribution, or if the issuer or selling security holder is also an underwriter, comply with the requirements of National Instrument 33-105 *Underwriting Conflicts* and, in Québec, the applicable securities legislation.

Item 15 Interest of Experts

15.1 Names of Experts - To the extent not disclosed in the issuer's current AIF, name each person or company

(a) who is named as having prepared or certified a statement, report or valuation in the short form prospectus or an amendment to the short form prospectus, either directly or in a document incorporated by reference; and

(b) whose profession or business gives authority to the statement, report or valuation made by the person or company.

15.2 Interest of Experts

(1) This section does not apply to

(a) auditors of a business acquired or to be acquired by the issuer, provided that they have not been, and it is not proposed that they will be, appointed as the auditors of the issuer either before or after the acquisition;

(b) the predecessor auditors of the issuer, if any, for periods in respect of which they were not the issuer's auditors; or

(c) registered or beneficial interests, direct or indirect, held through mutual funds.

(2) To the extent not disclosed in the issuer's current AIF, disclose all registered or beneficial interests, direct or indirect, in any securities or other property of the issuer or of associated parties or affiliates of the issuer

(a) held by the expert named in section 15.1 and, if the expert is not an individual, by the designated professionals of that expert, when that expert prepared the statement, report or valuation referred to in paragraph 15.1(a);

(b) received by an expert named in section 15.1 and, if the expert is not an individual, by the designated professionals of that expert, after the time specified in paragraph 15.2(2)(a); or

(c) to be received by an expert named in section 15.1 and, if the expert is not an individual, by the designated professionals of that expert.

(3) For the purposes of subsection (2), a "designated professional" means, in relation to an expert named in section 15.1,

(a) each partner, employee or consultant of the expert who participated in and who was in a position to directly influence the preparation of the statement, report or valuation referred to in paragraph 15.1(a); and

(b) each partner, employee or consultant of the expert who was, at any time during the preparation of the statement, report or valuation referred to in paragraph 15.1(a), in a position to directly influence the outcome of the preparation of the statement, report or valuation, including without limitation:

(i) any person who recommends the compensation of, or who provides direct supervisory, management or other oversight of, the partner, employee or consultant in the performance of the preparation of the statement, report or valuation referred to in paragraph 15.1(a), including those at all successively senior levels through to the expert's chief executive officer;

(ii) any person who provides consultation regarding technical or industry-specific issues, transactions or events for the preparation of the statement, report or valuation referred to in paragraph 15.1(a); and

(iii) any person who provides quality control for the preparation of the statement, report or valuation referred to in paragraph 15.1(a).

(4) For the purposes of paragraph (2), if the person's or company's interest in the securities represents less than one per cent of the issuer's outstanding securities of the same class, a general statement to that effect shall be sufficient.

(5) Despite paragraph (2), an auditor who is independent in accordance with the auditor's rules of professional conduct in the jurisdiction or who has performed an audit in accordance with US GAAS is not required to provide the disclosure in paragraph (2) if there is disclosure that the auditor is independent in accordance with the auditor's rules of professional conduct in [jurisdiction] or that the auditor has complied with the SEC's rules on auditor independence.

(6) If a person, or a director, officer or employee of a person or company, referred to in subsection (2) is or is expected to be elected, appointed or employed as a director, officer or employee of the issuer or of any associated party or affiliate of the issuer, disclose the fact or expectation.

Item 16 Promoters

16.1 Promoters

(1) For a person or company that is, or has been within the three years immediately preceding the date of the preliminary short form prospectus, a promoter of the issuer or of a subsidiary of the issuer state, to the extent not disclosed elsewhere in a document incorporated by reference in the short form prospectus,

(a) the person or company's name;

(b) the number and percentage of each class of voting securities and equity securities of the issuer or any of its subsidiaries beneficially owned, directly or indirectly, or over which control is exercised by the person or company;

(c) the nature and amount of anything of value, including money, property, contracts, options or rights of any kind received or to be received by the promoter, directly or indirectly, from the issuer or from a subsidiary of the issuer, and the nature and amount of any assets, services or other consideration received or to be received by the issuer or a subsidiary of the issuer in return; and

(d) for an asset acquired within the three years before the date of the preliminary short form prospectus, or to be acquired, by the issuer or by a subsidiary of the issuer from a promoter

(i) the consideration paid or to be paid for the asset and the method by which the consideration has been or will be determined,

(ii) the person or company making the determination referred to in subparagraph (i) and the person or company's relationship with the issuer, the promoter, or an affiliate of the issuer or of the promoter, and

(iii) the date that the asset was acquired by the promoter and the cost of the asset to the promoter.

(2) If a promoter of the issuer has been a director, executive officer or promoter of any person or company during the 10 years ending on the date of the preliminary short form prospectus, that while that person was acting in that capacity,

(a) was the subject of a cease trade or similar order, or an order that denied the person or company access to any exemptions under provincial or territorial securities legislation, for a period of more than 30 consecutive days, state the fact and describe the basis on which the order was made and whether the order is still in effect;

(b) was subject to an event that resulted, after the director, executive officer or promoter ceased to be a director, executive officer or promoter, in the company or person being subject to a cease trade or similar order or an order that denied the relevant company or person access to any exemption under securities legislation, for a period of more than 30 consecutive days, state the fact and describe the basis on which the order was made and whether the order is still in effect; or

(c) within a year of that person ceasing to act in that capacity, became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or been subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets, state the fact.

(3) Describe the penalties or sanctions imposed and the grounds on which they were imposed or the terms of the settlement agreement and the circumstances that gave rise to the settlement agreement, if a promoter has been subject to

(a) any penalties or sanctions imposed by a court relating to provincial or territorial securities legislation or by a provincial or territorial securities regulatory authority or has entered into a settlement agreement with a provincial or territorial securities regulatory authority; or

(b) any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor in making an investment decision.

