BLG
Borden Ladner Gervais

Short Form
Prospectus Guide

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INTRODUCTION [1]

This Short Form Prospectus Guide is intended to serve as a reference tool in the context of prospectus offerings involving short form prospectuses, including Bought Deals. Although practices with respect to short form prospectus offerings may vary in different Canadian markets and although such practices may evolve over time, this Guide is intended to serve as a general overview applicable in all Canadian markets and should provide some helpful precedents that can be a starting point for drafting the applicable documents in a particular transaction.

1.1 Statutory Instruments

Included in this Guide for ease of reference are copies of the following documents:

- National Instrument 44-101 – *Short Form Prospectus Distributions* ("NI 44-101");
- Form 44-101F1 – *Short Form Prospectus*; and
- Companion Policy 44-101CP – *To NI 44-101 Short Form Prospectus Distributions* ("NI 44-101CP").

These documents are the basis upon which Short Form Prospectus Offerings are carried out and apply in each province and territory of Canada.

In addition, we have also included the following excerpts:

- National Instrument 41-101 – *General Prospectus Requirements* ("NI 41-101"), Part 11 with respect to Over-Allocation and Underwriters;
- NI 41-101, Part 13 with respect to Advertising and Marketing in Connection with Prospectus Offerings of Issuers other than Investment Funds; and
- Companion Policy 41-101CP – *To NI 41-101 General Prospectus Requirements* ("NI 41-101CP"), section 2.4 and Part 6.

The general provisions of NI 41-101 apply to all forms of prospectuses, including short form prospectuses. Part 11 and Part 13 of NI 41-101 have been included for convenience.

1.2 Helpful Precedents

In a Short Form Prospectus Offering, the key offering document is a short form prospectus prepared in accordance with NI 44-101 which allows for the incorporation by reference of an issuer's continuous disclosure documents. The purpose of NI 44-101 is to shorten the time that it takes an issuer to access the Canadian capital markets and to streamline the procedures by which such access is obtained.

[1] Current as of September 1, 2018.

Even though an issuer seeks to raise capital through a Short Form Prospectus Offering and abridge the time it takes to raise capital, the process can still incorporate a marketing period that varies in length from overnight to a period of days or even weeks. Included in this Guide are the following precedents which may be helpful in preparing for and commencing a Short Form Prospectus Offering with a marketing period:

- Sample transaction checklist for Short Form Prospectus Offering; and
- Sample detailed timetable for Short Form Prospectus Offering.

In the context of a Bought Deal, the underwriters agree to purchase a certain number of securities from the issuer on agreed terms and conditions, thereby assuming the risks associated with the transaction from the moment they enter into the agreement with the issuer, typically in the form of a short letter agreement that is a binding obligation often referred to as a bid letter, before doing any marketing. Included in this Guide are the following precedents which may be helpful in preparing for and commencing a Short Form Prospectus Offering on a Bought Deal basis:

- Sample transaction checklist for Short Form Prospectus Offering – Bought Deal;
- Sample detailed timetable for Short Form Prospectus Offering – Bought Deal; and
- Sample Bought Deal Bid Letter.

In addition to the statutory instruments and precedents highlighted above, there are several overriding concepts with respect to Short Form Prospectus Offerings which are useful to note, each of which are discussed in this Guide. These are:

- Over Allocations and Underwriters;
- Advertising and Marketing in connection with Prospectus Offerings;
- Out Clauses and Several Liability of Underwriters; and
- Concurrent private placements in the United States.

2 OVER-ALLOCATION AND UNDERWRITERS [1]

2.1 Over-Allocation Position

Section 11.1 of NI 41-101 provides that securities that are sold to create the over-allocation position in connection with a distribution under a prospectus must be distributed under the prospectus. "Over-allocation position" is defined in NI 41-101 as "the amount, determined as at the closing of a distribution, by which the aggregate number or principal amount of securities that are sold by one or more underwriters of the distribution exceeds the base offering".

Further, section 11.2 of NI 41-101 prohibits the distribution of securities under a prospectus to any person or company acting as an underwriter in connection with the distribution of securities under the prospectus, other than pursuant to an over-allotment option granted to the underwriter(s) in connection with the distribution or any security issuable or transferable on the exercise of such over-allotment option or limited compensation securities.

2.2 Over-Allotment Option

NI 41-101 defines "over-allotment option" as "a right granted to one or more underwriters by an issuer or a selling securityholder of the issuer in connection with the distribution of securities under a prospectus to acquire, for the purposes of covering the underwriter's over-allocation position, a security of an issuer that has the same designation and attributes as a security that is distributed under such prospectus, and which (a) expires not later than the 60th day after the date of the closing of the distribution, and (b) is exercisable for a number or principal amount of securities that is limited to the lesser of (i) the over-allocation position, and (ii) 15% of the base offering".

