

**ALBERTA SECURITIES COMMISSION
NOTICE**

**NATIONAL INSTRUMENT 41-101
*PROSPECTUS DISCLOSURE REQUIREMENTS***

and

**REPEAL OF
NATIONAL POLICY STATEMENTS
NOS. 12, 13, 32 AND 35**

1. Implementation of Instrument and Repeal of Current Requirements

The Alberta Securities Commission (the "Commission") and other members of the Canadian Securities Administrators (the "CSA") have implemented National Instrument 41-101 *Prospectus Disclosure Requirements* ("NI 41-101"). NI 41-101 will become effective on December 31, 2000. In Alberta, NI 41-101 has been implemented as a Commission Rule.

In conjunction with the implementation of NI 41-101, the Commission and other CSA members have repealed the following, with effect on December 31, 2000.

- National Policy Statement No. 12 *Disclosure of "Market Out" Clauses in Underwriting Agreements in Prospectuses* ("NP 12");
- National Policy Statement No. 13 *Disclaimer Clause on Prospectus* ("NP 13");
- National Policy Statement No. 32 *Prospectus Warning Re: Scope of Distribution* ("NP 32"); and
- National Policy Statement No. 35 *Purchaser's Statutory Rights* ("NP 35").

Also in conjunction with the implementation of NI 41-101, the Commission has repealed sections 99 and 100 of the Commission Rules, with effect on December 31, 2000.

2. Purpose and Substance of the Instrument

NI 41-101 consolidates and simplifies, through the use of plainer language in prescribed disclosure, the prospectus disclosure requirements currently set out in NP 12, NP 13, NP 32 and NP 35 and similar prospectus disclosure requirements in the securities legislation of certain jurisdictions including, in Alberta, sections 99 and 100 of the Commission Rules.

3. Prior Publication, Public Comment and CSA Responses

The Commission and other CSA members published a draft version of NI 41-101 on May 16, 1997 (the "1997 Draft") together with an explanatory notice, and solicited public comment on the

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

The comments received and the CSA's responses are summarized below. The CSA made changes to NI 41-101 in response to the public comments and the CSA's own further consideration of the 1997 Draft. Because the changes, which are also summarized below, are not material, NI 41-101 is not being republished for comment.

(a) Detailed Summary of Public Comments and CSA Responses

Application and Interpretation - Section 1.2 Preliminary Prospectus

Comment

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

Response

The CSA believe that an exception is not necessary. NI 41-101 should be read together with the applicable form requirements for a prospectus. In this context, the form requirements provide that details concerning the price and other matters dependent upon or relating to price may be left out of a preliminary prospectus to the extent that these matters have not been decided.

Front Page Disclosure - Section 2.1 Prospectus Warning and Disclaimer Clause

Comment

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

Response

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

Front Page Disclosure - Section 2.2 Preliminary Prospectus Disclosure

Comment

The commenter recommended that an issuer be given more flexibility in naming those jurisdictions in which it has filed a prospectus. The commenter also suggested replacing the

reference to a “distribution” with the “sale of such securities” and “distributed” with “sold”, in the interests of plain English disclosure.

Response

The CSA agree with the comments. Section 2.2 of NI 41-101 and the related instruction have been revised accordingly.

Plan of Distribution Disclosure - Section 3.1

Comment

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

Response

The CSA agree in principle with the suggestions. The CSA are not, however, proposing changes at this time but will consider the suggestions again in the course of developing a national long form prospectus instrument based on the Ontario Long Form Prospectus Rule. The requirements of NI 41-101 are likely to be incorporated in that national long form prospectus instrument. For more information about the development of a national long form prospectus instrument, refer to the notices published concurrently with this Notice respecting, in Alberta, proposed Commission Rule 41-501 and, in Ontario, the Ontario Long Form Prospectus Rule. A copy of the Alberta notice can be found on the Commission's website at www.albertasecurities.com. Copies of the Ontario Long Form Prospectus Rule and the related OSC notice can be found on the OSC's website at www.osc.gov.on.ca.

Comment

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

Response

The CSA do not believe that a change is strictly required. Section 1.3 of NI 41-101 allows an issuer to modify any of the statements required to be included in a prospectus to reflect the terms and conditions of the distribution.

Purchasers' Statutory Rights - Part 4

Comment

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

Response

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

(b) Additional Changes to NI 41-101

The CSA have made two further changes to NI 41-101:

- new section 2.3 prescribes disclosure concerning the ability of investors to collect, from foreign issuers, selling security holders, credit supporters and/or promoters, judgments obtained in Canadian courts based on the civil liability provisions of securities legislation; and
- new section 4.2 prescribes disclosure concerning purchasers' statutory rights in respect of non-fixed price offerings.

October 13, 2000.

**NATIONAL INSTRUMENT 41-101
PROSPECTUS DISCLOSURE REQUIREMENTS**

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**NATIONAL INSTRUMENT 41-101
PROSPECTUS DISCLOSURE REQUIREMENTS**

PART 1 APPLICATION AND INTERPRETATION

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

PART 2 FRONT PAGE DISCLOSURE

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

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

- 2.2 Preliminary Prospectus Disclosure** - An issuer shall include the following statement in red ink and italics at the top of the cover page immediately above the disclosure required under section 2.1, with the bracketed information completed:

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

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

2.3 International Issuers

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

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

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

PART 3 PLAN OF DISTRIBUTION DISCLOSURE

- 3.1 Plan of Distribution Disclosure** - If an underwriter has agreed to purchase all of the securities being distributed at a specified price and the underwriter's obligations are subject to conditions, an issuer shall include the following statements in its prospectus with the bracketed information completed:

1. On the cover page of the prospectus:

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

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

"Under an agreement dated [date of agreement] between [name of issuer or selling shareholder] and [name(s) of underwriter(s)], as underwriter[s], [name of issuer or selling shareholder] has agreed to sell and the underwriter[s] [has/have] agreed to purchase on [closing date] the securities at a price of [offering price] payable in cash to [name of issuer or selling shareholder] against delivery. The obligations of the underwriter[s] under the agreement may be terminated at [its/their] discretion on the basis of [its/their] assessment of the state of the financial markets and may also be terminated upon the occurrence of certain stated events. The underwriter[s] [is/are], however, obligated to take up and pay for all the securities if any of the securities are purchased under the agreement."

PART 4 STATUTORY RIGHTS OF WITHDRAWAL AND RESCISSION

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

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

legislation of the purchaser's province [or territory]. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province [or territory] for the particulars of these rights or consult with a legal adviser."

- 4.2 Non-Fixed Price Offerings** - In the case of a non-fixed price offering, replace, if applicable, in the jurisdiction in which the prospectus is filed, the second sentence in the legend in item 4.1 with a statement in substantially the following form:

"This right may only be exercised within two business days after receipt or deemed receipt of a prospectus and any amendment, irrespective of the determination at a later date of the purchase price of the securities distributed."

PART 5 EXEMPTION

5.1 Exemption

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

5.2 Evidence of Exemption

- (1) Without limiting the manner in which an exemption under this Part may be evidenced, the granting of an exemption under this Part may be evidenced by the issuance of a receipt for a prospectus or an amendment to a prospectus.

- (2) An exemption under this Part may be evidenced in the manner set out in subsection (1) only if
 - (a) the person or company that sought the exemption sent the regulator the letter or memorandum referred to in subsection 5.1(3) on or before the date of the filing of the preliminary prospectus;
 - (b) sent to the regulator the letter or memorandum referred to in subsection 5.1(3) after the date of the filing of the preliminary prospectus and received a written acknowledgement from the regulator that the exemption may be evidenced in the manner set out in subsection (1); and
 - (c) the regulator has not sent notice to the contrary to the person or company that sought the exemption before, or concurrently with, the issuance of the receipt.

PART 6 EFFECTIVE DATE

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

**ALBERTA SECURITIES COMMISSION
NOTICE**

**NATIONAL INSTRUMENT 44-101
*SHORT FORM PROSPECTUS DISTRIBUTIONS***

and

**REPEAL OF
NATIONAL POLICY STATEMENT NO. 47
*PROMPT OFFERING QUALIFICATION SYSTEM***

1. Implementation of Instrument and Repeal of National Policy Statement

The Alberta Securities Commission (the "Commission") and other members of the Canadian Securities Administrators (the "CSA") have implemented National Instrument 44-101 *Short Form Prospectus Distributions* ("NI 44-101"), Form 44-101F1 *AIF* ("Form 1"), Form 44-101F2 *MD&A* ("Form 2"), Form 44-101F3 *Short Form Prospectus* ("Form 3") and Companion Policy 44-101CP (the "Policy"). In this Notice, Form 1, Form 2 and Form 3 are referred to collectively as the "Forms" and NI 44-101, the Forms and the Policy are referred to collectively as the "Instrument".

The Instrument will become effective on December 31, 2000 (the "Effective Date"). In Alberta, NI 44-101 and the Forms have been implemented as rules and the Policy has been adopted as a Commission policy. In addition, the Commission has made local implementing Rule 44-801, which will also become effective on the Effective Date.

In conjunction with the implementation of the Instrument, National Policy Statement No. 47 *Prompt Offering Qualification System* ("NP 47") has been repealed, with effect on the Effective Date.

2. Purpose and Substance of the Instrument

The Instrument prescribes conditions for the use of a short form prospectus to distribute securities to the public. It replaces NP 47, which has governed the use of a short form prospectus in CSA jurisdictions other than Québec since 1993.

Central to the short form prospectus distribution system (referred to in NP 47 as the "POP System" or "prompt offering qualification system") is the use of a short form prospectus which incorporates by reference, rather than restates, information contained in the issuer's annual information form ("AIF"), financial statements and other continuous disclosure. The system, and the more concise offering document, were designed to enable qualifying issuers to respond more

quickly to market opportunities without diminishing the information and protection available to investors.

The CSA are of the view that the regulatory regime established by NP 47 has operated efficiently and effectively. Their broader CSA project of reformulating policies and other instruments has, however, provided an opportunity to reconsider and update substantive and administrative elements of the short form prospectus distribution system under NP 47. The Instrument largely preserves the substance of NP 47 but is intended to better serve the CSA's original objectives through clarifying and simplifying important aspects of the system, broadening access to the system and modifying disclosure and other requirements in a manner consistent with other developments and initiatives of the CSA and member jurisdictions.

3. Prior Publication and Public Comment

Earlier versions of the Instrument and Rule 44-801 were published for comment in February 1998 (the "1998 Proposal", published in the Commission Summary at (1998) 7 ASCS 473), July 1999 (the "July 1999 Proposal", published in a supplement to the Commission Summary for the week ended July 23, 1999) and December 1999 (the "December 1999 Proposal", published in a supplement to the Commission Summary for the week ended December 17, 1999). Changes from NP 47 were summarized in the notices accompanying publication of the 1998, July 1999 and December 1999 Proposals. The notices accompanying the July 1999 and December 1999 Proposals also summarized public comments on the respective preceding proposals and CSA responses to those comments.

The CSA received comments on the December 1999 Proposal from the seven commenters identified in Appendix A to this Notice. A summary of their comments and the CSA's responses to those comments are set out in Appendix B to this Notice.

In addition to considering public comments, the CSA also considered proposed Ontario Securities Commission Rule 41-501 *General Prospectus Requirements* and the related form and companion policy (together, the proposed "OSC Rule"), which was published for comment by the Ontario Securities Commission (the "OSC") on July 23, 1999 and, in revised form, on December 17, 1999. The OSC has now finalized and implemented the OSC Rule, which will also become effective on the Effective Date unless rejected or returned by the Ontario Minister of Finance to the OSC for further consideration. Given the extensive similarities in the subject matter of the Instrument and the proposed OSC Rule, many of the comments received by the OSC on the proposed OSC Rule and the OSC's responses to those comments are also relevant to the Instrument. A list of commenters on the December 17, 1999 version of the proposed OSC Rule, a summary of their comments on the proposed OSC Rule and the OSC's responses are contained in Appendices C and D to this Notice.

4. Summary of the Instrument

Mandatory elements of the Instrument are set out in NI 44-101 and the Forms. Explanation and guidance are provided in the Policy. Rule 44-801 provides specific relief or variance from provisions of securities legislation in Alberta necessary to give effect to the Instrument in Alberta.

(a) NI 44-101

Part 1 of NI 44-101 provides definitions and interpretations of certain terms used in the Instrument. Other terms used but not defined in the Instrument have the respective meanings, if any, ascribed to them by National Instrument 14-101 *Definitions* or by local securities legislation.

Conditions for qualification to file a short form prospectus are set out in Part 2 of NI 44-101. As described in the notices accompanying earlier published versions of the Instrument, these qualification criteria have been expanded beyond those permitted under NP 47. The CSA have also endeavoured to clarify and simplify the qualification conditions, which in some cases have also been modified to align more closely with comparable provisions of United States federal securities legislation.

The Instrument differs from NP 47 in that qualification to make use of the system is to be determined, not annually at the time of filing an AIF, but rather at the time of each prospectus filing. The CSA consider that an issuer's eligibility to use the system is more relevant at the time of a distribution of securities. This approach can also provide greater flexibility for non-qualifying issuers who anticipate achieving the qualification criteria in the near future.

Qualification to file a short form prospectus is, pursuant to Part 2 of NI 44-101, conditional on the existence of a current AIF. Part 3 mandates the form of AIF, prescribing the use of Form 3 or, in specified circumstances, comparable US forms.

Part 3 also sets out certain requirements and procedures relating to the filing of AIFs and supporting documents, and review and amendment of AIFs. The AIF filing procedures set out in Part 3 are somewhat simpler than under NP 47. Regulatory review of a renewal AIF is no longer restricted to the immediate post-filing period. The Policy reminds issuers that procedures specific to the mutual reliance review system are set out in National Policy 43-201 *Mutual Reliance Review System for Prospectuses and Annual Information Forms* (the "MRRS Policy").

Issuers who make use of the short form prospectus distribution system must comply with the financial statement and other disclosure requirements of local securities legislation, to the extent not expressly varied by the Instrument or a related implementing rule. Parts 4 and 5 of NI 44-101 set out detailed requirements for financial statement disclosure in respect of acquisitions of businesses, proposed or completed, that are significant to the issuer individually or in

combination. Part 6 prescribes financial statement disclosure in respect of significant dispositions. The significance of an acquisition or disposition is interpreted in Part 1. These provisions differ from current requirements under NP 47 and other securities legislation, reflecting the evolution of generally accepted accounting principles in Canada, corresponding requirements under US federal securities legislation and ongoing refinement and harmonization of accounting practice recommendations of the chief accountants of CSA members. Among the more significant changes from current requirements, financial statement disclosure for an acquired business may be required for a shorter period, the precise requirements varying with the relative significance of the acquisition to the issuer, but the content of the required disclosure is expanded and specified in greater detail. NI 44-101 also provides exceptions and variations of the requirements available to issuers in specified circumstances.

Additional financial statement disclosure issues are dealt with in Part 7 of NI 44-101. It specifies the circumstances in which financial statements may be prepared in accordance with accounting principles other than Canadian generally accepted accounting principles (Canadian "GAAP"), and disclosure that must accompany the use of financial statements prepared in accordance with foreign GAAP. It also sets out requirements for audit reports and the auditing standards to be applied. Part 8 of NI 44-101 requires review by the issuer's audit committee, if any, and board approval of financial statements included in a short form prospectus.

Under Part 9 of NI 44-101, a short form prospectus is deemed to incorporate by reference, except as modified or superseded, all required documents, whether or not the prospectus so states. This provision is intended to enable investors to rely on the disclosure in all such documents.

Filing requirements and procedures in respect of a short form prospectus and supporting documents are set out in Part 10 of NI 44-101. Among the supporting documents to be filed are material contracts. Part 11 sets out procedures relating to short form prospectus amendments.

Part 12 of NI 44-101 prescribes conditions for the reduction of the offering price of securities distributed under a short form prospectus and for the use of a short form prospectus to distribute securities at a non-fixed price.

Part 13 of NI 44-101 specifies how certain disclosure requirements relating to take-over bids and issuer bids can be satisfied by using or referring to information disclosed under NI 44-101.

Prospectus requirements that would otherwise apply to an issuer's solicitation of expressions of interest from prospective investors are modified by Part 14 of NI 44-101 to permit such activities, on specified conditions, prior to the filing of a preliminary short form prospectus.

Provision for exemptions from the Instrument is made in Part 15.

(b) Form 1

Form 1 contains detailed content requirement for the AIF together with instructions designed to assist the preparer.

(c) Form 2

The content of management's discussion and analysis ("MD&A"), required to be included in an AIF (item 6 of Form 1), together with instructions, is now set out separately in Form 2, rather than as an appendix to NP 47 or to Form 1. The separation of MD&A from the AIF form is intended to facilitate the preparation of MD&A for purposes other than the Instrument, by making the MD&A requirements more readily accessible.

(d) Form 3

The form and content of a short form prospectus are set out in Form 3. This form includes prescribed cover page disclosure comparable to the disclosure that will be required for long form prospectuses pursuant to National Instrument 41-101 *Prospectus Disclosure Requirements*.

(e) The Policy

The Policy provides explanation and guidance for use of the short form prospectus distribution system. It explains the interrelationship of the system to other distribution systems and procedures, notably National Instrument 44-102 *Shelf Distributions*, National Instrument 44-103 *Post-Receipt Pricing* and the mutual reliance review procedures under the MRRS Policy.

The Policy contains extensive discussion in Part 4 intended to guide issuers in satisfying the requirements for financial statement disclosure relating to significant business acquisitions. It also discusses factors and conditions likely to be considered in connection with applications for exemption from those requirements.

5. Changes from the December 1999 Proposal**(a) Financial Statement Disclosure for Significant Acquisitions**

A number of commenters on the December 1999 Proposal and the July and December 1999 versions of the OSC Rule urged further consideration of the financial statement disclosure requirements proposed for significant acquisitions. Commenters noted in particular that it is often very difficult, if not impossible, for an acquirer of natural resource assets to obtain from the vendor the information necessary to enable the acquirer to comply with the proposed financial statement disclosure requirements, particularly if the acquired assets were not a substantial portion of the vendor's total assets.

The CSA considered very seriously these comments and other issues relating to these proposed disclosure requirements. As noted above, Part 5 of the Policy now provides extensive discussion of the requirements and sets out CSA views on circumstances and conditions that securities regulatory authorities would likely consider in response to applications for relief from these disclosure requirements. In particular, section 5.3 addresses circumstances and disclosure alternatives particular to oil and gas asset acquisitions.

(b) Supporting Documents to be Filed

Part 10 of NI 44-101 has been reorganized to clarify requirements for the documents in support of a short form prospectus. Sections 10.2 and 10.3 require that the issuer deliver to the regulator, when filing the preliminary short form prospectus, copies of all material contracts not previously filed, and that the issuer file with the final short form prospectus any material contract not previously filed. These requirements supplement the requirement under section 10.7 that the issuer make the material contracts available for inspection during the distribution period. With a view to harmonizing filing requirements, limitations on this filing requirement in Ontario and Nova Scotia that formed part of the December 1999 Proposal have been removed.

(c) Risk Factor Disclosure

Form 3 now requires, under Item 17, that a short form prospectus include a description of the risk factors material to the issuer that a reasonable investor would consider relevant to an investment in the securities being distributed. This requirement parallels the corresponding disclosure requirement applicable to long form prospectuses. The CSA consider such information an important element of the full, true and plain disclosure that should be provided by all prospectuses.

(d) Other Changes

The Instrument incorporates a number of other changes from the December 1999 Proposal. In general, these changes are intended to clarify the meaning and application of provisions of NI 44-101. Most of the changes respond to public comment on previously published versions of the Instrument or on similar provisions of the proposed OSC Rule. Many of these changes are also reflected in the requirements relating to long form prospectuses under the OSC Rule.

(i) NI 44-101

A. Definitions and Interpretation

The CSA have revised and added definitions in Part 1 of NI 44-101 to add clarity to the Instrument. Revisions include the following:

- The definition of “acquisition of related businesses” now includes a third criterion, contingency on a common event, to harmonize the definition with that in the US. Explanatory guidance is provided in subsection 5.4(3) of the Policy.
- The definition of “income from continuing operations” now specifically addresses amortization and write-offs of goodwill.

The CSA have also responded to public comments on the Instrument by revising interpretative provisions of Part 1 of NI 44-101:

- *Business Acquisitions “Significance” Tests*: The tests of “significance” have been revised and expanded to provide additional clarity.

To better distinguish between required and optional tests, the required significance tests, to be applied as at the date of an acquisition, are set in subsection 1.2(2) of NI 44-101. Optional significance tests, to be applied as at a date subsequent to the acquisition, are set out in subsection 1.2(3). New subsection 1.2(4) of the Rule makes clear that the optional significance tests can either confirm or reverse the characterization of an acquisition as a significant acquisition under subsection 1.2(2), but would not render an acquisition significant if it had not been so characterized under subsection 1.2(2).

A number of the changes to section 1.2 concern the financial statements to be used in applying the significance tests:

- Subsection 1.2(6) permits the use of unaudited financial statements of an acquired business if those financial statements have not in fact been audited. As section 5.9 of the Policy notes, this provision applies for the purpose of measuring significance, but does not alter the requirements for the inclusion of audited financial statements in a short form prospectus if the acquisition is determined to be significant.
- Under subsection 1.2(9), financial statements of an acquired business that are prepared in accordance with foreign GAAP must be reconciled to Canadian GAAP. Subsection 5.8 of the Policy notes that the reconciliation need not be audited for use in the significance tests.

New subsections 1.3(1) and (6) of NI 44-101 specify how to apply the income test when losses have been incurred.

B. Financial Statement Disclosure for Significant Acquisitions

A number of provisions in Part 4 of NI 44-101 have been amended and Part 4 as a whole has been reformatted to make its provisions more understandable, in response to public comments.

Separate sections now set out the financial statement disclosure requirements for (i) significant acquisitions completed within the three most recently completed financial years of the issuer, (ii) significant acquisitions completed during the issuer's current financial year and (iii) significant probable acquisitions.

The following is a summary of other changes in Part 4:

- *Interim financial statement requirements*: In response to public comments, Part 4 makes clear that interim financial statements for periods subsequent to the date of an acquisition are not required.
- *Balance sheet requirement*: Part 4 been amended to make clear that a balance sheet of an acquired business is not required if the acquisition was completed prior to the date of the most recent balance sheet of the issuer included in the short form prospectus.
- *Pre-acquisition financial statements*: In response to public comments, sections 4.2 and 4.3 of NI 44-101 have been modified to permit the inclusion of financial statements for a pre-acquisition period rather than for the most recently completed interim period.
- *Purchase price equation*: In response to public comments, the proposed requirement to provide an audited purchase price equation for probable acquisitions has been removed.
- *Non-coterminous year-ends*: In response to commenters' calls for more guidance on how to deal with non-coterminous year-ends, subsection 4.5(4) has been added to NI 44-101 and further guidance is provided in section 5.10 and subsection 5.17(3) of the Policy. This guidance is very similar to that provided in the "90-day" rule of the US Securities and Exchange Commission (the "SEC").
- *Additional financial statements or financial information filed or released*: In response to public comments, the requirements under sections 4.7 and 5.3 for financial statement disclosure relating to acquired businesses, have been modified:
 - The proposed requirement to include, in a short form prospectus, financial statements in support of recent news releases has been removed. Instead, only the contents of the news release need be included in the prospectus. NI 44-101 does not require either auditor's "comfort" for the financial information in the news release or updates to the MD&A or pro forma financial statements included in the short form prospectus.
 - If, however, interim or annual financial statements for an acquired business are filed for a period more recent than the periods for which financial statements are otherwise required to be included in a short form prospectus, then subsections 4.7(1) and 5.3(1) require that the more recent financial statements be included in

the short form prospectus. These financial statements, like other unaudited financial statements included in a short form prospectus, must be accompanied by a comfort letter from the auditor and the MD&A and pro-forma financial statements contained in the prospectus must be updated.

- Change of year-end: In response to comments, a definition of “transition year” has been added to Part I and section 4.9 has been modified to clarify that, if an acquired business has undergone a change of financial year-end, a transition year of at least nine months may be used for one of the years of historical financial statements required to be included in a short form prospectus.
- Relief: New section 4.15 of NI 44-101 provides that if annual financial statements for an acquired business were previously included in a prospectus without an auditor’s report and an audit has not been subsequently performed, those unaudited financial statements may be included in subsequent short form prospectuses.

C. Significant Dispositions

- Pro forma financial statements: New Part 6 of NI 44-101 requires certain pro forma financial statements for significant dispositions, consistent with SEC requirements.

D. Review and Approval of Financial Statements

- Audit committee review and board approval: Section 8.1 (formerly section 6.4) of NI 44-101 now supplements the requirement for audit committee (if any) review with a requirement for board of directors approval of all financial statements included in a short form prospectus.

E. GAAP, GAAS, Auditors’ Reports and Board Role

- Reconciliation of financial statements of foreign acquired businesses: If an issuer is required to include in a short form prospectus three years of financial statements for an acquired business and those financial statements are prepared in accordance with foreign GAAP, section 7.2 provides relief from the requirement to reconcile to Canadian GAAP the earliest of the three years of financial statements.
- Application of US GAAS: In response to a comment, clause 10.2(b)7(ii) has been modified so as to exempt only US auditors who apply US GAAS from including in their comfort letter the discussion specified in that clause.

F. Short Form Prospectus Filing Requirements

- Auditors' comfort letters: In addition to the change referred to immediately above, new clauses 10.3(b)1(ii), (iii) and (iv) of NI 44-101 require that a comfort letter be delivered to the regulator in respect of: financial information related to equity investees; financial statements constructed to comply with the "93-day" rule; and financial statements reflecting a significant disposition as required under Part 6.

(ii) Form Requirements

- MD&A: A new requirement for supplemental disclosure relating to MD&A, if a Canadian issuer prepares its MD&A on the basis of financial statements prepared other than in accordance with Canadian GAAP, has been added as Item 6.1(2) of Form 1.
- Asset-backed securities: In response to informal comments received and experience gained by regulatory staff from their review of recent asset-backed security offerings, refinements have been made to AIF disclosure requirements in section 4.2 of Form 1 and to short form prospectus disclosure requirements in section 8.3 of Form 3.

(iii) The Policy

- Significant Acquisitions In response to comments from the public, considerably more guidance is now provided in the Policy in areas including:
 - the interpretation of references to 60 and 90 days in connection with the age of financial statements (section 4.1 of the Policy);
 - the interpretation and application of the required and optional significance tests (section 5.7);
 - non-coterminous year-ends and the "93-day" rule (section 5.10 and subsection 5.17(3));
 - acquisitions of related businesses (section 5.14);
 - unrelated individually insignificant acquisitions (section 5.15); and
 - *pro forma* financial statements (expanded section 5.17)
- Exemptions relating to financial statement disclosure: The Policy now sets out the views of the CSA on the circumstances and conditions under which exemptions may be granted:

- from financial statement requirements for an issuer or for an acquired business in situations involving destroyed records, emergence from bankruptcy or a fundamental change in business (subsections 4.6(4) and 5.20(6)); or
- from requirements for audited financial statements in respect of an acquisition of an interest in an oil and gas property, as discussed in paragraph (a) above (section 5.3).
- Significant dispositions: Sections 5.18 and 5.19 of the Policy provide additional guidance concerning financial statements disclosure requirements relating to significant dispositions.
- Transitional provision: Section 5.20 sets out the CSA's view as to the circumstances and conditions under which relief may be granted from requirements to provide audited financial statements for a business acquisition completed prior to December 31, 2000, the Effective Date of the Instrument.
- Appendix B: Appendix B to the Policy provides examples intended to assist in understanding how certain provisions of the Instrument are to be applied.

6. International Disclosure Standards for Cross-Border Offerings

In September 1998 the International Organization of Securities Commissions ("IOSCO") proposed new international disclosure standards for use by issuers in connection with cross-border public offerings and listings of equity securities ("International Disclosure Standards"). The proposed standards would not govern financial statement disclosure and do not specify the bodies of accounting or auditing principles to be followed by an issuer in preparing its financial statements. On September 28, 1999 the SEC revised its requirements for disclosure, outside financial statements, by "foreign private issuers" to conform more closely to the International Disclosure Standards. The Commission and the CSA are monitoring developments in this area, which may result in post-implementation changes to the Instrument.

7. Transition

Under the Instrument, the existence of a "current AIF" is a condition of qualification to file a short form prospectus. Part 1 of NI 44-101 defines the term to include an AIF filed before the Effective Date, that would constitute a "Current AIF" under NP 47 if that instrument were applicable at the time the condition is being considered.

The Instrument makes no transitional provision for a short form prospectus itself. Accordingly, if a preliminary short form prospectus is filed in accordance with NP 47 but no receipt is issued for the final short form prospectus before the Effective Date, the final short form prospectus must comply with the requirements of the Instrument.

8. Instruments Repealed

The Commission has repealed NP 47 and the blanket orders of the Commission dated February 17, 1993 and July 22, 1993, with effect on the Effective Date.

October 13, 2000.

**APPENDIX A
TO
NOTICE**

**NATIONAL INSTRUMENT 44-101,
FORMS 44-101F1, 44-101F2 AND 44-101F3 AND
COMPANION POLICY 44-101CP
*SHORT FORM PROSPECTUS DISTRIBUTIONS***

**List of Commenters
on the December 1999 Proposal**

The CSA received comments on the December 1999 Proposal from the following commenters:

1. Borden & Elliot by letter dated February 25, 2000
2. Burnet, Duckworth & Palmer by letter dated February 14, 2000
3. CICA Task Force on Prospectuses and Other Offering Documents by letter dated February 14, 2000
4. KPMG LLP by letter dated February 17, 2000
5. Numac Energy Inc. by letter dated April 28, 2000
6. PricewaterhouseCoopers LLP by letter dated February 15, 2000
7. Talisman Energy Inc. by letter dated February 14, 2000

**APPENDIX B
TO
NOTICE**

**NATIONAL INSTRUMENT 44-101,
FORMS 44-101F1, 44-101F2 AND 44-101F3 AND
COMPANION POLICY 44-101CP
SHORT FORM PROSPECTUS DISTRIBUTIONS**

**Summary of Public Comments
on the December 1999 Proposal
and CSA Responses**

The CSA received comment letters on the version of the Instrument published in December 1999 from the seven commenters identified in Appendix A. The CSA thank all of them for their valuable comments. Their comments, and the CSA's responses, are summarized below.

In addition to the comments specific to the Instrument that are summarized in this Appendix B, refer also to Appendices C and D, which identify commenters on the proposed OSC Rule and summarize their comments and the OSC's responses.

I. Deadline for Issuers' Annual Financial Statements

Comment:

One commenter expressed concern that an additional qualification criterion has been introduced which requires an issuer that files a short form prospectus more than 90 days after its year-end to file its annual financial statements and incorporate them into the prospectus despite the fact that under continuous disclosure requirements, the annual financial statements are not required to be filed until 140 days after the year end. The commenter believed that this was inconsistent with the move towards increasing reliance upon on an issuer's continuous disclosure system. The commenter suggested that, if there is a concern that the short form prospectus offering system does not provide for sufficiently current information, regulators should review the entire system rather than merely accelerate deadlines when an offering is contemplated. The commenter suggested that if there is concern that the continuous disclosure requirements are not timely enough, then those deadlines should be reviewed.

CSA Response:

The CSA considered this issue at length. The CSA believe that in the context of a prospectus offering, it is appropriate to require the issuer's annual financial statements for its most recently completed year to be incorporated by reference if the prospectus is filed more than 90 days after the issuer's most recently completed year. The CSA are indeed considering whether continuous

disclosure requirements should be amended to reduce the 140 day deadline for annual financial statements to 90 days. Whether or not that change is made, the CSA believe that the context of an offering demands more current information and that the revised requirement is appropriate for a short form prospectus. A similar change will be reflected in the requirements applicable to long form prospectuses under the OSC Rule. The CSA also note that many issuers who file prospectuses under NP 47 already file their annual financial statements within 90 days, and that the new requirement is consistent with existing requirements that apply to issuers conducting cross-border offerings in the US. For these reasons the CSA do not believe that the new requirements will impose undue hardship on issuers.

II. Fourth Quarter Reports

Comment:

One commenter noted that some issuers release, soon after year-end, fourth quarter results which typically provide separate disclosure of the results of the last three months of the year and the issuer's 12 months results. The commenter raised the following two issues and recommended that they be addressed in the Companion Policy:

1. Even if the 12 month results are omitted from such a fourth quarter report, the report could reasonably be interpreted as a "back-door" release of the annual results and would trigger the requirements of 12.1(1)4 of Form 44-101F2.
2. In some cases, the 12 month results, prepared in the same format and detail as interim financial statements, have been incorporated by reference into the preliminary short form prospectus with the understanding that the annual financial statements will be included in the final prospectus. In the commenter's view, such 12 month financial statements are not prepared in accordance with GAAP. The commenter suggested that if others believe that they are in accordance with GAAP, then it would in the commenter's view be possible that issuers could satisfy their annual reporting requirements under securities legislation by providing annual financial statements prepared in accordance with CICA Handbook section 1750.

CSA Response:

1. In response to other comments received on the Instrument and the OSC Rule, the CSA have amended the requirements of Item 12.1 of Form 44-101 F2 (now Form 44-101F3). Release of fourth quarter results in a press release or other public communication would not, by itself, trigger the requirements in paragraphs 3 and 4 of Item 12.1(1) of Form 44-101F3. However, if the annual financial statements included in the fourth quarter or any other set of financial statements report were filed with the regulator, the requirements in paragraphs 3 and 4 of Item 12.1(1) of Form 44-101 F3 would be triggered.

2. The CSA do not agree with the commenter's view that where such 12 month financial statements are prepared in accordance with GAAP, an issuer has satisfied its annual reporting requirements under securities legislation since the relevant requirement under securities legislation is for annual *audited* historical information. Since the 12 month financial statements would be unaudited, they would not satisfy the requirement for one of the three years of audited historical financial statements required to be included in the prospectus.

III. Significant Acquisition Disclosure

Comment (i)

One commenter applauded the CSA's efforts to improve prospectus disclosure in the proposed Instruments. The commenter particularly agreed with the direction of disclosure for significant acquisitions in that it will improve the consistency of this disclosure. The commenter was also pleased that the requirements were harmonized with those in the US.

CSA Response

The comment was noted. For additional comments related to business acquisition disclosure please refer to Appendix D.

Comment (ii)

One commenter expressed concern with the definition of "acquisition of related businesses" as it relates to the oil and gas industry. The commenter was concerned that the definition may describe oil and gas acquisitions that have common operators but are otherwise unrelated. This would imply that a combined set of financial statements would be required, which the commenter suggested would be too onerous to prepare and would be potentially misleading. The commenter recommended that the definition be clarified to exclude such situations.

CSA Response

The CSA considered the commenter's recommendation but concluded that such an issue would need to be considered on a case-by-case basis. Accordingly, no change was made to the Instruments. However, it should be noted (and the Policy provides clarity in this regard) that there is no requirement to prepare one set of financial statements for related businesses. The instrument does provide that combined statements may be prepared if, during the period, the businesses were under common control or management.

IV. Securities Exchange Take-over Bids and Issuer Bids

Comment:

One commenter expressed its view that the requirements of the instruments as they relate to securities exchange take-over bids and issuer bids are too extensive in that they appear to require the target's financial statements be included in a take-over bid circular. In the commenter's view, the recipients of the take-over bid circular are security holders of the target and can be presumed to have already received financial statements of the target in the normal course. The target security holders require historical financial information about the offeror and *pro forma* financial information on a post-acquisition basis. Any other financial information on the target should come from the target itself, through the directors' circular. The commenter recommended amending the proposals to require only *pro forma* financial statements as at end of each of the offeror's most recently completed year and the most recent quarter for which financial statements of the target are available.

CSA Response:

The CSA agree with the comment. Changes have been made to the Instrument and the Form to address the commenter's concern. The requirement to include target financial statements in a take-over bid circular has been deleted.

V. Historical Oil and Gas Production

Comment:

One commenter criticized the proposed requirement for disclosure in the AIF, under Item 4.4, paragraph 8(a) of Form 44-101F1, of oil and gas production after deduction of royalties payable in kind, on the grounds that (i) differentiation between royalties payable in cash or in kind is not justified and would impair comparability between issuers, and between wells, that are subject to different royalty provisions, and (ii) royalties being more akin to a "cost of goods sold", a deduction for royalties would not be an appropriate adjustment for this disclosure item.

CSA Response:

The CSA generally concur with the comments. Item 4.4, paragraph 8(a) of Form 44-101F1 has been revised to provide that production is to be disclosed without deduction for royalties.

**APPENDIX C
TO
NOTICE**

**NATIONAL INSTRUMENT 44-101,
FORMS 44-101F1, 44-101F2 AND 44-101F3 AND
COMPANION POLICY 44-101CP
*SHORT FORM PROSPECTUS DISTRIBUTIONS***

**List of Commenters on
Proposed Ontario Securities Commission Rule 41-501
*General Prospectus Requirements***

The OSC received comments on the December 1999 Proposal from the following commenters:

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

**APPENDIX D
TO
NOTICE**

**NATIONAL INSTRUMENT 44-101,
FORMS 44-101F1, 44-101F2 AND 44-101F3 AND
COMPANION POLICY 44-101CP
*SHORT FORM PROSPECTUS DISTRIBUTIONS***

**Summary of Public Comments on
Proposed Ontario Securities Commission Rule 41-501
General Prospectus Requirements
and Ontario Securities Commission Responses**

The OSC received comment letters on the version of the proposed OSC Rule that it published in December 1999 from the six commenters identified in Appendix C. Many of those comments are relevant to the Instrument and were taken into consideration by the CSA in finalizing the Instrument. The comments, and the OSC's responses, are summarized below. References in this Appendix D are to provisions of the OSC Rule; the "Rule" refers to OSC Rule 41-501 *General Prospectus Requirements*, the "Policy" refers to OSC Companion Policy 41-501CP and the "Prospectus Form" refers to OSC Form 41-501F1 *Information Required in a Prospectus*.

PART A - OVERALL COMMENTS

I. Drafting Style

(i) Comment

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

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

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

Response

In finalizing the instruments the Commission was keenly aware of these concerns and made every effort to address them. Given that many of the key provisions of the instruments relate to financial

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

II. National Harmonization

(i) Comment

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

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

Response

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

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

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

(ii) Comment

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

Response

The Commission recognizes the merits of consolidating certain requirements, such as the financial statement requirements for issuers and acquired companies, into one or more separate national instruments. Given the statutory time periods required to make a rule and the time available to the Commission before the rule replacing National Policy Statement No. 47 is to expire, it would not have been possible to prepare a new national instrument, publish it for comment and finalize it.

III. Harmonization with the SEC

(i) Comment

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

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

Response

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

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

(ii) Comment

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

Response

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

IV. Continuous Disclosure Regime

(i) Comment

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

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

Response

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

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

V. Special Warrant Prospectuses

(i) Comment

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

Response

As noted in the December 1999 Notice, the Commission has resolved not to provide special treatment for special warrant transactions in the context of the instruments. The Commission is of the view that the differences between special warrant offerings and other offerings are mainly

with respect to timing. The significance of the prospectus to an issuer's continuous disclosure record is a key factor in the decision to make no distinction between, and therefore not establish a separate system for, special warrant and other offering documents.

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

PART B - SPECIFIC COMMENTS

I. Definitions and Interpretations

1. Junior Issuer - "Market Capitalization" Test

(i) Comment

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

Response

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

2. Probable Acquisition of a Business

(i) Comment

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

Response

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

3. Definition of Income from Continuing Operations

(i) Comment

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

Response

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

II. Comparative Figures

(i) Comment

One commenter disagreed with comment N.1(ii) in Appendix B to the December 1999 Notice which stated that “...failure to provide comparative figures, as contemplated by subsection 2.2(5) of the 1999 proposed Policy represents a departure from GAAP, unless the information is not reasonably determinable.” The commenter objected to the rationale provided and the original commenters’ view that it is contrary to GAAP to omit comparative financial statements. The commenter also stated that if securities regulators have concluded that depending on the significance of an acquisition, only a single year of financial statements of an acquired business is necessary for users of a prospectus, then it is not meaningful to require comparative financial statements in these circumstances. In such circumstances, presenting a single year of financial statements would be in accordance with GAAP.

Response

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

III. Change in Year End

(i) Comment

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

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

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

Response

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

IV. Significant Acquisitions - Reporting Requirements

1. Annual Financial Statements

(i) Comment

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

Response

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

As noted above, the Commission has substantially adopted the SEC's rules for business acquisition disclosure, notwithstanding the absence of continuous disclosure rules. This approach was advocated by commenters several years ago. The Commission believes that business

acquisition disclosure is material and should be included in a prospectus. As noted in previous Notices, the Commission supports extending these requirements to continuous disclosure filings. Progress is being made on that front through the IDS proposal.

2. Interim Financial Statements

(i) Comment

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

Response

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

3. Pre-acquisition Financial Statements

(i) Comment

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

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

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

Response

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

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

V. Pro Forma Financial Statements*(i) Comment*

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

Response

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

(ii) Comment

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

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

Response

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

(iii) Comment

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

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

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

Response

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

(iv) Comment

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

Response

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

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

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

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

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

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

Response

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

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

(ii) Comment

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

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

Response

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

VII. Significant Acquisitions Accounted For Using the Equity Method

(i) Comment

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

Response

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

(ii) Comment

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

Response

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

(iii) Comment

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

Response

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

VIII. Significant Acquisition of Joint Venture Interests

(i) Comment

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

Response

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

IX. Significant Acquisitions Made After Year End Accounted For Using the Purchase Method

(i) Comment

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

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

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

A third commenter did not believe that the purchase equation for a significant acquisition occurring subsequent to an issuer's year end should be subject to audit. In its view, there are many

important transactions which may occur subsequent to an issuer's year end and which are first recorded in interim financial statements, without audit.

Response

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

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

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

X. Financial Statement Disclosure For Multiple Insignificant Acquisitions

(i) Comment

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

Response

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

(ii) Comment

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

Response

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

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

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

Response

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

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

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

Response

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

3. Applying the tests at the second date

(i) Comment

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

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

Response

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

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

XII. Application of Significance Tests

1. Income Test for Multiple Acquisitions

(i) Comment

One commenter noted that the use of the combined basis in the income test for multiple acquisitions would appear to result in the netting of any losses from continuing operations of

certain businesses against the income from continuing operations of others. The commenter noted that the computational note to SEC Rule 1-02(w) states: “Where the test involves combined entities, ...entities reporting losses *shall not* be aggregated with entities reporting income.”

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

Response

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

2. Investment Test

(i) Comment

In connection with the application of the Investment test, one commenter was puzzled by the intent of the last sentence in s. 3.5 of the proposed Policy which read, “For the purpose of this test, any new debt incurred by the issuer in the acquisition should also be included as an investment by the issuer in the business.”

Response

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

XIII. Auditor’s Letter Filed in Connection with Financial Statements Prepared Using Foreign GAAP or Accompanied by a Foreign Auditor’s Report

(i) Comment

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

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

Response

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

(ii) Comment

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

Response

Consistent with the response in the December 1999 Notice, the Commission agrees that a list of foreign jurisdictions recognized as having standards that are substantially equivalent to Canadian standards is a worthy objective. However, such a list does not exist at present and is beyond the scope of the Rule. In the meantime, the responsibility for making a determination as to substantial equivalence and comprehensiveness appropriately lies with auditors with expertise in both of the jurisdictions in question. As the commenter is likely aware, the Commission along with its international counterparts through IOSCO, is looking at the acceptability of international auditing standards. To the extent IOSCO endorses their use at some point in the future, the Commission will consider revisiting this aspect of the Rule. Given this, the Commission does not think it is appropriate to provide the relief requested by the commenters. Since the Commission has not determined whether the identified foreign GAAS are substantially similar to Canadian GAAS, it would be inappropriate to suggest that relief might be granted. No change has been made to the proposed instruments.