(4) Despite paragraph (3), no disclosure is required of a settlement agreement entered into before December 31, 2000 unless the disclosure would likely be considered important to a reasonable investor in making an investment decision.

(5) If a promoter of the issuer has, within the 10 years before the date of the preliminary short form prospectus, become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency, or was subject to or instituted any proceedings, arrangement or compromise with creditors, or had a receiver, receiver manager or trustee appointed to hold the assets of the promoter, state the fact.

Item 17 Risk Factors

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

INSTRUCTION

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

Item 18 Other Material Facts

18.1 Other Material Facts - Give particulars of any material facts about the securities being distributed that are not disclosed under any other items or in the documents incorporated by reference into the short form prospectus and are necessary in order for the short form prospectus to contain full, true and plain disclosure of all material facts relating to, and in Québec not to make any misrepresentation likely to affect the value or market price of, the securities to be distributed.

Item 19 Statutory Rights of Withdrawal and Rescission

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

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

19.2 Non-fixed Price Offerings - In the case of a non-fixed price offering, replace, if applicable in the jurisdiction in which the short form prospectus is filed, the second sentence in the legend in section 19.1 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 20 Certificates

20.1 Officers, Directors and Promoters - Include a certificate in the following form signed by

(a) the chief executive officer and the chief financial officer or, if no such officers have been appointed, a person acting on behalf of the issuer in a capacity similar to a chief executive officer and a person acting on behalf of the issuer in a capacity similar to that of a chief financial officer;

(b) on behalf of the board of directors of the issuer, any two directors of the issuer duly authorized to sign, other than the persons referred to in paragraph (a), and

(c) any person or company who is a promoter of the issuer:

> "This short form prospectus, together with the documents incorporated herein by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by the securities legislation of [insert name of each jurisdiction in which qualified]. [Insert if offering made in Quebec - "For the purpose of the Province of Quebec, this short form prospectus, together with documents incorporated herein by reference, contains no misrepresentation that is likely to affect the value or the market price of the securities to be distributed."]"

20.2 Underwriters - If there is an underwriter, include a certificate in the following form signed by the underwriter or underwriters who, with respect to the securities being distributed, are in a contractual relationship with the issuer or selling security holders:

> "To the best of our knowledge, information and belief, this short form prospectus, together with the documents incorporated herein by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by the securities legislation of [insert name of each jurisdiction in which qualified]. [Insert if offering made in Quebec - "For the purpose of the Province of Québec, to our knowledge, this short form prospectus, together with documents incorporated herein by reference contains no misrepresentation that is likely to affect the value or the market price of the securities to be distributed."]"

20.3 Related Credit Supporters - If disclosure concerning a credit supporter is prescribed by section 12.1 or a credit supporter is exempt from the requirements of section 12.1 under sections 13.2 or 13.3, and the credit supporter is a related credit supporter, an issuer shall include a certificate of the related credit supporter in the form required in section 20.1 signed by

(a) the chief executive officer and the chief financial officer or, if no such officers have been appointed, a person acting on behalf of the related credit supporter in a capacity similar to a chief executive officer

and a person acting on behalf of the related credit supporter in a capacity similar to that of a chief financial officer; and

(b) on behalf of the board of directors of the related credit supporter, any two directors of the related credit supporter duly authorized to sign, other than the persons referred to in paragraph (a).

20.4 Amendments

(1) Include in an amendment to a short form prospectus that does not restate the short form prospectus the certificates required under sections 20.1, 20.2 and, if applicable, section 20.3 with the reference in each certificate to "this short form prospectus" omitted and replaced by "the short form prospectus dated [insert date] as amended by this amendment".

(2) Include in an amended and restated short form prospectus the certificates required under sections 20.1, 20.2 and, if applicable, section 20.3 with the reference in each certificate to "this short form prospectus" omitted and replaced by "this amended and restated short form prospectus".

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

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

TABLE OF CONTENTS

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

PART 1 INTRODUCTION AND DEFINITIONS

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

NI 44-101 is amended and restated to reflect the implementation in 2004 of NI 51-102 *Continuous Disclosure Obligations* ("NI 51-102") and NI 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* ("NI 52-107"), the implementation of National Instrument 81-106 *Investment Fund Continuous Disclosure* ("NI 81-106") in 2004 and various other developments in provincial and territorial securities legislation since the adoption of NI 44-101 in 2000.

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

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

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

1.2 **Interrelationship With Local Securities Legislation** - NI 44-101, while being the primary instrument regulating short form prospectus distributions, is not exhaustive. Issuers are reminded to refer to the implementing law of the jurisdiction and other securities legislation of the local jurisdiction for additional requirements that may be applicable to the issuer's short form prospectus distribution.

1.3 **Interrelationship with Continuous Disclosure (NI 51-102 and NI 81-106)** - The short form prospectus distribution system established under NI 44-101 is based on the continuous disclosure filings of reporting issuers pursuant to NI 51-102 or, in the case of an investment fund, NI 81-106. Issuers who wish to use the system should be mindful of their ongoing disclosure and filing obligations under the applicable CD rule. Issues raised in the context of a continuous disclosure review may be taken into consideration by the regulator when determining whether it is in the public interest to refuse to issue a receipt for a short form prospectus. Consequently, unresolved issues may delay or prevent the issuance of a receipt.