2.3 Over-Allotment to Facilitate Over-Allocations

The position of the Canadian Securities Administrators ("CSA") with respect to over-allocation is set out in section 2.4 of NI 41-101CP and states that "Over-allotment options are permitted solely to facilitate the over-allocation of the distribution and consequent market stabilization. Accordingly, an over-allotment option may only be exercised for the purpose of filling the underwriters' over-allocation position. The exercise of an over-allotment option for any other purpose would raise public policy concerns."

[1] Current as of September 1, 2018.

3
ADVERTISING AND MARKETING IN CONNECTION WITH PROSPECTUS OFFERINGS [1]

3.1 Restrictions During The Waiting Period

The Prospectus Requirement and the Waiting Period

Pursuant to applicable securities legislation, no person or company shall trade in a security if the trade would be a distribution of the security unless a preliminary and final prospectus have been filed and receipts have been issued. This is generally referred to as the "prospectus requirement". The period between the issuance of a receipt for a preliminary prospectus and a receipt for a final prospectus is generally known as the "waiting period".

The analysis of whether any particular activity is prohibited by virtue of the prospectus requirement turns largely on whether the activity constitutes a trade and, if so, whether such a trade would constitute a distribution. Securities legislation in Canada defines a "trade" in a non-exhaustive manner to include, among other things: (i) any sale or disposition of a security (e.g. a common share) for valuable consideration; (ii) any receipt by a registrant (such as a broker dealer) of an order to buy or sell a security; and (iii) any *act, advertisement, solicitation, conduct or negotiation* directly or indirectly in furtherance of any of the foregoing. The definition of a "distribution" includes a "trade" in securities that have not been previously issued and would include the Offering.

Pre-Marketing and Marketing

"Pre-marketing" occurs when a party communicates with potential investors before a public offering and includes other promotional activity that occurs before a preliminary prospectus is filed. Unless the issuer is relying on the bought deal exemption in Part 7 of NI 44-101, pre-marketing is generally prohibited in Canada (see discussion below). Specifically:

- securities legislation generally prohibits any form of marketing for a public offering unless a preliminary prospectus has been filed and receipted, subject to very limited exceptions; and

- investment dealers are not permitted to solicit expressions of interest from investors until a preliminary prospectus has been filed and receipted.

"Marketing" includes oral or written communications after the filing of a preliminary prospectus. During the "waiting period", certain limited marketing activities are permissible under securities legislation.

[1] Current as of September 1, 2018.

Advertising and Marketing Activities

Subject to certain limited exceptions, advertising or marketing activities prior to and during the waiting period are generally prohibited by virtue of the prospectus requirement. Any advertising or marketing activities that can reasonably be regarded as intended to promote a distribution of securities would be conduct directly or indirectly in furtherance of a distribution of a security and would fall within the definition of a trade. Accordingly, advertising or marketing activities intended to promote the distribution of securities, in any form, would be prohibited by virtue of the prospectus requirement. Advertising or marketing activities subject to the prospectus requirement may be oral, written or electronic and include the following:

- television or radio advertisements or commentaries;
- published materials, correspondence and records;
- videotapes or other similar material;
- market letters and research reports;
- circulars, promotional seminar text and telemarketing scripts; and
- reprints or excerpts of any other sales literature.

Permitted Advertising and Marketing Activities

Advertising or marketing activities that are not in furtherance of a distribution of securities would not generally fall within the definition of a "distribution" and therefore, would not be prohibited. The following activities are not generally considered by the CSA to be subject to the prospectus requirement:

- advertising and publicity campaigns that are aimed at either selling products or services of the issuer or raising public awareness of the issuer;
- communication of factual information concerning the business of the issuer that is released in a manner, timing and form that is consistent with the regular past communications practices of the issuer if that communication does not refer to or suggest the distribution of securities; and
- the release or filing of information that is required to be released or filed pursuant to securities legislation.

The CSA has noted that it is aware that a practice has developed for "non-deal road shows" where issuers and dealers will meet with institutional investors to discuss the business and affairs of the issuer. If such a non-deal road show was undertaken in anticipation of a prospectus offering, it would generally be prohibited under securities legislation by virtue of the prospectus

requirement. The CSA has also noted there may be selective disclosure concerns if the issuer provided the institutional investors with material information that has not been publicly disclosed.