(iii) Comment

Another commenter expressed views similar to those summarized above, but in addition suggested including International Auditing Standards. The commenter also suggested that the list

be periodically reviewed and updated so that it is not rigid and unresponsive to changing circumstances. In the commenter's view, the practical difficulty with the proposed Rule is that most foreign auditors are unfamiliar with Canadian GAAS and do not know whether the foreign GAAS are substantially equivalent to Canadian GAAS; while Canadian auditors, being unfamiliar with foreign GAAS, will be unable to help them.

Response

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

(iv) Comment

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

Response

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

(v) Comment

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

Response

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

(vi) Comment

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

Response

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

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

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

Comments

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

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

(b) Availability and Usefulness of Historical Financial Statements

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

generally considered by industry participants to be a compelling valuation tool and the starting point for an analysis of the appropriate price of the asset in question.

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

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

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

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

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

(d) Relevance of Asset and Investment Tests

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

Response

The Commission, with its CSA colleagues, carefully considered the comments raised. As stated in the December 1999 Notice, a CSA committee was in the process of reviewing these very issues. The Commission, in consultation with the CSA, has developed an approach that it believes will

address the concerns expressed by the commenters and others. Though the Commission takes the view that the acquisition of an oil and gas property will generally constitute the acquisition of a business, potential relief is outlined in section 3.3 of the Policy from the requirement for audited historical financial statements, if certain disclosure related conditions are met. These relief provisions were developed to address the issues outlined in the comment letters described above. The Commission has not extended similar relief provisions to acquisitions of other than oil and gas properties. The Commission believes that given the unique nature of the oil and gas industry, the requirements and the potential relief described in the Policy strikes the right balance between investor protection and fair and efficient capital markets.

XV. Form Requirements

(i) Comment

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

Response

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

(ii) Comment

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

Response

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

**NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS**

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**NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS**

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions - In this Instrument

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

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

- (a) the businesses were under common control or management before the acquisitions were completed,
- (b) each acquisition was conditional upon the completion of each other acquisition, or
- (c) each acquisition is contingent on a single common event;

"AIF" means an annual information form

- (a) in the form of Form 44-101F1 AIF,
- (b) in the form referred to in section 3.4, or
- (c) in the form of Appendix A to NP47, if the annual information form was filed before this Instrument came into force;

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

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

"approved rating" means, for a security, a rating at or above one of the following rating categories issued by an approved rating organization for the security or a rating category that replaces a category listed below:

Approved Rating Organization	Long Term Debt	Short Term Debt	Preferred Shares
CBRS Inc.	B++	A-2	P-3
Dominion Bond Rating Service Limited	BBB	R-2	Pfd-3
Duff & Phelps Credit Rating Co.	BBB-	D-3	BBB-
Fitch IBCA, Inc.	BBB	F3	BBB
Moody's Investors Service, Inc.	Baa	Prime-3	"baa"
Standard & Poor's Corporation	BBB	A-3	BBB
Thomson BankWatch, Inc.	BBB	TBW-3	BBB

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

"asset-backed security" means a security that is primarily serviced by the cash flows of a discrete pool of mortgages, receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, and any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders;

"associated party" means, if used to indicate a relationship with a person or company,

(a) a partner, other than a limited partner, of the person or company,

- (b) a trust or estate in which the person or company has a substantial beneficial interest or for which the person or company serves as trustee or in a similar capacity,
- (c) an issuer in respect of which the person or company beneficially owns or controls, directly or indirectly, securities carrying more than 10 per cent of the voting rights attached to all outstanding securities of the issuer,
- (d) a relative of the person who has the same home as that person,
- (e) an individual who has the same home as the person and who is either married to the person or is living with the person in a conjugal relationship outside marriage, or
- (f) a relative of an individual mentioned in paragraph (e) who has the same home as the person;

"auditor's report" means

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

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

"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 specified 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 specified derivative;

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

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

"current AIF" means

- (a) for an issuer other than an issuer subsisting under the laws of a foreign jurisdiction that has filed an AIF in the form of a current annual report on Form 10-K or on Form 20-F under the 1934 Act
 - (i) during the period of 140 days following the issuer's most recently completed financial year,
 - (A) if the issuer has filed an initial AIF for its most recently completed financial year that has been accepted for filing under this Instrument, the initial AIF,

- (B) if the issuer has filed a renewal AIF under this Instrument for its most recently completed financial year, the renewal AIF,
 - (C) if the issuer has not filed an AIF for its most recently completed financial year and has filed an initial AIF for the financial year preceding its most recently completed financial year that has been accepted for filing under this Instrument, the initial AIF, or
 - (D) if the issuer has not filed an AIF for its most recently completed financial year and has filed a renewal AIF under this Instrument for the financial year preceding its most recently completed financial year, the renewal AIF,
- (ii) at any time after 140 days following the issuer's most recently completed financial year,
- (A) if the issuer has filed an initial AIF for its most recently completed financial year that has been accepted for filing under this Instrument, the initial AIF, or
 - (B) if the issuer has filed a renewal AIF under this Instrument for its most recently completed financial year, the renewal AIF, or
- (iii) an AIF of the issuer filed before this Instrument came into force that would constitute a "Current AIF" for the purposes of NP47 if that instrument was applicable, or
- (b) for an issuer subsisting under the laws of a foreign jurisdiction that has filed an AIF in the form of a current annual report on Form 10-K or on Form 20-F under the 1934 Act
- (i) during the period of 180 days following the issuer's most recently completed financial year

- (A) if the issuer has filed an initial AIF for its most recently completed financial year that has been accepted for filing under this Instrument, the initial AIF,
 - (B) if the issuer has filed a renewal AIF under this Instrument for its most recently completed financial year, the renewal AIF,
 - (C) if the issuer has not filed an AIF for its most recently completed financial year and has filed an initial AIF for the financial year preceding its most recently completed financial year that has been accepted for filing under this Instrument, the initial AIF, or
 - (D) if the issuer has not filed an AIF for its most recently completed financial year and has filed a renewal AIF under this Instrument for the financial year preceding its most recently completed financial year, the renewal AIF,
- (ii) at any time after 180 days following the issuer's most recently completed financial year,
- (A) if the issuer has filed an initial AIF for its most recently completed financial year that has been accepted for filing under this Instrument, the initial AIF, or
 - (B) if the issuer has filed a renewal AIF under this Instrument for its most recently completed financial year, the renewal AIF, or
- (iii) an AIF of the issuer filed before this Instrument came into force that would constitute a "Current AIF" for the purposes of NP47 if that instrument was applicable;

"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" means an individual who is or at any time during the most recently completed financial year was

- (a) a chair of the issuer, if that individual performed the functions of the office on a full time basis,
- (b) a vice-chair of the issuer, if that individual performed the functions of the office on a full time basis,
- (c) the president of the issuer,
- (d) a vice-president of the issuer in charge of a principal business unit, division, or function such as sales, finance, or production,
- (e) an officer of the issuer or any of its subsidiaries who performed a policy-making function in respect of the issuer, or
- (f) any other person who performed a policy-making function in respect of the issuer;

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

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

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

"44-101 regulator" means, for an issuer filing an AIF, preliminary short form prospectus, short form prospectus or amendment to a short form prospectus,

- (a) the regulator in the local jurisdiction, if the issuer has not elected to use the MRRS, or
- (b) the person referred to in Appendix D of National Instrument 14-101 Definitions opposite the name of the jurisdiction that acts as principal regulator for the review of the document under National Policy 43-201 Mutual Reliance Review System for Prospectuses and Annual Information Forms, together with the regulator in each

jurisdiction, if any, that has opted out of, without having opted back into, the MRRS, if the issuer has elected to use the MRRS;

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

"initial AIF" means an AIF, as may be revised from time to time, filed by an issuer in the local jurisdiction, if at the time of filing the issuer either

- (a) has not previously had a current AIF in the local jurisdiction, or
- (b) previously had a current AIF in the local jurisdiction and no longer has one;

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

"investee" means an entity that the Handbook recommends that an issuer account for by the equity method or the proportionate consolidation method;

"MD&A" means the management's discussion and analysis of financial condition and results of operations of an issuer required to be disclosed in an AIF;

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

"MRRS" has the meaning ascribed to that term in National Policy 43-201;

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

"NP47" means National Policy Statement No. 47 Prompt Offering Qualification System;

"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;

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

"principal obligor" means, for an asset-backed security, a person or company that is obligated to make payments, has guaranteed payments, or has provided alternative credit support for payments, on financial assets that represent a third or more of the aggregate amount owing on all of the financial assets underlying the asset-backed security;

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

"probable acquisition of related businesses" means

- (a) a proposed acquisition of related businesses if each proposed acquisition has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high, or
- (b) a completed acquisition of a business and a proposed acquisition of a business if
 - (i) the proposed acquisition has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high, and
 - (ii) if
 - (A) the businesses were under common control or management prior to the date of the acquisition,

- (B) the proposed acquisition was conditional upon the completed acquisition; or
- (C) each acquisition is contingent on a single common event;

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

"renewal AIF" means an AIF filed by an issuer in the local jurisdiction, as may be revised from time to time, if at the time of filing the issuer had a current AIF;

"reorganization" means

- (a) a statutory amalgamation,
- (b) a statutory merger, or
- (c) a statutory arrangement;

"SEDAR" has the meaning ascribed to that term in National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR);

"significance tests" means the tests set out in subsection 1.2(2) and, if applicable, subsection 1.2(3), used to determine if an acquisition of a business, an acquisition of related businesses, a probable acquisition of a business or a probable acquisition of related businesses is a significant acquisition for purposes of this Instrument;

"specified 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;

"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;

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

"underlying interest" means, for a specified 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 specified derivative is derived, referenced or based; and

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

1.2 Significant Acquisitions

- (1) **Significant Acquisitions** - Unless the context otherwise requires, the term "significant acquisition" refers to an acquisition of a business, an acquisition of related businesses, a probable acquisition of a business or a probable acquisition of related businesses that satisfies any of the significance tests.
- (2) **Required Significance Tests at Date of Acquisition** - For the purposes of this Instrument, an acquisition of a business, an acquisition of related businesses, a probable acquisition of a business or a probable acquisition of related businesses is a significant acquisition, if it satisfies any of the following three tests:
 1. **The Asset Test.** The issuer's proportionate share of the consolidated assets of the business or related businesses exceeds 20 per cent of the consolidated assets of the issuer calculated using the audited financial statements of each of the issuer and the business or the related businesses for the most recently completed financial year of the issuer ended before the date of the acquisition.
 2. **The Investment Test.** The issuer's consolidated investments in and advances to the business or the related businesses exceeds 20 per cent of the consolidated assets of the issuer as at the last day of the most recently completed financial year of the issuer ended before the date of the acquisition for which audited financial statements are included in the short form prospectus, excluding any investments in or

advances to the business or the related businesses as at that date.

3. **The Income Test.** The issuer's proportionate share of the consolidated income from continuing operations of the business or related businesses exceeds 20 per cent of the consolidated income from continuing operations of the issuer calculated using the audited financial statements of each of the issuer and the business or related businesses for the most recently completed financial year of each ended before the date of the acquisition.

(3) **Optional Significance Tests Subsequent to the Date of Acquisition** - If an acquisition of a business, an acquisition of related businesses, a probable acquisition of a business or a probable acquisition of related businesses is significant based on the significance tests in subsection (2), the issuer may re-calculate the significance at a more recent date as follows:

1. **The Asset Test.** The issuer's proportionate share of the total consolidated assets of the business or the related businesses, as at the date of the issuer's most recent balance sheet included in the short form prospectus, exceeds 20 per cent of the consolidated assets of the issuer, as at the date of the issuer's most recent balance sheet included in the short form prospectus, without giving effect to the acquisition.
2. **The Investment Test.** The issuer's consolidated investments in and advances to the business or the related businesses as at the date of the acquisition or the proposed date of the acquisition exceeds 20 per cent of the consolidated assets of the issuer as at the date of the issuer's most recent balance sheet included in the short form prospectus for a period that ends before the date of the acquisition, excluding any investments in or advances to the business or related business as at that date.
3. **The Income Test.** The income from continuing operations calculated pursuant to the following clause (a) exceeds 20 per cent of the income from continuing operations calculated pursuant to the following clause (b):

- (a) The issuer's proportionate share of the consolidated income from continuing operations of the business or the related businesses for the later of
 - (i) the most recently completed financial year of the business or the related businesses that ended more than 90 days before the date of the short form prospectus, or
 - (ii) the 12 months ended on the last day of the most recently completed interim period of the business or related businesses that ended more than 60 days before the date of the short form prospectus.
 - (b) The issuer's consolidated income from continuing operations for the later of
 - (i) the most recently completed financial year, without giving effect to the acquisition, or
 - (ii) the 12 months ended on the last day of the most recently completed interim period of the issuer for which financial statements are included in the short form prospectus, without giving effect to the acquisition.
- (4) If an issuer re-calculates the significance of an acquisition of a business, an acquisition of related businesses, a probable acquisition of a business or a probable acquisition of related businesses pursuant to subsection (3) and none of the significance tests in that subsection is met, the acquisition is not a significant acquisition for purposes of this Instrument.
- (5) Despite subsection (3), the significance of an acquisition of a business, an acquisition of related businesses, a probable acquisition of a business or a probable acquisition of related businesses may be re-calculated only if, subsequent to the acquisition date, the business or related businesses remained substantially intact, were not significantly reorganized, and no significant assets and liabilities were transferred to other entities.

- (6) Despite subsection (2), the significance of an acquisition of a business, an acquisition of related businesses, a probable acquisition of a business or a probable acquisition of related businesses may be calculated using unaudited financial statements of the business or related business prepared in accordance with GAAP if the financial statements of the business or related businesses for the most recently completed financial year prior to the date of the acquisition have not been audited.
- (7) In determining whether an acquisition of related businesses or a probable acquisition of related businesses is a significant acquisition, the related businesses shall be considered on a combined basis.
- (8) If an issuer has accounted for an acquisition as a reverse take-over in accordance with Item 12.7 of Form 44-101F3 for the purposes of subsections (2) and (3), the legal parent, as that term is used in the Handbook, shall be considered the business.
- (9) For the purposes of the significance tests in subsections (2) and (3), financial statements of the business or the related businesses which are prepared in accordance with foreign GAAP or denominated in a foreign currency shall be reconciled to Canadian GAAP or translated into Canadian dollars, respectively.

1.3 Application of the Income Test

- (1) For the purposes of paragraph 3 of each of subsections 1.2(2) and 1.2(3), if any of the issuer, the business or the related businesses has incurred a loss, the test shall be applied using the absolute value of the loss.
- (2) For the purpose of calculating the significance of individually insignificant unrelated multiple acquisitions, entities reporting losses from continuing operations shall not be aggregated with entities reporting income from continuing operations.
- (3) **Lower than Average Income of the Issuer-Required Significance Tests** - For the purposes of paragraph 3 of subsection 1.2(2), if the issuer's consolidated income from continuing operations for the most recently completed financial year referred to in subsection 1.2(2) was

1. positive, and
2. lower by 20 per cent or more than the average consolidated income from continuing operations of the issuer for the three most recently completed financial years,

then, the average consolidated income for the three most recently completed financial years may, subject to subsection (6), be substituted in determining whether the significance test set out in subsection 1.2(2) is satisfied.

- (4) **Lower than Average Income of the Issuer - Optional Significance Tests Using Most Recently Completed Financial Year** - For the purposes of paragraph 3 of subsection 1.2(3), if the issuer's consolidated income from continuing operations for the most recently completed financial year referred to in subclause 3(b)(i) of subsection 1.2(3) was

1. positive, and
2. lower by 20 per cent or more than the average consolidated income from continuing operations of the issuer for the three most recently completed financial years,

then, the average consolidated income for the three most recently completed financial years may, subject to subsection (6), be substituted in determining whether the significance test set out in paragraph 3 of subsection 1.2(3) is satisfied.

- (5) **Lower than Average Income of the Issuer - Optional Significance Tests Using Most Recently Completed Twelve Months** - For the purposes of paragraph 3 of subsection 1.2(3), if the issuer's consolidated income from continuing operations for the most recently completed 12 month period referred to in subclause 3(b)(ii) of subsection 1.2(3) was

1. positive, and
2. lower by 20 per cent or more than the average consolidated income from continuing operations of the issuer for the three previous 12 month periods,

then, the average consolidated income for the three previous 12 month periods may, subject to subsection (6), be substituted in determining whether the significance test set out in paragraph 3 of subsection 1.2(3) is satisfied.

- (6) **Loss** - If the issuer's consolidated income from continuing operations for either of the two earlier financial years referred to in subsection (3) and (4), or either of the two earlier 12 month periods referred to in subsection (5), is a loss, the issuer's income from continuing operations for that period is considered to be zero for the purposes of calculating the average consolidated income for the three previous periods.

1.4 **Probable Acquisitions**

- (1) The term "probable acquisition" refers to a probable acquisition of a business and a probable acquisition of related businesses.
- (2) The term "significant probable acquisition" refers to a probable acquisition of a business or a probable acquisition of related businesses that is a significant acquisition under section 1.2.

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

1.6 **Significant Dispositions**

- (1) **Dispositions** - Unless the context otherwise requires, the term "disposition" refers to a completed or probable disposition of a business, a business segment, or a significant portion of a business, either by sale, abandonment or distribution to shareholders.
- (2) **Required Significance Tests using Most Recently Completed Financial Year** - For the purposes of this Instrument, a disposition of a business, a business segment or a significant portion of a business, is a significant disposition if it satisfies either of the following tests:

1. **The Asset Test for Dispositions** - The issuer's proportionate share of the consolidated assets of the business, business segment or significant portion of a business, exceeds 20 per cent of the consolidated assets of the issuer as at the date of the audited financial statements of the issuer for its most recently completed financial year ended before the date of the disposition for which financial statements are included in the short form prospectus, without giving effect to the disposition.
2. **The Income Test for Dispositions** - The issuer's proportionate share of the consolidated income from continuing operations of the business, business segment or significant portion of a business, for the most recently completed financial year of the business, business segment or significant portion of a business, before the date of the disposition exceeds 20 per cent of the total consolidated income from continuing operations of the issuer for the most recently completed financial year of the issuer before the date of the disposition for which financial statements are included in the short form prospectus, without giving effect to the disposition.

- 1.7 **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.
- 1.8 **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.
- 1.9 **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.
- 1.10 **Interpretation of "Short Form Prospectus"** - In this Instrument, unless other wise stated, a reference to a short form prospectus includes a preliminary short form prospectus.

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

2.1 Short Form Prospectus

- (1) An issuer shall not file a prospectus in the form of Form 44-101F3 Short Form Prospectus, unless the issuer is qualified under section 2.2, 2.3, 2.4, 2.5, 2.6, 2.7 or 2.8 to file a prospectus in the form of a short form prospectus.

- (2) An issuer that is qualified under section 2.2, 2.3, 2.4, 2.5, 2.6, 2.7 or 2.8 to file a prospectus in the form of a short form prospectus or that has been exempted from subsection (1) under section 15.1 may file
 - (a) a preliminary prospectus, prepared and certified in the form of Form 44-101F3 Short Form Prospectus, pertaining to a type of securities for which the issuer is qualified under this Instrument or permitted under any exemption to file a short form prospectus; and

 - (b) a prospectus, prepared and certified in the form of Form 44-101F3 Short Form Prospectus, pertaining to a type of securities for which the issuer is qualified under this Instrument or permitted under any exemption to file a short form prospectus.

- (3) An issuer that filed and obtained a receipt for a preliminary short form prospectus for a distribution of securities under NP47
 - (a) is considered to have satisfied the requirement in securities legislation to file and obtain a receipt for a preliminary prospectus for the distribution unless, in the case where securities legislation provides for lapsing of a preliminary prospectus, the issuer's preliminary short form prospectus has lapsed; and

 - (b) may file a prospectus, prepared and certified in the form of Form 44-101F3 Short Form Prospectus, for the distribution if in the case where securities legislation provides for lapsing of a preliminary prospectus, the issuer's preliminary short form prospectus has not lapsed.

- (4) If an issuer, before the coming into force of this Instrument, filed and obtained a receipt under NP47 for a short form prospectus pertaining to a distribution of securities, the prospectus requirement does not apply to the distribution only insofar as the prospectus requirement concerns the form and content of a preliminary prospectus and prospectus and only for one year from the date of the receipt issued for the short form prospectus pertaining to the distribution.
- (5) A short form prospectus shall, 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.

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. Either paragraph (a) or (b) is true:
 - (a) the issuer is a reporting issuer in the local jurisdiction and the issuer
 - (i) has been a reporting issuer in the local jurisdiction for the 12 calendar months preceding the date of the filing of its most recent AIF, or
 - (ii) is, and has been for the 12 calendar months preceding the date of the filing of its most recent AIF, a reporting issuer under Canadian securities legislation in at least one jurisdiction, other than the local jurisdiction, and has filed in the local jurisdiction all continuous disclosure documents that it was required to file during the 12 calendar months preceding the date of the filing of its most recent AIF under Canadian securities legislation of any jurisdiction in which it has been a reporting issuer; or
 - (b) all of the following are true:

1. The issuer is not a reporting issuer in the local jurisdiction.
 2. The securities regulatory authority is unable to deem the issuer to be, or designate the issuer as, a reporting issuer.
 3. The issuer is, and has been for the 12 calendar months preceding the date of the filing of its most recent AIF, a reporting issuer under Canadian securities legislation in at least one jurisdiction, other than the local jurisdiction.
 4. The issuer has filed in the local jurisdiction all continuous disclosure documents that it was required to file during the 12 calendar months preceding the date of the filing of its most recent AIF under Canadian securities legislation of any jurisdiction in which it has been a reporting issuer.
 5. The issuer has provided an undertaking to the securities regulatory authority that it will file all continuous disclosure documents that it would be required to file under securities legislation if it were a reporting issuer from the time of the filing of its most recent AIF until the issuer becomes a reporting issuer.
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2. The issuer has a current AIF.
 3. 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.
 4. If the issuer is filing a preliminary short form prospectus more than 90 days after the end of its most recently completed financial year, the issuer has filed audited financial statements for that year.

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
 - (a) a reporting issuer in the local jurisdiction; or
 - (b) a reporting issuer under Canadian securities legislation in at least one jurisdiction, other than the local jurisdiction, and satisfies the criterion in subparagraph 5 of paragraph 1(b) of section 2.2.
2. The issuer has a current AIF.
3. 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.
4. If the issuer is filing a preliminary short form prospectus more than 90 days after the end of its most recently completed financial year, the issuer has filed audited financial statements for that year.

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 satisfies either of the 12 month reporting issuer history criteria in paragraph 1 of section 2.2.
 2. The issuer has a current AIF.
 3. 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 downgraded 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. If the issuer is filing a preliminary short form prospectus more than 90 days after the end of its most recently completed financial year, the issuer has filed audited financial statements for that year.
- (2) Paragraph 3 of subsection (1) does not apply to an issuer filing a preliminary short form prospectus that is a base shelf prospectus under National Instrument 44-102 Shelf Distributions.

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 person or company
 - (a) fully and unconditionally guarantees the payments to be made by the issuer of securities as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities 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;
or

- (b) provides alternative credit support for the payments to be made by the issuer of securities as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities, that

- (i) in the case

- (A) where the securities are rated, 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 person or company providing the support, or

- (B) where the securities are not rated, would result, if the securities were rated, 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, and

- (ii) 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.

2. The credit supporter

- (a) satisfies

- (i) either of the 12 month reporting issuer history criteria in paragraph 1 of section 2.2, or

(ii) both

(A) the reporting issuer criterion in paragraph 1 of section 2.3, and

(B) 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; and

(b) has a current AIF.

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. If the issuer is filing a preliminary short form prospectus more than 90 days after the end of the most recently completed financial year of the credit supporter, the credit supporter has filed audited financial statements for that year.

- (2) For the purpose of paragraph 1 of subsection (1), 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.
- (3) Subparagraph 3(b) of subsection 2.5(1) does not apply to an issuer filing a preliminary short form prospectus that is a base shelf prospectus under National Instrument 44-102 Shelf Distributions.

2.6

Alternative Qualification Criteria for Issuers of Guaranteed Convertible Debt Securities or Preferred Shares

- (1) 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

- (a) fully and unconditionally guarantees the payments to be made by the issuer of the securities as stipulated in the terms of the securities or in an agreement governing the rights of 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; or
- (b) provides alternative credit support for the payments to be made by the issuer of the securities as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities, that
 - (i) in the case
 - (A) where the securities are rated, 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
 - (B) where the securities are not rated, would result, if the securities were rated, 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, and
 - (ii) 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.

2. The credit supporter

(a) satisfies

(i) both

(A) either of the 12 month reporting issuer history criteria in paragraph 1 of section 2.2, and

(B) 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

(ii) both

(A) the reporting issuer criterion in paragraph 1 of section 2.3, and

(B) 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; and

(b) has a current AIF.

3. If the issuer is filing a preliminary short form prospectus more than 90 days after the end of the most recently completed financial year of the credit supporter, the credit supporter has filed audited financial statements for that year.

- (2) For the purpose of paragraph 1 of subsection (1), 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.

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 has a current AIF.
 2. 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 downgraded 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.
 3. If the issuer is filing a preliminary short form prospectus more than 90 days after the end of its most recently completed financial year, the issuer has filed financial statements for that year.
- (2) Paragraph 2 of subsection 2.7(1) does not apply to an issuer filing a preliminary short form prospectus that is a base shelf prospectus under National Instrument 44-102 Shelf Distributions.

2.8 Alternative Qualification Criteria Following Reorganizations - A successor 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 successor issuer is deemed, under section 2.10, to have, or otherwise has, a current AIF.
2. The successor issuer is a reporting issuer under Canadian securities legislation of any jurisdiction.
3. The aggregate market value of the successor 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 successor issuer's preliminary short form prospectus.
4. The aggregate market value of the equity securities of at least one of the participants, 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 reorganization.
5. One of the participants satisfies the criterion in paragraph 4 and the 12 month reporting issuer history criterion in paragraph 1 of section 2.2.
6. If the successor issuer is filing a preliminary short form prospectus more than 90 days after the end of its most recently completed financial year, the successor issuer has filed audited financial statements for that year.

2.9 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, mutual fund or non-redeemable 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.

2.10

Adoption by Successor Issuer of a Participant's AIF Following a Reorganization - A successor issuer that notifies the regulator that it has adopted as its own AIF the AIF of a participant in the reorganization, as a result of which the successor issuer exists, is deemed to have a current AIF for the purposes of securities legislation, if the AIF was a current AIF of the participant at the time of the reorganization, until the earlier of

- (a) the date the successor issuer files an AIF; and
- (b) either
 - (i) the date the AIF ceases to be a current AIF of the participant, if the participant continues to exist after the reorganization, or
 - (ii) the date that is 140 days following the end of the financial year to which the AIF relates, if the participant did not continue to exist after the reorganization.

PART 3 AIF

3.1 Initial AIF

- (1) An issuer filing an initial AIF shall file the AIF in Form 44-101F1 or the form referred to in section 3.4.
- (2) If an issuer revises its initial AIF, the issuer shall promptly
 - (a) file in all jurisdictions in which the initial AIF was filed the revised initial AIF and a copy of the revised initial AIF, blacklined to show changes from the initial AIF; and
 - (b) send a copy of the revised initial AIF to each person and company that was sent an initial AIF.
- (3) An issuer shall file a French language version of its initial AIF before sending the French language version of the AIF to an investor or prospective investor.
- (4) An issuer that has prepared a French language version of its initial AIF shall file the French language version of the initial AIF and any supporting documents in New Brunswick concurrently with or as soon as practicable after filing the English language version of those documents in that Province.

3.2 Renewal AIF Filing Procedures

- (1) An issuer filing a renewal AIF shall file the AIF in Form 44-101F1 or the form referred to in section 3.4.
- (2) An issuer filing a renewal AIF for a financial year in which the issuer made a significant acquisition of a business or a significant acquisition of related businesses, or was a party to a reorganization that was material to the issuer, shall state in a covering letter accompanying the renewal AIF that the acquisition or reorganization occurred.
- (3) An issuer that intends to file a preliminary short form prospectus within 10 days of filing its renewal AIF should notify the 44-101 regulator of this intention at the time of filing its renewal AIF or, if the decision is not yet made at that time, then immediately upon making the decision.
- (4) The 44-101 regulator may decide to review a renewal AIF at any time, in which case the 44-101 regulator shall
 - (a) notify the issuer that the 44-101 regulator will be reviewing the renewal AIF;
 - (b) review the renewal AIF; and
 - (c) send the issuer upon completion of the review a notice that the review of the renewal AIF has been completed.
- (5) Upon receipt of a notice from the 44-101 regulator that its renewal AIF is being reviewed, an issuer shall promptly file the renewal AIF again, with the statement required under Item 1.2 of Form 44-101F1 added, in all jurisdictions in which the renewal AIF was filed.
- (6) An issuer shall promptly notify the 44-101 regulator if the issuer intends to file a short form prospectus after the 44-101 regulator has notified the issuer that its renewal AIF will be reviewed and before the 44-101 regulator has notified the issuer that the review has been completed.

- (7) If an issuer revises its renewal AIF, the issuer shall promptly
 - (a) file in all jurisdictions in which the renewal AIF was filed the revised renewal AIF and a copy of the revised renewal AIF, blacklined to show changes from the renewal AIF; and
 - (b) send a copy of the revised renewal AIF to each person and company that was sent a renewal AIF.
- (8) An issuer shall file a French language version of its renewal AIF before sending the French language version of the AIF to an investor or prospective investor.
- (9) An issuer that has prepared a French language version of its renewal AIF shall file the French language version of the renewal AIF and any supporting documents in New Brunswick concurrently with or as soon as practicable after filing the English language version of those documents in that Province.

3.3 Supporting Documents

- (1) In addition to any other requirement of securities legislation, an issuer that files an initial AIF and a renewal AIF shall
 - (a) file the following:
 - 1. **Material Incorporated by Reference** - Copies of all material incorporated by reference in the initial AIF or renewal AIF and not previously filed.
 - 2. **Mining Reports** - The technical reports required to be filed with an AIF under National Instrument 43-101 Standards of Disclosure for Mineral Projects and not previously filed, if the issuer has a mineral project; and
 - (b) deliver to the regulator the following:
 - 1. **Personal Information** - For each director and executive officer of the issuer for whom the issuer has not previously delivered to the regulator the

following information, a statement containing that individual's

- (a) full name;
- (b) position with or relationship to the issuer;
- (c) employer's name and address, if other than the issuer;
- (d) full residential address;
- (e) date and place of birth; and
- (f) citizenship.

2. Authorization of Collection of Information - An authorization in the form set out in Appendix A to the collection of personal information.

- (2) An issuer that files an AIF in the form of an annual report on Form 10-K, or on Form 20-F, under the 1934 Act shall file an undertaking with the regulator to the effect that the issuer will provide to any person or company, upon request to the secretary of the issuer, the documents listed in Item 9.1(1) of Form 44-101F1.

3.4 Alternative Form of AIF

- (1) An issuer that has securities registered under section 12 of the 1934 Act or has a reporting obligation under subsection 15(d) of the 1934 Act may file an AIF in the form of a current annual report on Form 10-K, or on Form 20-F, under the 1934 Act.
- (2) An issuer subsisting under the laws of a foreign jurisdiction that files an AIF in the form of a current annual report on Form 20-F under subsection (1) shall file the AIF within 180 days after the end of its most recently completed financial year.

PART 4 DISCLOSURE IN A SHORT FORM PROSPECTUS OF FINANCIAL STATEMENTS FOR SIGNIFICANT ACQUISITIONS

4.1 Scope - This Part applies only to

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

4.2 Financial Statement Disclosure for Significant Acquisitions Completed During the Issuer's Three Most Recently Completed Financial Years

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

Annual Financial Statements

- 1. Statements of income, retained earnings and cash flows for at least the periods specified in section 4.6.

Interim Financial Statements

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

***Pro Forma* Income Statement**

3. A *pro forma* income statement prepared in accordance with subsection 4.5(1)2(a).
 4. *Pro forma* earnings per share based on the *pro forma* income statement referred to in paragraph 3.
- (2) If an issuer is required under subsection (1) to include financial statements in a short form prospectus for more than one business because the significant acquisition involves an acquisition of related businesses, the financial statements required under subsection (1) shall be presented separately for each business, except that the issuer may present the financial statements of the businesses on a combined basis for the periods during which the businesses were under common control or management.

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

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

Annual Financial Statements

1. Statements of income, retained earnings and cash flows for at least the periods specified in section 4.6.
2. A balance sheet as at the date on which each of the periods specified in section 4.6 ended, except that, if section 4.6 specifies that separate financial statements of the business are to be included for three financial years, a balance sheet as at the last day of the earliest of the three financial years is not required.

Interim Financial Statements

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

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

Pro Forma Financial Statements

- 5. *Pro forma* financial statements prepared in accordance with subsection 4.5.
 - 6. *Pro forma* earnings per share based on the *pro forma* financial statements referred to in paragraph 5.
- (2) If an issuer is required under subsection (1) to include financial statements in a short form prospectus for more than one business because the significant acquisition involves an acquisition of related businesses or a probable acquisition of related businesses, the financial statements required under subsection (1) shall be presented separately for each business except the issuer may present the financial statements of the businesses on a combined basis for the periods during which the businesses have been under common control or management.

4.4 Financial Statement Disclosure for Significant Probable Acquisitions

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

Annual Financial Statements

- 1. Statements of income, retained earnings and cash flows for at least the periods specified in section 4.6.

2. A balance sheet as at the date on which each of the periods specified in section 4.6 ended, except that, if section 4.6 specifies that separate financial statements of the business are to be included for three financial years, a balance sheet as at the last day of the earliest of the three financial years is not required.

Interim Financial Statements

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

***Pro Forma* Financial Statements**

5. *Pro forma* financial statements prepared in accordance with subsection 4.5.
 6. *Pro forma* earnings per share based on the *pro forma* financial statements referred to in paragraph 5.
- (2) If an issuer is required under subsection (1) to include financial statements in a short form prospectus for more than one business because the significant acquisition involves an acquisition of related businesses or a probable acquisition of related businesses, the financial statements required under subsection (1) shall be presented separately for each business, except the issuer may present the financial statements of the businesses on a combined basis for periods during which the businesses have been under common control or management.

4.5 Pro Forma Financial Statements

(1) If an issuer is required to include *pro forma* financial statements in the short form prospectus under sections 4.2, 4.3, 4.4 or 5.2, the issuer shall prepare *pro forma* financial statements as follows:

1. **Pro forma balance sheet** - A *pro forma* balance sheet of the issuer shall be prepared as at the date of the issuer's most recent balance sheet included in the short form prospectus to give effect to, as if they had taken place as at the date of the *pro forma* balance sheet,

(a) significant acquisitions that have been completed, but are not reflected in the issuer's most recent balance sheet included in the short form prospectus; and

(b) significant probable acquisitions.

2. **Pro forma income statement** - A *pro forma* income statement of the issuer shall be prepared to give effect to

(a) significant acquisitions completed during the most recently completed financial year of the issuer as if they had taken place at the beginning of the most recently completed financial year of the issuer for which audited financial statements are included in the short form prospectus; and

(b) the acquisitions referred to in clauses (i) and (ii)

(i) significant acquisitions completed during the issuer's current financial year, and

(ii) significant probable acquisitions,

for each of the financial periods referred to in the following paragraphs:

- A. the most recently completed financial year of the issuer for which audited financial statements are included in the short form prospectus; and
- B. the most recently completed interim period of the issuer for which financial statements are included in the short form prospectus,

as if they had taken place at the beginning of the most recently completed financial year of the issuer for which audited financial statements are included in the short form prospectus.

- (2) If an issuer includes in a short form prospectus a *pro forma* financial statement prepared in accordance with subsection (1) which gives effect to more than one significant acquisition or significant probable acquisition, the *pro forma* financial statement shall separately identify each significant completed or probable acquisition.
- (3) If an issuer is required to include *pro forma* financial statements in a short form prospectus, the issuer shall include in the *pro forma* financial statements a description of the underlying assumptions on which the *pro forma* financial statements are prepared, cross-referenced to each related *pro forma* adjustment.
- (4) If an issuer is required under paragraph 2 of subsection (1) to include a *pro forma* income statement in a short form prospectus for the most recently completed financial year of the issuer and both of the following conditions are satisfied:
 - (a) the *pro forma* income statement is not prepared using the income statement of the business for the pre-acquisition period, and

- (b) the financial year end of a business differs from the issuer's year end by more than 93 days, then, despite paragraph 2 of subsection (1), for purposes of preparing the *pro forma* income statement, the income statement of the business shall be for a period of twelve consecutive months ending no more than 93 days from the issuer's year end.
- (5) Subject to subsection (4), if an issuer is required to prepare the *pro forma* income statements referred to in clauses (1)2(b)A and (1)2(b)B, and the *pro forma* income statement referred to in clause A includes results of the business which are also included in the *pro forma* income statement referred to in clause B, there shall be disclosed in a note to the *pro forma* financial statements the revenue, expenses, gross profit and income from continuing operations included in the *pro forma* income statements for the overlapping period.

4.6 Reporting Periods

- (1) **Exception to Requirement to Include Financial Statements - No financial statements are required under section 4.2 to be included in a short form prospectus if**
 - (a) the results of the business for a complete financial year have been reflected in the audited consolidated financial statements of the issuer included in the short form prospectus; and
 - (b) none of the significance tests would be satisfied if the 20 per cent threshold in the significance tests was changed to 100 per cent.
- (2) **Acquisitions at the 100% Significance Level - If the results of the business for a complete financial year have been reflected in the audited consolidated financial statements of the issuer included in the short form prospectus and any of the significance tests would be satisfied if the 20 per cent threshold in the significance tests was changed to 100 per cent, separate financial statements of the business are required for as many periods before the acquisition as may be necessary so that when these periods are added to the periods for which the issuer's financial statements in the short form prospectus include the results of the business, financial statements**

reflecting the results of the business, either separately or on a consolidated basis, are included for a total of three years or each of the completed financial years of the business, if the business has not been in existence for three completed financial years.

(3) Subject to subsections (1) and (2), the periods for which the financial statements are required under paragraphs 1 and 2 of subsections 4.2(1), 4.3(1) and 4.4(1) to be included in a short form prospectus shall be determined by reference to the significance tests as follows:

1. **Acquisitions Significant between 20% and 40%** - If none of the significance tests is satisfied if the 20 per cent threshold is changed to 40 per cent, financial statements shall be included for

- (a) the most recently completed financial year of the business ended more than 90 days before the date of the short form prospectus; or
- (b) if the business has not completed one financial year, the financial period from the date of formation to a date not more than 90 days before the date of the short form prospectus.

2. **Acquisitions Significant between 40% and 50%** - If any of the three significance tests are satisfied if the 20 per cent threshold is changed to 40 per cent, but none of the three significance tests is satisfied if the 20 per cent threshold is changed to 50 per cent, financial statements shall be included for

- (a) each of the three most recently completed financial years of the business ended more than 90 days before the date of the short form prospectus;
- (b) if the business has not completed two financial years, each completed financial year ended more than 90 days before the date of the short form prospectus; or

(c) if the business has not completed one financial year, the financial period from the date of formation to a date not more than 90 days before the date of the short form prospectus.

3. **Acquisitions Significant at 50% or greater** - If any of the three significance tests are satisfied if the 20 per cent threshold is changed to 50 per cent, financial statements shall be included for

(a) each of the three most recently completed financial years of the business ended more than 90 days before the date of the short form prospectus;

(b) if the business has not completed three financial years, each completed financial year ended more than 90 days before the date of the short form prospectus; or

(c) if the business has not completed one financial year, the financial period from the date of formation to a date not more than 90 days before the date of the short form prospectus.

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

(1) An issuer shall include in its short form prospectus annual and interim financial statements of a business for a financial period that ended before the date of the acquisition and is more recent than the periods for which financial statements are required under subsections 4.2(1), 4.3(1) and 4.4(1) if, before the short form prospectus is filed, the financial statements for the more recent period have been filed.

(2) If, before the short form prospectus is filed, financial information of a business for a period more recent than for the period for which financial statements are required under subsections 4.2(1), 4.3(1) and 4.4(1), is publicly disseminated by news release or otherwise by or on behalf of the issuer, the issuer shall include in the short form prospectus the content of the news release or public communication.

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

- (1) Despite subsection 4.6(3), an issuer may omit separate financial statements of a business for the earliest financial year otherwise required under subsection 4.6(3), if audited financial statements of the business are included in the short form prospectus for a financial year ended 90 days or less before the date of the short form prospectus.
- (2) Despite subsection 4.6(3), an issuer may omit separate financial statements of a business for the earliest financial year otherwise required under subsection 4.6(3) if
 - (a) separate financial statements of a business are required under subsection 4.6(3) for more than one financial year;
 - (b) audited financial statements are included in the short form prospectus for a period of at least nine months in the financial year after the most recent year for which separate financial statements are required under subsection 4.6(3);
 - (c) the issuer has not relied upon the exception in section 4.9; and
 - (d) the business is not seasonal.
- (3) Despite subsections 4.2(1), 4.3(1) and 4.4(1), an issuer may omit from a short form prospectus the financial statements of a business for the interim period otherwise required under subsections 4.2(1), 4.3(1) and 4.4(1) if annual financial statements of the business are included in the short form prospectus for a financial year ended 90 days or less before the date of the short form prospectus.

4.9 Exception to Disclosure Requirements for Significant Acquisitions if Financial Year End Changed - Despite section 4.6, if a business changed its financial year end once during any of its financial years for which financial statements are required to be included in the short form prospectus, the issuer may include financial statements for the transition year in satisfaction of the financial statements for one of the years under section 4.6 provided that the transition year is at least nine months.

4.10 Exception to Disclosure Requirements for Significant Acquisitions Accounted for Using the Equity Method - Despite subsections 4.2(1), 4.3(1) and 4.4(1), an issuer may omit from its short form prospectus the financial statements of a business and the *pro forma* financial statements of an issuer otherwise required under subsections 4.2(1), 4.3(1) and 4.4(1) if

- (a) the acquisition is, or will be, an investment accounted for using the equity method, as that term is defined in the Handbook;
- (b) the short form prospectus includes disclosure for the periods for which financial statements are otherwise required under subsections 4.2(1), 4.3(1) and 4.4(1) that
 - (i) summarizes the assets, liabilities and results of operations of the business, and
 - (ii) describes the issuer's proportionate interest in the business and any contingent issuance of securities by the business that might significantly affect the issuer's share of earnings;
- (c) the financial information provided under paragraph (b) for any completed financial year
 - (i) has been derived from audited financial statements of the business, or
 - (ii) has been audited;
- (d) the short form prospectus
 - (i) identifies the financial statements referred to in paragraph (c)(i) from which the disclosure provided under paragraph (b) has been derived; or
 - (ii) discloses that the financial information provided under paragraph (b), if not derived from audited financial statements, has been audited; and

- (iii) discloses that the audit opinion with respect to the financial statements referred to in (i), or the financial information referred to in (ii), was issued without a reservation of opinion.

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

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

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

- 4.13 Exception to Audit Requirement for Interim Financial Statements of a Business** - Despite section 4.12, an issuer may omit from its short form prospectus an auditor's report for the interim financial statements of a business included in a short form prospectus under this Part.
- 4.14 Exception to Audit Requirement for Recent Financial Statements of a Business** - Despite section 4.12, an issuer may omit from its short form prospectus an auditor's report for the annual financial statements of a business required under subsection 4.8(3), if the auditor has not issued an auditor's report on the financial statements.
- 4.15 Exception to Audit Requirement for Financial Statements of a Business Included in a Previous Prospectus without an Audit Opinion**-Despite section 4.12, an issuer may omit from its short form prospectus an auditor's report for the annual financial statements of a business included in the short form prospectus, other than for the most recently completed financial year of the business for which financial statements are included in the short form prospectus, if
- (a) those financial statements were previously included in a short form prospectus of the issuer without an auditor's report as permitted by this Instrument or pursuant to an exemption granted under this Instrument; and
 - (b) an auditor has not issued an auditor's report on the financial statements.
- 4.16 Compilation Report for *Pro Forma* Financial Statements** -The *pro forma* financial statements included in a short form prospectus under this Part shall be accompanied by a compilation report signed by the auditor and prepared in accordance with the Handbook.