1.4 **Interrelationship with MRRS** - National Policy 43-201 *Mutual Reliance Review System for Prospectuses [and AIFs]* ("NP 43-201") describes the practical application of the mutual reliance review system relating to the filing and review of prospectuses, including investment fund and shelf prospectuses, amendments to prospectuses and related materials. While use of NP 43-201 is optional, NP 43-201 represents the only means by which an issuer can enjoy the benefits of co-ordinated review by the securities regulatory authorities in the various jurisdictions in which the issuer has filed a short form prospectus. Under NP 43-201, one securities regulatory authority or regulator as defined in *NI 14-101 Definitions* ("NI 14-101"), as applicable, acts as the principal regulator for all materials relating to a filer.

1.5 **Interrelationship with Selective Review** - The securities regulatory authorities in many jurisdictions have, formally or informally, adopted a system of selective review of certain documents, including short form prospectuses and amendments to short form prospectuses. Under the selective review system, these documents may be subject to an initial screening to determine whether they will be reviewed and, if reviewed, whether they will be subject to a full review, an issue-oriented review or an issuer review. Application of the selective review system, taken together with MRRS, may result in certain short form prospectuses and amendments to short form prospectuses not being reviewed beyond the initial screening.

1.6 Interrelationship with Shelf Distributions (NI 44-102) - Issuers qualified under NI 44-101 to file a prospectus in the form of a short form prospectus and their security holders can distribute securities under a short form prospectus using the shelf distribution procedures under National Instrument 44-102 *Shelf Distributions* ("NI 44-102"). The Companion Policy to NI 44-102 explains that the distribution of securities under the shelf system is governed by the requirements and procedures of NI 44-101 and securities legislation, except as supplemented or varied by NI 44-102. Therefore, issuers qualified to file a prospectus in the form of a short form prospectus and selling security holders of those issuers that wish to distribute securities under the shelf system should have regard to NI 44-101 and this Policy first, and then refer to NI 44-102 and the accompanying policy for any additional requirements.

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

1.8 Definitions

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

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

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

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

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

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

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

An issuer that is a *venture issuer* for the purpose of NI 51-102, and certain investment funds, may have no obligation under the applicable CD rule to file an AIF. However, to qualify under NI 44-101 to file a prospectus in the form of a short form prospectus, that issuer will be required to file an AIF in accordance with the applicable CD rule so as to have a "current AIF". A current AIF filed by an issuer that is a venture issuer for the purposes of NI 51-102 can be expected to expire later than a non-venture issuer's AIF, due to the fact that the deadlines for filing annual financial statements under NI 51-102 are later for venture issuers than for other issuers.

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

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

(5) **Principal obligor** - The term "principal obligor" is defined to mean, 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. This term applies to a person or company that is obligated by the terms of the asset, eg. a receivable, to make payments. It does not include a person or company acting as "servicer" that collects payments from an obligor and remits payments to the issuer. Nor does the term include a seller, i.e. a person or company that has sold the financial assets comprising the pool to the issuer. Sellers of financial assets have assigned to the issuer the right to receive payments on the financial assets; they are not the ones contractually obligated to make payments on the financial assets.

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

Jurisdiction	**Position**
Alberta	Director, Capital Markets
British Columbia	Director, Corporate Finance
Manitoba	Director, Corporate Finance
New Brunswick	Administrator of Securities
Newfoundland and Labrador	Director of Securities
Northwest Territories	Deputy Registrar of Securities
Nova Scotia	Director of Securities
Nunavut	Registrar of Securities
Ontario	Manager, Corporate Finance or, in the case of an investment fund, Manager, Investment Funds
Prince Edward Island	Registrar of Securities
Quebec	Director, Marché des capitaux

Saskatchewan	Deputy Director, Corporate Finance (except for applications for exemptions from Part 2 of NI 44-101, for which the regulator is the Saskatchewan Financial Services Commission)
Yukon Territory	Registrar of Securities

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

(7) **Successor Issuer** - The definition of "successor issuer" requires that the issuer exist "as a result of a reorganization". In the case of an amalgamation, the amalgamated corporation is regarded by the securities regulatory authorities as existing "as a result of a reorganization". Also, if a corporation is incorporated for the sole purpose of facilitating a reorganization, the securities regulatory authorities regard the new corporation as "existing as a result of a reorganization" despite the fact that the corporation may have been incorporated before the reorganization. The definition of "successor issuer" also contains an exclusion applicable to divestitures. For example, an issuer may carry out a reorganization that results in the distribution to security holders of a portion of its business or the transfer of a portion of its business to another issuer. In that case, the entity that carries on the portion of the business that was "spun-off" is not a successor issuer within the meaning of the definition.

ALTERNATIVE A.

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

2.1 Basic Qualification Criteria - Issuers that have been Reporting Issuers for 12 Months (Section 2.2 of NI 44-101)

(1) A new reporting issuer or a successor issuer may satisfy the criteria to have current annual financial statements or a current AIF by filing its comparative annual financial statements or an AIF in accordance with NI 51-102 or NI 81-106, as applicable, for its most recently completed financial year. It is not necessary that the issuer be required by the applicable CD rule to have filed such documents. An issuer may voluntarily choose to file either of these documents in accordance with the applicable CD rule for the purposes of satisfying the eligibility criteria under NI 44-101.

Alternatively, an issuer may rely on the exemption from the requirement to file such documents in section 2.9. Section 2.9 provides an exemption from the current AIF and current annual financial statement requirements for new reporting issuers and successor issuers who have not yet been required to file such documents under the applicable CD Rule and who have filed a prospectus or information circular containing disclosure which would have been included in such documents.

(2) An issuer need not have filed all of its continuous disclosure filings in the local jurisdiction in order to be qualified to file a short form prospectus, but under sections 4.2 and 4.3 of NI 44-101 it will be required to file in the local jurisdiction all documents incorporated by reference into the short form prospectus no later than the date of filing the preliminary short form prospectus.