Exceptions to the Prospectus Requirement

Securities legislation provides for certain exceptions to the prospectus requirement for limited advertising or marketing activities during the waiting period. During the waiting period, it is permissible to:

(i) distribute a preliminary prospectus notice that:

- "identifies" the securities proposed to be issued;
- states the price of such securities, if then determined;
- states the name and address of a person or company from whom purchases of securities may be made;

provided that any such notice states the name and address of a person or company from whom a preliminary prospectus may be obtained and contains the legend required set forth below, and

- includes any further information as may be permitted or required by securities regulations;

(ii) distribute the preliminary prospectus;

(iii) provide standard term sheets if the conditions in section 13.5 of NI 41-101 are complied with;

(iv) provide marketing materials if the conditions in section 13.7 of NI 41-101 are complied with; and

(iii) solicit expressions of interest from a prospective purchaser, if prior to such solicitation or forthwith after the prospective purchaser indicates an interest in purchasing the securities, a copy of the preliminary prospectus is forwarded to the prospective purchaser.

The use of any other marketing information or materials during the waiting period would result in the violation of the prospectus requirement.

Although certain forms of communications are permitted as stated above, an issuer and its officers, directors and employees should only communicate with prospective investors through the intermediary of the underwriters. As discussed in further detail below, certain materials and activities are permissible during the waiting period provided such materials are distributed by and

such activities are undertaken by investment dealers who are duly registered under applicable securities laws.

Preliminary Prospectus Notice

A preliminary prospectus notice is a communication relating to a preliminary prospectus that sets out some basic information regarding the securities as described above (i.e. the notice identifies the securities, states the price and states the name and address of a person from whom purchases may be made). The "identification" of a security in a preliminary prospectus notice does not permit an issuer or dealer to include a summary of the commercial features of the proposed issuance. Rather, these details are to be included in the preliminary prospectus, which is intended to be the main disclosure vehicle pending the issuance of the final receipt. The purpose of permitted advertising or marketing activities during the waiting period is to alert the public as to the availability of the preliminary prospectus. For the purpose of identifying a security, the advertising or marketing material may only:

(i) indicate whether the security represents a debt or a share in a company;

(ii) name the issuer;

(iii) indicate, without providing details, whether the security qualifies the holder for special tax treatment; and

(iv) indicate how many securities will be made available.

Any preliminary prospectus notice or other communication used in connection with a prospectus offering during the waiting period must contain the following legend or words to the same effect:

> A preliminary prospectus containing important information relating to these securities has been filed with securities commissions or similar authorities in certain jurisdictions of Canada. The preliminary prospectus is still subject to completion or amendment. Copies of the preliminary prospectus may be obtained from [insert name and contact information for dealer or other relevant person or entity]. There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final prospectus has been issued.

Standard Term Sheets during the Waiting Period

Note: the requirements provided below are subject to the "bought deal" exemption. For a summary of the current rules applicable in the context of bought deal offerings, see Section 3.3 below ("Bought Deal Offerings").

Securities legislation provides an exception to the prospectus requirement to allow an investment dealer to provide a standard term sheet (a written communication intended for potential investors regarding a distribution of securities under a prospectus relating to an issuer, securities or an

offering) to a potential investor during the waiting period if: (i) the standard term sheet contains the information as prescribed by NI 41-101; (ii) other than contact information for the investment dealer or underwriter, all information in the standard term sheet concerning the issuer, the securities or the offering is disclosed in, or derived from, the preliminary prospectus; and (iii) a receipt for the preliminary prospectus has been issued. Accordingly, a standard term sheet can only be provided by investment dealers and only after a receipt for the preliminary prospectus has been issued.

The information that a standard term sheet is allowed to contain is quite restrictive and includes, among other things, the name of the issuer, the jurisdiction where the issuer's head office is located, a "brief" description of the business and the securities, the price of the securities, the names of any underwriters and a "brief" description of the use of proceeds. A "brief" description means a description consisting of no more than 3 lines of text in type that is at least as large as that used generally in the body. A standard term sheet must be dated and include the following legend (or words to the same effect) on the first page:

> A preliminary prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada].
>
> The preliminary prospectus is still subject to completion. Copies of the preliminary prospectus may be obtained from [insert contact information for the investment dealer or underwriters]. There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final prospectus has been issued.
>
> This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary prospectus, the final prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

Standard term sheets are subject to provisions in applicable securities legislation which prohibit misleading or untrue statements. Accordingly, if the standard term sheet is found to contain a misrepresentation, an issuer could be found guilty of an offence under applicable securities legislation.