PART 5 FINANCIAL STATEMENT DISCLOSURE FOR MULTIPLE ACQUISITIONS THAT ARE NOT OTHERWISE SIGNIFICANT OR RELATED

- 5.1 Scope** - This Part applies only to an issuer that
- (a) has acquired two or more businesses during its most recently completed financial year;

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

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

5.2 **Historical Financial Statement Disclosure**

- (1) **Application of the Significance Tests** - An issuer shall include in a short form prospectus separate financial statements of each business required under subsection (2) for the periods referred to in subsection (3) if any of the significance tests would be satisfied if
 - (a) the 20 per cent threshold in the significance tests was changed to 50 per cent;
 - (b) the total consolidated assets of the businesses referred to in section 5.1 were considered on a combined basis;
 - (c) the issuer's consolidated investments in and advances to the businesses referred to in section 5.1 were considered on a combined basis; and
 - (d) the consolidated income from continuing operations of the businesses referred to in section 5.1 for the most recently completed financial year of each business ended prior to the acquisition date of each business were considered on a combined basis.
- (2) **Significant Businesses for Reporting Purposes** - An issuer shall include in a short form prospectus the financial statements for a majority of the businesses that satisfy the asset, investment or income test at the highest percentage and which on a combined basis, represent a majority of

- (a) the total consolidated assets of all of the businesses referred to in section 5.1;
 - (b) the issuer's consolidated investments in and advances to all of the businesses referred to in section 5.1; or
 - (c) the consolidated income from continuing operations of all of the businesses referred to in section 5.1.
- (3) An issuer shall include the following financial statements for each business required under subsection (2):

Annual Financial Statements

1. Statements of income, retained earnings, and cash flows for
 - (a) the most recently completed financial year of the business before the date of the acquisition, if the acquisition was completed more than 90 days before the date of the short form prospectus;
 - (b) the most recently completed financial year of the business ended more than 90 days before the date of the short form prospectus, if the acquisition either has not been completed at the date of the short form prospectus or was completed 90 days or less before the date of the short form prospectus; or
 - (c) if a business has not completed one financial year, the financial period from the date of formation to a date not more than 90 days before the date of the short form prospectus.
2. A balance sheet as at the date on which the periods referred to in paragraph 1 ended.

Interim Financial Statements

3. Statements of income, retained earnings and cash flows for
 - (a) the most recently completed interim period of the business ended before the date of the acquisition or

the proposed date of the acquisition and more than 60 days before the date of the short form prospectus; or

(b) the pre-acquisition period.

4. A balance sheet as at the date on which the period referred to in paragraph 3 ended.

Pro Forma Financial Statements

5. *Pro forma* financial statements prepared in accordance with section 4.5.

6. *Pro forma* earnings per share based on the financial statement referred to in paragraph 5.

(4) Despite subsection (3), if the business was acquired before the date of the most recent audited balance sheet of the issuer included in the short form prospectus, the issuer may omit from the short form prospectus the balance sheets of the business referred to in paragraphs 2 and 4.

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

(1) An issuer shall include in its short form prospectus annual and interim financial statements of a business for a financial period that ended before the date of the acquisition and is more recent than the periods for which financial statements are required under section 5.2 if, before the short form prospectus is filed, the financial statements for the more recent period have been filed.

(2) If, before the short form prospectus is filed, financial information of a business for a period more recent than the period for which financial statements are required under section 5.2 is publicly disseminated by news release or otherwise by, or on behalf of, the issuer, the issuer shall include in the short form prospectus the content of the news release or public communication.

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

- (1) Despite section 5.2, an issuer may omit from a short form prospectus, the financial statements of a business for the financial year otherwise required under subsection 5.2(3) if audited financial statements of the business are included in the short form prospectus for a financial year ended 90 days or less before the date of the short form prospectus.
- (2) Despite section 5.2, an issuer may omit from a short form prospectus the financial statements of a business for the interim period otherwise required under subsection 5.2(3) if annual financial statements of the business are included in the short form prospectus for a financial year ended 90 days or less before the date of the short form prospectus.

5.5 Exception to Disclosure Requirements for Multiple Acquisitions if Financial Year End Changed - Despite section 5.2, if a business changed its financial year end during the year for which financial statements are required to be included in the short form prospectus, the issuer may include financial statements for the transition year in satisfaction of the financial statements for the year under paragraphs 1(a) and 1(b) of subsection 5.2(3) provided that the transition year is at least nine months.

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

5.7 Exception to Audit Requirement for Interim Financial Statements of a Business - Despite section 5.6, an issuer may omit from its short form prospectus an auditor's report for the interim financial statements of a business included under this Part.

5.8 Exception to Audit Requirement for Recent Financial Statements of a Business - Despite section 5.6, an issuer may omit from its short form prospectus an auditor's report for the annual financial statements of a business referred to under subsection 5.3(2) if the auditor has not issued an auditor's report on the financial statements.

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

PART 6 ***PRO FORMA* FINANCIAL STATEMENT DISCLOSURE FOR SIGNIFICANT DISPOSITIONS**

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

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

but not to significant dispositions of business segments.

- 6.2** ***Pro Forma* Financial Statements** - If an issuer has made a significant disposition referred to in clause (a) or (b) of section 6.1, the issuer shall include in its short form prospectus the following *pro forma* financial statements:

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

- (b) the issuer's current financial year for each of the financial periods referred to in clause (i) and (ii)
 - (i) the most recently completed financial year of the issuer for which audited financial statements are included in the short form prospectus; and
 - (ii) the most recently completed interim period of the issuer for which financial statements are included in the short form prospectus,

as if they had taken place at the beginning of the most recently completed financial year of the issuer for which audited financial statements are included in the short form prospectus.

- (3) If an issuer includes in a short form prospectus a *pro forma* financial statement prepared in accordance with subsection (2) which gives effect to more than one significant disposition, the *pro forma* financial statement shall separately identify each significant disposition.
- (4) If an issuer is required under this Part to include *pro forma* financial statements in a short form prospectus, the issuer shall include in the *pro forma* financial statements a description of the underlying assumptions on which the *pro forma* financial statements are prepared, cross-referred to each related *pro forma* adjustment.
- (5) **Pro Forma Earnings per Share** - If an issuer is required under this Part to include in a short form prospectus *pro forma* financial statements, the short form prospectus shall include *pro forma* earnings per share based on the *pro forma* financial statements referred to in this Part.
- (6) **Presentation of Pro Forma Financial Statements for Significant Dispositions** - Despite subsection (2), if an issuer is required to include in its short form prospectus *pro forma* financial statements prepared under section 4.5 and subsection (2) of this Part, the issuer shall prepare one set of *pro forma* financial statements which give effect to the significant acquisitions referred to in section 4.5 and the significant dispositions referred to in subsection 6.2(2).

PART 7 GAAP, GAAS, AUDITORS' REPORTS AND OTHER FINANCIAL STATEMENT MATTERS

7.1 Generally Accepted Accounting Principles

- (1) The financial statements of a person or company incorporated or organized in a jurisdiction that are included in a short form prospectus shall be prepared in accordance with Canadian GAAP.
- (2) The financial statements of a person or company incorporated or organized in a foreign jurisdiction that are included in a short form prospectus shall be prepared in accordance with
 - (a) Canadian GAAP; or
 - (b) foreign GAAP, if the notes to the financial statements
 - (i) explain and quantify the effect of material differences between Canadian GAAP and foreign GAAP that relate to measurements, and
 - (ii) provide disclosure consistent with Canadian GAAP requirements to the extent not already reflected in the financial statements.
- (3) If the financial information included in a short form prospectus in accordance with section 4.10 has been derived from financial statements of a person or company incorporated or acquired in a foreign jurisdiction that have been prepared in accordance with foreign GAAP, the information shall be accompanied by a note which explains and quantifies the effect of material differences between Canadian GAAP and foreign GAAP.

- 7.2 Exception to the Requirement to Reconcile Financial Statements Prepared in Accordance with Foreign GAAP** - Despite subsection 7.1(2)(b), if an issuer has made a significant acquisition or is proposing to make a significant acquisition, and is required to provide financial statements of the business under subsection 4.6(2) or paragraph 4.6(3)3 and those financial statements have been prepared in accordance with a foreign GAAP, the reconciliation to Canadian GAAP may be excluded for the earliest of the three years presented.

7.3 Audit Requirement - Financial statements of an issuer included in a short form prospectus, other than the following, shall be accompanied by an auditor's report without a reservation of opinion:

1. Comparative interim financial statements required to be incorporated by reference under paragraph (1)3 of Item 12.1 or paragraph 2 of 12.2 of Form 44-101F3.
2. The comparative annual financial statements of the issuer for the most recently completed financial year if
 - (a) the financial statements are required to be incorporated by reference in a short form prospectus solely by reason of paragraph (1)6 of Item 12.1 of Form 44-101F3;
 - (b) the auditor of the issuer has not issued an auditor's report on the financial statements; and
 - (c) comparative financial statements, together with the accompanying auditor's report, for the year preceding the most recently completed financial year are included in the short form prospectus.
3. The comparative interim financial statements of a credit supporter required to be incorporated by reference under Item 13.2 of Form 44-101F3.

7.4 Generally Accepted Auditing Standards

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

7.5 Foreign Auditor's Report - If the financial statements included in a short form prospectus are accompanied by a foreign auditor's report, the auditor's report shall be accompanied by a statement by the auditor

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

PART 8 AUDIT COMMITTEE REVIEW OF FINANCIAL STATEMENTS INCLUDED IN A SHORT FORM PROSPECTUS

8.1 Audit Committee Review of Financial Statements Included in a Short Form Prospectus - An issuer shall not file a short form prospectus unless each financial statement of a person or company included in the short form prospectus has been reviewed by the audit committee of the board of directors of the person or company, if the person or company has, or is required to have, an audit committee, and approved by the board of directors.

PART 9 DEEMED INCORPORATION BY REFERENCE

9.1 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 Item 12.1 of Form 44-101F3, 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.

9.2 Deemed Incorporation by Reference of Subsequently Filed Documents - If an issuer does not incorporate by reference in its short form prospectus a document required to be incorporated by reference under Item 12.2 of Form 44-101F3, 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 10 FILING REQUIREMENTS FOR A SHORT FORM PROSPECTUS

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

10.2 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 executed on behalf of the issuer by one of its executive officers certifying that all of the criteria on which the issuer is relying in order to be qualified to file a prospectus in the form of a short form prospectus have been satisfied.
3. **Material Incorporated by Reference** - Copies of all material incorporated by reference in the preliminary short form prospectus and not previously filed.
4. **Mining Reports** - If the issuer has a mineral project, the technical reports required to be filed with a preliminary short form prospectus under National Instrument 43-101 Standards of Disclosure for Mineral Projects if that National Instrument is in force and until that National Instrument is in force any technical report or certificate requested to be filed by the regulator.
5. **Oil and Gas Reports** - If the issuer has oil and gas operations, any technical report or certificate relating to oil and gas properties, not previously filed, that

- (i) if the preliminary short form prospectus is filed before a successor instrument to National Policy Statement No. 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators is in force, is requested to be filed by the regulator, in which case the technical report or certificate shall be prepared in accordance with National Policy Statement No. 2-B; and
 - (ii) in any other case, is required to be filed with the preliminary short form prospectus pursuant to a successor instrument to National Policy Statement No. 2-B.
- (b) deliver to the regulator, concurrently with the filing of the preliminary short form prospectus, the following:
1. **Personal Information** - For each director and executive officer of an issuer, each promoter of the issuer or, if the promoter is not an individual, each director and executive officer of the promoter, for whom the issuer has not previously delivered the following information, a statement containing that individual's
 - (i) full name;
 - (ii) position with or relationship to the issuer;
 - (iii) employer's name and address, if other than the issuer;
 - (iv) full residential address;
 - (v) date and place of birth; and
 - (vi) citizenship.

2. **Authorization to Collect Information** - An authorization in the form set out in Appendix A to the collection of personal information.
3. **Calculation of Earnings Coverage** - If the preliminary short form prospectus is filed for a proposed distribution of debt securities having a term to maturity in excess of one year or for a proposed distribution of preferred shares, a letter setting out the calculation of the earnings coverage.
4. **Material Contracts** - Copies of all material contracts to which the issuer is a party that have not previously been filed.
5. **Reports and Valuations** - A copy of each report or valuation referred to in the preliminary short form prospectus for which a consent is required to be filed under section 10.4 and that has not previously been filed, other than a technical report that
 - (i) deals with a mineral project or oil and gas operations; and
 - (ii) is not otherwise required to be filed under paragraphs 4 and 5 of clause 10.2(a).
6. **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 auditor's report.
7. **Comfort Letter regarding Foreign Auditor's Report** - If a financial statement included in a short form prospectus has been prepared in accordance with foreign GAAP or includes a foreign auditor's

report, a letter to the regulators from the foreign auditor that discusses the auditor's expertise

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

10.3 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. **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.
4. **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.

5. **Expert's Consent** - The consents required to be filed under section 10.4.
6. **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 13.2 of Form 44-101F3 to be included in a short form prospectus and a certificate of the credit supporter is not required under Item 20.3 of Form 44-101F3 to be included in the short form prospectus.
7. **Material Contracts** - Copies of all material contracts to which the issuer is a party that have not previously been filed.
8. **Other Mining Reports** - If the issuer has a mineral project, any technical report, certificate or consent required to be filed with a short form prospectus under National Instrument 43-101, if that National Instrument is in force and until that National Instrument is in force, any technical report or certificate requested to be filed by a regulator and not previously filed
9. **Other Oil and Gas Reports** - If the issuer has oil and gas operations, any technical report or certificate not previously filed, that,
 - (i) if the short form prospectus is filed before a successor instrument to National Policy Statement No. 2-B is in effect, is requested to be filed by the regulator, in which case the technical report or certificate shall be prepared in accordance with National Policy Statement No. 2-B; and
 - (ii) in any other case, is required to be filed with the short form prospectus pursuant to a successor instrument to National Policy Statement No. 2-B.

10. 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 10.3 and that has not previously been delivered, other than a technical report that

- (i) deals with a mineral project of an issuer or oil and gas operations; and
- (ii) is not otherwise required to be filed under paragraph 8 or 9; and

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

1. Auditor's Comfort Letter regarding Unaudited Financial Statements -

- (i) a comfort letter to the regulators from the auditor of the issuer or the business, as applicable, prepared in accordance with the relevant standards in the Handbook, if an unaudited financial statement of an issuer or a business is included in a short form prospectus;
- (ii) a comfort letter to the regulators from the auditor of the business, prepared in accordance with the relevant standards in the Handbook, if the prospectus includes unaudited financial information of a business that has been derived from financial statements of a business that are not included in the short form prospectus;
- (iii) a comfort letter to the regulators from the auditor of the business, prepared in accordance with the relevant standards in the Handbook, if a *pro forma* income statement of the issuer included in the short form prospectus includes results of the business

that have been prepared in accordance with subsection 4.5(4);

- (iv) a comfort letter to the regulators from the auditor of the issuer, prepared in accordance with the relevant standards of the Handbook, if a *pro forma* financial statement of the issuer included in the short form prospectus reflects the results of a significant disposition in accordance with Part 6 of this Instrument.

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

10.4 Consent of Experts

- (1) If any solicitor, auditor, accountant, engineer or appraiser, or any other person or company whose profession 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 that use of the report or valuation.

- (2) The consent referred to in subsection (1) shall
 - (a) refer to the report, valuation, statement or opinion stating the date of the report, valuation, statement or opinion, and
 - (b) contain a statement that the person or company referred to in subsection (1)
 - (iii) has read the short form prospectus, and
 - (iv) 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.

10.5 Filing of French Language Version

- (1) Except when the prospectus is filed in Quebec, an issuer shall file a French language version of a preliminary short form prospectus, short form prospectus, any amendment to a preliminary short form prospectus or short form prospectus before sending the French language version of a preliminary short form prospectus, a short form prospectus or an amendment to an investor or prospective investor.
- (2) An issuer that has prepared a French language version of a preliminary short form prospectus, short form prospectus, amendment to a preliminary short form prospectus or short form prospectus file the French language version of the document in New Brunswick concurrently with or as soon as practicable after filing the English language version of the document in that Province.

10.6 Prohibition on Filing - An issuer shall not file a preliminary short form prospectus or a short form prospectus if the issuer is in default in filing or delivering to the regulator a document required to be filed or delivered under securities legislation.

10.7 Material Contracts - An issuer shall make available all material contracts referred to in a short form prospectus for inspection at a reasonable time and place in the local jurisdiction, without charge, during the distribution of the securities being offered under the short form prospectus.

PART 11 AMENDMENTS TO A SHORT FORM PROSPECTUS

11.1 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 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]."

11.2 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) file any consent letter required under this Instrument to be filed with a preliminary short form prospectus or short form prospectus, as the case may be.

11.3 Auditor's Letter - If an amendment to a preliminary short form prospectus or short form prospectus materially affects, or relates to, an auditor's comfort letter filed under section 10.2 or 10.3 refers, the issuer shall file with the amendment a new auditor's comfort letter.

11.4 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.

11.5 **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.

11.6 **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) Except as required by securities legislation, 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.
- (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) Subject to subsection (5), 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.
- (5) Subsection (4) does not apply to amendments to short form prospectuses of mutual funds.

PART 12 NON-FIXED PRICE OFFERINGS AND REDUCTION OF OFFERING PRICE UNDER SHORT FORM PROSPECTUS

12.1 **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 13 CIRCULARS

13.1 Use of Short Form Prospectus Disclosure in Securities Exchange Take-Over Bid Circular and Securities Exchange Issuer Bid Circular

- (1) An issuer that makes a take-over bid or an issuer bid that includes consideration consisting, in whole or in part, of the issuer's securities satisfies the requirement in securities legislation to include, in a securities exchange take-over bid circular or a securities exchange issuer bid circular, the information prescribed

by the form of prospectus appropriate for the issuer by including, in the securities exchange take-over bid circular or the securities exchange issuer bid circular, the information required under this Instrument to be included in a short form prospectus, if the issuer's securities offered as consideration are of a type for which the issuer is qualified under section 2.2, 2.3, 2.4 or 2.8 to file a prospectus in the form of a short form prospectus.

- (2) In determining, for the purpose of subsection (1), whether an issuer is qualified to file a prospectus in the form of a short form prospectus under section 2.2, 2.3, 2.4 or 2.8, references in those sections to the time of the filing of a preliminary short form prospectus shall be read as references to the time of the filing of the securities exchange take-over bid circular or securities exchange issuer bid circular

13.2 Use of Short Form Prospectus Disclosure in Information Circular

- (1) An issuer, that sends an information circular to security holders disclosing information on a proposed reorganization that involves the issuer distributing its securities, satisfies the requirement in securities legislation to include in an information circular the information prescribed by the form of prospectus appropriate for the issuer by including in the information circular, the information required under this Instrument to be included in a short form prospectus, if the issuer's securities to be distributed in connection with the reorganization are of a type for which the issuer is qualified under section 2.2, 2.3, 2.4 or 2.8 to file a prospectus in the form of a short form prospectus.
- (2) In determining, for the purpose of subsection (1), whether an issuer is qualified to file a prospectus in the form of a short form prospectus under section 2.2, 2.3, 2.4 or 2.8, references in those sections to the time of the filing of a preliminary short form prospectus shall be read as references to the time of the filing of the information circular.

13.3 Information Circular Disclosure regarding Availability of Information - An issuer that has a current AIF and sends its information circular, as required under securities legislation, to security holders shall

- (a) send, upon request to the secretary of the issuer, a copy of the following documents to the person or company making the request and, in the case of a security holder, without charge:
 - 1. The issuer's current AIF, together with one copy of any document, or the pertinent pages of any document, incorporated by reference in the current AIF.
 - 2. The issuer's most recently filed comparative annual financial statements, together with the accompanying report of the auditor, and any interim financial statements of the issuer that have been filed for any period after the end of its most recently completed financial year.
 - 3. The issuer's information circular for its most recent annual meeting of shareholders that involved the election of directors or any annual filing prepared instead of that information circular, as appropriate; and
- (b) include in its information circular a statement describing the availability, without charge to a security holder, upon request made to the secretary of the issuer, of the documents listed in paragraph (a).

PART 14 SOLICITATIONS OF EXPRESSIONS OF INTEREST

14.1 **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 a receipt for the preliminary short form prospectus from
 - (i) the 44-101 regulator dated not more than two business days after the date that the agreement is entered into, if the issuer has elected to use the MRRS; or
 - (ii) if the issuer has not elected to use the MRRS
 - (A) the regulator in at least one jurisdiction, dated not more than two business days after the date that the agreement is entered into, and
 - (B) the Canadian securities regulatory authorities in any other jurisdictions in which the distribution is to be made, dated not more than three business days after the date that the agreement is entered into;
- (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 15 EXEMPTION

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

15.2 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 15.1(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 15.1(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 Director has not before, or concurrently with, the issuance of the receipt sent notice to the person or company that sought the exemption, that the exemption sought may not be evidenced in the manner set out in subsection (1).

15.3 Exemption under Prior Policy - An issuer that, immediately before the time this Instrument came into force, was eligible to participate in the prompt offering qualification system contemplated by NP47 under an exemption, ruling, order, decision or other action of the securities regulatory authority or regulator, other than a blanket ruling or order, is qualified to file a prospectus in the form of a short form prospectus, in reliance on the exemption, ruling, order, decision or other action and subject to the same conditions, if any, as are in the action, until the earliest of

- (a) the end of the period for which the AIF filed by the issuer before this Instrument came into force is a current AIF under this Instrument;
- (b) the expiration of the action; and
- (c) the revocation of the action by the securities regulatory authority or the regulator.

PART 16 EFFECTIVE DATE

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

**NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS**

**APPENDIX A
AUTHORIZATION OF
INDIRECT COLLECTION OF PERSONAL INFORMATION**

The attached Schedule 1 contains information concerning the name, position with or relationship to issuer, name and address of employer, if other than the issuer, residential address, date and place of birth and citizenship of each director, executive officer, promoter, if any, and each director and executive officer of the promoter, if any, of the issuer named below (the "Issuer") as required by securities legislation, unless previously delivered to the 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 for the purpose of enabling the regulator to discharge his/her obligations under the provisions of securities legislation 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) that 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 authorized the indirect collection of the information by the regulator.

Date: _____

Name of Issuer

Per: _____

Name

Official Capacity

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

**Schedule 1 Personal Information
to Appendix A
Authorization of Indirect
Collection of Personal Information**

[Name of Issuer]

<u>Name and Position with or Relationship to Issuer</u>	<u>Name and Address of Employer, if other than Issuer</u>	<u>Residential Address</u>	<u>Date and Place of Birth</u>	<u>Citizenship</u>
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**Schedule 2 Public Official
to Appendix A
Authorization of Indirect
Collection of Personal Information**

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

British Columbia

Supervisor, Registration
British Columbia Securities Commission
Suite 200
865 Hornby Street
Vancouver, British Columbia V6Z 2H4
Telephone: (604) 899-5692
Toll Free within British Columbia: (800) 373-6393

Manitoba

Director
Manitoba Securities Commission
Consumer and Corporate Affairs
Administration
1034 - 405 Broadway
Winnipeg, Manitoba R3C 3L6
Telephone: (204) 945-2653

New Brunswick

Administrator
Department of Justice
Securities Branch
Harbour Building, 133 Prince William Street
Suite 606, P.O. Box 5001
Saint John, New Brunswick E2L 4Y9
Telephone: (506) 658-3060

Newfoundland

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

Northwest Territories	Government of the Northwest Territories Securities Registries Department of Justice P.O. Box 1320, Yellowknife, Northwest Territories X1A 2L9
Nova Scotia	Deputy Director, Compliance and Enforcement Nova Scotia Securities Commission P.O. Box 458 Halifax, Nova Scotia B3J 2P8 Telephone: (902)424-5354
Nunavut	Nunavut Legal Registries Government of Nunavut BAG 9500 Yellowknife, Northwest Territories X1A 2R3
Ontario	Administrative Assistant to the Director of Corporate Finance Ontario Securities Commission 18th Floor, 20 Queen Street West Toronto, Ontario M5H 2S8 (416) 597-0681
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
Quebec	Secretary and Director Legal Department Commission d'accès à l'information Québec City (Head Office) 575, rue St-Amable Bureau 1.10 Québec, Québec G1R 2G4 Telephone: (418) 528-7741 Toll Free in Québec: (888) 628-7741

Saskatchewan

Director
Saskatchewan Securities Commission
800-1920 Broad Street
Regina, Saskatchewan S4P 3V7
Telephone: (306) 787-5842

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

**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 the Agent is not an individual, the title of the person

**NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS
FORM 44-101F1
AIF**

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9.1 Additional Information

NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS
FORM 44-101F1
AIF

INSTRUCTIONS

- (1) *An AIF is intended to provide background information that is essential to a proper understanding of the nature of an issuer and its operations and prospects.*
- (2) *Focus the AIF disclosure on the issuer and external factors affecting the issuer specifically; do not focus, unless specifically required, on external factors that affect issuers generally.*
- (3) *Do not omit any of the disclosure prescribed by this Form. In determining the degree of detail required, apply a standard of materiality. Materiality is a matter of judgment in particular circumstances, and should generally be determined in relation to an item's significance to investors, analysts and other users of the information. An item of information, or an aggregate of items, is considered material if it is probable that its omission or misstatement would influence or change an investment decision with respect to the issuer's securities. In determining whether information is material, take into account both quantitative and qualitative factors. This concept of materiality is consistent with the financial reporting notion of materiality contained in the Handbook.*
- (4) *A requirement in this Form to discuss or disclose forward-looking information does not call for a forecast or projection as defined in the Handbook. An issuer that chooses to provide a forecast or projection is required to comply with National Policy Statement No. 48 Future-Oriented Financial Information, or any successor instrument.*
- (5) *An issuer that is a special purpose vehicle may have to modify the disclosure items in this Form to reflect the special purpose nature of its business.*
- (6) *Any information required in an AIF may be incorporated by reference in the AIF. Clearly identify in an AIF any document incorporated by reference. If an excerpt of a document is incorporated by reference, clearly identify the excerpt in the AIF by caption and paragraph of the document. Any material incorporated*

by reference in an AIF is required under subsection 3.3(1) of National Instrument 44-101 to be filed with the AIF unless it has been previously filed.

- (7) *Date an AIF no earlier than the date of the auditor's report on the issuer's financial statements for the financial year covered by the AIF.*
- (8) *Unless otherwise specified in this Form, present the information in an AIF as at a date not later than the date of the AIF and not earlier than the last day of the issuer's most recently completed financial year, except for*
 - (a) *an AIF filed by a successor issuer following a reorganization, in which case present the information as at a date not earlier than the latest financial year end of any of the participants in the reorganization that were reporting issuers at the time of the reorganization; and*
 - (b) *an AIF filed by an issuer of asset-backed securities that has not completed its first financial year, in which case present the information as at a date within 30 days before the date that the initial AIF is filed.*
- (9) *If a material change affecting the issuer occurs after the date as at which the disclosure in the AIF is required, and before filing, include this information in the AIF.*
- (10) *Terms used and not defined in this Form that are defined or interpreted in National Instrument 44-101 Short Form Prospectus Distributions shall bear that definition or interpretation. Other definitions are set out in National Instrument 14-101 Definitions.*
- (11) *All references to an issuer in Items 3 through 6 of this Form are to be read as applying to an issuer and its subsidiaries and investees, if the disclosure concerning the issuer's subsidiaries and investees is material.*

Item 1: Cover Page

1.1 Date - Insert the date of the AIF on the cover page.

1.2 Review of Renewal AIF - If the issuer has been notified that its renewal AIF is being reviewed, include the following statement in **bold type** on the cover page of the renewal AIF until notified that the review has been completed.

"This annual information form is currently under review by the Canadian securities regulatory authorities of one or more jurisdictions. Information contained herein is subject to change."

INSTRUCTION *The statement required under Item 1.2 may be added to paper copies of the renewal AIF by way of a stamp, sticker or other method that will ensure that the statement may not be deleted or removed from the renewal AIF.*

1.3 Revisions - If revisions are made to an AIF after filing, identify the AIF as a "revised initial AIF" or a "revised renewal AIF", as the case may be, on the cover page.

Item 2: Corporate Structure

2.1 Name and Incorporation

(1) State the full corporate name of the issuer or, if the issuer is an unincorporated entity, the full name under which it exists and carries on business.

(2) State the statute under which the issuer is incorporated, continued or organized or, if the issuer is an unincorporated entity, the laws of the jurisdiction or foreign jurisdiction under which it is established and exists. If material, state whether the articles or other constituting or establishing documents of the issuer have been amended and describe the substance of the material amendments.

2.2 Intercorporate Relationships - Describe, by way of a diagram or otherwise, the intercorporate relationships among the issuer and the issuer's

subsidiaries as of the most recent financial year end of the issuer. For each subsidiary state

- (a) the percentage of the votes attaching to all voting securities of the subsidiary represented by voting securities beneficially owned, or over which control or direction is exercised, by the issuer;
- (b) the percentage of each class of non-voting securities beneficially owned, or over which control or direction is exercised, by the issuer; and
- (c) the place of incorporation or continuance.

INSTRUCTION *A particular subsidiary may be omitted if*

- (a) *the total assets of the subsidiary do not constitute more than 10 per cent of the consolidated assets of the issuer at the most recent financial year end;*
- (b) *the sales and operating revenues of the subsidiary do not exceed 10 per cent of the consolidated sales and operating revenues of the issuer at the most recent financial year end; and*
- (c) *the conditions in paragraphs (a) and (b) would be satisfied if*
 - (i) *the subsidiaries that may be omitted under paragraphs (a) and (b) were considered in the aggregate, and*
 - (ii) *the reference to 10 per cent in those paragraphs were changed to 20 per cent.*

Item 3: General Development of the Business

3.1 Three Year History - Describe the general development of the business of the issuer over its last three completed financial years. Include only major events or conditions that have influenced the general development of the issuer's business. If the business consists of the production or distribution

of more than one product or the rendering of more than one kind of service, describe the principal products or services. Also discuss changes in the issuer's business that are expected to occur during the current financial year of the issuer.

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

3.2 Significant Acquisitions and Significant Dispositions

(1) Disclose

- (a) any significant acquisition completed by the issuer during its most recently completed financial year for which financial statement disclosure would be required under Part 4 or 5 of National Instrument 44-101 if the AIF were a short form prospectus; and
- (b) any significant disposition completed by the issuer during its most recently completed financial year.

(2) Under paragraph (1) include particulars of

- (a) the nature of the assets acquired or disposed of;
- (b) the date of each significant acquisition or significant disposition;
- (c) the consideration, both monetary and non-monetary, paid to or by the issuer;
- (d) any material obligations that must be complied with to keep any significant acquisition or significant disposition agreement in good standing;
- (e) the impact of the significant acquisition or significant disposition on the operating results and financial position of the issuer;

- (f) any valuation opinion obtained within the last 12 months required under Canadian securities legislation or directives of a Canadian securities regulatory authority or a requirement of a Canadian stock exchange or other Canadian market to support the value of the consideration received or paid by the issuer or any of its subsidiaries for the assets, including the name of the author, the date of the opinion, the assets to which the opinion relates and the value attributed to the assets; and
- (g) whether the transaction is with an insider, associate or affiliate of the issuer and, if so, disclose the identity of the other parties and the relationship of the other parties to the issuer.

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

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

Item 4: Narrative Description of the Business

4.1 General

- (1) Describe the business of the issuer with reference to the reportable operating segments as defined in the Handbook and the issuer's business in general. Include the following for each reportable operating segment of the issuer:

- 1. For principal products or services,

- (a) the methods of their distribution and their principal markets;
 - (b) as dollar amounts or as percentages, for each of the two most recently completed financial years, the revenues for each category of principal products or services that accounted for 15 per cent or more of total consolidated revenues for the applicable financial year derived from
 - (i) sales to customers, other than investees, outside the consolidated entity,
 - (ii) sales or transfers to investees, and
 - (iii) sales or transfers to controlling shareholders.
2. The competitive conditions in the principal markets and geographic areas in which the issuer operates, including, if reasonably possible, an assessment of the issuer's competitive position.
 3. If there has been a public announcement of the introduction of a new product, the status of the product.
 4. The sources, pricing and availability of raw materials, component parts or finished products.
 5. The importance, duration and effect on the segment of identifiable intangible properties such as brand names, circulation lists, copyrights, franchises, licences, patents, software, subscription lists and trademarks.
 6. The extent to which the business of the segment is cyclical or seasonal.
 7. A description of any aspect of the issuer's business that may be affected in the current financial year by renegotiation or termination of contracts or sub-contracts and the likely effect.

8. The financial and operational effects of environmental protection requirements on the capital expenditures, earnings and competitive position of the issuer in the current financial year and the expected effect in future years.
 9. The number of employees, as at the most recent financial year end or as an average over the year, whichever is more relevant.
 10. Any risks associated with foreign operations of the issuer and any dependence of the segment upon the foreign operations.
- (2) Disclose the nature and results of any bankruptcy, receivership or similar proceedings against the issuer or any of its subsidiaries, or any voluntary bankruptcy, receivership or similar proceedings by the issuer or any of its subsidiaries, within the three most recently completed financial years or the current financial year.
 - (3) Disclose the nature and results of any material reorganization of the issuer or any of its subsidiaries within the three most recently completed financial years or the current financial year.

4.2

Issuers with Asset-backed Securities Outstanding - For issuers with asset-backed securities outstanding that were distributed under a prospectus, disclose

- (a) a description of any events, covenants, standards or preconditions that may reasonably be expected to affect the timing or amount of any payments or distributions to be made under the asset-backed securities;
- (b) for the two most recently completed financial years of the issuer or the lesser period commencing on the first date on which the issuer had asset-backed securities outstanding, information on the underlying pool of financial assets relating to
 - (i) the composition of the pool as of the end of each financial year or partial period;

- (ii) income and losses from the pool on at least an annual basis or such shorter period as is reasonable given the nature of the underlying pool of assets;
 - (iii) the payment, prepayment and collection experience of the pool on at least an annual basis or such shorter period as is reasonable given the nature of the underlying pool of assets;
 - (iv) servicing and other administrative fees; and
 - (v) any significant variances experienced in the matters referred to in clauses (i), (ii), (iii) or (iv);
- (c) if any of the information disclosed under paragraph (b) has been audited, the existence and results of the audit;
 - (d) the investment parameters applicable to investments of any cash flow surpluses;
 - (e) the amount of payments made during the two most recently completed financial years or the lesser period commencing on the first date on which the issuer had asset-backed securities outstanding, in respect of principal and interest or capital and yield, each stated separately, on asset-backed securities of the issuer outstanding;
 - (f) the occurrence of any event that has led to or with the passage of time could lead to, the accelerated payment of principal, interest or capital of asset-backed securities; and
 - (g) the identity of any principal obligors for the outstanding asset-backed securities of the issuer at the end of the most recent financial year or interim period, the percentage of the underlying pool of financial assets represented by obligations of each principal obligor and whether the principal obligor has filed an AIF in any jurisdiction or a Form 10-K or Form 20-F in the United States.

- INSTRUCTIONS
- (1) *Present the information required under paragraph (b) in a manner that will enable a reader to easily determine if, and the extent to which, the events, covenants, standards and preconditions referred to in paragraph (a) have occurred, are being satisfied or may be satisfied.*
 - (2) *If the information required under paragraph (b)*
 - (i) *is not compiled specifically on the underlying pool of financial assets, but is compiled on a larger pool of the same assets from which the securitized assets are randomly selected such that the performance of the larger pool is representative of the performance of the pool of securitized assets, or*
 - (ii) *in the case of a new issuer, where the underlying pool of financial assets will be randomly selected from a larger pool of the same assets such that the performance of the larger pool will be representative of the performance of the pool of securitized assets to be created,*

then an issuer may comply with paragraph (b) by providing the information required based on the larger pool and disclosing that it has done so.

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

1. Property Description and Location

- (a) The area (in hectares or other appropriate units) and the location of the property.
- (b) The nature and extent of the issuer's title to or interest in the property, including surface rights, obligations that must be met to retain the property and the expiration date of claims, licences and other property tenure rights.

- (c) The terms of any royalties, overrides, back-in rights, payments or other agreements and encumbrances to which the property is subject.
- (d) All environmental liabilities to which the property is subject.
- (e) The location of all known mineralized zones, mineral resources, mineral reserves and mine workings, existing tailing ponds, waste deposits and important natural features and improvements.
- (f) To the extent known, the permits that must be acquired to conduct the work proposed for the property and if the permits have been obtained.

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

- (a) The means of access to the property.
- (b) The proximity of the property to a population centre and the nature of transport.
- (c) To the extent relevant to the mining project, the climate and length of the operating season.
- (d) The sufficiency of surface rights for mining operations, the availability and sources of power, water, mining personnel, potential tailings storage areas, potential waste disposal areas, heap leach pads areas and potential processing plant sites.
- (e) The topography, elevation and vegetation.

3. History

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

- (b) If a property was acquired within the three most recently completed financial years of the issuer or during its current financial year from, or is intended to be acquired by the issuer from, an insider or promoter of the issuer or an associate or affiliate of an insider or promoter, the name and address of the vendor, the relationship of the vendor to the issuer, and the consideration paid or intended to be paid to the vendor.
 - (c) To the extent known, the name of every person or company that has received or is expected to receive a greater than five per cent interest in the consideration received or to be received by the vendor referred to in subparagraph (b).
4. **Geological Setting** - The regional, local and property geology.
5. **Exploration** - The nature and extent of all exploration work conducted by, or on behalf of, the issuer on the property, including
- (a) the results of all surveys and investigations and the procedures and parameters relating to surveys and investigations;
 - (b) an interpretation of the exploration information;
 - (c) whether the surveys and investigations have been carried out by the issuer or a contractor and if by a contractor, identifying the contractor; and
 - (d) a discussion of the reliability or uncertainty of the data obtained in the program.
6. **Mineralization** - The mineralization encountered on the property, the surrounding rock types and relevant geological controls, detailing length, width, depth and continuity together with a description of the type, character and distribution of the mineralization.

7. **Drilling** - The type and extent of drilling, including the procedures followed and an interpretation of all results.
8. **Sampling and Analysis** - The sampling and assaying including
 - (a) description of sampling methods and the location, number, type, nature, spacing or density of samples collected;
 - (b) identification of any drilling, sampling or recovery factors that could materially impact the accuracy or reliability of the results;
 - (c) a discussion of the sample quality and whether the samples are representative and of any factors that may have resulted in sample biases;
 - (d) rock types, geological controls, widths of mineralized zones, cut-off grades and other parameters used to establish the sampling interval; and
 - (e) quality control measures and data verification procedures.
9. **Security of Samples** - The measures taken to ensure the *validity and integrity of samples taken.*
10. **Mineral Resource and Mineral Reserve Estimates** - The mineral resources and mineral reserves, if any, including
 - (a) the quantity and grade or quality of each category of mineral resources and mineral reserves;
 - (b) the key assumptions, parameters and methods used to estimate the mineral resources and mineral reserves; and
 - (c) the extent to which the estimate of mineral resources and mineral reserves may be materially affected by metallurgical, environmental, permitting, legal, title,

taxation, socio-economic, marketing, political and other relevant issues.

11. **Mining Operations** - For development properties and production properties, the mining method, metallurgical process, production forecast, markets, contracts for sale of products, environmental conditions, taxes, mine life and expected payback period of capital.
12. **Exploration and Development** - A description of the issuer's current and contemplated exploration or development activities, to the extent they are material.

INSTRUCTIONS

- (1) *Issuers are reminded that disclosure regarding mineral exploration development or production activities on material properties is required to comply with National Instrument 43-101 Standards of Disclosure for Mineral Projects, once that National Instrument is in force, including the use of the appropriate terminology to describe mineral reserves and mineral resources.*
- (2) *Disclosure is required for each property material to the issuer. Materiality is to be determined in the context of the issuer's overall business and financial condition, taking into account quantitative and qualitative factors. A property will not generally be considered material to an issuer if the book value of the property as reflected in the issuer's most recently filed financial statements or the value of the consideration paid or to be paid (including exploration obligations) is less than 10 per cent of the book value of the total of the issuer's mineral properties and related plant and equipment.*
- (3) *Once National Instrument 43-101 comes into force, the information required under these items is required under National Instrument 43-101 to be based upon a technical report or other information prepared by or under the supervision of a qualified person, as that term is defined in National Instrument 43-101.*

- (4) *In giving the information required under these items, include the nature of ownership interests, such as fee interests, leasehold interests, royalty interests and any other types and variations of ownership interests.*

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

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

6. **Source of Reserve Estimates** - The source of the reserve estimates and whether the reserve estimates have been prepared by the issuer or by independent engineers or other qualified independent persons and any other information relating to reserve estimates required to be disclosed in an AIF by any successor instrument to National Policy Statement No. 2-B.
7. **Reconciliation of Reserves** - A reconciliation of the reserve volumes by categories and types that conform to the classifications, definitions and disclosure requirements of National Policy Statement No. 2-B or any successor instrument, as at the financial year end immediately preceding the most recently completed financial year to the reserve volume information furnished under paragraph 5, with the effects of production, acquisitions, dispositions, discoveries and revision of estimates shown separately if material.
8. **History** - For each quarter of the most recently completed financial year of the issuer, with comparative data for the same periods in the preceding financial year,
 - (a) the average daily production volume, before deduction of royalties, of
 - (i) conventional crude oil,
 - (ii) natural gas liquids, and
 - (iii) natural gas;
 - (b) the following on a per barrel basis for conventional crude oil and natural gas liquids and on a per thousand cubic feet basis for natural gas
 - (i) the average net product prices received,
 - (ii) royalties,
 - (iii) operating expenses, specifying the particular items included, and
 - (iv) netback received;

- (c) the average net product price received for the following, if the issuer's production of the following is material to the issuer's overall production,
 - (i) light and medium conventional crude oil,
 - (ii) heavy conventional crude oil, and
 - (iii) synthetic crude oil; and
- (d) the dollar amounts expended on
 - (i) property acquisition,
 - (ii) exploration, including drilling, and
 - (iii) development, including facilities.

9. Future Commitments - A description of the issuer's future material commitments to buy, sell, exchange or transport oil or gas, stating for each commitment separately

- (a) the aggregate price;
- (b) the price per unit;
- (c) the volume to be purchased, sold, exchanged or transported; and
- (d) the term of the commitment.

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

INSTRUCTION

The information required under this item shall be derived from or supported by information obtained from a report prepared under National Policy No. 2-B or any successor instrument.

Item 5: Selected Consolidated Financial Information

5.1 Annual Information - Provide the following financial data for the issuer in summary form for each of the three most recently completed financial years, accompanied by a discussion of the factors affecting the comparability of the data, including discontinued operations, changes in accounting policies, significant acquisitions or significant dispositions and major changes in the direction of the business

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

5.2 Dividends

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

5.3 Foreign GAAP - An issuer may present the selected consolidated financial information required in this Item 5 on the basis of foreign GAAP if

- (a) the issuer's primary financial statements have been prepared using foreign GAAP; and

- (b) where the issuer is required under securities legislation to have reconciled its financial statements to Canadian GAAP or the issuer has otherwise done so, the issuer provides a cross-reference to the notes to the financial statements containing the reconciliation of the financial statements to Canadian GAAP.

Item 6: Management's Discussion and Analysis

6.1 Form 44-101F2 Disclosure

- (1) Provide the disclosure required under Form 44-101F2.
- (2) If the issuer is incorporated, organized or continued under the laws of Canada or a jurisdiction and has based the discussion in the MD&A on financial statements prepared in accordance with foreign GAAP, provide a restatement of those parts of the MD&A that would read differently if they were based on financial statements of the issuer prepared in accordance with Canadian GAAP.