2.2 Alternative Eligibility Criteria - Issuers that have not been Reporting Issuers for 12 Months (Sections 2.3, 2.5, 2.6 and 2.7 of NI 44-101) - Issuers that have not been reporting issuers for 12 months in at least one jurisdiction in Canada may nonetheless be qualified to file a prospectus in the form of a short form prospectus under the following alternative qualification criteria of NI 44-101:

1. Section 2.3, which applies to issuers with a market value of $300,000,000 or more.

2. Section 2.5, which applies to issuers of non-convertible debt securities, non-convertible preferred shares or non-convertible cash settled derivatives, if another person or company that satisfies prescribed criteria provides full and unconditional credit support for the payments to be made by the issuer of the securities.

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

4. Section 2.7, which applies to issuers of asset-backed securities.

Under sections 2.5, 2.6 and 2.7 of NI 44-101, an issuer is not required to be a reporting issuer in any jurisdiction in order to qualify to file a prospectus in the form of a short form prospectus. Section 2.3 requires the issuer to be a reporting issuer in at least one jurisdiction in Canada.

Section 2.9 provides an exemption for a successor issuer from the requirement to have been a reporting issuer for 12 months. The successor issuer may rely on the reporting history of one of the participants in the reorganization for the purposes of meeting the seasoning requirement.

2.3 Calculation of the Aggregate Market Value of an Issuer's Equity Securities (Section 2.8 of NI 44-101)

(1) Section 2.8 of NI 44-101 sets out how to determine whether an issuer satisfies the market value criteria contained in Part 2 of NI 44-101. Subsection 2.8(2) requires certain securities to be excluded when calculating the total number of equity securities outstanding, and subsection 2.8(3) requires a subset of those excluded securities to be included nonetheless, despite subsection 2.8(2). The following examples are provided to assist issuers and their advisers in determining which securities are to be excluded in accordance with subsections 2.8(2) and 2.8(3):

Example (1):

A portfolio manager manages a pension fund. The pension fund holds 11% of the equity securities of the issuer.

Result: These equity securities must be excluded in calculating the market value of the issuer's equity securities.

Example (2):

A portfolio manager (not an affiliate of the issuer) manages three mutual funds each of which holds 3% of the equity securities of the issuer. An affiliate of the portfolio manager (not an affiliate of the issuer) manages two mutual funds each of which holds 3% of the equity securities of the issuer.

Result: The aggregated equity securities (15%) do not have to be excluded in calculating the market value of the issuer's equity securities.

Example (3):

The facts are the same as in Example (2) above, except that the portfolio manager is an affiliate of the issuer.

Result: The aggregated equity securities must be excluded in calculating the market value of the issuer's equity securities.

Example (4):

A portfolio manager (not an affiliate of the issuer) manages three non-redeemable investment funds (A, B and C). A holds 12% of the equity securities of the issuer. B and C each hold 6% of the equity securities of the issuer.

Result: The equity securities of the issuer held by A must be excluded in calculating the market value of the issuer's equity securities but the equity securities held by B and C (12% in the aggregate) need not be excluded in calculating the market value of the issuer's equity securities.

(2) Instalment receipts that evidence the beneficial ownership of outstanding equity securities (subject to an encumbrance to secure the obligation of the instalment receipt holder to pay future instalments) and other similar receipts that evidence beneficial ownership of outstanding equity securities are not, themselves, equity securities. Consequently, the market value of such a receipt may not be included in the market value calculation of an issuer's outstanding equity securities (subject to the exception in paragraph 2.8(1)(b) of NI 44-101). The market value of the equity securities evidenced by the receipt, may however, be included, subject to subsections 2.8(2) and 2.8(3) of NI 44-101.

The exclusions set out in subsection 2.8(2) of NI 44-101 refer to equity securities of an issuer that are beneficially owned, or over which control or direction is exercised by persons or companies that, alone or together with their respective affiliates and associated parties, beneficially own or exercise control or direction over more than 10 per cent of the outstanding equity securities of the issuer. Instalment receipt transactions typically involve a custodian holding a security interest in the securities the beneficial ownership of which is evidenced by instalment receipts. The securities regulatory authorities do not regard the custodian, by virtue of holding a security interest, as exercising “control or direction” over the securities for the purposes of

subsection 2.8(2) of NI 44-101 if the custodian is not entitled to exercise any voting rights attached to the securities or dispose of the securities without the beneficial owner's consent.

2.4 Alternative Qualification Criteria - Issuers of Guaranteed Debt Securities, Preferred Shares and Cash Settled Derivatives (Sections 2.5 and 2.6 of NI 44-101) - Sections 2.5 and 2.6 of NI 44-101 allow an issuer to qualify to file a prospectus in the form of a short form prospectus based on full and unconditional credit support, which may take the form of a guarantee or alterative credit support. The securities regulatory authorities are of the view that a person or company that provides the full and unconditional guarantee or alternative credit support is not, simply by providing that guarantee or alternative credit support, issuing a security.

2.5 Alternative Qualification Criteria for Issuers of Asset-Backed Securities (Section 2.7 of NI 44-101)

(1) In order to be qualified to file a prospectus in the form of a short form prospectus under section 2.7 of NI 44-101, an issuer must have been established in connection with a distribution of asset-backed securities. Ordinarily, asset-backed securities are issued by special purpose issuers established for the sole purpose of purchasing financial assets with the proceeds of one or more distributions of these securities. This ensures that the credit and performance attributes of the asset-backed securities are dependent on the underlying financial assets, rather than upon concerns relating to ancillary business activities and their attendant risks. Qualification to file a prospectus in the form of a short form prospectus under this section has been limited to special purpose issuers to avoid the possibility that an otherwise ineligible issuer would structure securities falling within the definition of “asset-backed security”.

