

**PROSPECTUS PRACTICE DIRECTIVE #1**  
**Personal information forms and other procedural matters regarding preliminary prospectus filings**

OSC Staff Notice 41-702  
April 1, 2011

The purpose of this practice directive is to alert issuers (including investment fund issuers) and their advisors of:

- procedural changes to facilitate our review of personal information forms filed by directors, executive officers and other individuals, and
- common deficiencies in preliminary prospectus filings.

It also reminds issuers and their advisors of the timing for filing preliminary prospectus materials and the issuance of receipts.

This practice directive is intended to assist issuers and their advisors. It has been prepared by staff of the Corporate Finance Branch and Investment Funds Branch. The views it expresses do not necessarily reflect the views of the Commission or the Canadian Securities Administrators.

### Procedures for personal information forms

Under the general prospectus rules, an issuer is required to:

- deliver a personal information form (including a certificate and consent) and an issuer authorization form (collectively, a PIF), or
- have previously filed or delivered a PIF or other acceptable authorization document, for each director, executive officer and promoter of the issuer (and, if the promoter is not an individual, each director and executive officer of the promoter) concurrent with the filing of a preliminary prospectus.<sup>1</sup>

Under the prospectus rules applicable to investment funds, PIFs are also required to be delivered, or to have previously been filed or delivered, for each director and executive officer of the manager of the investment fund issuer, as applicable.<sup>2</sup>

A summary of updated procedures to accommodate our expeditious review of PIFs, and a discussion of common deficiencies with PIF filings, is set out below.

<sup>1</sup> The specific PIF delivery requirements for issuers are described, as applicable, in paragraph 9.1(b)(ii) of NI 41-101 and in paragraph 4.1(b)(i) of NI 44-101.

<sup>2</sup> The specific PIF delivery requirements for investment fund issuers are described, as applicable, in paragraph 9.1(b)(ii) of NI 41-101, paragraph 4.1(b)(i) of NI 44-101 and paragraph 2.3(b)(ii) of NI 81-101.

### ***Procedural matters***

To facilitate our review of PIFs, issuers are advised to provide the following information in the cover letter accompanying the materials filed with a preliminary prospectus:

- the name of: (i) each current director, executive officer and promoter of the issuer (and, if the promoter is not an individual, each director and executive officer of the promoter) and, (ii) if the issuer is an investment fund, each director and executive officer of the manager of the investment fund issuer, as applicable (collectively, the individuals).
- for each of the individuals, an indication as to whether a PIF has been delivered with the preliminary prospectus or a PIF or other acceptable authorization document for the individual was previously filed or delivered, and
- for each of the individuals for whom the issuer has not delivered a PIF because a PIF or other acceptable authorization document was previously filed, the SEDAR project number and submission number under which the PIF or other acceptable authorization document was previously filed.

Where an issuer is submitting its first preliminary prospectus for which the OSC will act as its principal regulator, the issuer should either file a new PIF or refile a PIF or other acceptable authorization document that was previously filed with its previous principal regulator for each applicable individual.

Where an issuer has reason to believe that information contained in a PIF previously filed or delivered by an individual has materially changed, the issuer should deliver a new PIF for that individual concurrent with filing its preliminary prospectus.

### ***Common deficiencies with PIF filings***

Issuers and their advisors should pay careful attention to ensure that each PIF is fully completed by each applicable individual. In particular, we note the following deficiencies in PIF submissions that may cause delays in our review process:

- incorrect issuer name provided in the PIF
- missing or incomplete name of individual and date of birth information (i.e. middle initial provided, rather than full middle name)
- missing yes/no response to a question in any of Parts 6 – 9 of the PIF concerning offences, bankruptcy, regulatory proceedings and civil proceedings
- failure to provide details concerning a positive response to a question in any of Parts 6 – 9 of the PIF in an attachment to the PIF
- individual's certificate and consent not provided with the PIF
- individual's certificate and consent missing the name or signature of the individual, or the date of execution, and
- written responses to questions in the PIF are illegible.

## Other procedural matters when filing a preliminary prospectus

We continue to see certain deficiencies that can cause unnecessary delays in issuing a receipt for a preliminary prospectus and often result in additional communication among us, issuers and/or their advisors.

Accordingly, we remind issuers and their advisors to ensure the following:

<b>Prior discussions with staff</b>	<ul style="list-style-type: none"> <li>Details of prior discussions with staff regarding prospectus filing issues should be set out in the cover letter accompanying a preliminary prospectus filing.</li> </ul>
<b>Preliminary prospectus face page disclosure</b>	<ul style="list-style-type: none"> <li>The “red herring” statement provides the specified disclosure regarding the jurisdictions in Canada in which the issuer intends to offer securities under the prospectus (per Item 1.2 of Form 41-101F1, Item 1.1 of Form 41-101F2, Item 1.2 of Form 44-101F1 and Item 1 of Form 81-101F1, and the related Instruction in the prospectus forms, as applicable). A generic statement that securities will be offered in “certain” jurisdictions is not acceptable.</li> </ul>
<b>Preliminary prospectus amendment face page disclosure</b>	<ul style="list-style-type: none"> <li>An amendment to a preliminary prospectus identifies the name and date of the original prospectus that is being amended or amended and restated (as set out in subsection 6.1(2) of NI 41-101 and subsection 2.2(3) of NI 81-101).</li> </ul>
<b>Documents incorporated by reference</b>	<ul style="list-style-type: none"> <li>All documents incorporated by reference into a preliminary short form prospectus have, as of the date of filing the preliminary prospectus, been filed with each jurisdiction in which the preliminary short form prospectus is filed (as noted in subsection 2.1(3) of 44-101CP).</li> </ul>
<b>Prospectus certificates</b>	<ul style="list-style-type: none"> <li>Prospectus certificates in the preliminary prospectus comply with applicable requirements.</li> </ul>
<b>Short form prospectus qualification certificate</b>	<ul style="list-style-type: none"> <li>The issuer qualification certificate filed pursuant to section 4.1 of NI 44-101 is dated as of the date of the preliminary short form prospectus and refers to the correct issuer name and date of the preliminary short form prospectus.</li> </ul>
<b>Expert consent letters</b>	<ul style="list-style-type: none"> <li>All expert consent letters refer to the correct issuer and accurately identify the type and date of the preliminary prospectus.</li> </ul>
<b>Issuer confirmation letter pursuant to section 7.2 of NP 11-202</b>	<ul style="list-style-type: none"> <li>The issuer confirmation letter filed pursuant to subsection 7.2(2) of NP 11-202 specifies in respect of paragraph (d) that <u>either</u>: (i) at least one underwriter that signed the prospectus certificate is registered in each jurisdiction in which the issuer will offer the securities, <u>or</u> (ii) at least one underwriter that has signed a prospectus certificate has filed an application for registration or for an exemption from registration in each jurisdiction in which the issuer will offer the securities.</li> </ul>

<b>SEDAR – NI 13-101</b>	<ul style="list-style-type: none"> <li>• Documents filed with a preliminary prospectus are filed under the correct “Filing Type” and “Filing Subtype” as prescribed in the SEDAR Filer Manual.</li> <li>• Only documents from one “Filing Subtype” are filed under a single submission as prescribed in paragraph 8.3(e) of the SEDAR Filer Manual.</li> </ul>
<b>Fees</b>	<ul style="list-style-type: none"> <li>• Activity fees and participation fees are paid as required under OSC Rule 13-502 <i>Fees</i>.</li> <li>• The correct fee description and fee code for each type and form of preliminary prospectus or pro forma prospectus is used when attaching an activity fee in SEDAR.</li> </ul>

### Timing for filing preliminary prospectus materials and the issuance of receipts

#### **General timing guidelines**

We remind issuers and their advisors of OSC Staff Notice 41-701 *Issuance of Receipts for Preliminary Prospectuses and Prospectuses* (dated July 29, 2005). It sets out the following deadlines for filing preliminary prospectus materials where the issuer wishes to receive a receipt for the preliminary prospectus on the same day as the filing.

<b>Nature of prospectus offering</b>	<b>Timing for filing preliminary prospectus and all accompanying materials in acceptable form</b>
Preliminary prospectuses generally	<p>12 p.m. (EST) on the day that the receipt is required</p> <p>If preliminary prospectus materials are filed after 12 p.m. (EST), the receipt will normally be issued before 12 p.m. (EST) on the next business day and dated as of that day. If you anticipate filing a prospectus within a reasonable period of time after 12:00 p.m. (EST) and you need a receipt issued that day, please make special arrangements in advance with our Review Officer. We will attempt to accommodate these requests, but there is no assurance that a receipt will be issued on the date requested if the filing is made after 12 p.m. (EST)</p>

Nature of prospectus offering	Timing for filing preliminary prospectus and all accompanying materials in acceptable form
Preliminary short form prospectuses where the issuer has entered into a bought deal in which marketing efforts have been made in reliance on section 7.1 of NI 44-101	3 p.m. (EST) on the day that the receipt is required <u>provided that</u> : <ul style="list-style-type: none"> <li>• the issuer has advised our Review Officer before 12 p.m. (EST) that the preliminary prospectus will be filed by 3 p.m. (EST) on that day, and</li> <li>• the cover letter that accompanies the preliminary short form prospectus indicates the issuer's reliance on section 7.1 of NI 44-101</li> </ul>

If a preliminary prospectus and all accompanying materials are filed in acceptable form by the applicable deadline above, we will make every reasonable effort to issue a receipt for the preliminary prospectus on the day of filing.

**Timing guidelines for overnight marketed deals**

- The issuer should advise the Review Officer by email at ProspectusReviewOfficer@osc.gov.on.ca as soon as possible on the morning of the day a receipt is required that it intends to conduct an overnight marketed deal and that it will therefore request that the receipt for the preliminary prospectus be issued after markets close that day (i.e. 4:00 p.m. (EST)).
- The issuer should explain in the email to the Review Officer the reasons for the proposed specified receipt issuance time.
- If the Review Officer is advised of an overnight marketed deal on the morning of the day a receipt is required, and the preliminary prospectus and all accompanying materials are filed in acceptable form before 12 p.m. (EST) on that day, we will make every reasonable effort to issue the receipt for the preliminary prospectus on or after the time requested on the day of filing.

**Questions**

Questions may be referred to:

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