6.2 Foreign GAAP

- (1) An issuer that has securities registered under section 12 of the 1934 Act or has a reporting obligation under subsection 15(d) of the 1934 Act may satisfy the requirement in subsection 6.1(1) of this Item 6 by including disclosure that is required under the item requirements applicable to it under the 1934 Act for management's discussion and analysis.
- (2) If an issuer's primary financial statements have been prepared using foreign GAAP and the issuer is required under securities legislation to have reconciled its financial statements to Canadian GAAP at the time of filing its financial statements, or has otherwise done so at that time, then provide a cross-reference in the MD&A to the notes to the financial statements containing the reconciliation.

Item 7: Market for Securities

- 7.1 Market for Securities - Identify the exchange(s) and quotation system(s) on which the issuer's securities are listed and posted for trading or quoted.**

Item 8: Directors and Officers

8.1 Name, Address, Occupation and Security Holding

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

INSTRUCTION

For the purposes of subsection (3), securities of subsidiaries that are beneficially owned, directly or indirectly, or over which control or direction is exercised by directors or executive officers through ownership or control or direction over securities of the issuer do not need to be included.

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

- (a) was the subject of a cease trade or similar order, or an order that denied the other issuer access to any exemptions under Canadian 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

- (b) became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets, state the fact.

8.3 Penalties or Sanctions

- (1) Describe the penalties or sanctions imposed and the grounds on which they were imposed, or the terms of the settlement agreement and the circumstances that gave rise to the settlement agreement, if a director or officer of the issuer, or a shareholder holding a sufficient number of securities of the issuer to affect materially the control of the issuer, has
 - (a) been subject to any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority or has entered into a settlement agreement with a Canadian securities regulatory authority; or
 - (b) been subject to any other penalties or sanctions imposed by a court or regulatory body that would likely be considered important to a reasonable investor in making an investment decision.
- (2) Despite paragraph (1), no disclosure is required of a settlement agreement entered into before the date National Instrument 44-101 came into force unless the disclosure would likely be considered important to a reasonable investor in making an investment decision.

8.4 Personal Bankruptcies - If a director or officer of the issuer, or a shareholder holding a sufficient number of securities of the issuer to affect materially the control of the issuer, or a personal holding company of any such persons has, within the 10 years before the date of the AIF, 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 director or officer, state the fact.

8.5 Conflicts of Interest - Disclose particulars of existing or potential material conflicts of interest between the issuer or a subsidiary of the issuer and a director or officer of the issuer or a subsidiary of the issuer.

Item 9: Additional Information

9.1 Additional Information

- (1) Include a statement to the effect that the issuer, upon request to the secretary of the issuer, will provide to any person or company
 - (a) when the securities of the issuer are in the course of a distribution under a preliminary short form prospectus or a short form prospectus,
 - (i) one copy of the AIF of the issuer, together with one copy of any document, or the pertinent pages of any document, incorporated by reference in the AIF,
 - (ii) one copy of the comparative financial statements of the issuer for its most recently completed financial year for which financial statements have been filed together with the accompanying report of the auditor and one copy of the most recent interim financial statements of the issuer that have been filed, if any, for any period after the end of its most recently completed financial year,
 - (iii) one copy of the information circular of the issuer in respect of its most recent annual meeting of shareholders that involved the election of directors or one copy of any annual filing prepared instead of that information circular, as appropriate, and

- (iv) one copy of any other documents that are incorporated by reference into the preliminary short form prospectus or the short form prospectus and are not required to be provided under clauses (i), (ii) or (iii); or
 - (b) at any other time, one copy of any documents referred to in clauses (a)(i), (ii) and (iii), provided that the issuer may require the payment of a reasonable charge if the request is made by a person or company who is not a security holder of the issuer.
- (2) Include a statement to the effect that additional information including directors' and officers' remuneration and indebtedness, principal holders of the issuer's securities, options to purchase securities and interests of insiders in material transactions, if applicable, is contained in the issuer's information circular for its most recent annual meeting of shareholders that involved the election of directors, and that additional financial information is provided in the issuer's comparative financial statements for its most recently completed financial year.

**NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS
FORM 44-101F2 MD&A**

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**NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS
FORM 44-101F2 MD&A**

INSTRUCTIONS

- (1) *MD&A is supplemental analysis and explanation that accompanies, but does not form part of, an issuer's financial statements. MD&A provides management with the opportunity to discuss an issuer's current financial results, position and future prospects. MD&A is intended to give a reader the ability to look at the issuer through the eyes of management by providing both a historical and prospective analysis of the business of the issuer. MD&A requires that management discuss the dynamics of the business and analyze the financial statements. Coupled with the financial statements, this information should enable readers to better assess the issuer's performance, position and future prospects.*
- (2) *Focus the MD&A on material information about the financial condition of the issuer, as well as its operations, with particular emphasis on liquidity, capital resources and known material trends, commitments, events, risks or uncertainties that are reasonably expected to have a material effect on the issuer's business, financial condition or results of operations.*
- (3) *In this Form, "capital resources" means indebtedness, share capital and any other financial arrangement, whether or not it is reflected on the balance sheet of an issuer, that can reasonably be considered to provide financial resources to the issuer.*
- (4) *Issuers are not required to disclose information described in this Form if the information is not material. Materiality is a matter of judgement in particular circumstances and should generally be determined in relation to an item's significance to investors, analysts and other users of the information. An item of information, or an aggregate of items, is considered material if it is probable that its omission or misstatement would influence or change an investment decision with respect to the issuer's securities. In determining whether information is material, take into account both quantitative and qualitative factors. This concept of materiality is consistent with the financial reporting notion of materiality in the Handbook.*

- (5) *If information required under this Form is disclosed in a note to an issuer's financial statements, the issuer may comply with the disclosure requirement by providing a cross-reference to the note in which the information appears.*
- (6) *Focus the MD&A on the primary financial statements, even if the primary financial statements have been prepared using foreign GAAP.*
- (7) *The nature of the disclosure required under this Form is intentionally general. This Form contains a minimum of specific instructions in order to allow, as well as encourage, issuers to discuss their businesses in the most appropriate manner and to tailor their comments to their individual circumstances. Issuers should avoid boilerplate.*
- (8) *Staff of the CSA from time to time publishes MD&A guides and reports on MD&A and financial statement reviews. Issuers are encouraged to refer to this material.*

Item 1: General

- (1) Provide an analysis of the issuer's financial condition, cash flows and results of operations in the most recently completed financial year, including a comparison against the previously completed financial year. Provide all information necessary to understand the analysis and comparison. Include
 - (a) an analysis and comparison over a period longer than two financial years if necessary to describe a trend;
 - (b) an analysis and comparison on the basis of each reportable operating segment or other part of the business, as well as on the issuer as a whole, if necessary to understand the analysis and comparison;
 - (c) factors internal to the issuer as well as external economic and industry factors affecting the issuer;
 - (d) an explanation of why changes have or have not occurred in the financial condition and results of operations of the issuer;

- (e) the effect of discontinued operations; and
- (f) major changes in the direction of the business.

INSTRUCTION

- (1) *For purposes of paragraph (b), in making the determination whether an analysis and comparison on the basis of a reportable operating segment or other part of the business is required, give consideration to whether any part of the business has a disproportionate effect on revenues, profitability or cash needs; whether there are any legal or other restrictions on the free flow of funds from one part of the issuer's business to another; and whether known trends, demands, commitments, events or uncertainties within a part of the business are reasonably likely to have a material effect on the business as a whole.*
 - (2) *For purposes of paragraph (c), in providing an explanation of causes affecting more than one item, an overall analysis is sufficient.*
 - (3) *Issuers need only include information that is reasonably available to the issuer and that does not clearly appear in the issuer's financial statements. Numerical data included in, or readily calculable from, the financial statements need not be repeated in the analysis and comparison. For example, if it is clear from the comparative financial statements what the amount of increase or decrease in revenues or the respective percentage change would be from the prior year, it is not necessary to include this information in the discussion since it is readily calculable. Nonetheless, showing these increases and decreases immediately before the discussion is often useful to readers.*
- (2) Describe and quantify any events or items that have had a material impact on the issuer's financial condition, cash flows or results of operations during the issuer's fourth quarter of its most recently completed financial year, including extraordinary or infrequently occurring items, year-end and other adjustments and disposals of business segments.

INSTRUCTION *Infrequently occurring items are those which do not have all of the characteristics of extraordinary items, as that term is defined by the Handbook, but result from transactions or events that are not expected to occur frequently over several years or are not typical of the issuer's normal business activities.*

- (3) Disclose information on risks and uncertainties facing the issuer necessary to understand the issuer's financial condition, changes in financial condition and results of operations.
- (4) Provide an analysis of the risks, events and uncertainties that could cause reported financial information to not necessarily be indicative of future operating results or of future financial position. Include both qualitative and quantitative descriptions of factors that
 - (a) could have an effect on future operations or financial position and have not had an effect in the past; and
 - (b) have had an effect on reported operations or financial position, and are not expected to have an effect in the future.
- (5) Describe any changes in the accounting policies of the issuer adopted subsequent to its most recent financial year end or any changes in its accounting policies that are expected to be adopted by the issuer, including those resulting from a change in an accounting standard, or the issuance of a new accounting standard, that does not require adoption until some future date. Disclose the estimated effect on the financial statements of the implementation of any changes in the accounting policies described.
- (6) If not already disclosed in the issuer's financial statements, provide
 - (a) a discussion of the nature and extent of the issuer's use of financial instruments and the business purposes that they serve;
 - (b) an analysis of the risks associated with the issuer's financial instruments;
 - (c) an analysis of management's policies for controlling the risks associated with the issuer's financial instruments, including an analysis of, if applicable, the issuer's policies for the hedging of

risk exposures, the avoidance of undue concentrations of risk and any requirements for collateral to mitigate credit risks, and, if the issuer has no policies for controlling the risks associated with the issuer's financial instruments, a statement indicating that the issuer does not have any such policies;

- (d) a discussion of the relationships between financial instruments and the components of individual financial instruments that may affect the amount, timing or certainty of cash flows;
- (e) disclosure of significant accounting policies for financial instruments, including a description of how each class of financial instrument is reported in the financial statements, the policies for recognition and measurement of financial instruments, and the financial statement classification of gains and losses; and
- (f) significant assumptions made in determining the fair value of financial instruments, the total amount of the change in fair value of financial instruments recognized in income for the period, and the total amount of deferred or unrecognized gains and losses on financial instruments.

INSTRUCTION

- (1) *The discussion required under paragraph (a) should be designed to enhance a reader's understanding of the significance of recognized and unrecognized financial instruments on the issuer's financial position, results and cash flows. The information should also be designed to assist a reader in assessing the amounts, timing, and certainty of future cash flows associated with those instruments.*
- (2) *For purposes of paragraph (c), if the issuer is exposed to significant price, credit or liquidity risks, consideration should be given to providing a sensitivity analysis or tabular information that assists readers in assessing the degree of exposure. For example, an analysis of the effect of a hypothetical change in the prevailing level of interest or currency rates on the fair value of financial instruments and future earnings and cash flows may be useful in describing the issuer's exposure to price risk.*

- (3) *A discussion of the existence and terms of master netting agreements and the relationship between liability and equity components of convertible debt instruments would be appropriate for purposes of paragraph (d).*
- (7) If a decision to proceed with a transaction has been made by an issuer's board of directors, or by senior management with the expectation of concurrence from the board of directors, and the transaction involves an asset acquisition or disposition or an acquisition or disposition of a business, whether structured as an asset or share transaction, discuss the transaction and its anticipated effect as part of MD&A. Disclosure is not required if the issuer has made a confidential filing under the continuous disclosure provisions of securities legislation.

Item 2: Quarterly Information

- (1) Subject to paragraphs (2) and (3), for each of the eight most recently completed quarters ending at the end of the most recently completed financial year, provide the information required in paragraphs 1, 2 and 3 of Item 5.1 of the AIF.
- (2) For an issuer that has not been a reporting issuer for the eight most recently completed quarters ending at the end of the most recently completed financial year, provide the information required in paragraphs 1, 2 and 3 of Item 5.1 of the AIF for the period that the issuer was not a reporting issuer only if the issuer has prepared quarterly financial statements for that period.
- (3) If the issuer is only required to file six month interim financial statements, the information required under paragraph (1) may instead be provided for each of the four most recently completed six month periods ended at the end of the most recently completed financial year.

Item 3: Liquidity and Capital Resources

- (1) With respect to the issuer's liquidity,
 - (a) discuss the ability of the issuer to generate adequate amounts of cash and cash equivalents, in the short term and the long term,

when needed and to maintain capacity to provide for planned growth;

- (b) identify any known trends or expected fluctuations in the issuer's liquidity, taking into account known demands, commitments, events or uncertainties; if a deficiency is identified, indicate the course of action that has been taken or is proposed to be taken to remedy the deficiency;
- (c) describe those balance sheet conditions or income or cash flow items that the issuer believes may be indicators of its liquidity;
- (d) describe generally the requirements relating to working capital;
- (e) disclose the nature and extent of legal or practical restrictions on the ability of subsidiaries to transfer funds to the issuer and the effect that these restrictions have had or are expected to have on the ability of the issuer to meet its obligations; and
- (f) if the issuer is in arrears in the payment of dividends, interest or principal payment on borrowings, disclose this fact and provide details; if the issuer is in default on any debt covenants or was in default during the most recently completed financial year, disclose information concerning the default and the method or anticipated method of curing the default; if the issuer is unable to make required redemptions or retractions or sinking fund payments, disclose this information and provide details; and if the issuer anticipates being, in the current financial year, in any of the circumstances described in this paragraph, disclose this information and provide details.

INSTRUCTION

Examples of the disclosure required under paragraph (d) include situations where significant quantities of inventory are required to be carried to meet rapid delivery requirements of customers or where extended payment terms have been provided to customers or furnished by suppliers.

- (2) With respect to the issuer's capital resources,

- (a) describe and quantify commitments for capital expenditures as of the end of the most recently completed financial year, indicate the general purpose of these commitments and the anticipated source of funds needed to fulfil these commitments, and quantify expenditures that are necessary but not yet committed to meet plans discussed under MD&A or elsewhere in the AIF;
- (b) describe any known trends, favourable or unfavourable, in the issuer's capital resources, indicating any expected changes in the mix and relative cost of these resources; and
- (c) briefly discuss sources of financing that have been arranged but not yet utilized.

INSTRUCTION *Discussions of liquidity and capital resources may be combined if this facilitates the discussion.*

Item 4: Results of Operations

- (1) Describe any unusual or infrequent events or transactions and any significant economic changes that in each case materially affect income or loss from continuing operations and the extent to which income or loss from continuing operations is affected. Also disclose any other significant components of revenue or expense necessary to understand the results of operations.
- (2) Describe any known trends or uncertainties that have had or that the issuer reasonably expects will have a favourable or unfavourable effect on net sales or revenues or income or loss from continuing operations. If the issuer knows of factors that are expected to cause a change in the relationship between costs and revenues, disclose the expected change in the relationship and the cause.

INSTRUCTION *Examples of such events include known future changes in costs of labour or materials or price changes or inventory adjustments.*

- (3) Provide a discussion of the extent to which any changes in net sales or revenues are attributable to changes in selling prices, to changes in the

volume or quantity of goods or services being sold, or to the introduction of new products or services.

- (4) Discuss briefly any effect of inflation and specific price changes on the issuer's net sales and revenues and on income or loss from continuing operations. For purposes of the discussion, no specific numerical financial data need be presented.
- (5) If the issuer's business is still in the development stage, include the analysis of the issuer's results of operation a discussion of the issuer's material expenditures.

NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS
FORM 44-101F3
SHORT FORM PROSPECTUS

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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 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 National Instrument 44-101 Short Form Prospectus Distributions 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 10.2 and 10.3 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 9.2 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, 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 vehicle 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.*

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; 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 Basic Disclosure about the Distribution - State the following immediately below the disclosure required under Items 1.1 and 1.2, with the bracketed information completed:

[PRELIMINARY] 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]

INSTRUCTIONS

- (1) *The description of the number and type of securities being distributed shall include the restricted share terms, if any, prescribed by securities legislation.*
- (2) *If the offering price is in a currency other than the Canadian dollar or the U.S. dollar, comply with the exchange rate disclosure requirements of National Policy Statement No. 14 Acceptability of Currencies in Material Filed with Securities Regulatory Authorities, or any successor instrument.*

1.4 Distribution

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

	Price to public	Underwriting discounts or commissions	Proceeds to issuer or selling security holders
	(a)	(b)	(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, including warrants and options; and
 - (c) any finder's fees or similar required payment.
- (7) If a security is being distributed for the account of a selling security holder, state the name of the 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.
- (8) If the underwriter has been granted a compensation option, state whether the short form prospectus qualifies the grant of all or part of the compensation option and provide a cross-reference to the applicable section in the short form prospectus where further information about the compensation option is provided.

INSTRUCTIONS

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

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

- (a) the discount allowed or commission payable to the underwriter;
- (b) any other compensation payable to the underwriter and, if applicable, that the underwriter's compensation will be increased or decreased by the amount by which the aggregate price paid for the securities by the purchasers exceeds or is less than the gross proceeds paid by the underwriter to the issuer or selling security holder;
- (c) that the securities to be distributed under the 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.

1.6 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, include in **bold type** a cross-reference to the section in the short form prospectus where disclosure concerning the possible price decrease is provided.

1.7 Market for Securities

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

1.8 Underwriter(s)

- (1) State the name of each underwriter.
- (2) If applicable,
 - (a) until Multilateral Instrument 33-105 Underwriting Conflicts comes into force, provide the disclosure required by Item 15 of Appendix B of National Policy Statement No. 47 Prompt

Offering Qualification System as that National Policy read immediately before it was revoked; and

- (b) after Multilateral Instrument 33-105 comes into force, comply with the requirements of Multilateral Instrument 33-105 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.

1.9

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."

Item 2: Name of Issuer and Intercorporate Relationships

2.1 Name 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.

2.2 Intercorporate Relationships - Describe, by way of a diagram or otherwise, the intercorporate relationships among the issuer and the issuer's subsidiaries as of the most recent financial year end of the issuer. For each subsidiary state:

- (a) the percentage of the votes attaching to all voting securities of the subsidiary represented by voting securities beneficially owned, or over which control or direction is exercised, by the issuer;
- (b) the percentage of each class of non-voting securities beneficially owned, or over which control or direction is exercised, by the issuer; and
- (c) the place of incorporation or continuance.

INSTRUCTION *A particular subsidiary may be omitted if*

- (a) *the total assets of the subsidiary do not constitute more than 10 per cent of the consolidated assets of the issuer at the most recent financial year end;*
- (b) *the sales and operating revenues of the subsidiary do not exceed 10 per cent of the consolidated sales and operating revenues of the issuer at the most recent financial year end; and*

- (c) *the conditions in paragraphs (a) and (b) would be satisfied if*
 - (i) *the subsidiaries that may be omitted under paragraphs (a) and (b) were considered in the aggregate, and*
 - (ii) *the reference to 10 per cent in those paragraphs were changed to 20 per cent.*

Item 3: Summary Description of Business

- 3.1 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 4: Consolidated Capitalization and Financial Information Released

- 4.1 Consolidated Capitalization** - Describe any material change in, and the effect of the material change on, the share and loan capital of the issuer, on a consolidated basis, since the date of the comparative financial statements for the issuer's most recently completed financial year filed with the securities regulatory authority.
- 4.2 Financial Information of the Issuer Released** - If before the short form prospectus is filed, financial information about the issuer for a period for which financial statements are required to be filed is publicly disseminated by or on behalf of the issuer through news release or otherwise, the short form prospectus shall include the content of the news release or public communication.

Item 5: Use of Proceeds

- 5.1 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.

- 5.2 Principal Purposes** - Describe in reasonable detail and, if appropriate using tabular form, each of the principal purposes, with approximate amounts, for which the net proceeds will be used by the issuer.

Item 6: Plan of Distribution

- 6.1 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."

- 6.2 Best Efforts Offering** - Outline briefly the plan of distribution of any securities being distributed other than on the basis described in Item 6.1.
- 6.3 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.
- 6.4 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.

- 6.5 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.
- 6.6 Reduced Price Distributions** - If an underwriter wishes to be able to decrease the price at which securities are distributed for cash from the initial public 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 public 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.
- 6.7 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]."
- 6.8 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.]"

Item 7: Earnings Coverage Ratios

7.1 Earnings Coverage Ratios

- (1) If the securities being distributed are debt securities having a term to maturity in excess of one year or are preferred shares, disclose the following earnings coverage ratios adjusted in accordance with paragraph (2):
 1. The earnings coverage ratio based on the 12 month period ended on the last day of the most recently completed period for which audited annual financial statements of the issuer have been, or are required to have been, filed with any Canadian securities regulatory authority.
 2. The earnings coverage ratio based on the 12 month period ended on the last day of the most recently completed period for which interim financial statements of the issuer have been, or are required to have been, filed with any Canadian securities regulatory authority, if the period is subsequent to the last day of the most recently completed period for which audited annual financial statements of the issuer have been, or are required to have been, filed with any Canadian securities regulatory authority.
- (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) all preferred shares issued since the date of the annual or interim financial statements, and
 - (ii) all preferred shares repurchased, redeemed, or otherwise retired since the date of the annual or

interim financial statements and all preferred shares to be repurchased, redeemed, or otherwise retired from the proceeds to be realized from the sale of securities under the short form prospectus;

- (c) the issuance of all long-term financial liabilities, as defined in the Handbook;
 - (d) the repayment, redemption or other retirement of all long-term financial liabilities, as defined in the Handbook, since the date of the annual or interim financial statements and all long-term financial liabilities to be repaid or redeemed from the proceeds to be realized from the sale of securities distributed under the 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 under Canadian GAAP, disclose in notes to the ratios required under paragraph (1)
- (a) that the ratios have been calculated excluding the carrying charges for those securities that have been reflected in equity in the calculation of the issuer's interest and dividend obligations;
 - (b) that if those securities had been accounted for in their entirety as debt for the purpose of calculating the ratios required under paragraph (1), the entire amount of the annual carrying charges for those securities would have been reflected in the calculation of the issuer's interest and dividend obligations; and
 - (c) the earnings coverage ratios for the periods referred to in paragraph (1), calculated as though those securities had been accounted for as debt.

INSTRUCTIONS

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

- (ii) *the coverage calculation should gross up dividends to a before-tax equivalent (the "prior deduction method") using the issuer's effective income tax rate (the rate that is reconciled to the basic income tax rate in the issuer's financial statement notes), and*
 - (iii) *the combined interest and dividend method (the "combined method"), and not the prior deduction method, should be used to calculate earnings coverage; and*
- (f) *for distributions of both debt securities and preferred shares, the appropriate denominator is the same as for a preferred share issue, except that the denominator should also reflect the effect of the debt being offered pursuant to the short form prospectus.*
- (3) *The prior deduction method referred to in Instruction 2(e)(ii) reflects the net coverage for preferred dividends after meeting interest obligations and results in a higher ratio than the combined method. As investors may falsely interpret the higher ratio as indicating less risk, without appreciating the fact that debtholders rank before preferred shareholders, the combined method should be used, although disclosure of a supplementary coverage ratio calculated using the prior deduction method is permitted.*
- (4) *The denominator represents a pro forma calculation of the aggregate of an issuer's interest obligations on all long-term debt and dividend obligations (including both dividends declared and undeclared dividends on cumulative preferred shares) with respect to all outstanding preferred shares, as adjusted to reflect*
 - (a) *the issuance of all long-term debt and, in addition in the case of an issuance of preferred shares, all preferred shares issued, since the date of the annual or interim financial statements;*
 - (b) *the issuance of the securities that are to be distributed under the 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) *If meaningful in the circumstances, the earnings coverage ratio must be calculated and disclosed based on a pro forma income statement that is included in a short form prospectus.*
- (6) *For debt securities, disclosure of earnings coverage shall include language similar to the following:*

"The Company's interest requirements, after giving effect to the issue of [the debt securities to be distributed under the short form prospectus], amounted to \$● for the 12 months ended ●. The Company's earnings before interest and income tax for the 12 months then ended was \$●, which is ● times the Company's interest requirements for this period."
- (7) *For preferred share issues, disclosure of earnings coverage shall include language similar to the following:*

"The Company's dividend requirements on all of its preferred shares, after giving effect to the issue of [the preferred shares to be distributed under the

short form prospectus], and adjusted to a before-tax equivalent using an effective income tax rate of ●%, amounted to \$● for the 12 months ended ●. The Company's interest requirements for the 12 months then ended amounted to \$●. The Company's earnings before interest and income tax for the 12 months ended ● was \$●, which is ● times the Company's aggregate dividend and interest requirements for this period."

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

Item 8: Description of Securities Being Distributed

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

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

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

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

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

8.3 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.*

8.4 Specified Derivatives - If specified derivatives are being distributed, describe fully the material attributes and characteristics of the specified 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.

8.5 Other Securities - If securities other than shares, debt securities, asset-backed securities or specified derivatives are being distributed, describe fully the material attributes and characteristics of those securities.

8.6 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.

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

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

8.8 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.

8.9 Other Attributes -

- (1) If the rights attaching to the securities being distributed are materially limited or qualified by the rights of any other class of securities, or if any other class of securities ranks ahead of or equally with the securities being distributed, include information

about the other securities that will enable investors to understand the rights attaching to the securities being distributed.

- (2) If securities of the class being distributed may be partially redeemed or repurchased, state the manner of selecting the securities to be redeemed or repurchased.

INSTRUCTIONS

- (1) *This Item requires only a brief summary of the provisions that are material from an investment standpoint. The provisions attaching to the securities being distributed or any other class of securities do not need to be set out in full. They may, in the issuer's discretion, be attached as a schedule to the prospectus.*
- (2) *No information need be given as to any class of securities that is to be redeemed or otherwise retired if appropriate steps to assure redemption or retirement have been or will be taken before or contemporaneously with the delivery of the securities being distributed.*

Item 9: Selling Security Holder

9.1 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.

6. The date or dates the security holder acquired the securities.
7. If the security holder in the 12 months preceding the date of the preliminary short form prospectus acquired any securities of the same class as the securities being distributed, the cost to the security holder in the aggregate and on a per security basis.

Item 10: Resource Property

- 10.1 Resource Property** - If a material part of the proceeds of a distribution is to be expended on a particular resource property and if the current AIF does not contain the disclosure required under Item 4.3 or 4.4, as appropriate, of Form 44-101F1 for the property or that disclosure is inadequate or incorrect due to changes, disclose the information required under Item 4.3 or 4.4, as appropriate.

Item 11: Significant Acquisitions and Significant Dispositions

11.1 Significant Acquisitions and Significant Dispositions

- (1) Disclose
 - (a) any significant acquisition completed by the issuer or any significant probable acquisition proposed by the issuer, for which financial statements are required under Part 4 or 5 of the National Instrument; and
 - (b) any significant disposition completed by the issuer during the most recently completed financial year or the current financial year for which *pro forma* financial statements are required under Part 6 of the National Instrument.
- (2) Include particulars of
 - (a) the nature of the assets acquired or disposed of or to be acquired or disposed of;
 - (b) the actual or proposed date of each significant acquisition or significant disposition;

- (c) *the consideration, both monetary and non-monetary, paid or to be paid to or by the issuer;*
 - (d) *any material obligations that must be complied with to keep any significant acquisition or significant disposition agreement in good standing;*
 - (e) *the effect of the significant acquisition or significant disposition on the operating results and financial position of the issuer;*
 - (f) *any valuation opinion obtained within the last 12 months required under Canadian securities legislation or Canadian securities directions of a Canadian securities regulatory authority or a requirement of a Canadian stock exchange to support the value of the consideration received or paid by the issuer or any of its subsidiaries for the assets, including the name of the author, the date of the opinion, the assets to which the opinion relates and the value attributed to the assets; and*
 - (g) *whether the transaction is with an insider, associate, or affiliate of the issuer and if so, disclose the identity of the other parties and the relationship of the other parties to the issuer.*
- (3) *Include the financial statements required under Part 4 of National Instrument 44-101.*

Item 12: Documents Incorporated by Reference

12.1 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. Material change reports, except confidential material change reports, filed after the commencement of the issuer's current financial year.
 3. The comparative interim financial statements for the issuer's most recently completed financial period for which the issuer prepares interim financial statements that have been filed.
 4. The comparative financial statements, together with the accompanying report of the auditor, for the issuer's most recently completed financial year for which annual financial statements have been filed.
 5. 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 3 or 4 is publicly disseminated by, or on behalf of, the issuer through news release or otherwise, the content of the news release or public communication.
 6. MD&A for the annual comparative financial statements referred to in paragraph 4.
 7. MD&A for the issuer's interim financial statements included in the short form prospectus, to the extent that the issuer is required to file interim MD&A with a Canadian securities regulatory authority.
 8. Except as provided in Item 12.5, information circulars or, if the issuer is not required under securities legislation to prepare information circulars, annual filings that, in each case, have been filed after the commencement of the issuer's current financial year.
- (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.

- (3) If the issuer
- (a) has filed an AIF in a form of a current annual report on Form 10-K or Form 20-F under the 1934 Act, as permitted under section 3.4 of National Instrument 44-101;
 - (b) is incorporated, organized or continued under the laws of Canada or a jurisdiction; and
 - (c) has based the discussion in the MD&A that forms part of the AIF on financial statements prepared other than in accordance with Canadian GAAP,

the issuer shall incorporate by reference a supplement which shall restate, based on financial statements of the issuer prepared in accordance with Canadian GAAP, those parts of the annual MD&A that are based on financial statements prepared in accordance with foreign GAAP which would read differently if they were based on financial statements prepared in accordance with Canadian GAAP.

INSTRUCTION

- (1) *Paragraph 3 of subsection (1), requires issuers to include interim financial statements for only the most recently completed three, six or nine month period. (See the definition of "interim period" in National Instrument 44-101.) Issuers that choose to incorporate additional interim financial statements are reminded that subsection 10.3 of National Instrument 44-101 requires a comfort letter from an auditor to be delivered, commenting on any unaudited financial statement included in the short form prospectus.*
- (2) *Paragraph 5 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.*
- (3) *Paragraph 6 of subsection (1) is a document that forms part of or is incorporated by reference in an issuer's AIF.*

- (4) *Any material incorporated by reference in a short form prospectus is required under sections 10.2 and 10.3 of National Instrument 44-101 to be filed with the short form prospectus unless it has been previously filed.*

12.2 Mandatory Incorporation by Reference of Future Documents - State that the following documents, 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:

1. Material change reports, except confidential material change reports.
2. Comparative interim financial statements.
3. Comparative financial statements for the issuer's most recently completed financial year, together with the accompanying report of the auditor.
4. Except as provided in Item 12.5, information circulars or, if the issuer is not required under securities legislation to prepare information circulars, annual filings.

12.3 Exception for Guaranteed Securities - Despite Items 12.1 and 12.2, paragraphs 3 and 4 of Item 12.1(1) do not apply to an issuer to which paragraph 1 or 2 of Item 13.1 applies.

12.4 Required Language - State the following, 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]. [Insert if the offering is made in Quebec - "For the purpose of the Province of Quebec, this simplified prospectus contains information to be completed by consulting the permanent information record. A copy of the permanent information record may be obtained from the secretary of the issuer at the above-mentioned address and telephone number"]."

12.5 Exception for Certain Filings

- (1) An issuer is not required to incorporate by reference in a short form prospectus the disclosure required under securities legislation in an information circular or annual filing of
 - (a) the repricing downward of options or freestanding stock appreciation rights;
 - (b) the composition of the compensation committee of the board of directors of an issuer and its report on executive compensation; and
 - (c) a graph comparing the yearly percentage change in the issuer's cumulative total shareholder return on publicly traded securities with the cumulative total return of a broad equity market index or a published industry or line-of-business index or other issuers.
- (2) An issuer is not required to incorporate by reference in a short form prospectus disclosure in an information circular of an issuer's corporate governance practices, if that disclosure is in the information circular in order to comply with disclosure requirements of an exchange or other market on which the issuer's securities trade.

12.6 List of Material Change Reports - List the material change reports filed by the issuer since the commencement of the issuer's current financial year. In each case, provide the date of filing and a brief description of the material change.

12.7 Reverse Take-Overs - If an issuer has been involved in a business combination accounted for as a reverse take-over bid, financial statements of the legal subsidiary, as that term is used in the Handbook, shall be incorporated by reference in the short form prospectus.

Item 13: Issues of Guaranteed Securities

13.1 Issuer Disclosure

- (1) If a credit supporter has provided a guarantee or alternative credit support to the issuer for all or substantially all of the payments to

be made under the securities to be distributed, provide the following disclosure about the issuer:

1. If the issuer is a wholly owned subsidiary of the credit supporter, has no operations or only minimal operations that are independent of the credit supporter and is an entity that functions essentially as a special purpose division of the credit supporter, a statement that the financial results of the issuer are included in the consolidated financial results of the credit supporter.
 2. If the issuer is a wholly owned subsidiary of the credit supporter but has more than minimal operations that are independent of the credit supporter, a summary of financial information relating to the issuer's operations in a note to the most recent audited annual financial statements of the credit supporter included in the short form prospectus.
 3. If the issuer is not a wholly owned subsidiary of the credit supporter, a full narrative description of the business of the issuer.
- (2) If paragraph 3 of paragraph (1) applies to an issuer and the issuer does not have a current AIF that is incorporated by reference into the short form prospectus, include the required description either
- (a) directly, or
 - (b) by incorporating by reference
 - (i) if the issuer is a reporting issuer and has an annual information form that has been prepared in compliance with and filed under Canadian securities legislation of a jurisdiction and would be a current AIF if that annual information form had been filed under National Instrument 44-101, the issuer's annual information form and all other documents required to be incorporated by reference in a short form prospectus under Item 12, or
 - (ii) if clause (i) is not applicable and the issuer 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, the issuer's latest annual report on Form 10-K or Form 20-F filed with the SEC under the 1934 Act or any other document 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 issuer were registering on Form S-3 or Form F-3 the securities distributed under the short form prospectus.

INSTRUCTION *For purposes of Item 13.1, an issuer is considered to be a wholly owned subsidiary of the credit supporter, if the credit supporter owns voting securities representing 96 per cent or more of the votes attached to the outstanding voting securities of the issuer.*

13.2 Credit Supporter Disclosure - If a credit supporter has provided a guarantee or alternative credit support for all or substantially all of the payments to be made under the securities being distributed, include statements by the credit supporter providing disclosure about the credit supporter by complying with the following:

1. If the credit supporter is a reporting issuer and has a current AIF or an annual information form that has been prepared in compliance with and filed under Canadian securities legislation of a jurisdiction and would be a current AIF if that annual information form had been filed under National Instrument 44-101, incorporating by reference into the short form prospectus the credit supporter's annual information form and all other documents that would be required to be incorporated by reference under Item 12 if the credit supporter were the issuer of the securities.
2. If paragraph 1 is not applicable and the credit supporter 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 documents 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 12.1 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 the securities to be distributed.

INSTRUCTION *Documents incorporated by reference are required under sections 8.1 and 8.2 of National Instrument 44-101 to be filed with the short form prospectus unless they have been previously filed.*

Item 14: Relationship between Issuer or Selling Security holder and Underwriter

14.1 Relationship between Issuer or Selling Security holder and Underwriter

- If the issuer or selling security holder is a connected issuer of an underwriter of the distribution, or if the issuer or selling security holder is also an underwriter,

- (a) until Multilateral Instrument 33-105 Underwriting Conflicts comes into force, provide the disclosure required by Item 15 of Appendix B of National Policy Statement No. 47 Prompt Offering Qualification System as that National Policy read immediately before it was revoked; and
- (b) after Multilateral Instrument 33-105 comes into force, comply with the requirements of that Multilateral Instrument.

Item 15: Interest of Experts

15.1 Interest of Experts

- (1) Disclose all direct or indirect interests in the property of the issuer or of an associated party or affiliate of the issuer received or to be received by a person or company whose profession or business gives authority to a statement made by the person or company and who is named in a short form prospectus or a document specifically incorporated by reference in a short form prospectus as having

prepared or certified a part of that document or a report or valuation described in a short form prospectus or in a document specifically incorporated by reference into a short form prospectus.

- (2) Disclose the beneficial ownership, direct or indirect, by a person or company referred to in paragraph (1) of any securities of the issuer or any associated party or affiliate of the issuer.
- (3) For the purposes of paragraph (2), if ownership is less than one per cent, a general statement to that effect shall be sufficient.
- (4) If a person, or a director, officer or employee of a person or company, referred to in paragraph (1) is or is expected to be elected, appointed or employed as a director, officer or employee of the issuer or of any 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 two years immediately preceding the date of the preliminary short form prospectus, a promoter of the issuer or of a subsidiary of the issuer state
 - (a) the person or company's name;
 - (b) the number and percentage of each class of voting securities of the issuer or any of its subsidiaries beneficially owned, directly or indirectly, or over which control is exercised 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 or a subsidiary of the promoter, directly or indirectly, from the issuer or from a subsidiary of the issuer, and the nature and amount of any assets, services or other consideration therefor received or to be received by the issuer or a subsidiary of the issuer; and

- (d) for an asset acquired within the two years before the date of the preliminary short form prospectus or thereafter, or to be acquired, by the issuer or by a subsidiary of the issuer from a promoter or a subsidiary of 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 or past promoter referred to in paragraph (1) has been a director, officer or promoter of any person or company during the 10 years ending on the date of the preliminary short form prospectus that
 - (a) was the subject of a cease trade or similar order, or an order that denied the person or company access to any exemptions under Canadian 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
 - (b) became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or been subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets, state the fact.
- (3) Describe the penalties or sanctions imposed and the grounds on which they were imposed or the terms of the settlement agreement and the circumstances that gave rise to the settlement agreement, if a promoter or past promoter referred to in paragraph (1) has

- (a) been subject to any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority or has entered into a settlement agreement with a Canadian securities regulatory authority; or
 - (b) been subject to any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor in making an investment decision.
- (4) Despite paragraph (3), no disclosure is required of a settlement agreement entered into before the date National Instrument 44-101 came into force unless the disclosure would likely be considered important to a reasonable investor in making an investment decision.
- (5) If a promoter or past promoter referred to in paragraph (1) 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.

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 the preceding 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 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 Item 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: Reconciliation to Canadian GAAP

20.1 Reconciliation to Canadian GAAP - If financial statements prepared in accordance with foreign GAAP are included in the short form prospectus and a reconciliation to Canadian GAAP has not been incorporated by reference in the short form prospectus, include in the short form prospectus the reconciliation to Canadian GAAP required under paragraph (b) of subsection 7.1(2) of the National Instrument.

Item 21: Certificates

21.1 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 simplified prospectus, as supplemented by the permanent information record, contains no misrepresentation that is likely to affect the value or the market price of the securities to be distributed."]"

21.2 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 Quebec, to our knowledge, this simplified prospectus, as supplemented by the permanent information record, contains no misrepresentation that is likely to affect the value or the market price of the securities to be distributed."]

21.3 Related Credit Supporters - If disclosure concerning a credit supporter is prescribed by Item 13.2 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 Item 21.1 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).

21.4 Amendments

- (6) Include in an amendment to a short form prospectus that does not restate the short form prospectus the certificates required under Items 21.1, 21.2 and, if applicable, Item 21.3 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".
- (7) Include in an amended and restated short form prospectus the certificates required under Items 21.1, 21.2 and, if applicable, Item 21.3 with the reference in each certificate to "this short form prospectus" omitted and replaced by "this amended and restated short form prospectus".

**COMPANION POLICY
TO NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS**

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**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 (the "National Instrument") replaces National Policy Statement No. 47 Prompt Offering Qualification System ("NP47") and sets out the substantive test for an issuer to qualify to file a prospectus in the form of a short form prospectus. The purpose of the National Instrument is the same as NP47's: 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.

British Columbia, Alberta, Ontario, Manitoba and Nova Scotia have adopted the National Instrument by way of rule. Saskatchewan has adopted it by way of regulation. Quebec has adopted it by way of policy. All other jurisdictions have adopted National Instrument 44-101 by way of related blanket ruling or order. Each jurisdiction implements the National Instrument 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 the National Instrument (also referred to as "this Companion Policy" or this "Policy") provides information relating to the manner in which the provisions of the National Instrument are intended to be interpreted or applied by the Canadian securities regulatory authorities, as well as the exercise of discretion under the National Instrument. Terms used and not defined in this Companion Policy that are defined or interpreted in the National Instrument or a definition instrument in force in the jurisdiction should be read in accordance with the National Instrument or 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 the National Instrument in those jurisdictions that have adopted the National Instrument by way of related blanket ruling or order, the provisions of the National Instrument prevail over the provisions of this Policy.

- 1.2 Interrelationship With Local Securities Legislation** - The National Instrument, 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 MRRS - National Policy 43-201 Mutual Reliance Review System for Prospectuses and AIFs** ("National Policy 43-201") describes the practical application of the mutual reliance review system relating to the filing and review of prospectuses, including mutual fund and shelf prospectuses, amendments to prospectuses, annual information forms and related materials. While use of the MRRS is optional, the MRRS represents the only means by which an issuer can enjoy the benefits of co-ordinated review by the Canadian securities regulatory authorities in the various jurisdictions in which the issuer has filed a short form prospectus or an AIF. Under the MRRS, one Canadian securities regulatory authority or regulator as defined in National Instrument 14-101 Definitions, as applicable, acts as the principal regulator for all materials relating to a filer.

The provisions of this Policy relating to clearance of a short form prospectus or review of an AIF apply only to filings for which the issuer has not elected to use MRRS.

- 1.4 Interrelationship with Selective Review** - The Canadian securities regulatory authorities in Ontario, British Columbia and Alberta have adopted a system of selective review of certain documents, including AIFs, short form prospectuses and amendments to short form prospectuses. Under the selective review system, these documents are 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 AIFs, short form prospectuses and amendments to short form prospectuses not being reviewed beyond the initial screening.
- 1.5 Interrelationship With Shelf Distributions (National Instrument 44-102)** - Issuers qualified under the National Instrument 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. The Companion Policy to National Instrument 44-102 Shelf Distributions explains that the distribution of securities under the shelf system is governed by the requirements and procedures of the National Instrument and securities legislation, except as supplemented or varied by National Instrument 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 the National Instrument and this Policy first, and then refer to National Instrument 44-102 and the accompanying policy for any additional requirements.

- 1.6 Inter-relationship With PREP Procedures (National Instrument 44-103) -** National Instrument 44-103 Post-Receipt Pricing contains the post receipt pricing procedures (the "PREP procedures"). All issuers and selling security holders can use the PREP procedures of National Instrument 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 the National Instrument and this Policy first, and then refer to National Instrument 44-103 and the accompanying policy for any additional requirements.

1.7 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 the National Instrument.

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 the National Instrument.

- (2) **Asset-backed security** - The definition of "asset-backed security" is virtually identical to the definition adopted in the October, 1992 amendments to Form S-3 of the 1933 Act, permitting issuers of "investment grade" asset-backed securities access to the U.S. short-form registration

statement and related procedures.

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) **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, ie. 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.

- (4) **Probable Acquisition of a Business and Probable Acquisition of Related Businesses** - See section 5.4.
- (5) **Regulator** - The regulator for each jurisdiction is listed in Appendix D to National Instrument 14-101 Definitions. In practice, that person has often delegated his or her powers to act under the National Instrument to another staff member of the same Canadian 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 the National Instrument 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 (except for applications for exemptions from Part 2 of the National Instrument, for which the regulator is the Director, Exemptions and Orders)
Manitoba	Director, Corporate Finance
New Brunswick	Administrator of Securities
Newfoundland	Director of Securities
Northwest Territories	Deputy Registrar of Securities
Nova Scotia	Director of Securities
Nunavut	Registrar of Securities
Ontario	Manager, Corporate Finance
Prince Edward Island	Registrar of Securities
Quebec	Commission des valeurs mobilières du Québec
Saskatchewan	Deputy Director, Corporate Finance (except for applications for exemptions from Part 2 of the National Instrument, for which the

regulator is the Saskatchewan Securities
Commission)
Yukon Territory Registrar of Securities

Further delegation may take place among staff or under securities legislation.