(2) The qualification criteria for a distribution of asset-backed securities under a prospectus in the form of a short form prospectus are intended to provide sufficient flexibility to accommodate future developments. To qualify under section 2.7 of NI 44-101, the securities to be distributed must satisfy the following two criteria:

1. First, the securities must be “asset-backed securities” as the payment obligations on the securities must be serviced primarily by the cash flows of a pool of discrete liquid assets such as accounts receivable, instalment sales contracts, leases or other assets that by their terms convert into cash within a specified or determinable period of time.

2. Second, the securities must (i) receive an approved rating on a provisional basis, (ii) not have been the subject of an announcement regarding a downgrade to a rating that is not an approved rating, and (iii) not have received a provisional or final rating lower than an approved rating from any approved rating organization.

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

2.6 Reorganizations

(1) A successor issuer may satisfy the criteria to have current annual financial statements or a current AIF by filing its comparative annual financial statements or AIF in accordance with NI 51-102 for its most recently completed financial year. It is not necessary that the issuer be required by the applicable CD rule to have filed such documents. An issuer may voluntarily choose to file either of these documents in accordance with the applicable CD rule for the purposes of satisfying the eligibility criterion under item 4 of section 2.2 of NI 44-101.

(2) A successor issuer who chooses not to file its own current annual financial statements or a current AIF may nonetheless be exempt from the requirements to have such documents if it satisfies the requirements of section 2.9. In such circumstances, the successor issuer may rely on the information circular filed with respect to the reorganization until the successor issuer is required to file its updated annual financial statements and AIF.

(3) An issuer that was previously qualified to file a prospectus in the form of a short form prospectus under the basic qualification criteria set out in section 2.2 of NI 44-101, including the $75,000,000 market value requirement, and is the subject of a reorganization that results in that issuer becoming a wholly-owned subsidiary of another entity, will not be qualified to file a prospectus in the form of a short form prospectus under section 2.2. This is because it cannot satisfy the $75,000,000 market value requirement. It may continue to be qualified to file a prospectus in the form of a short form prospectus under section 2.4 or section

2.5 of NI 44-101 (approved rating or guaranteed securities) or section 2.7 of NI 44-101 (asset-backed securities).

(4) An entity that carries on the portion of the business that was "spun-off" is not a successor issuer within the meaning of the definition. The securities regulatory authorities have, from time to time, granted relief allowing the "spun-off" entity to file a prospectus in the form of a short form prospectus even though it may not otherwise satisfy certain of the qualification criteria. In those situations where the securities regulatory authorities have granted relief, there has been substantial audited segmented disclosure of the "spun-off" entity in the market place for at least one year before the reorganization. In addition, the securities regulatory authorities will generally look at whether the spun-off entity is described in the AIF and MD&A of the parent company. Applications for relief will be considered on a case-by-case basis.

(5) Market participants are reminded that if an issuer files a prospectus or other offering document following a material reorganization, take-over bid or acquisition of assets, the prospectus or offering document is required to contain, either directly or, if permitted, through incorporation by reference, appropriate disclosure concerning the reorganization, take-over bid or acquisition of assets and its effect on the issuer in order for the prospectus or other offering document to contain full, true and plain disclosure of all material facts and in Québec, disclosure of all material facts likely to affect the value or the market price of the securities to be distributed.

2.7 Notice Declaring Intention - Each of sections 2.2, 2.3, 2.4 and 2.7 of NI 44-101 includes as a qualification criterion the requirement that the issuer have filed in the local jurisdiction, at least 10 business days prior to filing the preliminary short form prospectus, a notice declaring the issuer's intention to be qualified to file a short form prospectus under NI 44-101, and that this notice has not been withdrawn. This is a new requirement that came into effect on [effective date of restatement]. The Canadian Securities Administrators expect that this notice will be a one-time filing for issuers who intend to be participants in the short form prospectus distribution system established under the Instrument. Once filed, the notice is operative until withdrawn. Section 2.10 of NI 44-101 is a transitional provision that has the effect of deeming issuers who are participants in the short form prospectus distribution system as of [effective date of restatement] to have filed this notice and no additional filing is required to satisfy the notice requirements set out in each of these sections.

ALTERNATIVE B.

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

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

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

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

(i) the offering is for the purpose of financing a dormant or inactive issuer whether or not the issuer intends to use the proceeds to reactivate the issuer or to acquire an active business; or

(ii) the offering is for the purpose of financing a material undertaking that would constitute a material departure from the business or operations of the issuer as at the date of its current annual financial statements and current AIF.

(2) A new reporting issuer or a successor issuer may satisfy the criteria to have current annual financial statements or a current AIF by filing its comparative annual financial statements or an AIF in accordance with NI 51-102 or NI 81-106, as applicable, for its most recently completed financial year. It is not necessary that the issuer be required by the applicable CD rule to have filed such documents. An issuer may voluntarily choose to file either of these documents in accordance with the applicable CD rule for the purposes of satisfying the eligibility criteria under NI 44-101.

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

(3) An issuer need not have filed all of its continuous disclosure filings in the local jurisdiction in order to be qualified to file a short form prospectus, but under sections 4.2 and 4.3 of NI 44-101 it will be required to file in the local jurisdiction all documents incorporated by reference into the short form prospectus no later than the date of filing the short preliminary form prospectus.

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

1. Section 2.3, which applies to issuers which are reporting issuers in at least one jurisdiction, and who are intending to issue non-convertible securities with a provisional approved rating.

2. Section 2.4, which applies to issuers of non-convertible debt securities, non-convertible preferred shares or non-convertible cash settled derivatives, if another person or company that satisfies prescribed criteria provides full and unconditional credit support for the payments to be made by the issuer of the securities.