- (6) **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 Canadian 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 Canadian 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.

PART 2 QUALIFICATION TO FILE A PROSPECTUS IN THE FORM OF A SHORT FORM PROSPECTUS

2.1 Basic Qualification Criteria

- (1) **Reporting Issuers in Local Jurisdiction that have been Reporting Issuers for 12 Months in a Jurisdiction other than the Local Jurisdiction (Clause 1(a)(ii) of section 2.2 of the National Instrument)** - Clause 1(a)(ii) of section 2.2 of the National Instrument provides that a reporting issuer in the local jurisdiction that is, and has been for the 12 calendar months preceding the date of the filing of its most recent AIF, a reporting issuer under Canadian securities legislation in at least one jurisdiction, other than the local jurisdiction, satisfies the reporting issuer criterion for being qualified to file a prospectus in the form of a short form prospectus if it has filed in the local jurisdiction all continuous disclosure documents that it was required to file during the 12 calendar months

preceding the date of the filing of its most recent AIF under the Canadian securities legislation of any jurisdiction in which it has been a reporting issuer. An issuer that has already filed with the Canadian securities regulatory authority of the local jurisdiction some or all of the continuous disclosure documents contemplated in this clause is not required to file those documents again.

- (2) **Issuers not Reporting Issuers in Local Jurisdiction that are and have been Reporting Issuers for 12 Months in a Jurisdiction other than the Local Jurisdiction (Subparagraph 1(b) of section 2.2 of the National Instrument)** - Subparagraph 1(b) of section 2.2 of the National Instrument provides what an issuer that is not a reporting issuer in the local jurisdiction must do to be qualified to file a prospectus in the form of a short form prospectus in that jurisdiction if the issuer is, and has been for the 12 calendar months preceding the date of the filing of its most recent AIF, a reporting issuer under Canadian securities legislation in at least one jurisdiction, other than the local jurisdiction, and if the securities regulatory authority is unable to deem the issuer to be, or designate the issuer as, a reporting issuer. As of the coming into force date of this Policy, only the provinces of Alberta, British Columbia, Ontario, Quebec, Nova Scotia and Saskatchewan have the statutory power to deem an issuer to be, or to designate an issuer as, a reporting issuer.

2.2 Alternative Eligibility Criteria: Issuers that have not been Reporting Issuers for 12 Months in any Jurisdiction (Sections 2.3, 2.5, 2.6, 2.7, and 2.8 of the National Instrument) - Issuers that have not been reporting issuers for 12 months in any jurisdiction may nonetheless be qualified to file a prospectus in the form of a short form prospectus under the following alternative qualification criteria of the National Instrument:

1. Section 2.3, which applies to issuers with a public float of \$300,000,000 or more.
2. Section 2.5, which applies to issuers of non-convertible debt securities, non-convertible preferred shares or cash settled derivatives, if another person or company that satisfies prescribed criteria fully and unconditionally guarantees or provides alternative credit support for the payments to be made by the issuer of the securities as stipulated in the terms of the securities or in an agreement governing the rights of holders 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 and fully and unconditionally guarantees or provides alternative credit support for the payments to be made by the issuer of the securities as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities.
4. Section 2.7, which applies to issuers of asset-backed securities.
5. Section 2.8, which applies to successor issuers following reorganizations.

Under sections 2.5, 2.6 and 2.7 of the National Instrument, 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. Under section 2.8 of the National Instrument, a successor issuer must be a reporting issuer in at least one jurisdiction. However, it is not necessary for it to have been one for 12 months, as the successor issuer may rely on the reporting history of one of the participants in the reorganization. Paragraph 1 of section 2.3 requires the issuer to be a reporting issuer or, if the issuer is not a reporting issuer in the local jurisdiction, it must be a reporting issuer under Canadian securities legislation in a jurisdiction other than the local jurisdiction, and satisfy the criterion in subparagraph 5 of paragraph 1(b) of section 2.2 of the National Instrument.

2.3 Calculation of the Aggregate Market Value of an Issuer's Equity Securities (Section 2.9 of the National Instrument)

- (1) Section 2.9 of the National Instrument sets out how to determine whether an issuer satisfies the market value criteria contained in Part 2 of the National Instrument. Subsection 2.9(2) requires certain securities to be excluded when calculating the total number of equity securities outstanding, and subsection 2.9(3) requires a subset of those excluded securities to be included nonetheless, despite subsection 2.9(2). The following examples are provided to assist issuers and their advisers in determining which securities are to be excluded in accordance with subsections 2.9(2) and (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

2.9(1)(b) of the National Instrument). The market value of the equity securities evidenced by the receipt, may however, be included, subject to subsections 2.9(2) and 2.9(3) of the National Instrument.

The exclusions set out in subsection 2.9(2) of the National Instrument 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 Canadian 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 2.9(2) of the National Instrument 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 for Substantial Issuers (Section 2.3 of the National Instrument)** - Subparagraph 1(b) of section 2.3 of the National Instrument requires substantial issuers, that are not reporting issuers in the local jurisdiction, to be reporting issuers under Canadian securities legislation in a jurisdiction, other than the local jurisdiction, and to satisfy the criterion in subparagraph 5 of paragraph 1(b) of section 2.2. That criterion requires the issuer to have provided an undertaking to the securities regulatory authority that it will file all continuous disclosure documents that it would be required to file under securities legislation if it were a reporting issuer from the time of the filing of its most recent AIF until the issuer becomes a reporting issuer.
- 2.5 Alternative Qualification Criteria for Issuers of Guaranteed Debt Securities, Preferred Shares and Cash Settled Derivatives (Sections 2.5 and 2.6 of the National Instrument)** - Sections 2.5 and 2.6 of the National Instrument allow an issuer to qualify to file a prospectus in the form of a short form prospectus based on a full and unconditional guarantee or alternative credit support. The Canadian 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.

2.6 Alternative Qualification Criteria for Asset-Backed Securities (Section 2.7 of the National Instrument)

- (1) In order to be qualified to file a prospectus in the form of a short form prospectus under section 2.7 of the National Instrument, 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 dependant 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 the National Instrument, 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.

2.7 Reorganizations (Section 2.8 of the National Instrument)

- (1) Section 2.8 of the National Instrument provides alternative qualification criteria for a successor issuer to qualify to file a prospectus in the form of a short form prospectus even though it has not been a reporting issuer in any jurisdiction for 12 months. It may qualify if, among other things, it is a reporting issuer under Canadian securities legislation and, at the time of the reorganization, at least one of the participants in the reorganization satisfied the 12 month reporting issuer criterion in paragraph 1 of section 2.2 of the National Instrument.
- (2) 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 the National Instrument, 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 the National Instrument (approved rating or guaranteed securities) or section 2.7 of the National Instrument (asset-backed securities).
- (3) 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 Canadian 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 Canadian 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 Canadian 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.
- (4) Market participants are also 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.

- 2.8 Adoption by Successor Issuer of a Participant's AIF Following a Reorganization (Section 2.10 of the National Instrument)** - Section 2.10 of the National Instrument enables a successor issuer to adopt as its own AIF the AIF of a participant in the reorganization, if the AIF was a current AIF of the participant at the time of the reorganization. By adopting the AIF of a participant, the successor issuer is deemed under section 2.10 to have a current AIF for the purposes of securities legislation. It is not relevant whether the participant that filed the AIF continues to exist after the reorganization. If the participant continues to exist after the reorganization, the adoption by the successor issuer of the current AIF of the participant does not preclude the participant from having the AIF in order to, itself, qualify to file a prospectus in the form of a short form prospectus. Under section 2.10 of the National Instrument, a successor issuer may choose to adopt the current AIF of more than one participant in the reorganization that gave rise to the successor issuer. This may be appropriate in circumstances where the successor issuer succeeded to the businesses of two participants where each participant had a current AIF. A successor issuer may always file its own AIF in order to have a current AIF.

PART 3 AIF

3.1 Initial AIF Review Procedures (Section 3.1 of the National Instrument)

- (1) An AIF filed by either an issuer that has not previously had an AIF accepted for filing in the local jurisdiction or an issuer that previously had a current AIF in the local jurisdiction and no longer has one is treated as an initial AIF for the purpose of review by the POP regulator.
- (2) An initial AIF and supporting documents will be reviewed by the Canadian securities regulatory authorities, including the CVMQ, in accordance with the procedures described in the MRRS if the issuer has elected to use the MRRS. Compliance by issuers with the MRRS procedures, although not mandatory, will generally result in the most expeditious treatment of initial AIFs on a national basis. If an issuer does not elect MRRS, the review of the initial AIF will not be co-ordinated among the various jurisdictions in

which the issuer has filed the AIF, nor is the review subject to any particular time frame.

- (3) An issuer filing in more than one jurisdiction should file the initial AIF, together with any supporting materials, as nearly as may be practicable, contemporaneously in each of the jurisdictions in which the issuer wishes to become qualified to file a prospectus in the form of a short form prospectus. Contemporaneous filing is automatic for issuers using SEDAR. An issuer should file in each jurisdiction an AIF identical in form and content, including the date, except that French language documents filed in Quebec need not be filed in the other jurisdictions, except as required under subsections 3.1(3) and (4) of the National Instrument. The review of documents filed in Quebec in the French language, apart from substantive comments applying to both English and French language versions, will ordinarily be dealt with between Quebec and the issuer or the issuer's agent in Quebec directly.

3.2 Renewal AIF Filing and Review Procedures (Section 3.2 of the National Instrument)

- (1) An issuer that has a current AIF for its second most recently completed financial year and wishes to have a current AIF for its most recently completed financial year must file a renewal AIF in accordance with section 3.2 of the National Instrument.
- (2) An issuer that does not have a current AIF in the local jurisdiction, yet has a current AIF in another jurisdiction, and wishes to file a short form prospectus in the local jurisdiction may file, as an initial AIF under section 3.1 of the National Instrument in the local jurisdiction, either (i) the new AIF that it is filing as a renewal AIF in the other jurisdiction, or (ii) the AIF that is a current AIF in the other jurisdiction. The issuer should notify all the other jurisdictions in which it already has a current AIF that it is filing an initial AIF in a new jurisdiction.
- (3) An issuer filing in more than one jurisdiction should file a renewal AIF, together with any supporting materials, as nearly as may be practicable, contemporaneously in each of the jurisdictions in which the issuer wishes to remain qualified to file a prospectus in the form of a short form prospectus. Contemporaneous filing is automatic for issuers using SEDAR. An issuer should file an AIF in each jurisdiction identical in form and

content, including the date, except that French language documents filed in Quebec need not be filed in the other jurisdictions, except as otherwise provided in subsections 3.2(8) and (9) of the National Instrument.

- (4) A renewal AIF, if selected for review, will be reviewed by the Canadian securities regulatory authorities in accordance with section 3.2 of the National Instrument and the procedures described in MRRS, if the issuer has elected to use MRRS.
- (5) This subsection applies to an issuer that files a renewal AIF and has not elected to use the MRRS. If an issuer's renewal AIF has been selected for review and the issuer files a preliminary short form prospectus, both the issuer's preliminary short form prospectus and its renewal AIF will be reviewed at the same time. In these circumstances, comments arising in the course of the review of the renewal AIF will be taken into account during the review of the preliminary short form prospectus. The notice that the review of the renewal AIF has been completed will be issued before, or concurrently with, the issuance of the receipt for the short form prospectus. A receipt for the short form prospectus will not be issued until the review of the renewal AIF has been completed. No particular time frame applies to this review.

3.3 Supporting Documents (Section 3.3 of the National Instrument)

- (1) Any material incorporated by reference in an AIF is required under paragraph 3.3(1)(a) of the National Instrument to be filed with the AIF unless it has been previously filed. When an issuer using SEDAR files a previously unfiled document with its AIF, the issuer should ensure that the document is filed under the appropriate SEDAR filing type and document type specifically applicable to the document, rather than generic type "Documents Incorporated by Reference". For example, an issuer that has incorporated by reference an information circular in its AIF and has not previously filed the circular should file the circular under the "Management Proxy Materials" filing subtype and the "Management proxy/information circular" document type.
- (2) There is no regulatory requirement for auditor involvement with respect to the preparation of an AIF. No solicitor's, auditor's, accountant's, engineer's, appraiser's or other consent is required to be filed with an AIF. However, reporting issuers may choose to involve their auditors. The

auditing profession's standards may require limited auditor involvement in certain circumstances. Section 10.4 of the National Instrument requires the filing of consents of experts with a short form prospectus. In order to be able to provide the necessary consent letter on a short form prospectus, an auditor will be obliged to comply with applicable requirements of the Handbook and of Canadian securities legislation of the jurisdictions in which the AIF is filed.

PART 4 FINANCIAL MATTERS

A. ISSUERS AND SIGNIFICANT ACQUISITIONS

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

- (1) The financial statement disclosure requirements for an issuer and any business acquired or to be acquired are often described with reference to 60 or 90 day periods. A reporting issuer is required to file interim financial statements 60 days after the last day of an interim period on a continuous disclosure basis. The interim financial statement disclosure requirements in the National Instrument are based on these continuous disclosure reporting time frames. Annual audited financial statements are required to be filed 140 days after year end on a continuous disclosure basis. However, if a preliminary short form prospectus is filed more than 90 days after year end, the audited financial statements are required to be included in the short form prospectus.
- (2) Section 1.10 of the National Instrument states that unless otherwise stated, a reference to a short form prospectus in the National Instrument includes a preliminary short form prospectus. Consequently, the 60 and 90 day period references discussed in subsection (1) should be considered as at the date the preliminary short form prospectus is filed and again at the date of the final short form prospectus is filed for both the issuer and any business acquired or to be acquired. Depending on the period of time between the dates of the preliminary and final short form prospectuses, an issuer may have to include more recent financial statements.
- (3) However, in order for an issuer to distribute securities using the short form prospectus system, sections 2.2, 2.3, 2.4, 2.5, 2.6, 2.7 and 2.8 of the

National Instrument each require the issuer to file financial statements for its most recently completed financial year only if the issuer files a preliminary short form prospectus more than 90 days after its most recently completed financial year. If the issuer files a preliminary short form prospectus less than 90 days after the end of its most recently completed financial year and files the final short form prospectus more than 90 days after the end of the issuer's most recently completed financial year, the issuer is not required to include in the short form prospectus the financial statements for its most recently completed financial year. The Canadian securities regulatory authorities recognize that issuers generally anticipate that the period of time between the filing a preliminary and a final short form prospectus will be relatively brief. Accordingly, imposing the requirement on an issuer to update its prospectus to reflect the results of its most recently completed financial year because those financial statements were filed between the dates of the preliminary and final short form prospectus could significantly delay the completion of an offering thus diminishing the benefits of the short form prospectus offering regime.

- (a) For example, assume an issuer has a December 31 year end and files a preliminary short form prospectus on March 28, year one. If the issuer has not filed audited financial statements for its most recently completed financial year by March 28 and files its final short form prospectus on April 5, the issuer will not be required to file and incorporate by reference its audited financial statements for its most recently completed year nor will it be required to update the final short form prospectus to reflect the results for the most recently completed financial year. However, if the issuer filed the preliminary short form prospectus on or after April 1, it would be required to include the audited financial statements for its most recently completed financial year.
- (4) Despite subsection (3), the Canadian 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.

4.2 Additional Financial Statements or Financial Information Filed or Released -
If annual or interim financial statements of a business acquired or to be acquired, more recent than those that would otherwise be required to be included in a short

form prospectus, have been filed before a short form prospectus is filed, sections 4.7 and 5.3 of the National Instrument require those financial statements to be included in the short form prospectus and the short form prospectus to be updated accordingly. However, if information derived from more recent annual or interim financial statements is released to the public by the issuer before the financial statements are filed, the short form prospectus should include the information included in the news release or public communication. There is no specific requirement in the National Instrument to otherwise update the short form prospectus or *pro forma* financial statements to reflect the more recent information.

- 4.3 Auditor's Report for All Financial Statements Included in the Short Form Prospectus** - The National Instrument requires that all financial statements included in a short form prospectus be accompanied by an auditor's report without a reservation of opinion, except financial statements specifically exempted in the National Instrument. Issuers are reminded that this requirement extends to financial statements of subsidiaries and other entities even if the financial statements are not required to be included in the short form prospectus but have been included at the discretion of the issuer.
- 4.4 Exemption from Auditor's Report if not Previously Included in a Short Form Prospectus** - If an issuer received a receipt for a final short form prospectus that included financial statements of a business acquired or to be acquired for a financial year that were not accompanied by an auditor's report, section 4.15 of the National Instrument provides that if the issuer includes any of those unaudited financial statements in a subsequent short form prospectus, the issuer will not be expected to include an auditor's report on those financial statements unless they were audited subsequent to obtaining the final receipt for the previous short form prospectus. The Canadian securities regulatory authorities recognize that requesting an issuer to obtain an auditor's report that it was permitted to exclude from a previous final short form prospectus could create undue hardship for the issuer.
- 4.5 Timing of Requests for Exemptions from the Financial Statement Requirements** - Requests for exemptions from Parts 4 and 5 of the National Instrument and Item 12.1 of Form 44-101 F3 should be made in accordance with Part 15 of the National Instrument which requires the issuer to make submissions in writing along with the reasons for the request and the proposed alternative disclosure. Written submissions should be filed at, or preferably before, the time the preliminary short form prospectus is filed, in order to permit the issue to be resolved in a timely manner. Issuers filing a short form prospectus in more than

one jurisdiction are encouraged to consult National Policy 43-201 Mutual Reliance Review System for Short form prospectuses and Annual Information Forms for more guidance on pre-filing applications.

B. ISSUERS

4.6 Applications for Exemption from Requirement to Include Financial Statements of the Issuer

- (1) The Canadian securities regulatory authorities are of the view that relief from the requirement to provide audited historical financial statements should be granted only in unusual circumstances not related to cost or the time involved in preparing or auditing the financial statements. If in unusual circumstances relief is granted, conditions will likely be imposed, such as a requirement to include audited divisional statements of income or cash flows, financial statements accompanied by audit reports containing a reservation of opinion or audited statements of net operating income.
- (2) In view of the reluctance of the Canadian securities regulatory authorities to grant exemptions from the requirement to include audited historical financial statements, issuers seeking relief should consult with staff on a pre-filing basis.
- (3) Relief may be granted in appropriate circumstances to permit the auditor's report on financial statements to contain a reservation relating to opening inventory if there is a subsequent audited period of at least six months on which the auditor's report contains no reservation and the business is not seasonal.
- (4) Considerations relevant to granting an exemption from the requirement to include financial statements, generally for the years immediately preceding the issuer's most recently completed financial year, may include the following:
 - (a) The issuer's historical accounting records have been destroyed and cannot be reconstructed. In this case, as a condition of granting the exemption, the issuer may be requested by the Canadian securities regulatory authorities to
 - (i) represent in writing to the Canadian securities regulatory

authorities, no later than the time the preliminary short form prospectus is filed, that the issuer made every reasonable effort to obtain copies of, or reconstruct, the historical accounting records necessary to prepare and audit the financial statements, but such efforts were unsuccessful; and

- (ii) disclose in the short form prospectus the fact that the historical accounting records have been destroyed and cannot be reconstructed.

(b) The issuer has emerged from bankruptcy and current management is denied access to the historical accounting records necessary to audit the financial statements. In this case, as a condition of granting the exemption, the issuer may be requested by the Canadian securities regulatory authorities to

- (i) represent in writing to the Canadian securities regulatory authorities, no later than the time the preliminary short form prospectus is filed, that the issuer has made every reasonable effort to obtain access to, or copies of, the accounting records necessary to audit the financial statements but that such efforts were unsuccessful; and

- (ii) disclose in the short form prospectus the fact that the issuer has emerged from bankruptcy and current management is denied access to the historical accounting records.

(c) The issuer has undergone a fundamental change in the nature of its business or operations affecting a majority of its operations and all, or substantially all, of the executive officers and directors of the company have changed. The evolution of a business or progression along a development cycle will not be considered to be a fundamental change in an issuer's business or operations. Relief from the requirement to include financial statements of the issuer required by the National Instrument for the year in which the change occurred, or for the most recently completed financial year if the change in operations occurred during the issuer's current financial year, generally will not be granted

- 4.7 Reverse Take-overs** - When an issuer has been involved in a business combination accounted for a reverse take-over, Item 12.7 of Form 44-101F3 requires that financial statements referred to in Item 12.1(1) of Form 44-101F3 be provided for the legal subsidiary which is the accounting parent, as those terms are used in the Handbook.

PART 5 DISCLOSURE IN A SHORT FORM PROSPECTUS OF FINANCIAL STATEMENTS FOR SIGNIFICANT ACQUISITIONS, SIGNIFICANT DISPOSITIONS AND MULTIPLE ACQUISITIONS

A. GENERAL

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

- 5.2 Acquisition of a Business** - Part 4 of the National Instrument requires an issuer that has made a significant acquisition or is proposing to make a significant probable acquisition to include in its short form prospectus certain financial statements of each business acquired or to be acquired. Part 5 of the National Instrument has similar requirements for an issuer that has made or is proposing to make multiple acquisitions that are not related or individually significant. For this purpose, the term "business" should be evaluated in light of the facts and circumstances involved. The Canadian securities regulatory authorities generally consider that a separate entity, a subsidiary or a division is a business and that in certain circumstances a lesser component of a person or company may also constitute a business, whether or not the subject of the acquisition previously prepared financial statements. Continuity of business operations is considered in determining whether an acquisition constitutes the acquisition of a business. Other factors that will be considered include

- (a) whether the nature of the revenue producing activity or potential revenue producing activity will remain generally the same after the acquisition; and
- (b) whether any of the physical facilities, employees, marketing systems, sales forces, customers, operating rights, production

techniques or trade names are acquired by the issuer instead of remaining with the vendor after the acquisition.

5.3 Acquisition of an Interest in an Oil and Gas Property

- (1) The Canadian securities regulatory authorities consider the acquisition of an interest in an oil and gas property ("property") to constitute the acquisition of a business as discussed in section 5.2 of the Policy. However, it is recognized that in certain situations, limited availability of, or access to, audited financial statements or financial information of the acquired property makes it difficult to comply with the financial statement disclosure requirements outlined in Parts 4 and 5 of the National Instrument. The Canadian securities regulatory authorities have also considered that, unique to the oil and gas industry, relevant operating information is often publicly available. Accordingly, the Canadian securities regulatory authorities may consider granting an exemption from the disclosure requirements of Parts 4 and 5 of the National Instrument if
 - (a) the issuer has not accounted for the acquisition as a reverse take-over;
 - (b) the property does not constitute a "reportable segment" of the vendor, as defined in section 1701 of the Handbook, at the time of the acquisition; and
 - (c) the prospectus includes acceptable alternative disclosure in respect of the property as outlined in subsection (2).

- (2) **Alternative Disclosure**
 - (a) The Canadian securities regulatory authorities are of the view that alternative disclosure in a short form prospectus, to be acceptable for the purposes of subsection (1)(c), should include at least an audited operating statement of the property acquired or to be acquired for each of the years required by Parts 4 and 5 of the National Instrument. The operating statements should each present, at a minimum, the following line items:
 - gross revenue;
 - royalty expenses;

- production costs; and
- operating income.

In applying Parts 4 and 5 of the National Instrument for purposes of this paragraph, the significance of an acquired property or of a probable acquisition of a property shall be determined based on the investment and income tests outlined in section 1.2 of the National Instrument, except that for purposes of the income test, "operating income" should be substituted for "consolidated income from continuing operations".

- (b) In addition to the information in paragraph (a), the following information may also be required to be included in the short form prospectus.
 - (i) Information with respect to reserve estimates and estimates of future net revenue and production volumes and other relevant information regarding the property, if material.
 - (ii) Actual production volumes of each of the properties for each of the three most recently completed years.
 - (iii) Estimated production volumes of each of the properties for each of the next three years based on information in the respective reserve reports.
- (3) **Relief from the requirement to Audit Operating Statements** - Despite subsection (2)(a), the Canadian securities regulatory authorities may permit an issuer to exclude an audit opinion on the operating statements referred to in subsection (2)(a) if
 - (a) the property was acquired prior to December 31, 2000 and the issuer provides written submissions prior to filing the final short form prospectus which establish to the satisfaction of the Canadian securities regulatory authorities that, despite making reasonable efforts, the issuer was unable to obtain audited operating statements because the vendor refused to provide such audited statements or to permit access to the information necessary to audit the statements; or

- (b) during the 12 months preceding the date of the acquisition or the proposed date of the probable acquisition, the daily average production of the property on a barrel of oil equivalent basis (with gas converted to oil in the ratio of six thousand cubic feet of gas being the equivalent of one barrel of oil), is less than 20 per cent of the total daily average production of the vendor for the same or similar periods and
 - (i) the issuer provides written submissions prior to filing the final short form prospectus that establish to the satisfaction of the Canadian securities regulatory authorities that despite reasonable efforts during the purchase negotiations, the issuer was prohibited from including in the purchase agreement the rights to obtain an audited operating statement of the property;
 - (ii) the purchase agreement includes representations and warranties by the vendor that the amounts presented in the operating statement agree to the vendor's books and records; and
 - (iii) the issuer discloses in the short form prospectus its inability to obtain an audited operating statement, the reasons therefore, the fact that the representations and warranties referred to in item (ii) have been obtained, and a statement that the results presented in the operating statements may have been materially different if the statements had been audited.

5.4 Probable Acquisitions

- (1) The definitions of "probable acquisition of a business" and "probable acquisition of related businesses" in the National Instrument both include the phrase "where a reasonable person would believe that the likelihood of the acquisition being completed is high". The Canadian securities regulatory authorities interpret this phrase having regard to section 3290 of the Handbook "Contingencies". It is the view of the Canadian 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.
- (2) The test of whether a proposed acquisition is a "probable acquisition of a business" or "probable acquisition of related businesses" is an objective, rather than subjective, test in that the question turns on what a "reasonable person" would believe. It is not sufficient for an officer of an issuer to determine that he or she personally believes that the likelihood of the acquisition being completed is or is not high. The officer must form an opinion as to what a reasonable person would believe in the circumstances. In the event of a dispute as to whether an acquisition is a probable acquisition, an objective test requires an adjudicator to decide whether a reasonable person would believe in the circumstances that the likelihood of an acquisition being completed was high. By contrast, if the definition relied on a subjective test, the adjudicator would assess an individual's credibility and decide whether the personal opinion of the individual as to whether the likelihood of the acquisition being completed was high was an honestly held opinion. Formulating the definition using an objective test rather than a subjective test strengthens the basis upon which the regulator may object to an issuer's application of the definition in particular circumstances.
- (3) A completed acquisition of a business and a proposed acquisition of a business will constitute a probable acquisition of related businesses defined in section 1.1 of the National Instrument if, among other things, each acquisition is contingent on a single common event. Common financing is one example of a single common event contemplated by the definition.

5.5 Significant Acquisitions Completed During the Issuer's Three Most Recently Completed Financial Years - If an issuer made a significant acquisition during its three most recently completed financial years, the balance sheets of the business as at a date prior to the date of the acquisition will be reflected in the issuer's most recent audited balance sheet included in the prospectus. In addition, the allocation of the purchase price to the assets acquired and liabilities assumed should also be disclosed in the issuer's audited financial statements. Accordingly, there is no requirement under subsection 4.2(1) of the National Instrument for the financial

statements of the business included in the prospectus to include a balance sheet. The corresponding exception for individually insignificant, unrelated acquisitions is provided in subsection 5.2(4) of the National Instrument. The Canadian securities regulatory authorities recognize that a balance sheet will normally have been prepared and will not object if the financial statements of a business included in the prospectus include a balance sheet.

5.6 Significant Acquisitions Completed During the Issuer's Current Financial Year

- If an issuer has made a significant acquisition during its current financial year, and the acquisition is accounted for using the purchase method, section 4.11 of the National Instrument requires an issuer to include disclosure about the acquisition, including a purchase price allocation, in a subsequent event note to the issuer's financial statements. At the time the short form prospectus is filed, the allocation of the purchase price may not yet be finalized so it may be impracticable to provide a detailed purchase equation. However, the issuer will know the assets and liabilities it has acquired and is expected to estimate an allocation of the purchase price to those assets and liabilities, at least on an aggregate basis.

B. APPLICATION OF THE SIGNIFICANCE TESTS

5.7 Timing of Significance Tests

(1) Section 1.2 of the National Instrument sets out the significance tests for determining whether an acquisition of a business by an issuer is a "significant acquisition". The first test measures the assets of the acquired business against the assets of the issuer. The second test measures the issuer's investments in and advances to the acquired business against the assets of the issuer. The third test measures the income from continuing operations of the acquired business against the income from continuing operations of the issuer. If any one of these three tests is satisfied at the 20 per cent level, the acquisition is considered "significant" to the issuer. The tests must be applied at the time of the acquisition using the most recent audited financial statements of the issuer and the business. This is consistent with the requirement of the Securities and Exchange Commission of the United States of America and provides issuers with certainty that if an acquisition is not significant at the time of the acquisition, then no financial statements of the business will be required to be included in the prospectus.

- (2) If an acquisition is determined under subsection 1.2(2) of the National Instrument to be significant on the date of acquisition, an issuer has the option under subsection 1.2(3) of the National Instrument of applying the tests using the more recent financial statements for the 12 months ended on the last day of the most recent interim period financial statements included in the short form prospectus and the financial statements of the business for a coterminous period ending on the same day as the issuer's financial statements. However, for the purposes of applying the investment test under subsection 1.2(3)2 of the National Instrument, the issuer's investments in and advances to the business should be the amount used to calculate the significance as at the date of the acquisition and not the amount as at the date of the issuer's financial statements used to recalculate the significance.
- (3) The option under subsection 1.2(3) of the National Instrument has been included in order to recognize the possible growth of an issuer between the date of acquisition and the date of a short form prospectus offering and the corresponding potential decline in significance of the acquisition to the issuer. If the significance of an acquisition increases at the second date under subsection 1.2(3), only the financial statements required when the tests are applied at the first stage under subsection 1.2(2) of the National Instrument, are required to be included in the short form prospectus. Applying the significance tests at the second date is not intended to increase the level of significance of an acquisition and thereby the number of years of financial statements.
- (4) The significance tests at the second date are an option available to all issuers. However, depending on how or when an issuer integrates the acquired business into its existing operations and the nature of post-acquisition financial records it maintains for the acquired business, it may not be possible for an issuer to apply the tests at the second date.

5.8 Acquisition of a Business when the Financial Statements of the Business are Prepared in Accordance with Foreign GAAP - Subsection 1.2(9) of the National Instrument states that where the financial statements of the business or related businesses are prepared in accordance with foreign GAAP, for purposes of applying the significance tests, the relevant financial statements should be reconciled to Canadian GAAP. It is unnecessary for the reconciliation to be audited for the purpose of the test as the Canadian securities regulators recognize that this could be onerous, particularly if the business or related businesses are determined not to be a significant acquisition.

- 5.9 Acquisition of a Previously Unaudited Business** - Section 1.2(2) of the National Instrument requires the significance of an acquisition to be determined using the most recent audited financial statements of the issuer and the business acquired or to be acquired. If the business was a private company prior to the acquisition and it did not engage an auditor to audit its annual financial statements then, for the purpose of applying the significance tests, subsection 1.2(6) of the National Instrument permits use of the unaudited financial statements of the business prepared in accordance with GAAP. If the acquisition is determined to be significant, then the financial statements for the number of periods required by Parts 4 and 5 of the National Instrument must be audited.
- 5.10 Application of the Significance Tests when the Financial Year Ends of the Issuer and the Acquired Business are Non-Coterminous** - Subsection 1.2(2) of the National Instrument requires the significance of an acquired business to be determined using the most recent audited financial statements of both the issuer and the acquired business. For the purpose of applying the tests under this subsection, the year ends of the issuer and the acquired business need not be coterminous. Accordingly, neither the audited financial statements of the issuer or the business should be adjusted for the purpose of applying the significance tests. However, if an acquired business is determined to be significant and *pro forma* income statements are prepared in accordance with Part 4 or 5 of the National Instrument, and if the last day of the business' year end is more than 93 days from the last day of the issuer's year end, the business' reporting period so required under subsection 4.5(4) of the National Instrument should be adjusted to reduce the gap to 93 days or less. Reference is made to section 5.17 of this Companion Policy for further guidance.
- 5.11 Application of Investment Test for Significance of an Acquisition** - Subsections 1.2(2) and, if applicable, 1.2(3) of the National Instrument set out when an acquisition of a business by an issuer is a "significant acquisition". One of the tests is whether the issuer's consolidated investments in and advances to the business or related businesses exceeds 20 per cent of the consolidated assets of the issuer as at the date of the audited financial statements of the issuer, for the most recently completed financial year ended prior to the date of the acquisition. In applying this test, the "investments in" the business should be determined using the total cost of the purchase, as determined by generally accepted accounting principles, which includes consideration paid or payable and the costs of the acquisition. If the acquisition agreement includes a provision for contingent consideration, for the purpose of applying the test, the contingent consideration should be included in the total cost of the purchase unless the likelihood of

payment is considered remote at the date of the acquisition. In addition, any payments made in connection with the acquisition which would not constitute purchase consideration but which would not have been paid unless the acquisition had occurred, should be considered part of investments in and advances to the business for the purpose of applying the significance tests. Examples of such payments include loans, royalty agreements, lease agreements and agreements to provide a pre-determined amount of future services.

5.12 Application of Income Test for Significance of an Acquisition

- (1) The third significance test set out in subsection 1.2(2)3 of the National Instrument is whether the issuer's proportionate share of the consolidated income from continuing operations of the business or related businesses exceeds 20 per cent of the consolidated income from continuing operations of the issuer based on the audited financial statements of the issuer and the acquired business for the most recently completed financial year ended before the date of the acquisition. Subsection 1.2(3)3 of the National Instrument sets out an optional calculation using more recent financial statements. In applying the income test, the income from continuing operations of the business should be determined using the accounting policies applied by the issuer.
- (2) Subsections 1.3(3), (4) and (5) of the National Instrument permit the issuer to use the average income of its three most recently completed fiscal years or 12 month periods, respectively, if the income from continuing operations for the most recently completed fiscal year is positive and at least 20 per cent lower than the average for the three most recently completed years. The averaging option is not available if the issuer has incurred a loss from continuing operations during its most recently completed year or more recent 12 month period. If the averaging option is available to the issuer but it incurred a loss from continuing operations in the second and/or third most recently completed fiscal years or 12 month periods, subsection 1.3(6) of the National Instrument states that for purposes of calculating the average consolidated income from continuing operations for the three fiscal years or 12 month periods, the loss must be treated as zero in the numerator and as one in the denominator.

C. FINANCIAL STATEMENTS OF ACQUIRED BUSINESSES

- 5.13 Financial Statements for Interim and Pre-acquisition Periods** - Subsections 4.2(1), 4.3(1) and 4.4(1) of the National Instrument require that a short form prospectus include financial statements for the most recently completed interim period of the acquired business that ended prior to the date of acquisition, in the case of a completed acquisition, and in any case, more than 60 days before the date of the short form prospectus. In some circumstances, the acquired business may not have been a reporting issuer and therefore may not have prepared financial statements for the required interim periods. In connection with its sale, a business may prepare financial statements for the period commencing with the first day of its current year up to the date of the acquisition, or a day prior to the date of the acquisition. Subsections 4.2(1)2(a)(ii) and 4.3(1)3(a)(ii) of the National Instrument permit an issuer to satisfy the requirement for interim financial statements by filing financial statements for a period longer than an interim period provided that period ends no more than 30 days before the date of the acquisition. The period covered by these financial statements is defined in the National Instrument as the "pre-acquisition period". If the issuer elects to include pre-acquisition period financial statements in the short form prospectus, it is not also required to include the interim financial statements for the most recently completed interim period ended more than 60 days prior to the date of the short form prospectus. The pre-acquisition period financial statements may be used to prepare the *pro forma* financial statements of the issuer required under Part 4 of the National Instrument.
- 5.14 Acquisition of Related Businesses** - Subsections 4.2(2), 4.3(2) and 4.4(2) of the National Instrument require that if an issuer is required to include in its short form prospectus financial statements for more than one business because the significant acquisition involves an acquisition of related businesses or a probable acquisition of related businesses, the financial statements required under these subsections should be presented for each business except for the periods during which the businesses have been under common control or management, in which case the issuer may present the financial statements on a combined basis. Although one or more of the related businesses may be insignificant relative to the others, separate financial statements of each business for the same number of periods required must be presented. Relief from the requirement to include financial statements of the least significant related business or businesses may be granted depending on the facts and circumstances.

5.15 Financial Statement Disclosure for Unrelated Individually Insignificant Acquisitions

- (1) When an issuer acquires unrelated businesses that are determined by the significance tests to be individually insignificant, section 5.2 of the National Instrument requires the significance of the acquisitions to be tested again by combining the results of the businesses. The significance tests should be applied using the financial results of the businesses on a combined basis. If the businesses satisfy any of the significance tests at a threshold of 50 per cent or more, then financial statements shall be provided for the businesses that constitute more than 50 per cent of the test satisfied at the highest level of significance. For example, if the acquisitions satisfy the asset, investment and income tests at thresholds of 40 per cent, 80 per cent and 60 per cent, respectively, then the investment test is the most significant. Accordingly, financial statements of the individual businesses which comprise 50 per cent of the dollar value of the combined investments in and advances to the businesses must be included in the short form prospectus. Audited financial statements must be presented for the most recently completed financial year of each business plus interim financial statements. Depending upon the number of acquisitions, there may be several combinations of businesses whose financial statements would satisfy the requirement. Any combination may be included in the short form prospectus. For further guidance, refer to example 4 in Appendix B to this Companion Policy.

- (2) Subsection 1.3(2) of the National Instrument states that if one or more of the unrelated businesses have incurred losses from continuing operations while others have earned income from continuing operations, the losses should not offset the income. Instead, the businesses with losses should be evaluated separately from those with income for the purpose of applying the income test. The absolute value of the aggregate losses should be used to calculate the significance. For further guidance, refer to example 5 in Appendix B to this Companion Policy.

5.16 Preparation of Divisional and Carve-out Financial Statements

- (1) As discussed in section 5.2 of this Companion Policy, the Canadian securities regulatory authorities generally consider the acquisition of a division of a business and in certain circumstances, a lesser component of a person or company as constituting a business for purposes of the National

Instrument, whether or not the subject of the acquisition previously prepared financial statements. In order to determine the significance of the acquisition and comply with the requirements in Parts 4 and 5 of the National Instrument, financial statements must be prepared. This section provides guidance on preparing these financial statements.

- (2) The guidance in this section also applies to the preparation of the financial statements of a completed significant disposition for the purpose of preparing *pro forma* financial statements in accordance with Part 6 of the National Instrument.
- (3) **Interpretations** - In this section of this Companion Policy, unless otherwise stated, the following interpretations apply:
 - (a) A reference to "a business" means a division or some lesser component of another business acquired by an issuer which constitutes a significant acquisition.
 - (b) The term "parent" refers to the vendor from whom the issuer purchased a business.
- (4) **Divisional and Carve-Out Financial Statements** - The terms "divisional" and "carve-out" financial statements are often used interchangeably although a distinction is possible. Some companies maintain separate financial records and prepare financial statements for a business activity or unit which is operated as a division. Financial statements prepared from these financial records are often referred to as "divisional" financial statements. In certain circumstances, no separate financial records for a business activity are maintained; they are simply consolidated with the parent's records. In these cases, if the parent's financial records are sufficiently detailed, it is possible to extract or "carve-out" the information specific to the business activity in order to prepare separate financial statements of that business. Financial statements prepared in this manner are commonly referred to as "carve-out" financial statements. The guidance in this section applies to the preparation of both divisional and carve-out financial statements unless otherwise stated.

(5) **Preparation of Divisional and Carve-Out Financial Statements**

(a) When complete financial records of the business acquired or to be acquired have been maintained, those records should be used for preparing and auditing the financial statements of the business. For the purposes of this section, it is presumed that the parent maintains separate financial records for its divisions.

(b) When complete financial records of the business acquired or to be acquired do not exist, carve-out financial statements should generally be prepared in accordance with the following guidelines:

1. **Allocation of Assets and Liabilities** - A balance sheet should include all assets and liabilities directly attributable to the business.
2. **Allocation of Revenues and Expenses** - Income statements should include all revenues and expenses directly attributable to the business. Some fundamental expenditures may be shared by the business and its parent in which case the parent's management must determine a reasonable basis for allocating a share of these common expenses to the business. Examples of such common expenses include salaries, rent, depreciation, professional fees, general and administration.
3. **Allocation of Income and Capital Taxes** - Income and capital taxes should be calculated as if the entity had been a separate legal entity and filed a separate tax return for the period presented.
4. **Disclosure of Basis of Preparation** - The financial statements should include a note describing the basis of preparation. If expenses have been allocated as discussed in paragraph 2, the financial statements should include a note describing the method of allocation for each significant line item, at a minimum.

(6) **Statements of Assets Acquired, Liabilities Assumed and Statements of Operations** - When it is impracticable to prepare carve-out financial

statements of a business, an issuer may be required to include in its prospectus for the business an audited statement of assets acquired and liabilities assumed and a statement of operations. Such a statement of operations should exclude only those indirect operating costs, such as corporate overhead, not directly attributable to the business. If these costs were previously allocated to the business and there is a reasonable basis of allocation, they should not be excluded. Issuers are encouraged to submit a pre-filing application when this circumstance arises.

5.17 Preparation of *Pro Forma* Financial Statements Giving Effect to Significant Acquisitions

- (1) **Objective and Basis of Preparation** - The objective of *pro forma* financial statements is to illustrate the impact of a transaction on an issuer's financial position and results of operations by adjusting the historical financial statements of the issuer to give effect to the transaction. Accordingly, the *pro forma* financial statements should be prepared on the basis of the issuer's financial statements as they appear elsewhere in the short form prospectus. No adjustment should be made to eliminate extraordinary items or discontinued operations.
- (2) ***Pro Forma* Balance Sheet and Income Statements** - Subsection 4.5(1) of the National Instrument does not require a *pro forma* balance sheet to be prepared to give effect to significant acquisitions which are reflected in the issuer's most recent audited or interim balance sheet included in the short form prospectus. Similarly, if a significant acquisition was completed during the issuer's most recently completed financial year, subsection 4.5(1)2 of the National Instrument does not require a *pro forma* income statement to be prepared for the issuer's most recent interim period for which financial statements are included in the short form prospectus because the results of the acquired business have been consolidated with the issuer's for the entire interim period.
- (3) **Non-coterminous Year-ends**
 - (a) **Reducing the Gap to 93 Days** - For the purpose of preparing a *pro forma* income statement, if the financial year of the business ends on a day which is more than 93 days from the last day of the issuer's financial year, subsection 4.5(4) of the National Instrument requires the income statement of the business to be adjusted to

reduce this gap to less than 93 days. Reducing the gap may be accomplished by adding a subsequent interim period to the results of the most recent fiscal year of the acquired business and deducting the comparable interim results for the immediately preceding year.

- (b) **Consecutive Months** - The adjusted financial period of the business should be comprised of consecutive months. For example, if the adjusted reporting period is 12 months and ends on June 30, the 12 months should commence on July 1 of the immediately preceding year; it should not begin on March 1st of the immediately preceding year with three of the following 15 months omitted, such as the period from October 1 to December 31, since this would not be a consecutive 12 month period.
 - (c) **Disclosure of the Adjusted Financial Period** - The adjusted financial period should be clearly disclosed on the face of the *pro forma* financial statements. In addition, there should be disclosure in a note to the *pro forma* financial statements stating that the financial statements of the business used to prepare the *pro forma* financial statements were prepared for this purpose and do not conform with the financial statements included elsewhere in the prospectus.
 - (d) **Disclosure of Results Reported in Two *Pro forma* Income Statements** - If the financial statements of the business are adjusted in accordance with paragraph (a), it is possible that the results for one or more months may be included in the twelve month and interim period financial statements of the business which are used by the issuer to prepare *pro forma* income statements for its most recently completed financial year and interim period. In this situation, disclosure should be made of the revenue and income for any periods excluded or included in both *pro forma* income statements.
- (4) **Financial Statements of a Business Prepared for the Purpose of Preparing *Pro Forma* Financial Statements** - If, in accordance with subsection (3), an income statement of an acquired business is constructed for the purpose of preparing a *pro forma* income statement, the constructed income statement need not be audited or otherwise included in the short form prospectus except as a separate column in the *pro forma* income

statement. However, a comfort letter addressed to the Canadian securities regulatory authorities is required to be delivered in accordance with subsection 10.3(b)1 of the National Instrument.