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

4. Section 2.6, which applies to issuers of asset-backed securities.

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

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

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

(1) In order to be qualified to file a prospectus in the form of a short form prospectus under section 2.6 of NI 44-101, an issuer must have been established in connection with a distribution of asset-backed securities. Ordinarily, asset-backed securities are issued by special purpose issuers established for the sole purpose of purchasing financial assets with the proceeds of one or more distributions of these securities. This ensures that the credit and performance attributes of the asset-backed securities are dependent on the underlying financial assets, rather than upon concerns relating to ancillary business activities and their attendant risks. Qualification to file a prospectus in the form of a short form prospectus under this section has been limited to special purpose issuers to avoid the possibility that an otherwise ineligible issuer would structure securities falling within the definition of “asset-backed security”.

(2) The qualification criteria for a distribution of asset-backed securities under a prospectus in the form of a short form prospectus are intended to provide sufficient flexibility to accommodate future developments. To qualify under section 2.6 of NI 44-101, the securities to be distributed must satisfy the following two criteria:

1. First, the payment obligations on the securities must be serviced primarily by the cash flows of a pool of discrete liquidating assets such as accounts receivable, instalment sales contracts, leases or other assets that by their terms convert into cash within a specified or determinable period of time.

2. Second, the securities must (i) receive an approved rating on a provisional basis, (ii) not have been the subject of an announcement regarding a downgrade to a rating that is not an approved rating, and (iii) not have received a provisional or final rating lower than an approved rating from any approved rating organization.

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

2.5 Notice Declaring Intention - Each of sections 2.2 through 2.6 of NI 44-101 includes as a qualification criterion the requirement that the issuer have filed in the local jurisdiction, at least 10 business days prior to filing the preliminary short form prospectus, a notice declaring the issuer's intention to be qualified to file a short form prospectus under NI 44-101, and that this notice has not been withdrawn. This is a new requirement that came into effect on [effective date of restatement]. The Canadian Securities Administrators expect that this notice will be a one-time filing for issuers who intend to be participants in the short form prospectus distribution system established under the Instrument. Once filed, the notice is operative until withdrawn. Section 2.8 of NI 44-101 is a transitional provision that has the effect of deeming issuers who are participants in the short form prospectus distribution system as of [effective date of restatement] to have filed this notice and no additional filing is required to satisfy the notice requirements set out in each of sections 2.2 through 2.6.

PART 3 FILING AND RECEIPTING OF SHORT FORM PROSPECTUS

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

(a) the material change is generally disclosed and an amendment to the short form prospectus is filed, if required; or

(b) the decision to implement the material change has been rejected and the issuer has so notified the regulator of each jurisdiction where the confidential material change report was filed.

3.2 Supporting Documents

(1) Material that is filed in a jurisdiction will be made available for public inspection in that jurisdiction, subject to the provisions of securities legislation in the local jurisdiction regarding confidentiality of filed material. Material that is delivered to a regulator, but not filed, is not required under securities legislation to be made available for public inspection. However, the regulator may choose to make such material available for inspection by the public.

(2) Any material incorporated by reference in a preliminary short form prospectus or a short form prospectus is required under sections 4.2 and 4.3 of NI 44-101 to be filed with the preliminary short form prospectus or short form prospectus unless previously filed. When an issuer files a previously unfiled document with its short form prospectus, the issuer should ensure that the document is filed under the SEDAR category of filing and filing subtype specifically applicable to the document, rather than the generic type "Other". For example, an issuer that has incorporated by reference an interim financial statement in its short form prospectus and has not previously filed the statement should file that statement under the "Continuous Disclosure" category of filing, and the "Interim Financial Statements" filing subtype.

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

3.4 **Amendments and Incorporation by Reference of Subsequently Filed Material Change Reports** - The requirement in securities legislation for the filing of an amendment to a preliminary prospectus and prospectus is not satisfied by the incorporation by reference in a preliminary short form prospectus or a short form prospectus of a subsequently filed material change report.

3.5 **Short Form Prospectus Review** - No target time frame applies to the review of a short form prospectus of an issuer if the issuer has not elected to use MRRS.

3.6 **"Waiting Period**" - If the securities legislation of the local jurisdiction contains the concept of a "waiting period" such that the securities legislation requires that there be a specified period of time between the issuance of a receipt for a preliminary short form prospectus and the issuance of a receipt for a short form prospectus, the implementing law of the jurisdiction removes that requirement as it would otherwise apply to a distribution under NI 44-101.

3.7 **Registration Requirements** - Issuers filing a preliminary short form prospectus or short form prospectus and other market participants are reminded to ensure that members of underwriting syndicates are in compliance with registration requirements under Provincial and territorial securities legislation in each jurisdiction in which syndicate members are participating in the distribution of securities under the short form prospectus.

PART 4 CONTENT OF SHORT FORM PROSPECTUS

4.1 **Prospectus Liability** - Nothing in the short form prospectus regime established by NI 44-101 is intended to provide relief from liability arising under the provisions of securities legislation of any jurisdiction in which a short form prospectus is filed if the short form prospectus contains an untrue statement of a material fact or omits to state a material fact that is required to be stated therein or that is necessary to make a statement not misleading in light of the circumstances in which it was made.

4.2 **Style of Prospectus** - Provincial and territorial securities legislation requires that a prospectus contain "full, true and plain" disclosure and, in Québec, disclosure of all material facts likely to affect the value or the market price of the securities to be distributed. To that end, issuers and their advisors are reminded that they should ensure that disclosure documents are easy to read, and encourage issuers to adopt the following plain language principles in preparing a prospectus in the form of a short form prospectus:

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

If technical or business terms are required, clear and concise explanations should be used. The securities regulatory authorities are of the view that question and answer and bullet point formats are consistent with the disclosure requirements of NI 44-101.

4.3 **Firm Commitment Underwritings** - If an underwriter has agreed to purchase a specified number or principal amount of the securities to be distributed at a specified price, Subsection 1.10(4) of Form 44-101F1 requires the short form prospectus to contain a statement that the securities are to be taken up by the underwriter, if at all, on or before a date not later than 42 days after the date of the receipt for the short form prospectus. If the provincial and territorial securities legislation of a jurisdiction requires that a prospectus indicate that the securities must be taken up by the

underwriter within a period that is different than the period provided under NI 44-101, the implementing law of a jurisdiction exempts issuers from that requirement if they comply with NI 44-101.

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

4.5 Distribution of Asset-backed Securities

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

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

1. The extent of disclosure respecting an issuer will depend on the extent of the issuer's on-going involvement in the conversion of the assets comprising the pool to cash and the distribution of cash to security holders; this involvement may, in turn, vary dramatically depending on the type, quality and attributes of the assets comprising the pool and on the overall structure of the transaction.

2. Requested disclosure respecting the business and affairs of the issuer should be interpreted to apply to the financial assets underlying the asset-backed securities.

3. Disclosure respecting the originator or the seller of the underlying financial assets will be relevant to investors in the asset-backed securities particularly in circumstances where the originator or seller has an on-going relationship with the financial assets comprising the pool. For example, if asset-backed securities are serviced with the cash flows from a revolving pool of receivables, an evaluation of the nature and reliability of the future origination or the future sales of underlying assets by the seller to or through the issuer may be a critical aspect of an investor's investment decision. To address this, the focus of disclosure respecting an originator or seller of the underlying financial assets should deal with whether there are current circumstances that indicate that the originator or seller will not generate adequate assets in the future to avoid an early liquidation of the pool and, correspondingly, an early payment of the asset-backed securities. Summary historical financial information respecting the originator or seller will ordinarily be adequate to satisfy the disclosure requirements applicable to the originator or seller in circumstances where the originator or seller has an ongoing relationship with the assets comprising the pool.

(3) Paragraph 7.3(d)(i) of Form 44-101F1 requires issuers of asset-backed securities to describe any person or company who originated, sold or deposited a material portion of the financial assets comprising the pool, irrespective of whether the person or company has an on-going relationship with the assets comprising the pool. The securities regulatory authorities consider $33^{1}/_{3}$ % of the dollar value of the financial assets comprising the pool to be a material portion in this context.

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

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

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

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

(i) the distribution of both the convertible or exchangeable securities and the underlying securities will be qualified by the prospectus; or

(ii) the statutory rights that an investor would have if he or she purchased the underlying security offered under a prospectus are otherwise provided to the investor by way of a contractual right of action.

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

4.10 Recent and Proposed Acquisitions

(1) Item 10 of Form 44-101F1 requires a summary of certain acquisitions and proposed acquisitions. Paragraph 3 of that Item also requires inclusion of the financial statements that would be required by Part 8 of NI 51-102 to be included in a business acquisition report if the acquisition were completed as of the date of the preliminary short form prospectus if the acquisition or proposed acquisition is a reverse takeover or if the inclusion of the financial statements is necessary in order for the short form prospectus to contain full, true and plain disclosure of all material facts relating to, and in Québec, disclosure of all material facts likely to affect the value or the market price of, the securities being distributed. The securities regulatory authorities generally presume that such disclosure is required to satisfy those disclosure standards if any of the significance tests set out in subsections 8.3(2) and 8.3(4) is satisfied at the 40% level. Issuers can rebut this presumption if they can provide compelling evidence that the financial statements are not required for full, true and plain disclosure.

(2) Item 10 of Form 44-101F1 requires prescribed disclosure of a proposed acquisition that has progressed to a state "where a reasonable person would believe that the likelihood of the acquisition being completed is high" and that would, if completed on the date of the preliminary short form prospectus, be a significant acquisition for the purposes of NI 51-102. The securities regulatory authorities interpret the phrase "where a reasonable person would believe that the likelihood of the acquisition being completed is high" having regard to section 3290 of the Handbook "Contingencies". It is the view of the securities regulatory authorities that the following factors may be relevant in determining whether the likelihood of an acquisition being completed is high

(a) whether the acquisition has been publicly announced;

(b) whether the acquisition is the subject of an executed agreement; and

(c) the nature of conditions to the completion of the acquisition including any material third party consents required.

(3) The test of whether a proposed acquisition "has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high" is an objective, rather than subjective, test in that the question turns on what a "reasonable person" would believe. It is not sufficient for an officer of an issuer to determine that he or she personally believes that the likelihood of the acquisition being completed is or is not high. The officer must form an opinion as to what a reasonable person would believe in the circumstances. In the event of a dispute, an objective test requires an adjudicator to decide whether a

reasonable person would believe in the circumstances that the likelihood of an acquisition being completed was high. By contrast, if the disclosure requirement involved a subjective test, the adjudicator would assess an individual's credibility and decide whether the personal opinion of the individual as to whether the likelihood of the acquisition being completed was high was an honestly held opinion. Formulating the disclosure requirement using an objective test rather than a subjective test strengthens the basis upon which the regulator may object to an issuer's application of the test in particular circumstances.