(5) **Effective Date of Adjustments**

(a) **Pro forma balance sheet** - Paragraph 1 of subsection 4.5(1) of the National Instrument requires a *pro forma* balance sheet to be prepared to give effect to significant acquisitions as if they occurred on the date of the issuer's most recent balance sheet included in the short form prospectus.

(b) **Pro forma income statement** - Paragraph 2 of subsection 4.5(1) of the National Instrument requires a *pro forma* income statement to be prepared to give effect to significant acquisitions as if they had taken place at the beginning of the issuer's current financial year or its most recently completed financial year, depending on when the acquisition occurred. If a short form prospectus includes *pro forma* income statements for the issuer's most recently completed financial year and a subsequent interim period, the acquisition and most of the adjustments should be computed as if the acquisition had occurred at the beginning of the most recently completed financial year and carried through the most recent interim period presented, if any. However, those adjustments related to the allocation of the purchase price, including the amortization of fair value increments and intangibles, should be based on the purchase price allocation arising from giving effect to the acquisition as if it occurred on the date of the issuer's most recent balance sheet included in the short form prospectus.

(6) **Acceptable Adjustments** - *Pro forma* adjustments shall be limited to those which are directly attributable to a specific completed or proposed transaction for which there are firm commitments and for which the complete financial effects are objectively determinable.

(7) **Multiple Acquisitions** - If the *pro forma* financial statements give effect to more than one significant acquisition or other event, the *pro forma* adjustments may be grouped by line item on the face of the *pro forma* financial statements provided the details for each transaction are disclosed in the notes.

- (8) **Intervening Periods** - If the issuer prepares a *pro forma* financial statement using a pre-acquisition interim financial statement of the acquired business and that period ends prior to the date of the acquisition, the *pro forma* financial statements should include any significant adjustments necessary to account for the intervening period.

D. SIGNIFICANT DISPOSITIONS

5.18 Significant Dispositions

- (1) Section 1.6 of the National Instrument states that the term "significant disposition" refers to a disposition of a business, a business segment or a significant portion of a business, either by sale, abandonment or distribution to shareholders. A disposition is determined to be significant in subsection 1.6(2) of the National Instrument if it satisfies the asset or income test at at least the 20 per cent significance level.
- (2) Separate financial statements of a significant disposition are not required to be included in the short form prospectus. If an issuer decides to include the financial statements, they should be prepared following the guidance in section 5.16 of this Companion Policy and should not be for more periods than the most recently completed financial year and interim period of the issuer for which financial statements are included in the short form prospectus.

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

- (1) **Businesses and Business Segments** - Part 6 of the National Instrument requires inclusion in an issuer's short form prospectus of *pro forma* financial statements which give effect to significant dispositions completed during the issuer's most recently completed financial year or current financial year. The disposition of a business segment, as defined by section 3475 of the Handbook, is excluded from the *pro forma* requirements because the financial statement presentation of a discontinued business segment is addressed by the Handbook.
- (2) **Objective and Basis of preparation** - The basis for preparing *pro forma* financial statements which give effect to a significant disposition is very

similar to the guidance outlined in section 5.17 of this Companion Policy which discusses the preparation of *pro forma* financial statements which give effect to significant acquisitions. The *pro forma* financial statements should be prepared using the issuer's financial statements as if the significant disposition occurred at the beginning of an issuer's current or most recently completed financial year, as appropriate.

- (3) **Pro Forma Balance Sheets** - Section 6.2(1) of the National Instrument does not require a *pro forma* balance sheet if the significant disposition is reflected in the issuer's most recent balance sheet included in the short form prospectus.
- (4) **Pro Forma Income Statements**
 - (a) If a significant disposition was completed during the issuer's most recently completed financial year, subsection 6.2(2)(a) of the National Instrument does not require inclusion of a *pro forma* income statement for the most recent interim period for which financial statements are included in the short form prospectus because the results of the disposed business have been excluded from the issuer's results for the entire interim period.
 - (b) A *pro forma* income statement prepared to give effect to significant dispositions should not present results below the level of income from continuing operations.
- (5) **Constructed Financial Statements of the Business for the Purpose of Preparing the Pro Forma Financial Statements** - If an income statement of the disposed business is constructed or otherwise carved out from the issuer's financial statements in accordance with the guidance in section 5.16 of this Companion Policy, for the purpose of preparing a *pro forma* income statement, the constructed income statement need not be audited or otherwise included in the prospectus except as a separate column in the *pro forma* income statement. However, a comfort letter addressed to the Canadian securities regulatory authorities is required to be delivered in accordance with subsection 10.3(b)1 of the National Instrument.
- (6) **Effective Date of Adjustments** - *Pro forma* balance sheets should be prepared as if the disposition had occurred on the date of each balance sheet presented. If a short form prospectus includes *pro forma* income statements

for the issuer's most recently completed financial year and a subsequent interim period, the acquisition and adjustments should be computed as if the disposition had occurred at the beginning of the most recently completed financial year of the issuer only and carried toward the most recent interim period presented, if any.

- (7) **Acceptable Adjustments** - *Pro forma* adjustments should be limited to those which are directly attributable to a specific completed or proposed transaction for which there are firm commitments and for which complete financial effects are objectively determinable.
- (8) **Multiple Dispositions** - If the *pro forma* financial statements give effect to more than one significant disposition, the *pro forma* adjustments may be grouped by line item on the face of the *pro forma* financial statements provided the details for each transaction are disclosed in the notes.

E. EXEMPTIONS

5.20 Exemptions from Parts 4 and 5 of the National Instrument

- (1) Despite Parts 4 and 5 of the National Instrument, an issuer may be permitted by the Canadian securities regulatory authorities to exclude an audit opinion on the financial statements of an acquired business for any of the years for which financial statements are required other than the most recently completed year of the acquired business if
 - (a) the business was acquired prior to December 31, 2000;
 - (b) the issuer provides written submissions prior to filing the short form prospectus which establish to the satisfaction of the regulator that, despite making reasonable efforts, the issuer was unable to obtain audited financial statements because the vendor refused to provide such audited financial statements or to permit access to the information necessary to audit the financial statements; and
 - (c) the issuer discloses in the prospectus that despite making reasonable efforts, the issuer was unable to obtain audited financial statements because the vendor refused to provide such audited financial statements or to permit access to the information necessary to audit the financial statements.

- (2) The Canadian securities regulatory authorities are of the view that relief from the financial statement requirements of Parts 4 and 5 of the National Instrument should be granted only in unusual circumstances not related to cost or the time involved in preparing and auditing the financial statements.
- (3) If relief is granted from the requirements of Parts 4 and 5 of the National Instrument to include in a short form prospectus audited financial statements of an acquired business, conditions will likely be imposed, such as a requirement to include audited divisional or partial income statements or divisional statements of cash flow, financial statements accompanied by an auditor's report containing a reservation of opinion such as an inventory qualification or an audited statement of net operating income for a business.
- (4) Relief may be granted in appropriate circumstances to permit the auditor's report on financial statements of a business acquisition to contain a reservation relating to opening inventory. In certain situations, such as when any of the significance tests are satisfied at 40 per cent or higher, the issuer may be requested to include in the prospectus audited financial statements of the business for a subsequent period of at least six months on which the auditor's report contains no reservation of opinion and the business is not seasonal.
- (5) Considerations relevant to granting an exemption from the requirement to include interim financial statements for the comparable period in the immediately preceding financial year may include the fact that an acquired business was, before the filing of the short form prospectus, a private entity that did not prepare interim financial statements.
- (6) If an issuer acquired a business or is proposing to acquire a business, considerations relevant to granting an exemption from the requirement to include financial statements of the business for any one or more of the years required to be included in the short form prospectus may include the following:
 - (a) The business's historical accounting records have been destroyed and cannot be reconstructed. In this case, as a condition for granting the exemption, the issuer may be requested by the Canadian securities regulatory authorities to

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

PART 6 GAAP, GAAS, AND AUDITOR'S REPORTS

6.1 Foreign GAAP

- (1) Subsection 7.1(2) of the National Instrument provides that if a person or company is incorporated or organized in a foreign jurisdiction, the financial statements of the person or company included in the prospectus shall be prepared in accordance with either Canadian GAAP or foreign GAAP. Foreign GAAP is defined in the National Instrument to mean a body of generally accepted accounting principles, other than Canadian GAAP, that are as comprehensive as Canadian GAAP.
- (2) The Canadian securities regulatory authorities are of the view that foreign GAAP are as comprehensive as Canadian GAAP if the foreign GAAP covers substantially the same core subject matter as Canadian GAAP, including recognition and measurement principles and disclosure requirements.
- (3) The National Instrument permits foreign GAAP to be used only if the notes to the financial statements explain and quantify the effect of material differences between the foreign GAAP and Canadian GAAP that relate to measurements and provide disclosure consistent with Canadian GAAP requirements. The Canadian securities regulatory authorities expect that in most cases the reconciliation will be adequate to ensure clear and understandable disclosure for investors in Canada, unless the differences are so pervasive as to render the financial statements misleading.

6.2 Foreign Auditors and Foreign GAAS

- (1) The National Instrument requires financial statements in a short form prospectus to be accompanied by an auditor's report which by definition is prepared in accordance with generally accepted auditing standards. The National Instrument permits the financial statements of foreign issuers to be audited in accordance with generally accepted auditing standards other than those applied in Canada, if those auditing standards are substantially equivalent to Canadian auditing standards.
- (2) Issuers should recognize that Canadian securities legislation in some jurisdictions requires the regulator not to issue a receipt for a prospectus if it appears to the regulator that a person or company who has prepared any

part of the prospectus or is named as having prepared or certified a report used in connection with a prospectus is not acceptable to the regulator. Therefore, under section 7.5 of the National Instrument, the foreign auditor's report must be accompanied by a statement that the auditing standards applied are substantially equivalent to Canadian GAAS. The statement must also disclose any material differences in the form and content of the foreign auditor's report.

- (3) The Canadian securities regulatory authorities are of the view that in order for auditing standards to be substantially equivalent to Canadian GAAS, they must require underlying audit work that is comparable in scope, nature and timing to the work required in connection with an audit in accordance with Canadian GAAS. For example, auditing standards of foreign jurisdictions such as the United States are known to the Canadian securities regulatory authorities to be substantially equivalent to the standards of the CICA. Foreign issuers using auditors from foreign jurisdictions with auditing standards and supervision that are less well known to the Canadian securities regulatory authorities are encouraged to consult with staff of the Canadian securities regulatory authorities in advance of filing a preliminary prospectus to resolve uncertainty as to whether the Canadian securities regulatory authorities will consider a particular auditor or auditing standards to be acceptable.
- (4) In making a determination of whether the foreign auditing standards applied are substantially equivalent to Canadian GAAS, auditors are referred, in particular to the general standard of Canadian GAAS as set out in section 5100 of the Handbook and its reference to an auditor's "objective state of mind". This standard, when read together with the objectivity standard for auditors contained in the standards of professional conduct applicable to Canadian auditors in each jurisdiction, emphasizes the importance of the independence of the auditor. In the view of the Canadian securities regulatory authorities, auditor independence is an essential element of Canadian GAAS which should be reflected, among other things, in the foreign GAAS applied in order for the foreign GAAS applied and Canadian GAAS to be considered substantially equivalent.
- (5) Subparagraph 7 of paragraph 10.2(b) of the National Instrument requires an issuer, if a financial statement included in a prospectus has been prepared in accordance with foreign GAAP or includes a foreign auditor's report, to deliver a letter from the auditor that discusses the auditor's

expertise to audit the reconciliation of foreign GAAP to Canadian GAAP and, in the case of foreign GAAS other than U.S. GAAS applied by a U.S. auditor, to make the determination that the foreign GAAS applied are substantially equivalent to Canadian GAAS. This provision requires that this comfort letter be delivered with the preliminary prospectus to better facilitate timely resolutions of any issues.

- 6.3 Auditor's Comfort Letters** - Subparagraph 1(i) of subsection 10.3(b) of the National Instrument requires a comfort letter to be delivered to the regulators from the auditor of the issuer or the business, as applicable, if an unaudited financial statement of an issuer or a business is included in a final prospectus. If unaudited financial statements of the issuer or the business for more than one interim period are included in the prospectus, a comfort letter with respect to each unaudited financial statement must be delivered. If an unaudited financial statement presents the results of the issuer or the business for the most recently completed interim period and the cumulative results for the current financial year up to the last day of the most recently completed interim period, a comfort letter with respect to both the interim and cumulative periods, including any comparative periods presented, must be delivered.

PART 7 FILING AND RECEIPTING OF SHORT FORM PROSPECTUS

- 7.1 Confidential Material Change Reports** - Confidential material change reports cannot be incorporated by reference into a short form prospectus. Accordingly, an issuer may not file a confidential material change report during a distribution. However, 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.

7.2 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 section 9.1 and 9.2 of the National Instrument to be filed with the preliminary short form prospectus or short form prospectus unless previously filed. When an issuer using SEDAR 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.

7.3 Experts' Consent - Issuers are reminded that securities legislation in Alberta prescribes a form of consent for experts.

7.4 Material Contracts - Section 10.7 of the National Instrument requires an issuer to make available all material contracts referred to in a short form prospectus. The Canadian securities regulatory authorities recognize that certain material contracts or portions thereof may contain sensitive operational or financial information, disclosure of which would be competitively disadvantageous or otherwise detrimental to the issuer. The regulator will consider granting relief from the requirement to make these contracts available for public inspection if disclosure would be unduly detrimental to the issuer and the disclosure would not be necessary in the public interest.

7.5 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.

- 7.6 Short Form Prospectus Review** - No time frame applies to the review of a short form prospectus of an issuer if the issuer has not elected to use MRRS.
- 7.7 "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 National Instrument 44-101.
- 7.8 Refusal to Issue Prospectus Receipt** - The regulator has the discretion under securities legislation to refuse, in the public interest, to issue a receipt for a prospectus. Despite acceptance by a regulator of an issuer's AIF, if, at the time the issuer files a preliminary short form prospectus, a regulator has concerns about the adequacy or timeliness of the disclosure in the AIF and the disclosure is not supplemented in the short form prospectus, the regulator may refuse to issue a receipt for the short form prospectus.
- 7.9 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 Canadian securities legislation in each jurisdiction in which syndicate members are participating in the distribution of securities under the short form prospectus.

PART 8 CONTENT OF AIF

8.1 Issuers of Asset-backed Securities

- (1) Item 4.2 of Form 44-101F1 AIF specifies additional disclosure applicable to issuers of asset-backed securities that were distributed under a prospectus. Form 44-101F1 leaves to an issuer of asset-backed securities the determination of which other prescribed disclosure is applicable and ought to be included in the AIF. 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 nature and extent of required disclosure may vary depending on the type and attributes of the underlying pool.

The following factors should be considered by an issuer of asset-backed securities in preparing its AIF:

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. Financial information respecting the pool of assets to be described and analyzed in the AIF will consist of information commonly set out in servicing reports prepared to describe the performance of the pool and the specific allocations of income, loss and cash flows applicable to outstanding asset-backed securities made during the relevant period.
- (2) Item 4.2(b)(i) of Form 44-101F1 AIF requires issuers of asset-backed securities that were distributed by way of prospectus to include information relating to the composition of the underlying pool of financial assets, the cash flows from which service the asset-backed securities. Disclosure respecting the composition of the pool will vary depending upon the nature and number of the underlying financial assets. For example, in a geographically dispersed pool of financial assets, it may be appropriate to provide summary disclosure based on the location of obligors. In the context of a revolving pool, it may be appropriate to provide details relating to aggregate outstanding balances during a year in order to illustrate historical fluctuations in asset origination due, for example, to seasonality. In pools of consumer debt obligations, it may be appropriate to provide a breakdown within ranges of amounts owing by obligors in order to illustrate limits on available credit extended.

8.2 Non-corporate Issuers - Item 8 of Form 44-101F1 AIF requires disclosure concerning the directors and officers of an issuer. An issuer that is not a corporation must refer to the definitions in securities legislation of "director" and "officer". The definition of "officer" may include any individual acting in a

capacity similar to that of an officer of a company. Similarly, the definition of "director" typically includes a person acting in a capacity similar to that of a director of a company. Therefore, non-corporate issuers must determine in light of the particular circumstances which individuals or persons are acting in such capacities for the purposes of complying with Item 8 of Form 44-101F1.

PART 9 CONTENT OF SHORT FORM PROSPECTUS

9.1 Prospectus Liability - Nothing in the short form prospectus regime established by the National Instrument is intended to provide relief from liability arising under the provisions of Canadian 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.

9.2 Style of Prospectus - Canadian securities legislation requires that a prospectus contain "full, true and plain" disclosure. To that end, issuers and their advisors are reminded that they should ensure that disclosure documents are easy to read, and 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 Canadian securities regulatory authorities are of the view that question and answer and bullet point formats are consistent with the disclosure requirements of the National Instrument.

- 9.3 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, Item 1.8(4) of Form 44-101F3 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 Canadian 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 the National Instrument, the implementing law of a jurisdiction exempts issuers from that requirement if they comply with the National Instrument.
- 9.4 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 6.5 of Form 44-101F3 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 Canadian 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 the National Instrument, the implementing law of a jurisdiction exempts issuers from that requirement if they comply with the National Instrument.
- 9.5 Distribution of Asset-backed Securities**
- (1) Item 8.3 of Form 44-101F3 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) Item 8.3(d)(i) of Form 44-101F3 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 Canadian securities regulatory authorities consider 33⅓% of dollar value of the financial assets comprising the pool to be a material portion in this context.

- 9.6 Distribution of Specified Derivatives** - Item 8.4 of Form 44-101F3 specifies additional disclosure applicable to distributions of specified derivatives. This prescribed disclosure is formulated in general terms for issuers to customize appropriately in particular circumstances.
- 9.7 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.
- 9.8 Financial Statements** - Documents incorporated by reference in a preliminary short form prospectus are required under section 9.1 of the National Instrument to be filed with the preliminary short form prospectus if they have not previously been filed. Section 9.2 of the National Instrument contains a similar provision for a short form prospectus. This may result in financial statements that have been incorporated by reference under Item 12.1 of Form 44-101F3 being filed earlier than would otherwise be the case under the continuous disclosure requirements of securities legislation. The implementing law of each jurisdiction provides relief, if necessary, from the requirement of securities legislation to send these statements concurrently to security holders and, in British Columbia, to file written confirmation of having sent these statements. The conditions to the relief require the issuer to send the financial statements to security holders within the time periods and in accordance with the other provisions of continuous disclosure requirements of securities legislation and, in British Columbia, to file written confirmation of sending to security holders.

PART 10 CIRCULARS

- 10.1 Fee for Documents** - The CSA are of the view that issuers that charge non-security holders that request copies of the documents referred to in paragraph (a) of section 13.3 of the National Instrument should not charge an amount more than the issuer's reasonable cost of sending the documents. If the issuer's practice is to charge non-security holders for the documents, a statement to that effect should be included in the information circular.

PART 11 CERTIFICATES

11.1 Non-corporate Issuers

- (1) Item 21.1(a) of Form 44-101F3 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) Item 21.1(b) of Form 44-101F3 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 Item 21.1(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.

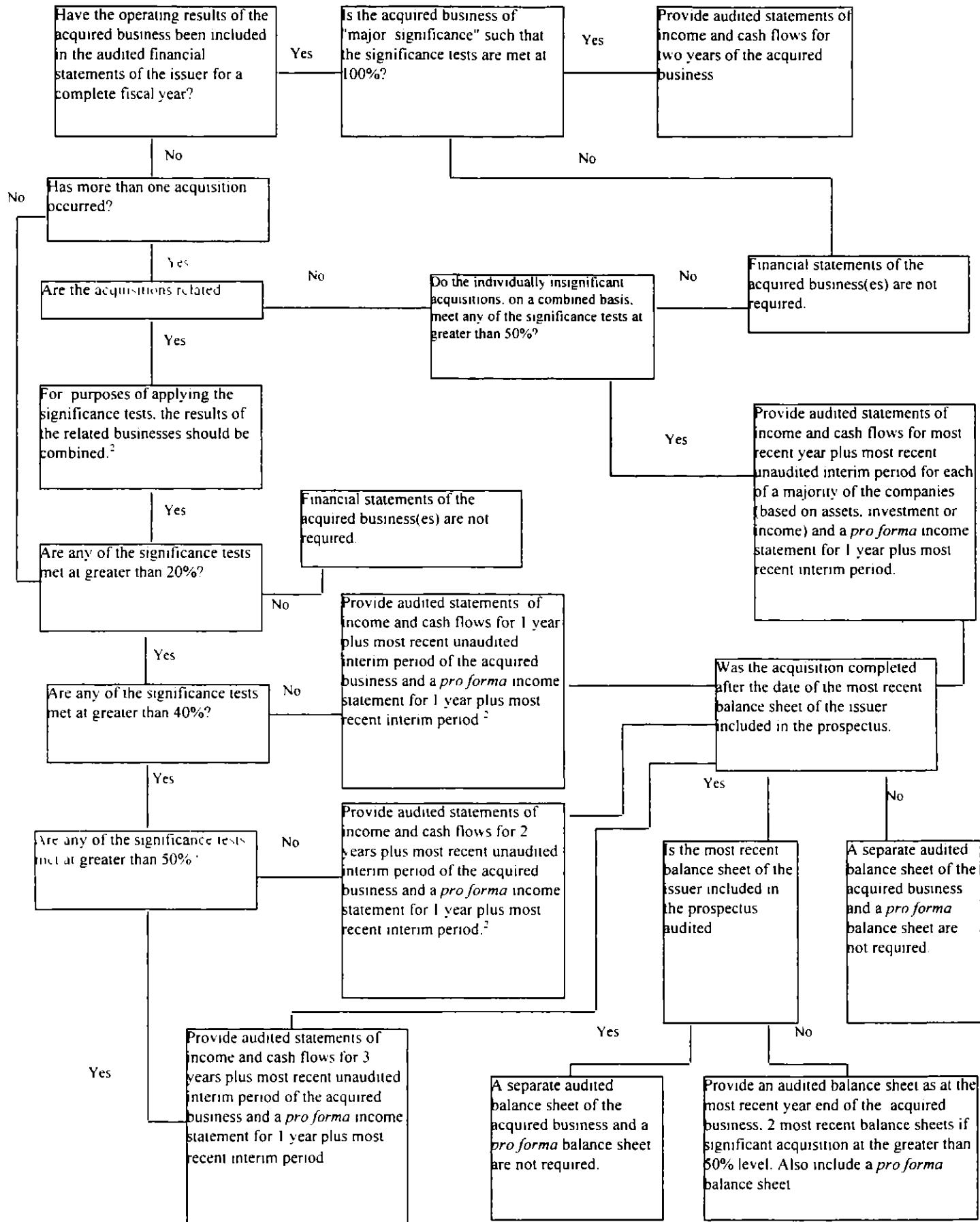
11.2 Promoters of Issuers of Asset-backed Securities

- (1) Canadian securities legislation 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 Canadian 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 Canadian 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 Canadian 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.

OVERVIEW OF BUSINESS ACQUISITIONS DECISION CHART¹



Notes

- ¹ This decision chart provides general guidance and should be read in conjunction with National Instrument 44-101 and Companion Policy 44-101CP. No reference is made to pre-acquisition periods for the sake of simplicity.
- ² If an acquisition of related businesses constitutes a significant acquisition when the results of the related businesses are combined, the required financial statements shall be provided for each of the related businesses.

APPENDIX B - ILLUSTRATIVE EXAMPLES

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

Unless otherwise stated, the Issuer is assumed to have a December 31 year end.

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

Year 1 - refers to the current year.

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

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

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

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

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

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

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

EXAMPLE 1 - SIGNIFICANT ACQUISITION OF A COMPANY IN YEAR 1

Assumptions:

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

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

Company A has a December 31 year end.

Company A does not qualify as a short form issuer.

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

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

The significance tests under subsection 1.2(2) of the National Instrument are applied using the audited financial statements of the Issuer and Company A for the year ended December 31, Year 2. Company A is determined to be significant at 65%, 55% and 35% based on the income test, the investment test, and the asset test, respectively.

Financial Statement Requirements:

The preliminary prospectus filed on June 15 should include or incorporate by reference, as appropriate, the following financial statements of the Issuer and Company A:

Issuer:

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

Audited balance sheets for years 2 and 3.

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

Unaudited balance sheet as at March 30, Year 1.

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

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

Company A

Audited financial statements for Years 2, 3 and 4.

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

Unaudited balance sheet as at March 30, Year 1.

Explanations:

1. Financial statements would be required for three years which corresponds the level of significance, as outlined in section 4.6 of the National Instrument.
2. A *pro forma* balance sheet is required because the March 30, Year 1 balance sheet of the Issuer does not reflect the acquisition.

Variations:

1. If the Issuer filed its preliminary prospectus on April 15, it would be unnecessary to include the Q1 financial statements of the Issuer, including the *pro forma* financial statements, unless those financial statements had been filed, because April 15 is not more than 60 days from March 30, the last day of Q1. However, the Issuer would be required to include audited financial statements for the year ended December 31, Year 2 because that year ended more than 90 days before April 15, the date of the preliminary prospectus.
2. If the Issuer filed its preliminary prospectus on March 25 and its final prospectus on April 5, the issuer would not be required to include the audited financial statements for the year ended December 31, Year 2 in the final prospectus unless those financial statements had been filed.

3. If the Issuer filed its final prospectus on September 10th, the Instrument would require it to include in the prospectus its unaudited financial statements for Q2-Year1 because the interim period ended more than 60 days from the date of the prospectus. The Issuer would be required to update all disclosure in the prospectus, including the pro forma financial statements for the interim period, to reflect the Q2 results.

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

Assumptions:

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

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

Company A is a public company.

Company A does not qualify as a short form issuer.

Company A's year end is June 30.

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

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

Note: Company A's fiscal year 1 begins on July 1 of the issuer's fiscal year 2 which is also the calendar year. For simplicity, all references will be to calendar years instead of fiscal year. For example, Company A's Q1 financial statements for its fiscal year 1 will be referred to as its Q1-Year 2 financial statements.

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

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

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

Financial Statement Requirements:

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

Issuer:

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

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

Company A:

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

Audited balance sheets as at June 30, Years 2 and 3.

Unaudited statements of income, retained earnings and cash flows for Q1- Years 2 and 3.

Unaudited balance sheet as at June 30, Year 2.

***Pro forma* Income Statement**

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

- (1) Prepare an income statement for Company A for the period January 1, Year 2 to November 14 and compile these results with the Issuer's audited consolidated income statement for the year ended December 31, Year 2. A comfort letter would be filed with the Securities Regulator(s) in connection with Company A's income statement.
- (2) Prepare an income statement for Company A for the period October 1, Year 3 to September 30, Year 2 which period ends not more than 93 days from December 31. This may be accomplished by starting with Company A's income statement for the year ended June 30, Year 2, deducting Q1 of that year (July 1 to September 30, Year 3) and adding Q1 of fiscal year 1 (July 1 to September 30, Year 2). Deduct the post-acquisition results of Subsidiary A from the Issuer's consolidated income statement for the year ended December 31, Year 2. Compile the two income statements. A comfort letter would be filed with the securities

regulators with respect to both the Issuer's deconsolidated income statement and Company A's constructed income statement.

- (3) Prepare an income statement for Company A for the period January 1, Year 2 to September 30, Year 2 and add this to the Issuer's consolidated income statement for the year ended December 31, Year 2. The results of Company A for the period October 1 to October 31 would have to be included as a separate column in the *pro forma* income statement. A comfort letter would be filed with the Securities Regulator(s) in connection with Company's A income statement for the period January 1 to September 30 and with respect to the results for the stub period October 1 to November 14, either separately or on a combined basis.
- (4) Prepare an income statement for Company A for the period April 1, Year 2 to March 30, Year 2 and add this to the Issuer's consolidated income statement for the year ended December 31, Year 3. A comfort letter would be filed with the securities regulator(s) in connection with Company's A income statement for the 12 months ended March 30, Year 2.

Variations:

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

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

Assumptions:

The Issuer files a prospectus June 10, Year 1.
The Issuer acquired Company A on April 5, Year 1.
The Issuer filed its Q1-Year 1 interim financial statements on May 30.
Company A is a public company.
Company A does not qualify as a short form issuer.
Company A's year end is May 30.
Company A's financial statements for the year ended April 30, Year 1 are not audited as at the time the prospectus is filed.
Company A filed its Q3-Year 1 interim financial statements on April 29, Year 1.

Company A is determined to be significant at 44%.

Financial Statement Requirements:

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

Issuer:

Audited statements of income, retained earnings and cash flows for the years ended December 31, Years 2, 3 and 4.
Audited balance sheets as at December 31, Years 2 and 3.
Unaudited statements of income, retained earnings and cash flows for Q1-Years 1 and 2.
Unaudited balance sheet as at March 31, Year 1.

Company A:

Audited statements of income, retained earnings and cash flows for the years ended April 30, Years 2 and 3.
Audited balance sheets as at April, Years 2 and 3.
Unaudited statements of income, retained earnings and cash flows for Q3-Years 1 and 2.
Unaudited balance sheet as at February 28, Year 1.

***Pro forma* Financial Statements**

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

A *pro forma* balance sheet as at March 31, Year 1.
A *pro forma* income statement for the year ended December 31, Year 2.

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

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

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

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

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

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

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

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

Assumptions

The Issuer acquired five companies, A, B, C, D and E, during Year 2, its most recently completed financial year. The Issuer files a prospectus on April 15, Year 1.

Each company reported net income from continuing operations during its most recently completed year ended before the date of the acquisition.

Discussion

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

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

Issuer's Dec. 31 \$4,000 \$400
balance

Aggregate Significance 40% 50% 75%
of Companies'
Combined Results

Highest significance 75%

The investment test is satisfied at the highest percentage. As a result, the Issuer should include in its prospectus audited financial statements of those companies which comprise at least 50% of the total investment in all five companies acquired - i.e. 50% of \$3000 or \$1500.

The following table shows some of the combinations of the companies' financial statements which the Issuer may include in its prospectus. Column B shows the Issuer's combined investments in and advances to the companies identified in column A. Column C shows that the combined investments in and advances to each combination of companies represents more than 50% of the Issuer's investments in and advances to all five companies acquired. The Issuer should include in its prospectus

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

A	B	C
Companies	Combined Investments in and Advances to the Companies \$ Greater than \$1,500	Combined Purchase Price of Selected Companies as a % of \$3000
A+B+C	1,750	58%
A+B+D	1,650	55%
A+D+E	1,800	60%
B+C+D	1,800	60%
C+D+E	1,950	65%

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

Assumptions

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

Discussion

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

combination of companies should be selected using the absolute value of any net losses.

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

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

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

**ALBERTA SECURITIES COMMISSION
RULE 44-801**

**IMPLEMENTING
NATIONAL INSTRUMENT 44-101
*SHORT FORM PROSPECTUS DISTRIBUTIONS***

PART 1 DEFINITIONS

1.1 Definitions

- (a) In this Rule:
 - (i) "NI 44-101" means National Instrument 44-101 *Short Form Prospectus Distributions*;
 - (ii) "Form 44-101F2" means Form 44-101F2 *Short Form Prospectus*;
 - (iii) "NP 47" means National Policy Statement No. 47 *Prompt Offering Qualification System*;
 - (iv) "qualified issuer" means an issuer referred to in subsection 2.1(2) of NI 44-101; and
 - (v) "rules" mean the Alberta Securities Commission Rules.
- (b) Each term used in this Rule that is defined or interpreted in Part 1 of NI 44-101 has the meaning ascribed to it in that Part.

PART 2 DESIGNATION OF FORM

2.1 Short Form of Prospectus

- (a) A preliminary short form prospectus prepared and certified in accordance with NI 44-101 is a preliminary short form prospectus for the purposes of section 95.1 of the Act.
- (b) A short form prospectus prepared and certified in accordance with NI 44-101 is a short form prospectus for the purposes of section 95.1 of the Act.
- (c) References in the Schedule to the Securities Regulation to a preliminary prospectus or a prospectus include a preliminary short form prospectus or

a short form prospectus, respectively, certified and filed in accordance with NI 44-101.

PART 3 DISTRIBUTIONS OF SECURITIES OF AN ELIGIBLE ISSUER

3.1 Exemptions from the Act and Rules

The following do not apply to a distribution of securities made in compliance with NI 44-101 by a qualified issuer:

- (a) section 81 of the Act and section 77 of the rules, as they concern the form and content of a preliminary prospectus or prospectus;
- (b) sections 90 and 91 of the Act;
- (c) sections 98 and 99 of the rules; and
- (d) to the extent inconsistent with NI 44-101 and Form 44-101F2, sections 105, 108, 109, 111 and 114 of the rules.

3.2 AIF Deemed Prospectus for Qualification as Reporting Issuer

For the purposes of paragraph 1(t.1)(ii) of the Act, an initial AIF that has been filed by an issuer and accepted by the Executive Director in accordance with NI 44-101 is deemed to be a prospectus for which the issuer has obtained a receipt, provided that all continuous disclosure documents referred to in subparagraph 2.2(1)(a)(ii) of NI 44-101 have been filed with the Executive Director.

3.3 Sending of Comparative Audited Financial Statements

The requirement in section 122 of the Act that comparative audited annual financial statements be sent to securityholders concurrently with filing does not apply to an issuer that has, because of the requirements of NI 44-101, filed earlier than 140 days after the end of a financial year comparative audited annual financial statements in respect of that financial year, provided that the comparative audited annual financial statements are sent to the securityholders referred to in section 122 of the Act within 140 days from the end of that financial year.

3.4 Specified Prospectus Disclosure

National Instrument 41-101 *Prospectus Disclosure Requirements* does not apply to a preliminary short form prospectus or to a short form prospectus certified, filed and received in accordance with NI 44-101.

3.5 Transition

The following do not apply, for one year after the date of the receipt for a preliminary short form prospectus, to a distribution of securities for which the short form prospectus was certified, filed and received before the coming into force of NI 44-101, in accordance with the Act and NP 47:

- (a) section 81 of the Act, as it concerns the form and content of a preliminary prospectus or prospectus; and
- (b) subsections 98(2) and (3) of the rules.

PART 4 EFFECTIVE DATE**4.1 Effective Date**

This Rule comes into force on December 31, 2000.

**ALBERTA SECURITIES COMMISSION
NOTICE**

**NATIONAL INSTRUMENT 44-102
*SHELF DISTRIBUTIONS***

and

**REPEAL OF
NATIONAL POLICY STATEMENT NO. 44**

Implementation of Instrument and Repeal of National Policy Statement No. 44

The Alberta Securities Commission (the "Commission") and other members of the Canadian Securities Administrators (the "CSA") have approved National Instrument 44-102 *Shelf Distributions* ("NI 44-102") and related Companion Policy 44-102CP (the "Policy", NI 44-102 and the Policy being together referred to in this Notice as the "Instrument"). The Commission has also approved related implementing Rule 44-802. In Alberta, NI 44-102 and Rule 44-802 have been made Commission Rules and the Policy has been made a Commission policy.

NI 44-102, the Policy and Commission Rule 44-802 will take effect on December 31, 2000.

In conjunction with the implementation of the Instrument and National Instrument 44-103 *Post-Receipt Pricing*, discussed separately in a notice published contemporaneously with this Notice, the Commission has repealed, also with effect on December 31, 2000, National Policy Statement No. 44 *Rules for Shelf Prospectus Offerings and for Pricing Offerings after the Final Prospectus is Received* ("NP 44") and the related blanket order of the Commission dated May 9, 1991.

Purpose and Substance of the Instrument

The Instrument will regulate Canadian shelf prospectus distributions. It reformulates and replaces the provisions of NP 44 relating to shelf distributions, with which it is largely consistent.

The shelf distribution regime under the Instrument involves three main changes from the shelf provisions of NP 44:

- First, through the interaction of the Instrument with National Instrument 44-101 *Short Form Prospectus Distributions* ("NI 44-101", discussed separately in a notice published contemporaneously with this Notice), access to the shelf procedures has been expanded to permit the use of the shelf procedures for distributions of cash

settled derivatives and asset-backed securities, with specific requirements applicable if the securities to be distributed are "novel".

- Second, the Instrument permits a shelf prospectus that contemplates both equity and debt offerings without specific allocation between them. This added flexibility is balanced by provision for early disclosure of an equity offering under an unallocated shelf prospectus. A news release must be issued when an issuer or selling security holder has discussions with an underwriter concerning the distribution of a tranche of equity securities under an unallocated shelf prospectus, of sufficient specificity that it is reasonable to expect that the distribution will proceed.
- Third, the Instrument includes an expiry mechanism for a shelf prospectus receipt, making clear that the receipt expires if, prior to the issuance of securities under the shelf prospectus, the conditions relating to the issuer's qualification to file a prospectus in the form of a short form prospectus are not satisfied.

The Policy sets out the views of the Canadian securities regulatory authorities on various issues concerning the shelf procedures, including the qualification criteria, information that may be omitted from a base shelf prospectus, distributions of derivatives and asset-backed securities, use of an unallocated shelf prospectus, shelf prospectus supplements and amendments, and firm commitment and best efforts distributions.

Prior Publication, Public Comment and CSA Responses

The Commission and other CSA members published a draft version of the Instrument (the "1998 Draft Instrument") for comment on October 2, 1998. The accompanying notice summarized and solicited comment on the 1998 Draft Instrument.

The CSA received one comment letter on the 1998 Draft Instrument. The CSA have considered the comments received and thank the commenter. A summary of the comments and the CSA's responses is contained in the Appendix to this Notice.

Changes to the Instrument

Changes from the 1998 Draft Instrument are discussed below. Because the changes are not material, the Instrument is not being republished for comment.

A change has been made to section 6.5 of NI 44-102 that prescribes the manner in which the provisions of securities legislation that regulate conflicts of interest in connection with a distribution of securities using the shelf procedures are to be satisfied. NI 44-102 stipulates that the requirements concerning the participation of independent underwriters are to be satisfied, in the case of medium term note programs or other continuous distributions, on the basis of the total dollar amount of securities that, at any given time, have been or are being

distributed under the program. This requires the independent underwriter participation requirements to be satisfied on a "rolling" basis. The 1998 Draft Instrument referred only to the total dollar amount of securities that are being distributed under the program, thus implying that the requirements need only be satisfied at the end of the distribution of all of the securities to be distributed under the program.

Other changes have been made to conform the substance, terminology and drafting style of the Instrument to NI 44-101, as the shelf qualification criteria in the Instrument parallel the criteria under NI 44-101 for qualification to file a short form prospectus. Further changes of a minor nature have been made for clarification.

October 13, 2000.

APPENDIX
to
NOTICE

**Summary of Comments Received on
Proposed National Instrument 44-102
Shelf Distributions
and
Responses of the Canadian Securities Administrators**

The CSA received one submission on the 1998 Draft Instruments. The CSA considered the comments received and thank the commenter for its comments.

The following is a summary of the comments received, together with the CSA's responses. Unless otherwise provided, references to section numbers in this Appendix are to section numbers in the 1998 Draft Instruments.

1. *Comment:* The commenter recommends the use of term sheets as a precursor to the preparation of a shelf prospectus supplement.

Response: The current prospectus regime does not contemplate the use of a term sheet as an offering document to be given to prospective purchasers. To permit the use of a term sheet would be a fundamental change to the shelf procedures which the CSA do not propose to make at this time. Section 1.3 of the Policy currently contemplates a preliminary form of shelf prospectus supplement that may be used to market securities before the offering price has been determined.

2. *Comment:* The commenter suggested that it would be helpful if the Instrument would address who the issuer is in various structured finance distributions using special purpose vehicles.

Response: The identity of the "issuer" is very fact specific to each offering. While the CSA recognize that it may involve a complex legal analysis, it is beyond the scope of the Instrument to provide the kind of guidance sought.

3. *Comment:* The commenter thought it would be helpful if:
 - (a) the Policy provided greater guidance as to how the definition of "novel" would apply to an offering of derivatives or asset-backed securities;
 - (b) the consequences of a disagreement between the issuer and the regulator as to what is novel were clarified; and

- (c) the CSA indicated its willingness to discuss with issuers and, where appropriate, provide comfort that securities proposed to be distributed are, or are not, novel.

Response:

- (a) The CSA recognize that the concept of "novel" may be difficult to apply in certain circumstances. In subsection 3.4(4) of the Policy, the CSA express their view that the definition of the term "novel" should be read relatively restrictively. The CSA have also clarified that a security would not be novel merely because a new underlying interest was used. At this point, the CSA do not propose to attempt to provide additional explanation in the Policy as to the interpretation and application of the definition of "novel" because the application of the definition in a particular case is highly fact specific.
- (b) The consequences of a disagreement between the issuer and the regulator as to what is novel will vary depending on the circumstances. Whether a breach of an undertaking not to distribute novel derivatives or asset-backed securities without pre-clearing the supplement has occurred is a legal determination, not an exercise of regulatory discretion. In some jurisdictions, breach of an undertaking filed with the securities regulatory authority is an offence under securities legislation and may therefore be the subject of enforcement action. Furthermore, the public interest power of Canadian securities regulatory authorities to cease trade issuers is available in appropriate circumstances.
- (c) The CSA are always prepared to discuss with issuers matters of concern and appreciate the potential difficulty of applying the definition of "novel" in certain cases. The CSA would require an issuer that wishes to discuss whether an offering is novel to make written submissions describing the proposed distribution in detail and analyzing the aspects in which the distribution is similar to and different from other analogous distributions. For distributions in more than one jurisdiction, issuers should use the pre-filing procedures set out in Part 9 of National Policy 43-201 *Mutual Reliance Review System for Prospectuses and Annual Information Forms* to make their submissions. Issuers should not expect CSA staff to perform this analysis for them; rather staff may be able to guide issuers as to how the definition, in their view, should be applied to a distribution in the context of the issuer's analysis of the facts. The CSA also caution issuers and underwriters against routinely seeking comfort on this issue as a matter of due diligence.
4. *Comment:* The commenter suggests that no independent underwriter should be required in cases where a special purpose vehicle distributing asset-backed securities is owned by an underwriter, given that the securities to be distributed must have received an approved rating.

Response: This comment falls within the purview of Multilateral Instrument 33-105 *Underwriting Conflicts*. In that context, the CSA did not consider an approved rating to be a sufficient proxy for the participation of an independent underwriter.

5. *Comment:* The commenter requested that the Instrument exempt from the definition of "distribution" the sale of asset-backed securities by an owner underwriter in the course of its market making activities on the basis that the Ontario Securities Commission has been prepared to grant this relief in the past.

Response: The CSA are not prepared to do so at this time as they are of the view that applications for this relief should be considered on a case by case basis.

**NATIONAL INSTRUMENT 44-102
SHELF DISTRIBUTIONS**

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**NATIONAL INSTRUMENT 44-102
SHELF DISTRIBUTIONS**

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

(1) In this Instrument

"acting jointly or in concert" has the meaning ascribed to that phrase in securities legislation;

"at-the-market distribution" means a non-fixed price distribution of equity securities under the shelf procedures into a pre-existing trading market in which securities of the same class are traded;

"base shelf prospectus" means a short form prospectus that is prepared in the form required under National Instrument 44-101 Short Form Prospectus Distributions, as varied in accordance with this Instrument;

"clearing corporation" has the meaning ascribed to that term in National Instrument 81-102 Mutual Funds;

"conventional convertible security" means a security of an issuer that is, according to its terms, convertible into, or exchangeable for, other securities of the issuer, or of an affiliate of the issuer;

"conventional warrant or right" means a security of an issuer, other than a clearing corporation, that gives the holder the right to purchase securities of the issuer or of an affiliate of the issuer;

"index participation unit" means a security traded on a stock exchange in Canada or the United States and issued by an issuer the only purpose of which is to

- (a) hold the securities that are included in a specified widely quoted market index in substantially the same proportion as those securities are reflected in the index; or
- (b) invest in a manner that causes the issuer to replicate the performance of that index;

"method 1" means the method described in Appendix A of providing forward looking prospectus certificates in a base shelf prospectus or in a shelf prospectus supplement that establishes an MTN program or continuous distribution;

"method 2" means the method described in Appendix B of providing non-forward looking prospectus certificates in a base shelf prospectus and a shelf prospectus supplement;

"MTN program" means a continuous distribution of debt securities in which the specific variable terms of the individual debt securities and the method of distribution of those securities are determined at the time of the distribution;

"novel" means

- (a) for a specified derivative proposed to be distributed using the shelf procedures
 - (i) a derivative of a type that has not been distributed by way of prospectus in at least one jurisdiction before the proposed distribution, or
 - (ii) a derivative of a type that has been distributed by way of prospectus in at least one jurisdiction before the proposed distribution, but
 - (A) the attributes of the derivative differ materially from the attributes of derivatives of the same type previously distributed by way of prospectus,
 - (B) the structure and contractual arrangements underlying the derivative differ materially from the structure and contractual arrangements underlying derivatives of the same type previously distributed by way of prospectus, or
 - (C) the type of the underlying interest for the derivative differs materially from the type of underlying interest for derivatives of the

same type previously distributed by way of prospectus, and

- (b) for an asset-backed security proposed to be distributed using the shelf procedures
 - (i) a security of a type that has not been distributed by way of prospectus in at least one jurisdiction before the proposed distribution, or
 - (ii) a security of a type that has been distributed by way of prospectus in at least one jurisdiction before the proposed distribution, but
 - (A) the attributes of the security differ materially from the attributes of securities of the same type previously distributed by way of prospectus,
 - (B) the structure and contractual arrangements underlying the security differ materially from the structure and contractual arrangements underlying securities of the same type previously distributed by way of prospectus, or
 - (C) the type of financial assets servicing the security differ materially from the type of financial assets servicing securities of the same type previously distributed by way of prospectus;

"pricing supplement" means a shelf prospectus supplement that contains the price of securities distributed under an MTN program or other continuous distribution using the shelf procedures;

"shelf information" means the information permitted by this Instrument to be omitted from a base shelf prospectus;

"shelf procedures" means the requirements in this Instrument for the distribution of securities under a base shelf prospectus and a shelf prospectus supplement;

"shelf prospectus supplement" means a supplement to a base shelf prospectus, containing some or all of the information omitted from the base shelf prospectus as permitted by this Instrument;

"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 the special warrant or the other security to undertake efforts to file a prospectus to qualify the distribution of the other security;

"specified derivative" means an instrument, agreement or security, the market price, value or payment obligations of which are derived from, referenced to, or based on an underlying interest, other than one that is also

- (a) a conventional convertible security,
- (b) a specified asset-backed security,
- (c) an index participation unit,
- (d) a government or corporate strip bond,
- (e) a capital, equity dividend or income share of a subdivided equity or fixed income security,
- (f) a conventional warrant or right, or
- (g) a special warrant; and

"stabilization provisions" means those provisions of securities legislation that prohibit an issuer, selling securityholder, underwriter or dealer, or an affiliate of any of the foregoing persons or companies, or any person or company acting jointly or in concert with any of them from trading in securities being distributed by way of prospectus during the period of distribution.

- (2) All terms defined in National Instrument 44-101 and used, but not defined, in this Instrument have the respective meanings ascribed to them in National Instrument 44-101.

1.2 Amendments - References in this Instrument, other than in Appendix A and Appendix B, to an amendment to a prospectus include both an amendment that does not fully restate the text of a prospectus and an amended and restated prospectus.

1.3 Market Value Calculation - For the purposes of this Instrument, the aggregate market value of an issuer's equity securities on a date shall be calculated in accordance with section 2.9 of National Instrument 44-101.

PART 2 SHELF QUALIFICATION AND PERIOD OF RECEIPT EFFECTIVENESS

2.1 General - An issuer shall not file a short form prospectus that is a base shelf prospectus, unless the issuer is qualified to do so under this Instrument or has been exempted from this section under section 11.1.

2.2 Shelf Qualification for Distributions Qualified under Section 2.2 (Basic Qualification) or 2.8 (Following a Reorganization) of National Instrument 44-101

- (1) An issuer is qualified to file a preliminary short form prospectus that is a preliminary base shelf prospectus if, at the time of filing, the issuer is qualified under section 2.2 or 2.8 of National Instrument 44-101 to file a prospectus in the form of a short form prospectus.
- (2) An issuer that has filed a preliminary base shelf prospectus in reliance on the qualification criteria in subsection (1) is qualified to file a short form prospectus that is the corresponding base shelf prospectus.
- (3) A receipt issued for a base shelf prospectus of an issuer qualified under subsection (2) is effective until the earliest of
 - (a) the date 25 months from the date of its issue;
 - (b) the time immediately before the entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time
 - (i) the issuer does not have a current AIF, or

- (ii) the aggregate market value of the issuer's equity securities, listed and posted for trading on an exchange in Canada, has not been \$75,000,000 or more on a date within 60 days before the date of the agreement; and
- (c) the lapse date, if any, prescribed by securities legislation, if relief has not been granted to the issuer extending the lapse date for the distribution.

2.3 Shelf Qualification for Distributions Qualified under Section 2.3 of National Instrument 44-101 (Substantial Issuers)

- (1) An issuer is qualified to file a preliminary short form prospectus that is a preliminary base shelf prospectus if, at the time of filing, the issuer is qualified under section 2.3 of National Instrument 44-101 to file a prospectus in the form of a short form prospectus.
- (2) An issuer that has filed a preliminary base shelf prospectus in reliance on subsection (1) is qualified to file a short form prospectus that is the corresponding base shelf prospectus.
- (3) A receipt issued for a base shelf prospectus of an issuer qualified under subsection (2) is effective until the earliest of
 - (a) the date 25 months from the date of its issue;
 - (b) the time immediately before the entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time
 - (i) the issuer does not have a current AIF, or
 - (ii) the aggregate market value of the issuer's equity securities, listed and posted for trading on an exchange in Canada, has not been \$300,000,000 or more on a date within 60 days before the date of the agreement; and
 - (c) the lapse date, if any, prescribed by securities legislation, if relief has not been granted to the issuer extending the lapse date for the distribution.

2.4 Shelf Qualification for Distributions Qualified under Section 2.4 of National Instrument 44-101 (Approved Rating Non-Convertible Securities)

- (1) An issuer is qualified to file a preliminary short form prospectus that is a preliminary base shelf prospectus for approved rating non-convertible securities if, at the time of filing, the issuer has reasonable grounds for believing that, if it were to distribute securities under the base shelf prospectus, the securities distributed would receive an approved rating and would not receive a rating lower than an approved rating from any approved rating organization.
- (2) An issuer that has filed a preliminary base shelf prospectus in reliance on the qualification criteria in subsection (1) is qualified to file a short form prospectus that is the corresponding base shelf prospectus if, at the time of the filing of the base shelf prospectus, the issuer has reasonable grounds for believing that, if it were to distribute non-convertible securities under the base shelf prospectus, the securities distributed would receive an approved rating and would not receive a rating lower than an approved rating from any approved rating organization.
- (3) A receipt issued for a base shelf prospectus of an issuer filed under subsection (2) is effective until the earliest of
 - (a) the date 25 months from the date of its issue;
 - (b) the time immediately before the entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time
 - (i) the issuer does not have a current AIF,
 - (ii) the securities to which the agreement relates
 - (A) have not received a final approved rating,
 - (B) are the subject of an announcement by an approved rating organization of which the issuer is or ought 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, or

- (C) have received a provisional or final rating lower than an approved rating from any approved rating organization; and
- (c) the lapse date, if any, prescribed by securities legislation, if relief has not been granted to the issuer extending the lapse date for the distribution.

2.5 Shelf Qualification for Distributions made under Section 2.5 of National Instrument 44-101 (Guaranteed Non-Convertible Debt Securities, Preferred Shares and Cash Settled Derivatives)

- (1) An issuer is qualified to file a short form prospectus that is a preliminary base shelf prospectus for non-convertible debt securities, non-convertible preferred shares or non-convertible cash settled derivatives if, at the time of filing, the issuer is qualified under section 2.5 of National Instrument 44-101 to file a prospectus in the form of a short form prospectus.
- (2) An issuer that has filed a preliminary base shelf prospectus in reliance on subsection (1) is qualified to file a short form prospectus that is the corresponding base shelf prospectus.
- (3) A receipt issued for a base shelf prospectus of an issuer qualified under subsection (2) is effective until the earliest of
 - (a) the date 25 months from the date of its issue;
 - (b) the time immediately before the entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time
 - (i) a person or company has not provided a guarantee or alternative credit support for the securities to which the shelf prospectus supplement relates that satisfies the criteria in paragraph 1 of subsection 2.5(1) of National Instrument 44-101,
 - (ii) the credit supporter referred to in subparagraph (i)

- (A) is not a reporting issuer, or
 - (B) does not have a current AIF, or
- (iii) the aggregate market value of the equity securities of the credit supporter referred to in subparagraph (i), listed and posted for trading on an exchange in Canada has not been \$75,000,000 or more on a date within 60 days before the date of the agreement, and either of the following are true:
1. The credit supporter does not have issued and outstanding non-convertible securities that
 - (A) have received an approved rating,
 - (B) have not been the subject of an announcement by an approved rating organization of which the issuer is or ought 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 rating lower than an approved rating from any approved rating organization.
 2. The securities to which the agreement relates
 - (A) have not received a final approved rating,
 - (B) have been the subject of an announcement by an approved rating organization of which the issuer is or ought 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 received a provisional or final rating lower than an approved rating from any approved rating organization; and

- (c) the lapse date, if any, prescribed by securities legislation, if relief has not been granted to the issuer extending the lapse date for the distribution.

2.6 Shelf Qualification for Distributions made under Section 2.6 of National Instrument 44-101 (Guaranteed Convertible Debt Securities or Preferred Shares)

- (1) An issuer is qualified to file a short form prospectus that is a preliminary base shelf prospectus for convertible debt securities and convertible preferred shares if, at the time of filing, the issuer is qualified under section 2.6 of National Instrument 44-101 to file a prospectus in the form of a short form prospectus.
- (2) An issuer that has filed a preliminary base shelf prospectus in reliance on subsection (1) is qualified to file a short form prospectus that is the corresponding base shelf prospectus.
- (3) A receipt issued for a base shelf prospectus qualified under subsection (2) is effective until the earliest of
 - (a) the date 25 months from the date of its issue;
 - (b) the time immediately before the entering into of an agreement of purchase and sale for a security to be sold under the base shelf prospectus, if at that time
 - (i) the issuer of the securities into which the securities to which the agreement relates are convertible has not provided a guarantee or alternative credit support that satisfies the criteria in subsection 2.6 (1) of National Instrument 44-101,
 - (ii) the credit supporter referred to in subparagraph (i)

- (A) is not a reporting issuer,
 - (B) does not have a current AIF, or
 - (C) does not have equity securities listed and posted for trading on an exchange in Canada, the aggregate market value of which has been \$75,000,000 or more on a date within 60 days before the date of the agreement; and
- (c) the lapse date, if any, prescribed by securities legislation, if relief has not been granted to the issuer extending the lapse date for the distribution.

2.7

Shelf Qualification for Distributions made under Section 2.7 of National Instrument 44-101 (Asset-Backed Securities)

- (1) An issuer qualified under section 2.7 of National Instrument 44-101 to file a prospectus in the form of a short form prospectus may file a preliminary base shelf prospectus for asset-backed securities if, at the time of filing, the issuer has reasonable grounds for believing that
 - (a) all asset-backed securities that it may distribute under the base shelf prospectus will receive an approved rating; and
 - (b) no asset-backed securities that it may distribute under the base shelf prospectus will receive a rating lower than an approved rating from any approved rating organization.
- (2) An issuer that has filed a preliminary base shelf prospectus in reliance on the qualification criteria in section 2.7 of National Instrument 44-101 may file the corresponding base shelf prospectus if, at the time of the filing of the base shelf prospectus, the issuer has reasonable grounds for believing that
 - (a) all asset-backed securities that it may distribute under the base shelf prospectus will receive an approved rating; and
 - (b) no asset-backed securities that it may distribute under the base shelf prospectus will receive a rating lower than an approved rating from any approved rating organization.

- (3) A receipt issued for a base shelf prospectus qualified under subsection (2) is effective for a distribution of asset-backed securities until the earliest of
- (a) the date 25 months from the date of its issue;
 - (b) the time immediately before the entering into of an agreement of purchase and sale for an asset-backed security to be sold under the base shelf prospectus, unless at that time the asset-backed securities to which the agreement relates
 - (i) have not received a final approved rating,
 - (ii) have 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 downgraded to a rating category that would not be an approved rating, or
 - (iii) have received a provisional or final rating lower than an approved rating from any approved rating organization; and
 - (c) the lapse date, if any, prescribed by securities legislation, if relief has not been granted to the issuer extending the lapse date for the distribution.

2.8 Lapse Date - Ontario - In Ontario, the lapse date prescribed by securities legislation for a receipt issued for a base shelf prospectus is extended to the date 25 months from the date of issuance of the receipt.

2.9 Lapse Date - Alberta - In Alberta, the lapse date prescribed by securities legislation for a receipt issued for a base shelf prospectus is the date 25 months from the date of the issuance of the receipt.

2.10 Prohibited Offerings - Despite any provision in this Instrument, the shelf procedures shall not be used for a distribution of rights under a rights offering.

PART 3 UNALLOCATED SHELF

- 3.1 Unallocated Shelf Permitted** - A base shelf prospectus may pertain to more than one type of security for which the issuer is qualified to file a prospectus in the form of a short form prospectus.
- 3.2 Distributions of Equity Securities Under Unallocated Shelf** - An issuer or selling security holder that forms a reasonable expectation that a distribution of a tranche of equity securities will proceed under a base shelf prospectus that is not specifically restricted to equity securities shall immediately issue a news release that announces the intention to proceed with the distribution.

PART 4 DISTRIBUTIONS OF NOVEL DERIVATIVES OR ASSET-BACKED SECURITIES UNDER SHELF

- 4.1 Distributions of Novel Derivatives or Asset-Backed Securities Under Shelf**
- (1) If a base shelf prospectus pertains to specified derivatives or asset-backed securities, the issuer or the selling security holder, as the case may be, shall file before or concurrently with the base shelf prospectus an undertaking that it will not distribute under the base shelf prospectus specified derivatives or asset-backed securities, as the case may be, in the local jurisdiction that, at the time of distribution, are novel without pre-clearing with the regulator in accordance with subsection (2) the disclosure to be contained in a shelf prospectus supplement pertaining to the distribution of the novel specified derivatives or asset-backed securities.
- (2) The undertaking referred to in subsection (1) shall state that the issuer or the selling security holder, as the case may be, shall not distribute specified derivatives or asset-backed securities in the local jurisdiction that, at the time of distribution, are novel, unless
- (a) the draft shelf prospectus supplement or, if more than one shelf prospectus supplement is to be used, the draft shelf prospectus supplements, pertaining to the distribution of the novel specified derivatives or asset-backed securities have been delivered to the regulator in substantially final form; and

- (b) either
 - (i) the regulator has confirmed his or her acceptance of each draft shelf prospectus supplement in substantially final form or each shelf prospectus supplement in final form, or
 - (ii) 21 days have elapsed since the date of delivery to the regulator of each draft shelf prospectus supplement in substantially final form and the regulator has not provided written comments on the draft shelf prospectus supplement.

PART 5 BASE SHELF PROSPECTUSES

5.1 Opting out of the Shelf Procedures After a Preliminary Prospectus has been Received - An issuer that has filed a preliminary base shelf prospectus shall not file a short form prospectus that is not a base shelf prospectus unless the issuer files

- (a) either
 - (i) an amended preliminary short form prospectus in accordance with National Instrument 44-101 that is not a preliminary base shelf prospectus, or
 - (ii) a new preliminary short form prospectus that is not a preliminary base shelf prospectus; and
- (b) a covering letter stating that the issuer or the selling security holder, as the case may be, has decided not to use the shelf procedures for the distribution.

5.2 Opting into the Shelf Procedures After a Preliminary Prospectus has been Received - An issuer that has filed a preliminary short form prospectus that is not a preliminary base shelf prospectus shall not file a base shelf prospectus for the distribution unless the issuer files

- (a) either
 - (i) an amended preliminary base shelf prospectus in accordance with this Instrument, or

(ii) a new preliminary short form prospectus that is a preliminary base shelf prospectus in accordance with this Instrument; and

(b) a covering letter stating that the issuer or the selling securityholder, as the case may be, has decided to use the shelf procedures for the distribution.

5.3 Form of Base Shelf Prospectus - Despite National Instrument 44-101, a short form prospectus that is a base shelf prospectus may vary from Form 44-101F3 to the extent required or permitted by this Instrument.

5.4 Dollar Value of Securities - A base shelf prospectus shall pertain to no more than the dollar value of securities that the person or company proposing to distribute securities under the base shelf prospectus reasonably expects, at the time the base shelf prospectus is filed, to distribute within 25 months after the date of the receipt for the base shelf prospectus.

5.5 Required Disclosure - A base shelf prospectus shall contain the following:

1. A statement at the top of the cover page identifying the short form prospectus as a base shelf prospectus.

2. The following statement in red ink in *italics* on the cover page:

"This short form prospectus has been filed under legislation in [insert name[s] of the jurisdiction[s] where qualified] that permits certain information about these securities to be determined after this prospectus has become final and that permits the omission from this prospectus of that information. The legislation requires the delivery to purchasers of a prospectus supplement containing the omitted information within a specified period of time after agreeing to purchase any of these securities."

3. A statement that all shelf information omitted from the base shelf prospectus will be contained in one or more shelf prospectus supplements that will be delivered to purchasers together with the base shelf prospectus.

4. A statement that each shelf prospectus supplement will be incorporated by reference into the base shelf prospectus for the

purposes of securities legislation as of the date of the shelf prospectus supplement and only for the purposes of the distribution of the securities to which the shelf prospectus supplement pertains.

5. A statement of the aggregate dollar amount of securities that may be raised under the base shelf prospectus.
6. Disclosure of the types of securities that may be distributed under the base shelf prospectus.
7. If an undertaking is required to be filed under subsection 4.1(1), a statement that the issuer or the selling security holder, as the case may be, has filed an undertaking that it will not distribute specified derivatives or asset-backed securities, as the case may be, that, at the time of distribution, are novel without pre-clearing with the regulator the disclosure to be contained in the shelf prospectus supplement pertaining to the distribution of the novel specified derivatives or asset-backed securities.
8. The prospectus certificates prescribed by
 - (a) method 1, if
 - (i) the base shelf prospectus is being used to establish an MTN program or other continuous distribution, or
 - (ii) method 2 has not been elected; or
 - (b) method 2, if method 2 has been elected.

5.6 Disclosure that may be Omitted - If the specified circumstances exist, a base shelf prospectus may omit the following information:

1. The variable terms of the securities that may be distributed under the base shelf prospectus, if not known on the date the base shelf prospectus is filed.
2. The dollar amount, size and other specific terms of each tranche of securities that may be distributed under the base shelf prospectus, if not known on the date the base shelf prospectus is filed.

3. The variable terms of the plans of distribution for the securities that may be distributed under the base shelf prospectus, if not known on the date the base shelf prospectus is filed.
4. The name and prospectus certificate of an underwriter if, at the time of the filing of the base shelf prospectus, no underwriter is, and it is not known to the issuer that a particular underwriter will be, in a contractual relationship with the issuer or selling security holder requiring the underwriter to distribute under the base shelf prospectus.
5. If one or more underwriters have agreed to purchase the securities to be distributed under the base shelf prospectus at a specified price, the statement required under Form 44-101F3 that the securities are to be taken up by the underwriters, if at all, on or before a specified date.
6. If the securities to be distributed under the base shelf prospectus are underwritten on a best efforts basis for which a minimum amount of funds are required by an issuer, the disclosure required under Form 44-101F3 concerning the maximum length of time for which the distribution may continue and concerning the disposition of subscription funds.
7. Any other information that pertains only to a specific distribution of securities under the base shelf prospectus, if not known on the date the base shelf prospectus is filed.
8. Any other information required under National Instrument 44-101 or other securities legislation that is not known and cannot be ascertained at the time of filing of the base shelf prospectus.

5.7 Issue of Receipt - Despite the omission of shelf information, the regulator may issue a receipt for a base shelf prospectus.

5.8 Amendments - If a material change occurs at a time when no securities are being distributed under a base shelf prospectus, the provisions of securities legislation that require the filing of an amendment to a prospectus if a material change occurs are satisfied by

- (a) the filing of a material change report; and
- (b) the incorporation by reference in the base shelf prospectus of the material change report.

PART 6 SHELF PROSPECTUS SUPPLEMENTS

6.1 Requirement to Use Shelf Prospectus Supplements - An issuer or selling security holder that distributes securities under a base shelf prospectus shall supplement the disclosure in the base shelf prospectus with a shelf prospectus supplement, or more than one shelf prospectus supplement, in order for the prospectus to contain full, true and plain disclosure of all material facts relating to the securities distributed under the prospectus.

6.2 Incorporation by Reference

- (1) An issuer shall incorporate by reference in the corresponding base shelf prospectus by means of a statement in the base shelf prospectus each shelf prospectus supplement referred to in section 6.1 as of the date of the shelf prospectus supplement and only for purposes of the distribution to which the shelf prospectus supplement pertains.
- (2) If an issuer does not incorporate by reference in a base shelf prospectus a shelf prospectus supplement required to be incorporated by reference under subsection (1), the shelf prospectus supplement is conclusively deemed for purposes of securities legislation to be incorporated by reference in the issuer's base shelf prospectus as of the date of the shelf prospectus supplement and only for purposes of the distribution to which the shelf prospectus supplement pertains.

6.3 Shelf Prospectus Supplement Disclosure

- (1) A shelf prospectus supplement shall contain the following:
 - 1. The name of the issuer on the cover page
 - 2. The dates of the corresponding base shelf prospectus and of each previously filed shelf prospectus supplement

corresponding to the same base shelf prospectus and pertaining to the same distribution, on the cover page.

3. The prospectus certificates prescribed by
 - (a) method 1, if the shelf prospectus supplement establishes an MTN program or other continuous distribution; or
 - (b) method 2, if the prospectus certificates prescribed by method 1 have not been included in the corresponding base shelf prospectus and if method 1 is not mandatory under paragraph (a).
 4. A list of each document that is incorporated by reference into the corresponding base shelf prospectus as of the date of the shelf prospectus supplement and provides disclosure pertaining to the securities being distributed under the shelf prospectus supplement.
- (2) If only one shelf prospectus supplement is used to supplement the disclosure in the corresponding base shelf prospectus pertaining to a distribution of securities, that shelf prospectus supplement shall contain the following, and if more than one shelf prospectus supplement is used to supplement the disclosure in the corresponding base shelf prospectus pertaining to a distribution of securities, the shelf prospectus supplements used shall, together, contain the following:
1. All of the shelf information pertaining to the distribution of securities that was not disclosed in the corresponding base shelf prospectus.
 2. All material facts relating to the securities to be distributed and all other information required under securities legislation to be disclosed in a short form prospectus that is not disclosed, either directly or through incorporation by reference, in the corresponding base shelf prospectus.

- (1) A shelf prospectus supplement shall be filed in the local jurisdiction if a base shelf prospectus to which the shelf prospectus supplement pertains was filed in the local jurisdiction.
- (2) A shelf prospectus supplement that is required to be filed under subsection (1) shall be filed,
 - (a) if the shelf prospectus supplement pertains to a distribution of securities, other than an MTN program or other continuous distribution, on or before the earlier of
 - (i) the date the shelf prospectus supplement was first sent or delivered to a purchaser or a prospective purchaser, and
 - (ii) the date two business days after the offering price of the securities to which it pertains is determined; or
 - (b) in all other circumstances, on or before the date two business days after the date the shelf prospectus supplement was first sent or delivered to a purchaser or a prospective purchaser.

6.5 Underwriters' Conflicts of Interest - For a distribution of securities under a base shelf prospectus, the provisions of securities legislation that regulate conflicts of interest in connection with a distribution of securities of a registrant, a connected issuer of a registrant or a related issuer of a registrant

- (a) concerning the participation of independent underwriters shall be satisfied
 - (i) on a tranche-by-tranche basis for a distribution other than an MTN program or other continuous distribution, or
 - (ii) on the basis of the total dollar amount of securities that, at any given time, have been or are being distributed under the program or distribution for a distribution of securities under an MTN program or other continuous distribution; and

- (b) concerning disclosure, to the extent not previously satisfied in the base shelf prospectus, shall be satisfied by including the prescribed disclosure in a shelf prospectus supplement pertaining to the distribution.

6.6 Market Stabilization - The stabilization provisions shall be satisfied on a tranche-by-tranche basis for a non-continuous distribution of securities under a base shelf prospectus.

6.7 Delivery Requirement - The shelf prospectus supplement or supplements that, together with the corresponding base shelf prospectus, contain full, true and plain disclosure of all material facts relating to the securities being distributed shall be sent by prepaid mail or delivered to a purchaser of the securities with the base shelf prospectus.

PART 7 SHELF SUPPORTING DOCUMENTS

7.1 General - The provisions of National Instrument 44-101 requiring the filing of supporting documents with a preliminary short form prospectus, a short form prospectus or a prospectus amendment do not apply to a filing of a preliminary base shelf prospectus, a base shelf prospectus or an amendment to a preliminary base shelf prospectus or to a base shelf prospectus, except to the extent varied in this Part.

7.2 Consents

- (1) If any solicitor, auditor, accountant, engineer or appraiser, or any other person or company whose profession gives authority to a statement made by that person or company, is
 - (a) named in a document that is
 - (i) incorporated by reference into a base shelf prospectus, and
 - (ii) filed after the date of filing of the base shelf prospectus; and
 - (b) named in the document as having prepared or certified

- (i) any part of the base shelf prospectus, amendment or shelf prospectus supplement, or
- (ii) a report or valuation referred to in the base shelf prospectus or shelf prospectus supplement, either directly or in a document incorporated by reference,

the issuer shall file the written consent of the person or company to being named and to that use of the report or valuation in accordance with subsection (2).

- (2) A consent of an expert required under subsection (1) shall be filed in accordance with the following:
 - 1. If the document in which the expert is named is incorporated by reference into the base shelf prospectus by means of a statement to that effect in the base shelf prospectus, the consent shall be filed
 - (a) no later than the time the document is filed, if the base shelf prospectus establishes an MTN program or other continuous distribution; and
 - (b) in all other circumstances, no later than the time of the next filing of a shelf prospectus supplement corresponding to the base shelf prospectus.
 - 2. If the document in which the expert is named is incorporated by reference into a shelf prospectus supplement by means of a statement to that effect in the shelf prospectus supplement and filed before or concurrently with the shelf prospectus supplement, the consent shall be filed no later than the time the shelf prospectus supplement is filed.
 - 3. If the document in which the expert is named is incorporated by reference into a shelf prospectus supplement by means of a statement to that effect in the shelf prospectus supplement and filed after the shelf prospectus supplement is filed, the consent shall be filed no later than the time the document is filed.

7.3 Auditor's Comfort Letters - An auditor's comfort letter for unaudited financial statements incorporated by reference into a base shelf prospectus but filed after the date of filing of the base shelf prospectus shall be filed

- (a) concurrently with the unaudited financial statements, if the base shelf prospectus establishes an MTN program or other continuous distribution; and
- (b) in all other circumstances, no later than the time of the next filing of a shelf prospectus supplement corresponding to the base shelf prospectus.

7.4 Underwriting Agreements

- (1) If, at the time an issuer files a base shelf prospectus, no underwriter is in a contractual relationship with the issuer or selling security holder requiring the underwriter to distribute securities under the base shelf prospectus, the issuer is not required to file a copy of an underwriting agreement with the base shelf prospectus.
- (2) If an underwriter enters into a contractual relationship with an issuer or selling security holder requiring the underwriter to distribute securities under a base shelf prospectus after the base shelf prospectus is filed, the issuer shall file a copy of the underwriting agreement pertaining to the distribution concurrently with the next shelf prospectus supplement filed pertaining to that distribution.

PART 8 MEDIUM TERM NOTE PROGRAMS AND OTHER CONTINUOUS DISTRIBUTIONS UNDER SHELF

8.1 General - An issuer that is qualified under Part 2 to file a base shelf prospectus for securities may distribute those securities by way of an MTN program or other continuous distribution, if it files

- (a) a base shelf prospectus or a shelf prospectus supplement that establishes the program or distribution; and
- (b) a pricing supplement.

8.2 Additional Disclosure Requirements

- (1) Despite section 5.5, a base shelf prospectus or shelf prospectus supplement that establishes an MTN program or other continuous distribution shall contain the following:
 1. A description of the method of distribution, including the name of any underwriter involved in the distribution and the amount of any underwriting fee, discount or commission.
 2. A description of the intended parameters of the terms of the MTN program or other continuous distribution.
 3. At the option of the issuer or selling security holder proposing to distribute securities under the MTN program or other continuous distribution, a statement that the issuer or selling security holder, as the case may be, reserves the right to issue securities under the MTN program or other continuous distribution on terms outside the intended parameters disclosed under paragraph 2.

- (2) A pricing supplement for an MTN program or other continuous distribution under the shelf procedures shall contain the following:
 1. The terms of the securities distributed that are not disclosed in the base shelf prospectus or shelf prospectus supplement establishing the MTN program or other continuous distribution.
 2. A list of each document that is incorporated by reference into the corresponding base shelf prospectus as of the date of the pricing supplement and that provides disclosure pertaining to the securities being distributed under the MTN program or other continuous distribution.

8.3 Filing Requirement - If an issuer sends or delivers to a purchaser or a prospective purchaser in the local jurisdiction a pricing supplement in a particular month, the issuer shall, despite section 6.4, file within seven days after the end of the month

- (a) a copy of each pricing supplement sent or delivered to a purchaser or prospective purchaser during the month, if the

pricing supplement had not previously been sent or delivered to any purchaser or prospective purchaser; or

- (b) a summary of the information contained in each pricing supplement sent or delivered to a purchaser or prospective purchaser during the month, including
 - (i) a list of the pricing supplements referred to in paragraph (a),
 - (ii) the terms of the securities distributed under each pricing supplement sent or delivered to a purchaser or a prospective purchaser during the month, and
 - (iii) the aggregate amount of securities distributed under each pricing supplement sent or delivered to a purchaser or a prospective purchaser during the month.

8.4 Requirement to Update Earnings Coverage Ratios - An issuer distributing securities by way of an MTN program or other continuous distribution using the shelf procedures shall

- (a) calculate updated earnings coverage ratios for the ratios contained in its base shelf prospectus each time the issuer prepares interim or audited annual financial statements, using the 12 month period that ended on the last day of the most recently completed financial period; and
- (b) file the updated earnings coverage ratios, concurrently with the filing of its financial statements, either
 - (i) as an exhibit to the financial statements, or
 - (ii) as a shelf prospectus supplement corresponding to the base shelf prospectus.

PART 9 AT-THE-MARKET DISTRIBUTIONS OF EQUITY SECURITIES UNDER SHELF

9.1 At-the-Market Distributions of Equity Securities Under Shelf

- (1) Despite section 11.1 of National Instrument 44-101, equity securities may be distributed by way of an at-the-market distribution using the shelf procedures if the market value of equity securities distributed does not exceed 10 percent of the aggregate market value of the issuer's outstanding equity securities of the same class as the class of securities distributed, calculated in accordance with section 2.9 of National Instrument 44-101, as at the last trading day of the month before the month in which the first trade under the at-the-market distribution is made.
- (2) No underwriter or dealer distributing equity securities by way of an at-the-market distribution, or any affiliate of such an underwriter or dealer, or any person or company acting jointly or in concert with such an underwriter or dealer, shall, in connection with the distribution, over-allot the securities or effect a transaction that is intended to stabilize or maintain the market price of the securities.
- (3) An issuer shall include in a base shelf prospectus or shelf prospectus supplement pertaining to an at-the-market distribution a statement that no underwriter or dealer involved in the distribution, no affiliate of such an underwriter or dealer and no person or company acting jointly or in concert with such an underwriter or dealer has over-allotted, or will over-allot, securities in connection with the distribution or effect any other transactions that are intended to stabilize or maintain the market price of the securities.

PART 10 TRANSITIONAL SHELF PROCEDURES

10.1 Transitional Shelf Procedures

- (1) A receipt issued for a shelf prospectus filed under National Policy Statement No. 44 is a receipt for the purposes of a base shelf prospectus under this Instrument.

- (2) A preliminary shelf prospectus filed under National Policy Statement No. 44 is a preliminary base shelf prospectus under this Instrument.
- (3) A receipt issued for a shelf prospectus filed under National Policy Statement No. 44 before National Instrument 44-101 came into force shall expire
 - (a) if the issuer relied on section 4.1 or 4.4 of National Policy Statement No. 47 or section 164 or 168 of the Regulation Concerning Securities (Québec) to be qualified to file the shelf prospectus, at the time specified in section 2.2 of this Instrument;
 - (b) if the issuer relied on section 4.2 of National Policy Statement No. 47 or an exemption granted under the Securities Act (Québec) to be qualified to file the shelf prospectus, at the time specified in section 2.3 of this Instrument;
 - (c) if the issuer relied on paragraph 4.3(1)(a) of National Policy Statement No. 47 or section 165 of the Regulation Concerning Securities (Québec) to be qualified to file the shelf prospectus, at the time specified in section 2.4 of this Instrument;
 - (d) if the issuer relied on paragraph 4.3(1)(b) of National Policy Statement No. 47 or section 166 of the Regulation Concerning Securities (Québec) to be qualified to file the shelf prospectus, at the time specified in section 2.5 of this Instrument; and
 - (e) if the issuer relied on subsection 4.3(2) of National Policy Statement No. 47 or an exemption granted under the Securities Act (Québec) to be qualified to file the shelf prospectus, at the time specified in section 2.6 of this Instrument.

PART 11 EXEMPTIONS

11.1 Exemption

- (1) The regulator or the securities regulatory authority may grant an exemption from 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 and Alberta, only the regulator may grant such an exemption.
- (3) An application made to the securities regulatory authority or regulator for an exemption from 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.

11.2 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 base shelf prospectus or an amendment to a base shelf 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 11.1(3) on or before the date of filing of the preliminary base shelf prospectus, or
 - (ii) sent to the regulator the letter or memorandum referred to in subsection 11.1(3) after the date of filing of the preliminary base shelf 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 to the person or company that sought the exemption notice that the exemption sought can not be evidenced in the manner set out in subsection (1).

PART 12 EFFECTIVE DATE

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

NATIONAL INSTRUMENT 44-102
SHELF DISTRIBUTIONS
APPENDIX A
METHOD 1 FOR SHELF PROSPECTUS CERTIFICATES

**METHOD 1: FORWARD LOOKING CERTIFICATES TO BE INCLUDED IN
BASE SHELF PROSPECTUSES OR SUPPLEMENTS
ESTABLISHING AN MTN PROGRAM OR OTHER CONTINUOUS
DISTRIBUTION**

PART 1 Base Shelf Prospectuses

1.1 Certificate of Issuer and Promoter - If a base shelf prospectus establishes an MTN program or other continuous distribution, or if method 2 has not been elected by an issuer, the preliminary base shelf prospectus and the base shelf prospectus shall contain a certificate in the following form signed by

- (a) the chief executive officer and the chief financial officer of the issuer or, if no such officers have been appointed, a person acting on behalf of the issuer in a capacity similar to that of 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, other than the persons referred to in paragraph (a), duly authorized to sign and
- (c) any person or company who is a promoter of the issuer:

"This short form prospectus, together with the documents incorporated in this prospectus by reference, will, as of the date of the last supplement to this prospectus relating to the securities offered by this prospectus and the supplement(s), constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus and the supplement(s) as required by the securities legislation of [insert name of each jurisdiction in which qualified] [insert if distribution made in Quebec---"and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

1.2 Underwriters' Certificates - A preliminary base shelf prospectus and a base shelf prospectus shall contain an underwriter's certificate in the

following form signed by each underwriter who, at the time of filing, is, or it is known will be, in a contractual relationship with the issuer for the securities to be distributed under the base shelf prospectus, if

- (a) the base shelf prospectus establishes an MTN program or other continuous distribution; or
- (b) method 2 has not been elected by the underwriter:

"To the best of our knowledge, information and belief, this short form prospectus, together with the documents incorporated in this prospectus by reference will, as of the date of the last supplement to this prospectus relating to the securities offered by this prospectus and the supplement(s), constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus and the supplement(s) as required by the securities legislation of [insert name of each jurisdiction in which qualified] [insert if distribution made in Quebec---"and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]."

1.3 Credit Supporter's Certificate - A preliminary base shelf prospectus and a base shelf prospectus shall contain a certificate in the form described in section 1.1 signed by a credit supporter of the securities to be distributed under the base shelf prospectus, if

- (a) National Instrument 44-101 requires a prospectus certificate of the credit supporter; and
- (b) either
 - (i) the base shelf prospectus establishes an MTN program or other continuous distribution, or
 - (ii) method 2 has not been elected by the credit supporter.

1.4 Amendments

- (1) An amendment to a base shelf prospectus or an amended and restated base shelf prospectus shall, subject to subsection (2), contain

- (a) the certificates required under section 1.1 to be included in a base shelf prospectus, if the base shelf prospectus contains an issuer's certificate in the form described in section 1.1;
 - (b) the certificates required under section 1.2 to be included in a base shelf prospectus, if the base shelf prospectus contains an underwriter's certificate in the form described in section 1.2; and
 - (c) the certificate required under section 1.3 to be included in a base shelf prospectus, if the base shelf prospectus contains a credit supporter's certificate in the form described in section 1.3.
- (2) In each certificate required under subsection (1), the reference to "this short form prospectus" shall be omitted and replaced by
- (a) in the case of an amendment to a base shelf prospectus, "the short form prospectus dated [insert date] as amended by this amendment"; and
 - (b) in the case of an amended and restated base shelf prospectus, "this amended and restated short form prospectus".

PART 2 Shelf Prospectus Supplements establishing an MTN Program

2.1 Certificate of Issuer and Promoter - If an issuer's certificate in the form described in section 1.1 was not included in the corresponding base shelf prospectus, a shelf prospectus supplement that establishes an MTN program or other continuous distribution shall contain a certificate in the following form signed by

- (a) the chief executive officer and the chief financial officer of the issuer or, if no such officers have been appointed, a person acting on behalf of the issuer in a capacity similar to that of 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, other than the persons referred to in paragraph (a), duly authorized to sign; and

- (c) any person or company who is a promoter of the issuer:

"The short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, will, as of the date of the last supplement to the prospectus relating to the securities offered by the prospectus and the supplement(s), constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and the supplement(s) as required by the securities legislation of [insert name of each jurisdiction in which qualified] [insert if distribution made in Quebec---"and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]."

2.2 Underwriters' Certificates - A shelf prospectus supplement that establishes an MTN program or other continuous distribution shall contain a certificate in the following form signed by each underwriter who

- (a) is in a contractual relationship with the issuer for the securities being distributed under the shelf prospectus supplement; and
- (b) did not sign and include in the corresponding base shelf prospectus a certificate in the form described in section 1.2:

"To the best of our knowledge, information and belief, the short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, will, as of the date of the last supplement to the prospectus relating to the securities offered by the prospectus and the supplement(s), constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and the supplement as required by the securities legislation of [insert name of jurisdiction in which qualified] [insert if distribution made in Quebec---"and will not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

2.3 Credit Supporter's Certificate - A shelf prospectus supplement that establishes an MTN program or other continuous distribution shall contain a certificate in the form described in section 2.1 signed by a credit

supporter of the securities being distributed under the shelf prospectus supplement, if

- (a) National Instrument 44-101 requires a prospectus certificate of the credit supporter; and
- (b) a prospectus certificate of the credit supporter in the form described in section 1.3 was not included in the corresponding base shelf prospectus.

2.4

Amendments

- (1) An amendment to a shelf prospectus supplement or an amended and restated shelf prospectus supplement that establishes an MTN program or other continuous distribution shall, subject to subsection (2), contain
 - (a) the certificates required under section 2.1 to be included in a shelf prospectus supplement, if the shelf prospectus supplement contains an issuer's certificate in the form described in section 2.1;
 - (b) the certificates required under section 2.2 to be included in a shelf prospectus supplement, if the shelf prospectus supplement contains an underwriter's certificate in the form described in section 2.2; and
 - (c) the certificate required under section 2.3 to be included in a shelf prospectus supplement, if the shelf prospectus supplement contains a credit supporter's certificate in the form described in section 2.3.
- (2) In each certificate required under subsection (1), the reference to "this shelf prospectus supplement" shall be omitted and replaced by
 - (a) in the case of an amendment to a shelf prospectus supplement, "the shelf prospectus supplement dated [insert date] as amended by this amendment"; and
 - (b) in the case of an amended and restated shelf prospectus supplement, "this amended and restated shelf prospectus supplement".

**NATIONAL INSTRUMENT 44-102
SHELF DISTRIBUTIONS
APPENDIX B
METHOD 2 FOR SHELF PROSPECTUS CERTIFICATES**

METHOD 2: NON-FORWARD LOOKING PROSPECTUS CERTIFICATES TO BE INCLUDED IN BOTH BASE SHELF PROSPECTUSES AND SUPPLEMENTS

PART 1 Base Shelf Prospectus

1.1 Certificate of Issuer and Promoter - If method 2 is elected by an issuer, a preliminary base shelf prospectus and a base shelf prospectus shall contain a certificate in the following form signed by

- (a) the chief executive officer and the chief financial officer of the issuer or, if no such officers have been appointed, a person acting on behalf of the issuer in a capacity similar to that of 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, other than the persons referred to in paragraph (a), duly authorized to sign; and
- (c) any person or company who is a promoter of the issuer:

"This short form prospectus, together with the documents incorporated in this prospectus 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 distribution made in Quebec---"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

1.2 Underwriters' Certificates - A preliminary base shelf prospectus and a base shelf prospectus shall contain an underwriter's certificate in the following form signed by each underwriter who

- (a) at the time of filing, is, or it is known will be, in a contractual relationship with the issuer for the securities to be distributed under the base shelf prospectus; and

- (b) elects method 2:

"To the best of our knowledge, information and belief, the short form prospectus, together with the documents incorporated in the prospectus 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 distribution made in Quebec---"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"]".

1.3 Credit Supporter's Certificate - A base shelf prospectus shall contain a certificate in the form described in section 1.1 signed by a credit supporter of the securities to be distributed under the base shelf prospectus, if

- (a) National Instrument 44-101 requires a prospectus certificate of the credit supporter; and
- (b) method 2 is elected by the credit supporter.

1.4 Amendments

- (1) An amendment to a base shelf prospectus or an amended and restated base shelf prospectus shall, subject to subsection (2), contain
- (a) the certificates required under section 1.1 to be included in a base shelf prospectus, if the issuer has elected method 2;
- (b) the certificate described in section 1.2 signed by each underwriter who
- (i) at the time of filing the amendment or the amended and restated base shelf prospectus, is, or it is known will be, in a contractual relationship with the issuer for the securities to be distributed under the base shelf prospectus, and
- (ii) has elected method 2; and

- (c) the certificate required under section 1.3 to be included in a base shelf prospectus, if the base shelf prospectus contains a credit supporter's certificate in the form described in section 1.3.
- (2) In each certificate required under subsection (1), the reference to "this short form prospectus" shall be omitted and replaced by
- (a) in the case of an amendment to a base shelf prospectus, "the short form prospectus dated [insert date] as amended by this amendment"; and
 - (b) in the case of an amended and restated base shelf prospectus, "this amended and restated short form prospectus".