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

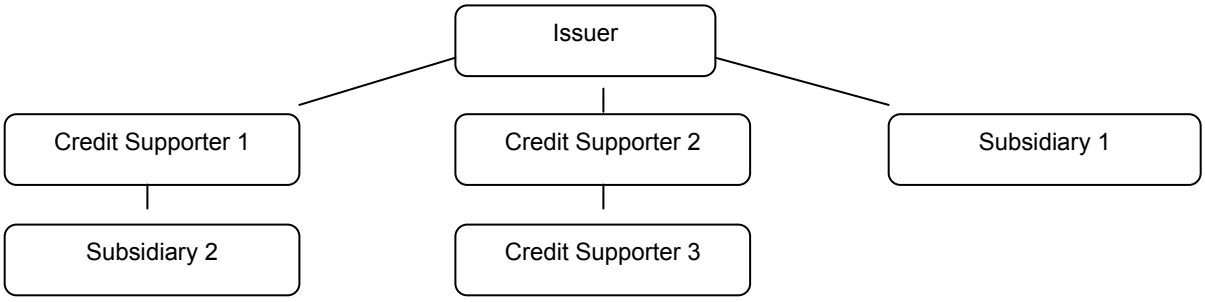
4.12 **Credit Supporter Disclosure** - In addition to the issuer's documents required to be incorporated by reference under sections 11.1 and 11.2 of Form 44-101F1 and the issuer's earnings coverage ratios required to be included under Item 6 of Form 44-101F1, a short form prospectus must include, under section 12.1 of Form 44-101F1, disclosure about any credit supporters that have provided a guarantee or alternative credit support for all or substantially all of the payments to be made under the securities being distributed. This type of guarantee or alternative credit support is not necessarily full and unconditional credit support as contemplated in sections 2.5 and 2.6 of NI 44-101. Accordingly, disclosure about a credit supporter may be required even if the credit supporter has not provided full and unconditional credit support.

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

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

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

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



Facts:

- Credit Supporter 1, Credit Supporter 2, and Credit Supporter 3 are credit supporters.
- Credit Supporter 1, Credit Supporter 2, and Credit Supporter 3 have each provided full and unconditional credit support for the securities being distributed.

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

Disclosure required in short form prospectus

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

PART 5 CERTIFICATES

5.1 Non-corporate Issuers

(1) Paragraph 20.1(a) of Form 44-101F1 requires an issuer to include a certificate in the prescribed form signed by the chief executive officer and the chief financial officer or, if no such officers have been appointed, a person acting on behalf of the issuer in a capacity similar to a chief executive officer and a person acting on behalf of the issuer in a capacity similar to a chief financial officer. For a non-corporate issuer that is a trust and has a trust company acting as its trustee, this officers' certificate is frequently signed by authorized signing officers of the trust company that perform functions on behalf of the trust similar to those of a chief executive officer and a chief financial officer. In some cases, these functions are delegated to and performed by other persons (e.g. employees of a management company). If the declaration of trust governing the issuer delegated the trustee's signing authority, the officers' certificate may be signed by the persons to whom authority is delegated under the declaration of trust to sign documents on behalf of the trustee or on behalf of the trust, provided that those persons are acting in a capacity similar to a chief executive officer or chief financial officer of the issuer.

(2) Paragraph 20.1(b) of Form 44-101F1 requires an issuer to include a certificate in the prescribed form signed on behalf of the board of directors, by two directors of the issuer, other than the persons referred to in paragraph 19.1(a), duly authorized to sign. Issuers that are not companies are directed to the definition of "director" in securities legislation to determine the appropriate signatories to the certificate. The definition of "director" in securities legislation typically includes a person acting in a capacity similar to that of a director of a company. Issuers that are not companies are also directed to the definition of "person" in securities legislation.

5.2 Promoters of Issuers of Asset-backed Securities

(1) Securities legislation in some jurisdictions in Canada contains definitions of "promoter" and requires, in certain circumstances, a promoter of an issuer to assume statutory liability for prospectus disclosure. Asset-backed securities are commonly issued by a "special purpose" entity, established for the sole purpose of facilitating one or more asset-backed offerings. The securities regulatory authorities are of the opinion that special purpose issuers of asset-backed securities will have a promoter because someone will typically have taken the initiative in founding, organizing or substantially reorganizing the business of the issuer. The securities regulatory authorities interpret the business of such issuers to include the business of issuing asset-backed securities and entering into the supporting contractual arrangements.

(2) For example, in the context of a securitization program under which assets of one or more related entities are financed by issuing asset-backed securities (sometimes called a “single seller program”), an entity transferring or originating a significant portion of such assets, an entity initially agreeing to provide on-going collection, administrative or similar services to the issuer, and the entity for whose primary economic benefit the asset-backed program is established, will each be a promoter of the issuer if it took the initiative in founding, organizing or substantially reorganizing the business of the issuer. Persons or companies contracting with the issuer to provide credit enhancements, liquidity facilities or hedging arrangements or to be a replacement servicer of assets, and investors who acquire subordinated investments issued by the issuer, will not typically be promoters of the issuer solely by virtue of such involvement.

(3) In the context of a securitization program established to finance assets acquired from numerous unrelated entities (sometimes called a “multi-seller program”), the person or company (frequently a bank or an investment bank) establishing and administering the program in consideration for the payment of an on-going fee, for example, will be a promoter of the issuer if it took the initiative in founding, organizing or substantially reorganizing the business of the issuer. Individual sellers of the assets into a multi-seller program are not ordinarily considered to be promoters of the issuer, despite the economic benefits accruing to such persons or companies from utilizing the program. As with single-seller programs, other persons or companies contracting with the issuer to provide services or other benefits to the issuer of the asset-backed securities will not typically be promoters of the issuer solely by virtue of such involvement.

(4) While the securities regulatory authorities have included this discussion of promoters as guidance to issuers of asset-backed securities, the question of whether a particular person or company is a “promoter” of an issuer is ultimately a question of fact to be determined in light of the particular circumstances.