PART 2 Shelf Prospectus Supplement

2.1 Certificate of Issuer and Promoter - If method 2 is elected by an issuer, each shelf prospectus supplement shall contain a certificate in the following form signed by

- (a) the chief executive officer and the chief financial officer of the issuer or, if no such officers have been appointed, a person acting on behalf of the issuer in a capacity similar to that of a chief executive officer and a person acting 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, other than the persons referred to in paragraph (a) duly authorized to sign; and
- (c) any person or company who is a promoter of the issuer:

"The short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, constitutes full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and this supplement as required by the securities legislation of [insert name of each jurisdiction in which qualified] [insert if distribution made in Quebec---"and does not contain any misrepresentation likely

to affect the value or the market price of the securities to be distributed"].".

2.2 Underwriters' Certificates - Each shelf prospectus supplement shall contain a certificate in the following form signed by each underwriter who

- (a) is in a contractual relationship with the issuer for the securities being distributed under the supplement; and
- (b) has elected method 2:

"To the best of our knowledge, information and belief, the short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, constitutes full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and this supplement as required by the securities legislation of [insert name of each jurisdiction in which qualified] [insert if distribution made in Quebec---"and does not contain any misrepresentation likely to affect the value or the market price of the securities to be distributed"].".

2.3 Credit Supporter's Certificate - Each shelf prospectus supplement shall contain a certificate in the form described in section 2.1 signed by a credit supporter of the securities being distributed under the shelf prospectus supplement, if

- (a) National Instrument 44-101 requires a prospectus certificate of the credit supporter; and
- (b) method 2 is elected by the credit supporter.

2.4 Amendments

- (1) An amendment to a shelf prospectus supplement or an amended and restated shelf prospectus supplement shall, subject to subsection (2), contain
 - (a) the certificates required under section 2.1 to be included in a shelf prospectus supplement, if the shelf prospectus supplement contains an issuer's certificate in the form described in section 2.1;

- (b) the certificate described in section 2.2 signed by each underwriter who
 - (i) at the time of filing the amendment or the amended and restated shelf prospectus supplement, is in a contractual relationship with the issuer for the securities being distributed under the shelf prospectus supplement, and
 - (ii) has elected method 2; and
 - (c) the certificate required under section 2.3 to be included in a shelf prospectus supplement, if the shelf prospectus supplement contains a credit supporter's certificate in the form described in section 2.3.
- (2) In each certificate required under subsection (1), the reference to "this shelf prospectus supplement" shall be omitted and replaced by
- (a) in the case of an amendment to a shelf prospectus supplement, "the shelf prospectus supplement dated [insert date] as amended by this amendment"; and
 - (b) in the case of an amended and restated shelf prospectus supplement, "this amended and restated shelf prospectus supplement".

**COMPANION POLICY 44-102CP
TO NATIONAL INSTRUMENT 44-102
SHELF DISTRIBUTIONS**

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**COMPANION POLICY 44-102CP
TO NATIONAL INSTRUMENT 44-102
SHELF DISTRIBUTIONS**

PART 1 GENERAL

1.1 Relationship of the National Instrument to Securities Legislation

- (1) Issuers are reminded that the rules and procedures contained in National Instrument 44-102 for distributions made under the shelf procedures should be read in conjunction with other provisions of securities legislation in each jurisdiction in which a distribution is being made.
- (2) A distribution under a short form prospectus using the shelf procedures is subject to all the requirements of National Instrument 44-101 Short Form Prospectus Distributions and other provisions of securities legislation, as supplemented or varied by National Instrument 44-102 and the implementing law of the jurisdiction. Reference is made to section 1.5 of the Companion Policy to National Instrument 44-101 for a discussion of the relationship between National Instrument 44-101 and National Instrument 44-102.

1.2 Liability

- (1) The securities regulatory authorities are of the view that an issuer's prospectus certificate contained in an amendment to a base shelf prospectus filed under the shelf procedures supersedes and replaces the issuer's certificate contained in the base shelf prospectus. Accordingly, an officer who signed the later dated certificate and the directors at the time the amendment was filed would be subject to statutory civil liability to purchasers of securities under the amended base shelf prospectus.
- (2) The securities regulatory authorities are of the view that an issuer's prospectus certificate contained in a shelf prospectus supplement filed under the shelf procedures supersedes and replaces the issuer's certificate contained in the base shelf prospectus for purposes of the distribution of securities under the shelf prospectus supplement. Accordingly, an officer who signed the later dated certificate and the directors at the time the supplement was filed would be subject to statutory civil liability to purchasers of securities under the shelf prospectus supplement.

- 1.3 Draft Supplements** - A preliminary form of shelf prospectus supplement describing a tranche of securities may be used in marketing the securities before the public offering price is determined. Issuers are reminded that the ability to use a preliminary form of shelf prospectus supplement in this manner for a distribution of equity securities under an unallocated base shelf prospectus is subject to the requirement contained in section 3.2 of National Instrument 44-102 to issue a news release once the issuer or the selling security holder has formed a reasonable expectation that the distribution will proceed.

PART 2 SHELF PROCEDURES

2.1 Shelf Qualification

- (1) The principle guiding the qualification provisions of National Instrument 44-102 is that any distribution under a short form prospectus, other than rights offerings, may be effected using the shelf procedures.
- (2) A distribution using the shelf procedures is necessarily a distribution under a short form prospectus. Therefore, issuers must be qualified to file a prospectus in the form of a short form prospectus under National Instrument 44-101 and must satisfy the additional qualification criteria under Part 2 of National Instrument 44-102.

2.2 Period of Receipt Effectiveness

- (1) National Instrument 44-102 provides that a receipt for a base shelf prospectus is effective until the earliest of the following three events: (i) the date 25 months from the date of the issuance of a receipt for the base shelf prospectus, (ii) immediately before selling the securities, if certain prescribed conditions relating to the issuer's qualification to file a prospectus in the form of a short form prospectus are not satisfied, and (iii) the lapse date of the receipt, if any, prescribed by securities legislation, if no relief has been granted to the issuer through a blanket ruling or upon application by the issuer. This receipt expiry mechanism is designed to impose a limit of, essentially, two years on shelf distributions under the same base shelf prospectus and to prevent distributions of securities under

a base shelf prospectus if the issuer would no longer be qualified under National Instrument 44-101.

- (2) The securities legislation in some jurisdictions provides that a prospectus receipt does not continue to be effective for more than one year absent relief granted by the securities regulatory authority in that jurisdiction. Some of these jurisdictions have provided blanket relief for receipts issued for base shelf prospectuses. At the time of the coming into force of this Policy New Brunswick has a lapse date provision in its securities legislation and has not provided blanket relief for shelf distributions.
- (3) In New Brunswick issuers must apply for and obtain relief from securities legislation in order for a receipt for a base shelf prospectus to be effective for more than one year. An application for relief may consist of a covering letter accompanying the filing of the preliminary base shelf prospectus or the base shelf prospectus containing the following statement:

"The [issuer] hereby applies for an extension of the lapse date of this base shelf prospectus to 24 months."

Where application for relief is made, the issuance of a receipt for the base shelf prospectus is evidence of the granting of the relief.

2.3 Unallocated Shelf

- (1) Section 3.1 of National Instrument 44-102 provides that a base shelf prospectus may pertain to different types of securities. This allows a base shelf prospectus to be used to distribute any combination of debt securities, preferred shares, derivatives, asset-backed securities and equity securities, for which the issuer is eligible to participate in the POP system.
- (2) In the case of an unallocated base shelf prospectus, section 3.2 of National Instrument 44-102 requires an issuer or a selling security holder to issue a news release immediately upon having formed a reasonable expectation that a distribution of equity securities under the unallocated shelf prospectus will proceed. An issuer or selling security holder will generally only have formed such a reasonable expectation upon having discussions with an underwriter concerning the distribution of some specificity and certainty.

2.4 **Distributions of Derivatives and Asset-Backed Securities using the Shelf Procedures**

- (1) The securities regulatory authorities recognize the utility of the shelf procedures for distributions of derivatives and asset-backed securities in order to permit tranches of these products to be priced and distributed expeditiously to take advantage of market opportunities, without the need for regulatory approval.
- (2) However, the securities regulatory authorities are also aware of the complexities that may be associated with distributions of specified derivatives and asset-backed securities. Particularly in the area of distributions of novel specified derivatives and asset-backed securities, the securities regulatory authorities wish to encourage adequate prospectus disclosure, either in the base shelf prospectus or the shelf prospectus supplement, of the attributes of and the risks associated with these products. The securities regulatory authorities have attempted to balance these objectives in formulating National Instrument 44-102.
- (3) The requirements relating to the clearance of issues of derivatives or asset-backed securities make a distinction between "novel" and "non-novel" products. If a base shelf prospectus pertains to specified derivatives or asset-backed securities, the issuer or selling security holder, as the case may be, must file an undertaking under section 4.1 with its base shelf prospectus. The undertaking must state that the issuer or the selling security holder, as the case may be, will not distribute under the base shelf prospectus specified derivatives or asset-backed securities that at the time of distribution are novel without pre-clearing the disclosure in shelf prospectus supplements with the regulator.
- (4) The securities regulatory authorities are of the view that the definition of the term "novel" should be read relatively restrictively. The term is intended to apply to a distribution of derivatives or asset-backed securities that is structured in a manner that differs materially from the manner in which any public distribution that has previously taken place in a jurisdiction was structured. A security would not be novel merely because a new underlying interest was used.

- (5) If the product is not novel, then the shelf prospectus supplements concerning the product need not be reviewed by the securities regulatory authorities. The securities regulatory authorities are of the view that the disclosure in shelf prospectus supplements in such circumstances should be no less comprehensive than the disclosure that has previously been reviewed by a securities regulatory authority in a jurisdiction.

2.5 Information that may be Omitted from a Base Shelf Prospectus

- (1) Paragraph 1 of section 5.6 of National Instrument 44-102 provides that a base shelf prospectus may omit the variable terms, if not known, of the securities that may be distributed under it. The types of variable information that may be omitted from the base shelf prospectus include
 - (a) the designation of the tranche;
 - (b) maturities;
 - (c) denominations;
 - (d) interest or dividend provisions;
 - (e) purchase, redemption and retraction provisions;
 - (f) conversion or exchange provisions;
 - (g) the terms for extension or early repayment;
 - (h) the currencies in which the securities are issued or payable;
 - (i) sinking fund provisions; and
 - (j) any special covenants or other terms applicable to the securities of the tranche.
- (2) Paragraph 3 of section 5.6 of National Instrument 44-102 provides that a base shelf prospectus may omit information, if not known, relating to the variable terms of the plans of distribution for the securities that may be distributed under the base shelf prospectus. *These variable terms may include*

- (a) if the shelf prospectus sets forth alternative methods of distribution, the method that will be applicable to each tranche of securities distributed under the shelf prospectus; and
- (b) for each tranche of securities distributed under the shelf prospectus, the specific terms not included in the description of the applicable method of distribution in the shelf prospectus, including, if applicable
 - (i) the names of any underwriters, and
 - (ii) the distribution spread and underwriting fees, discounts and commissions.
- (3) Paragraph 7 of section 5.6 of National Instrument 44-102 provides that a base shelf prospectus may omit other information, if not known, that pertains only to a specific distribution of securities under the base shelf prospectus. These terms may include
 - (a) the public offering price;
 - (b) delivery dates;
 - (c) legal opinions regarding the eligibility for investment of the securities and tax matters;
 - (d) *statements regarding listing of the securities;*
 - (e) actual amount of proceeds on the distribution; and
 - (f) information about the use of proceeds.

2.6 Shelf Prospectus Supplements

- (1) The ability to file a shelf prospectus supplement does not prevent the filing of a shelf prospectus amendment to supply some or all of the information that is permitted to be included in a prospectus supplement.

- (2) Under subsection 6.3(2) of National Instrument 44-102, the shelf prospectus supplements used in a distribution must contain all omitted shelf information as well as all information necessary for the base shelf prospectus to comply with the disclosure requirements for a short form prospectus. For example, if the securities being distributed using the shelf procedures are rated, that rating must be disclosed in a shelf prospectus supplement because National Instrument 44-101 requires all ratings, including provisional ratings, received from one or more approved rating organizations for the securities to be distributed and continuing in effect, to be disclosed in a short form prospectus.
- (3) Section 6.7 of National Instrument 44-102 provides that all shelf prospectus supplements pertaining to the securities being distributed under a base shelf prospectus shall be sent by prepaid mail or delivered to purchasers of the securities concurrently with the base shelf prospectus. A shelf prospectus supplement may take the form of a "sticker", a "wrap-around" or a one or more page supplement to a base shelf prospectus.

2.7 Firm Commitment Distributions - Paragraph 5 of section 5.6 of National Instrument 44-102 provides that a base shelf prospectus for securities to be distributed by one or more underwriters that have agreed to purchase the securities at a specified price may omit the statement that the securities are to be taken up by the underwriters, if at all, on or before a specified date. This paragraph provides an exemption from the requirement of securities legislation that this disclosure be contained in a prospectus. Issuers are reminded that paragraph 1 of subsection 6.3(2) of National Instrument 44-102 requires all information that was omitted from the base shelf prospectus to be included in a shelf prospectus supplement. Therefore, it is necessary to include in a shelf prospectus supplement the disclosure required under securities legislation relating to specific distributions that are being effected on a firm commitment basis.

2.8 Best Efforts Distributions - Paragraph 6 of section 5.6 of National Instrument 44-102 similarly provides that a base shelf prospectus for a distribution of securities underwritten on a best efforts basis for which a minimum amount of funds are required by an issuer may omit disclosure required under securities legislation concerning the maximum length of time for which the distribution can continue and concerning the disposition of subscription funds. Issuers are reminded that paragraph 1 of subsection 6.3(2) of National Instrument 44-102 requires all information that was

omitted from the base shelf prospectus to be included in a shelf prospectus supplement. Therefore, it is necessary to include in a shelf prospectus supplement the disclosure required under securities legislation relating to specific distributions that are being effected on a best efforts basis.

- 2.9 Delivery Obligations** - The securities regulatory authorities are of the view that statutory rights of rescission or withdrawal commence from the time of the purchaser's receipt of all relevant shelf prospectus supplements. It is only at this time that the entire prospectus has been delivered.

PART 3 SHELF PROSPECTUS AMENDMENTS

3.1 Shelf Prospectus Amendments

- (1) Securities legislation in a number of jurisdictions requires that an amendment to a prospectus be filed if a material change occurs after the receipt for the prospectus is obtained but before the completion of the distribution under that prospectus. These requirements apply to base shelf prospectuses.
- (2) Subsection 5.8(1) of National Instrument 44-102 permits, in limited circumstances, the requirement in Canadian securities legislation to file an amendment to be satisfied by the incorporation by reference of material change reports filed after the base shelf prospectus has been receipted. This is an exception to the general principle set out in section 6.5 of Companion Policy 44-101CP. That section provides that the requirement in securities legislation to file an amendment is not satisfied by the incorporation by reference of material change reports filed after the short form prospectus has been receipted. The exception in subsection 5.8(1) of the National Instrument is limited to periods in which no securities are being distributed under the base shelf prospectus.
- (3) If securities are being distributed under a base shelf prospectus, the general principle referred in subsection (2) applies. The requirement of securities legislation to file an amendment to a prospectus if a material change occurs may be satisfied by filing an amendment which is also a material change report. In these circumstances, the material change report would:

- (a) state that the base shelf prospectus is amended and supplemented by the contents of the material change report; and
- (b) contain the certificates required to be contained in an amendment.

PART 4 PROSPECTUS CERTIFICATES

4.1 Prospectus Certificates

- (1) Appendix A and Appendix B of National Instrument 44-102 provide for two alternate methods of executing prospectus certificates. Unless a particular method is prescribed, the choice of method may be changed between the date of filing of the preliminary base shelf prospectus and the date of filing of the base shelf prospectus. Furthermore, the method elected by an issuer, credit supporter and underwriter need not be the same. The method elected by an issuer applies to a promoter.
- (2) Method 1 requires that a forward looking prospectus certificate be included in a base shelf prospectus. Doing so allows the use of shelf prospectus supplements that do not contain prospectus certificates. Method 2 requires prospectus certificates that speak only to the present to be included in both the base shelf prospectus and each shelf prospectus supplement.
- (3) Method 1 is mandatory for a base shelf prospectus that establishes an MTN program. If an MTN program is established in a shelf prospectus supplement, method 1 is mandatory and prescribes that forward looking certificates be included, unless they were already included in the base shelf prospectus.

ALBERTA SECURITIES COMMISSION RULE 44-802

IMPLEMENTING

NATIONAL INSTRUMENT 44-102
SHELF DISTRIBUTIONS

PART 1 DEFINITIONS

1.1 Definitions

- (a) In this Rule:
- (i) "NI 44-101" means National Instrument 44-101 *Short Form Prospectus Distributions*;
 - (ii) "NI 44-102" means National Instrument 44-102 *Shelf Distributions*; and
 - (iii) "shelf distribution" means a distribution:
 - (A) in respect of which a preliminary base shelf prospectus and base shelf prospectus that comply with the requirements of NI 44-102 are filed under section 81 of the Act in accordance with the requirements and procedures set out in NI 44-102;
 - (B) in respect of which the preliminary base shelf prospectus and base shelf prospectus referred to in paragraph (A) are supplemented and amended under sections 85 and 89 of the Act to the extent required by, and in accordance with, the procedures set out in NI 44-102; and
 - (C) for which the procedures of NI 44-102 are available and that otherwise complies with the requirements and procedures set out in the Act and the Alberta Securities Commission rules as varied by NI 44-102 and this Rule.
- (b) Each term used in this Rule that is defined or interpreted in Part 1 of NI 44-102 has the meaning given to it in that Part.

PART 2 EXEMPTIONS FROM CERTAIN PROSPECTUS REQUIREMENTS**2.1 Exemptions from Part 8 of the Act**

To the extent that they are inconsistent with NI 44-101, as varied by NI 44-102, the requirements of Part 8 of the Act and the Alberta Securities Commission Rules thereunder, as they concern the form and content of a preliminary prospectus and a prospectus, do not apply to a shelf distribution.

PART 3 LAPSE DATE**3.1 Lapse Date Specified**

The lapse date for a receipt issued for a base shelf prospectus is the date 25 months from the date of the issuance of the receipt.

PART 4 EFFECTIVE DATE**4.1 Effective Date**

This Rule comes into force on December 31, 2000.

ALBERTA SECURITIES COMMISSION
NOTICE

NATIONAL INSTRUMENT 44-103
POST-RECEIPT PRICING

and

REPEAL OF
NATIONAL POLICY STATEMENT NO. 44

Implementation of Instrument and Repeal of National Policy Statement No. 44

The Alberta Securities Commission (the "Commission") and other members of the Canadian Securities Administrators (the "CSA") have approved National Instrument 44-103 *Post-Receipt Pricing* ("NI 44-103") and related Companion Policy 44-103CP (the "Policy", NI 44-103 and the Policy being together referred to in this Notice as the "Instrument"). The Commission has also approved related implementing Rule 44-803. In Alberta, NI 44-103 and Rule 44-803 have been made Commission Rules and the Policy has been made a Commission policy.

NI 44-103, the Policy and Commission Rule 44-803 will take effect on December 31, 2000.

In conjunction with the implementation of the Instrument and National Instrument 44-102 *Shelf Distributions* ("NI 44-102", discussed separately in a notice published contemporaneously with this Notice), the Commission has repealed, also with effect on December 31, 2000, National Policy Statement No. 44 *Rules for Shelf Prospectus Offerings and for Pricing Offerings after the Final Prospectus is Received* ("NP 44") and the related blanket order of the Commission dated May 9, 1991.

The Commission and other CSA members published a draft version of the Instrument (the "1998 Draft Instrument") for comment on October 2, 1998. The accompanying notice summarized and solicited comment on the 1998 Draft Instrument. The CSA did not receive any comment letters on the 1998 Draft Instrument.

Purpose and Substance of the Instrument

The Instrument prescribes procedures for distributions of securities for which pricing is deferred until after the issuance of a receipt for a final prospectus (the post-receipt pricing or "PREP" procedures). It reformulates and replaces the provisions of NP 44 relating to post-receipt pricing, maintaining the substance of the PREP procedures under NP 44 while adding clarity, operational efficiency and enhanced access. The Policy sets out the views of the Canadian securities regulatory authorities on various issues concerning the PREP procedures.

The following are the primary differences between the PREP regime under the Instrument and that under NP 44:

- Availability: The PREP procedures under the Instrument are available for any distribution other than a distribution of rights. NP 44 restricted the PREP procedures to issuers (i) eligible to distribute securities using a short form prospectus, or (ii) that have securities listed on a specified exchange.
- Base PREP Prospectus Disclosure: The Instrument permits the omission from a base PREP prospectus of such information as the offering price but does require that the aggregate offering size be specified. The base PREP prospectus need not identify non-lead underwriters nor any information that can be mathematically derived from the pricing information included in the PREP prospectus.
- Extension of Period for Filing of Supplement: Under NP 44, a supplemented PREP prospectus must be filed within five business days of the date of the base PREP prospectus receipt. Under the Instrument, this period is extended to 20 days. If no supplemented PREP prospectus is filed within that 20 day period, distribution can proceed only if the base PREP prospectus is updated by a filed amendment. To preclude use of the amendment procedure to extend a receipt indefinitely, the Instrument provides that the receipt for a base PREP prospectus expires 90 after the issuance of the receipt unless a supplemented PREP prospectus is filed.

Changes have been made from the 1998 Draft Instrument to conform the substance, terminology and drafting style of the Instrument to National Instrument 44-101 *Short Form Prospectus Distributions* (discussed separately in a notice published contemporaneously with this Notice) and NI 44-102. Further changes of a minor nature have been made for clarification. Because the changes are not material, the Instrument is not being republished for comment.

October 13, 2000.

**NATIONAL INSTRUMENT 44-103
POST-RECEIPT PRICING**

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**NATIONAL INSTRUMENT 44-103
POST-RECEIPT PRICING**

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

(1) In this Instrument

"base PREP prospectus" means a prospectus that at the time of issuance of a receipt for the prospectus omits some or all of the PREP information as permitted by this Instrument;

"PREP information" means the information permitted by this Instrument to be omitted from a base PREP prospectus;

"PREP procedures" means the requirements in this Instrument for the distribution under a base PREP prospectus and a supplemented PREP prospectus of securities, the price of which is determined after a receipt has been obtained for the base PREP prospectus; and

"supplemented PREP prospectus" means a prospectus filed under the PREP procedures containing PREP information.

(2) All terms defined in National Instrument 44-101 Short Form Prospectus Distributions and used, but not defined, in this Instrument have the respective meanings ascribed to them in National Instrument 44-101.

1.2 Amendments - References in this Instrument to an amendment to a prospectus include both an amendment that does not fully restate the text of a prospectus and an amended and restated prospectus.

PART 2 USE OF THE PREP PROCEDURES

2.1 Prohibited Offerings - Despite the other provisions of this Instrument, the PREP procedures shall not be used for a distribution of rights under a rights offering.

2.2 Opting out of the PREP Procedures After a Preliminary Prospectus has been Received and before a Prospectus has been Received - An issuer that has obtained a receipt for a preliminary base PREP prospectus for a distribution of securities shall not file a prospectus for the distribution that

is not a base PREP prospectus, unless the issuer files a covering letter, before or concurrently with the filing of the prospectus, stating that the issuer or the selling security holder, as the case may be, has decided not to use the PREP procedures for the distribution.

2.3 Opting into the PREP Procedures After a Preliminary Prospectus has been Received and before the Prospectus has been Received - An issuer that has obtained a receipt for a preliminary prospectus that is not a preliminary base PREP prospectus for a distribution of securities shall not file a base PREP prospectus for the distribution, unless the issuer files a covering letter, before or concurrently with the base PREP prospectus, stating that the issuer or the selling security holder, as the case may be, has decided to use the PREP procedures for the distribution.

2.4 Opting out of the PREP Procedures After a Prospectus has been Received - If a receipt has been issued for a base PREP prospectus for a distribution of securities and the issuer or the selling security holder decides, before a supplemented PREP prospectus is filed, no longer to use the PREP procedures for the distribution, the issuer shall file

- (a) either
 - (i) an amended prospectus that is not a base PREP prospectus or a supplemented PREP prospectus, or
 - (ii) a new preliminary prospectus that is not a preliminary base PREP prospectus; and
- (b) a covering letter stating that the issuer or the selling security holder, as the case may be, has decided not to use the PREP procedures for the distribution.

PART 3 BASE PREP PROSPECTUSES

3.1 Form of Base PREP Prospectus - The required form of prospectus under securities legislation may be varied for a PREP prospectus to the extent provided for in this Instrument.

3.2 Required Disclosure

- (1) A base PREP prospectus of an issuer shall contain the following:
 1. A statement at the top of the cover page identifying the prospectus as a base PREP prospectus.
 2. The following statement in red ink and in *italics* on the cover page:

"This [insert throughout, if applicable, "short form"] prospectus has been filed under procedures in [insert names of each jurisdiction where qualified] that permit certain information about these securities to be determined after the prospectus has become final and that permit the omission of that information from this prospectus. The procedures require the delivery to purchasers of a supplemented PREP prospectus containing the omitted information within a specified period of time after agreeing to purchase any of these securities."
 3. A statement that all disclosure contained in a supplemented PREP prospectus that is not contained in the base PREP prospectus will be incorporated by reference into the base PREP prospectus as of the date of the supplemented PREP prospectus.
 4. If securities other than shares are being distributed, a statement of the aggregate dollar amount of securities to which the base PREP prospectus pertains.
 5. If shares are being distributed,
 - (a) the aggregate dollar amount of the shares to which the base PREP prospectus pertains, if
 - (i) the proceeds of the offering are to be applied to a specific purpose identified in the prospectus and a minimum amount must be raised through the offering in order to accomplish the purpose, and

- (ii) there is no pre-existing trading market in which securities of the same class as the securities to be distributed under the prospectus are traded; and
 - (b) otherwise, either the aggregate number, or the aggregate dollar amount, of the shares to which the base PREP prospectus pertains.
6. Any earnings coverage ratios required under securities legislation, which may be expressed as ranges based on a reasonable estimate of the PREP information.
7. 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 [insert, if applicable, "short form"] prospectus, together with the documents and information incorporated herein by reference, will, as of the date of the supplemented prospectus providing the information permitted to be omitted from this prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required under securities legislation of [insert name of each jurisdiction in which qualified]. [Insert if distribution made in Québec - "For the purpose of the Province of Québec, this [describe document], [insert in the case of short form prospectus

distributions - "simplified prospectus, as supplemented by the permanent information record,"] will as of the date of the supplemented prospectus contain no misrepresentation likely to affect the value or the market price of the securities to be distributed.""]"

8. A certificate in the following form signed by each underwriter, if any, who for the securities to be distributed under the prospectus, is in a contractual relationship with the issuer or selling security holder:

"To the best of our knowledge, information and belief, this [insert, if applicable, "short form"] prospectus, together with the documents incorporated herein by reference, will, as of the date of the supplemented prospectus providing the information permitted to be omitted from this prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required under securities legislation of [insert name of each jurisdiction in which qualified]. [Insert if distribution made in Québec - "For the purpose of the Province of Québec, to our knowledge, this [describe document], [insert in the case of short form prospectus distributions - "simplified prospectus, as supplemented by the permanent information record,"] will as of the date of the supplemented prospectus contain no misrepresentation likely to affect the value or the market price of the securities to be distributed.""]"

9. If securities legislation requires a prospectus certificate of a credit supporter, a certificate in the form described in paragraph 7 signed by the credit supporter and if the credit supporter is a corporation 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 credit supporter in a capacity similar to a chief executive officer and a

person acting on behalf of the credit supporter in a capacity similar to that of a chief financial officer; and

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

- (2) Despite subsection (1), a preliminary base PREP prospectus is not required to contain the information required in paragraphs 4, 5 and 6 of subsection (1), if the information is not known at the time of filing the preliminary base PREP prospectus.

3.3

Disclosure that may be Omitted - A base PREP prospectus may omit the following:

1. The public offering price of the securities to be distributed.
2. The amount of cash underwriting fees, discounts and commissions for the distribution of the securities.
3. The net proceeds of the distribution.
4. If shares are being distributed and only the aggregate number of securities to be distributed is disclosed and the aggregate dollar amount of shares is not required to be disclosed under paragraph 5 of subsection 3.2(1), the gross proceeds of the distribution.
5. Any dividend or interest rate of the securities to be distributed.
6. Any dividend or interest payment dates, record dates and any dates from which dividends or interest accrue for the securities to be distributed.
7. Any redemption, purchase for cancellation, conversion and exchange prices of the securities.
8. The identity of the members of the underwriting syndicate, other than the lead underwriter and any co-lead underwriter and the disclosure required under Item 14 of Form 44-101F3 Short Form Prospectus.

9. The delivery dates of securities to be purchased under the distribution.
10. If one or more underwriters have agreed to purchase the securities to be distributed at a specified price, the statement required under securities legislation that the securities are to be taken up by the underwriters, if at all, on or before a specified date.
11. If the securities to be distributed are underwritten on a best efforts basis for which a minimum amount of funds are required by an issuer, disclosure required under securities legislation concerning the maximum length of time for which the distribution may continue and concerning the disposition of subscription funds.
12. Other terms of the securities to be distributed that are mathematically derivable from any of the information referred to in paragraphs 1 through 11.

3.4 Issuance of Receipt - Despite the omission of PREP information, the regulator may issue a receipt for a base PREP prospectus.

3.5 Expiry of Receipt

- (1) Subject to subsection (2), a receipt issued for a base PREP prospectus expires 90 days after issuance unless a supplemented PREP prospectus is filed within the 90 day period.
- (2) If a supplemented PREP prospectus is not filed within 20 days of the filing of a base PREP prospectus, the receipt issued for the base PREP prospectus expires at the time immediately before the entering into of the first agreement of purchase and sale for a security to which the base PREP prospectus pertains, unless a receipt has been issued within the preceding 20 days for an amended base PREP prospectus that updates to the date of the filing of the amended base PREP prospectus all of the disclosure contained in the base PREP prospectus.

3.6 Amendment to a Base PREP Prospectus - An amendment to a base PREP prospectus, other than an amendment filed under section 2.4 to opt out of the PREP procedures, shall contain the certificates required under subsection 3.2(1) to be included in a base PREP prospectus with the following changes:

1. If the amendment is not a restatement of the base PREP prospectus, insert the phrase "as amended by this amendment" after the reference in each certificate to the base PREP prospectus.
2. If the amendment is an amended and restated base PREP prospectus, preface the reference in each certificate to the document with the phrase "this amended and restated".

PART 4 SUPPLEMENTED PREP PROSPECTUSES

- 4.1 **Requirement to Use a Supplemented PREP Prospectus** - An issuer or selling security holder that distributes securities under a base PREP prospectus shall supplement the disclosure in the base PREP prospectus with a supplemented PREP prospectus in order for the prospectus to contain full, true and plain disclosure of all material facts relating to the securities distributed under the prospectus.
- 4.2 **Incorporation by Reference** - The content of a supplemented PREP prospectus that is not also contained in the corresponding base PREP prospectus is incorporated by reference in the base PREP prospectus as of the date of the supplemented PREP prospectus.
- 4.3 **Restriction on Changes** - A supplemented PREP prospectus shall be identical to the corresponding base PREP prospectus, except for the changes permitted or required under this Part.
- 4.4 **Changes in the Size of Distribution**
 - (1) The size of the distribution as disclosed in the base PREP prospectus under paragraph 4 or 5 of subsection 3.2(1) may be increased or decreased by up to 20 percent in a supplemented PREP prospectus.
 - (2) If the size of the distribution as disclosed in the base PREP prospectus under paragraph 4 or 5 of subsection 3.2(1) is increased or decreased by up to 20 percent in a supplemented PREP prospectus and that increase or decrease is a material change, the provisions of securities legislation that require the filing of an amendment to a prospectus if a material change occurs are satisfied by the filing of the supplemented PREP prospectus.

- (3) Despite the provisions of securities legislation regarding the prescribed form of certificates for prospectus amendments, a supplemented PREP prospectus filed in order to satisfy provisions of securities legislation that require the filing of an amendment to a prospectus if a material change occurs shall contain the certificates required in subsection 4.5(2).

4.5 Required Disclosure

- (1) A supplemented PREP prospectus shall be dated the date that the public offering price of the securities is determined.
- (2) A supplemented PREP prospectus shall contain the following:
 1. All of the PREP information omitted from the base PREP prospectus.
 2. Instead of the earnings coverage ratios expressed as ranges based on a reasonable estimate of the PREP information as permitted under paragraph 6 of subsection 3.2(1), the earnings coverage ratios required under securities legislation.
 3. Instead of the prospectus certificate required under paragraph 7 of subsection 3.2(1), 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 of company who is a promoter of the issuer:

"This [insert, if applicable, "short form"] prospectus, together with the documents information incorporated herein by reference, constitutes full,

true and plain disclosure of all material facts relating to the securities offered by this prospectus as required under securities legislation of [insert name of each jurisdiction in which qualified]. [Insert if distribution made in Québec - "For the purpose of the Province of Québec, this [describe document], [insert in the case of short form prospectus distributions - "simplified prospectus, as supplemented by the permanent information record,"] contains no misrepresentation likely to affect the value or the market price of the securities to be distributed."]"

4. Instead of the prospectus certificate required under paragraph 8 of subsection 3.2(1), a certificate in the following form signed by the each underwriter, if any, who for the securities to be distributed under the prospectus, is in a contractual relationship with the issuer or selling security holder:

"To the best of our knowledge, information and belief, this [insert throughout in the case of short form prospectus distributions - "short form"] [insert in the case of short form prospectus distributions - ", 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 under the securities legislation of [insert name of each jurisdiction in which qualified]. [Insert if distribution made in Québec - "For the purpose of the Province of Québec, this [insert in the case of short form prospectus distributions - "simplified prospectus, as supplemented by the permanent information record,"] contains no misrepresentation that is likely to affect the value or the market price of the securities to be distributed."]"

5. Instead of the prospectus certificate required under paragraph 9 of subsection 3.2(1), a certificate signed by a credit supporter in the form described in paragraph 3 if

securities legislation requires a prospectus certificate of a credit supporter.

6. A list and brief description of each document that has been incorporated by reference in the base PREP prospectus since the issuance of a receipt for the base PREP prospectus.

4.6 Legend to be Omitted - A supplemented PREP prospectus shall omit the legend required under paragraph 2 of subsection 3.2(1).

4.7 Amendment to a Supplemented PREP Prospectus - An amendment to a supplemented PREP prospectus shall contain the certificates required under subsection 4.5(2) to be included in a supplemented PREP prospectus with the following changes:

1. If the amendment is not a restatement of the supplemented PREP prospectus, the phrase "as amended by this amendment" inserted after the reference in each certificate to the supplemented PREP prospectus.
2. If the amendment is an amended and restated supplemented PREP prospectus, the reference in each certificate to the document prefaced by the phrase "this amended and restated".

4.8 Timing of Filing of Supplemented PREP Prospectus - If securities are distributed using the PREP procedures in the local jurisdiction, a supplemented PREP prospectus prepared in accordance with this Instrument shall be filed in the local jurisdiction by the second business day following the date of the determination of the information omitted from the base PREP prospectus.

4.9 Delivery Requirement - If securities are being distributed using the PREP procedures, the requirement under securities legislation to deliver a prospectus to a purchaser of securities shall be satisfied by the delivery of a supplemented PREP prospectus.

4.10 Underwriting Agreements - Despite the provisions of securities legislation, an underwriting agreement or other material contract that relates to a distribution of securities that cannot be completed until the distribution is priced and that is required under securities legislation to be filed or delivered to the regulator with a prospectus

- (a) shall be filed or delivered, as the case may be, with the base PREP prospectus in draft form and may omit PREP information; and
- (b) shall be refiled or redelivered, as the case may be, in final form, together with the supplemented PREP prospectus or base PREP prospectus amendment containing the PREP information and a copy of the agreement, blacklined against the draft form filed under paragraph (a).

PART 5 TRANSITIONAL PREP PROCEDURES

5.1 Transitional PREP Procedures

- (1) An issuer that has filed and obtained a receipt for a PREP prospectus under National Policy Statement No. 44, or pursuant to securities legislation in the Province of Québec, before this Instrument came into force is considered to have filed and obtained a receipt for a base PREP prospectus under this Instrument.
- (2) An issuer that has filed a preliminary PREP prospectus under National Policy Statement No. 44, or pursuant to securities legislation in the Province of Québec, is considered to have filed a preliminary base PREP prospectus under this Instrument.

PART 6 EXEMPTIONS

6.1 Exemption

- (1) The regulator or the securities regulatory authority may grant an exemption from 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 and Alberta, only the regulator may grant such an exemption.
- (3) An application made to the securities regulatory authority or regulator for an exemption from 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.

6.2 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 of an exemption under this Part may be evidenced by the issuance of a receipt for a base PREP prospectus or an amendment to a base PREP 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 6.1(3) on or before the date of the filing of the preliminary base PREP prospectus, or
 - (ii) sent to the regulator the letter or memorandum referred to in subsection 6.1(3) after the date of the filing of the preliminary base PREP 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 6 EFFECTIVE DATE

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

**COMPANION POLICY 44-103CP
TO NATIONAL INSTRUMENT 44-103
POST-RECEIPT PRICING**

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**COMPANION POLICY 44-103CP
TO NATIONAL INSTRUMENT 44-103
POST-RECEIPT PRICING**

PART 1 INTRODUCTION

- 1.1 Implementation of the Instrument** - Certain jurisdictions have implemented National Instrument 44-103 Post-Receipt Pricing (the "Instrument") by one or more instruments forming part of securities legislation or securities directions in the jurisdiction. As a result, the provisions of the Instrument apply in those jurisdictions to the extent provided by, and except as modified by, the implementing law of the jurisdiction.
- 1.2 Availability of PREP Procedures** - Access to the PREP procedures is not restricted to issuers qualified to file a prospectus in the form of a short form prospectus. Any issuer that wishes to use the PREP procedures, or enable a selling security holder to use the PREP procedures, to distribute securities may file a prospectus that is a base PREP prospectus.
- 1.3 Relationship of the Instrument to Securities Legislation**
- (1) Issuers are reminded that the rules and procedures contained in the Instrument for distributions made using the PREP procedures should be read in conjunction with other provisions of securities legislation in each jurisdiction in which a distribution is being made.
 - (2) A distribution under a short form prospectus using the PREP procedures is subject to all the requirements of National Instrument 44-101 Short Form Prospectus Distributions and other provisions of securities legislation, as supplemented or varied by the Instrument and the implementing law of the jurisdiction. Reference is made to Part 1 of the Companion Policy to National Instrument 44-101 for a discussion of the relationship between National Instrument 44-101 and various other pieces of securities legislation.
 - (3) Similarly, a distribution using the PREP procedures not made under a short form prospectus is subject to securities legislation, as supplemented or varied by the Instrument and the implementing law of the jurisdiction.

PART 2 PROSPECTUS AMENDMENTS

2.1 Prospectus Amendments

- (1) Section 4.4 of the Instrument provides that the size of an offering may be increased or decreased by up to 20 percent between the filing of the prospectus and the filing of the supplemented PREP prospectus. The section further provides that, in cases where such a change in the size of the offering constitutes a material change, the requirement in securities legislation to file an amendment if a material change occurs may be satisfied by filing the supplemented PREP prospectus. The certificates required in the supplemented PREP prospectus are those prescribed by subsection 4.5(2) of the Instrument. For changes in the size of the offering by more than 20 percent that constitute a material change, this flexibility in filing of the amendment is not available.

- (2) The securities regulatory authorities are of the view that an issuer's ability to use the PREP procedures does not prevent the filing of a prospectus amendment to make some or all of the changes to the prospectus that are permitted to be made by a supplemented PREP prospectus.

PART 3 PREP PROCEDURES

3.1 Firm Commitment Distributions - Paragraph 10 of section 3.3 of the Instrument provides that a base PREP prospectus for securities to be distributed by one or more underwriters that have agreed to purchase the securities at a specified price is not required to indicate that the securities are to be taken up by the underwriters, if at all, on or before a specified date. This subsection provides an exemption from the requirement of securities legislation that this disclosure must be contained in a prospectus. Issuers are reminded that paragraph 1 of subsection 4.5(2) requires all information omitted from a base PREP prospectus to be included in a supplemented PREP prospectus. Therefore, it is necessary to comply with the relevant requirement of securities legislation in a supplemented PREP prospectus relating to specific distributions that are being effected on a firm commitment basis.

3.2 Best Efforts Distributions - Similarly, paragraph 11 of section 3.3 of the Instrument provides that a base PREP prospectus for a distribution of

securities underwritten on a best efforts basis for which a minimum amount of funds are required by an issuer is not required to include disclosure required under securities legislation concerning the maximum length of time for which the distribution may continue and concerning the disposition of subscription funds. Issuers are reminded, as in the previous subsection, that paragraph 1 of subsection 4.5(2) requires all information omitted from a base PREP prospectus to be included in a supplemented PREP prospectus. Therefore, it is necessary to comply with the relevant requirement of securities legislation in a supplemented PREP prospectus relating to specific distributions that are being effected on a best efforts basis. Issuers are also reminded that where PREP procedures are used in connection with securities offered on a best efforts basis for which a minimum amount of funds are required, the issuer may not reduce the size of the distribution pursuant to section 4.4 of the Instrument in a supplemented PREP prospectus to a size that would yield less than the minimum amount of funds.

- 3.3 Rights of Rescission or Withdrawal** - The securities regulatory authorities are of the view that statutory rights of rescission or withdrawal commence from the time of the purchaser's receipt of a supplemented PREP prospectus. It is only at this time that the entire prospectus has been delivered.
- 3.4 Supplemented Prospectus not an Amendment** - The securities regulatory authorities do not consider a supplemented PREP prospectus to constitute an amendment to a prospectus within the meaning of securities legislation.
- 3.5 Certificates** - With respect to the certificate requirements in the Instrument, reference should be made to the provisions of securities legislation of a jurisdiction that provide for a right of action against every person who signs a prospectus or an amendment to a prospectus. The securities regulatory authorities recognize that, in certain circumstances, a credit supporter may consider that its knowledge of the affairs of the issuer is not such that it considers it appropriate to sign a certificate in the form specified by the Instrument. In these circumstances, if the credit supporter is not a promoter of the issuer or a selling security holder, the regulatory authorities may allow the credit supporter to sign a different form of certificate. Credit supporters who wish to make application should do so in accordance with Part 6 of the Instrument.

ALBERTA SECURITIES COMMISSION RULE 44-803

IMPLEMENTING

**NATIONAL INSTRUMENT 44-103
*POST-RECEIPT PRICING***

PART 1 DEFINITIONS

1.1 Definitions

- (a) In this Rule, "NI 44-103" means National Instrument 44-103 *Post-Receipt Pricing*.
- (b) Each term used in this Rule that is defined or interpreted in Part 1 of NI 44-103 has the meaning given to it in that Part.

PART 2 EXEMPTION FROM CERTAIN PROSPECTUS REQUIREMENTS

2.1 Exemption from Prospectus Form and Content Requirements

To the extent that they are inconsistent with NI 44-103, the requirements of Part 8 of the Act and the Alberta Securities Commission Rules thereunder, as they concern the form and content of a preliminary prospectus and a prospectus, do not apply to a distribution for which the PREP procedures are available under, and that is effected in compliance with, NI 44-103.

PART 3 EFFECTIVE DATE

3.1 Effective Date

This Rule comes into force on December 31, 2000.