Marketing Materials during the Waiting Period

Securities legislation provides an exception to the prospectus requirement to allow an investment dealer to provide "marketing materials" (a written communication intended for potential investors regarding a distribution of securities under a prospectus that contains material facts relating to an issuer, securities or an offering) to a potential investor during the waiting period if: (i) the marketing materials contains the information as prescribed by NI 41-101; (ii) other than contact information for the investment dealer or underwriters and any comparables, all information in the

marketing materials concerning the issuer, the securities or the offering is disclosed in, or derived from, the preliminary prospectus; (iii) other than prescribed language, the marketing materials contain the same cautionary language in bold type as contained on the cover page, and in the summary, of the preliminary prospectus; (iv) a template version of the marketing materials is approved in writing by the issuer and the lead underwriter before the marketing materials are provided; (v) a template version of the marketing materials is filed on SEDAR on or before the day that the marketing materials are first provided; (vi) a receipt for the preliminary prospectus has been issued; and (vii) the investment dealer provides a copy of the preliminary prospectus with the marketing materials. Similar to standard term sheets, marketing materials can only be provided by investment dealers and only after a receipt for the preliminary prospectus has been issued.

If the marketing materials include "comparables" (*i.e.*, information that compares a reporting issuer to other reporting issuers), the issuer may remove such comparables and any disclosure relating to those comparables from the template version of the marketing materials before filing it on SEDAR if certain conditions are met. As a result, such comparables and related information would not form part of the marketing materials incorporated by reference in the final prospectus.

Marketing materials often take the form of presentations and term sheets that contain information beyond that allowed for standard term sheets under NI 44-101. Marketing materials must be dated and include the following legend, or words to the same effect, on the first page:

> A preliminary prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada].
>
> The preliminary prospectus is still subject to completion. There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final prospectus has been issued.
>
> This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary prospectus, the final prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

If marketing materials are provided during the waiting period, the issuer must include the template version of the marketing materials in its final prospectus or incorporate by reference the template version of the marketing materials previously filed on SEDAR into its final prospectus.

If the final prospectus modifies a statement of a material fact that appeared in the marketing materials provided during the waiting period, the issuer must prepare and file, at the time the issuer files the final prospectus, a revised template version of the marketing materials that is blacklined to show the modified statement and include in the final prospectus, details of how the

statement in the marketing materials has been modified, that the issuer has prepared a revised template version of the marketing materials which has been blacklined to show the modified statement and the revised template version of the material scan be viewed under the issuer's provide on SEDAR.

Similar to standard term sheets, marketing materials are subject to provisions in applicable securities legislation which prohibit misleading or untrue statements. Accordingly, the issuer and investment dealers involved in preparing such materials should have a reasonable, factual basis for any statement contained in marketing materials. As stated above, a "template" version of the marketing materials is required to be filed on SEDAR and is required to be included in or incorporated by reference into the final prospectus. As a document included or incorporated by reference in the prospectus, this means that an investor who purchases a security distributed under the final prospectus may have remedies under the civil liability provisions of applicable securities legislation if the marketing materials contain a misrepresentation. Furthermore, an investor who purchases a security of the issuer on the secondary market may have remedies under the civil liability for secondary market disclosure provisions of applicable securities legislation if the template version of the marketing materials contains a misrepresentation.

Road Shows during the Waiting Period

Securities legislation provides an exception to the prospectus requirement to allow an investment dealer to conduct a road show for potential advisors during the waiting period if a receipt for the preliminary prospectus has been issued and the road show complies with the requirements of NI 41-101. Any marketing materials provided to an investor attending a road show must comply with the provisions outlined above under the heading *"Marketing Materials during the Waiting Period"*. In addition, the investment dealer must establish and follow reasonable procedures to:

(i) ask any investor attending the road show in person, by telephone conference call, on the internet or by other electronic means to provide their name and contact information;

(ii) keep a record of any information provided to the investor; and

(iii) provide the investor with a copy of the preliminary prospectus.

If an investment dealer permits an investor, other than an accredited investor, to attend a road show, the investment dealer must commence the road show with the oral reading of the following statement or a statement to the same effect:

> This presentation does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary prospectus, the final prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

Although members of the media may attend a road show, they should not be specifically invited to the road show by the issuer or by an investment dealer. The CSA notes that road shows are intended to be presentations for potential investors and not press conferences for members of the media. Furthermore, issuers and investment dealers should not market a prospectus offering in the media.

The following should be noted with respect to oral statements made at a road show:

- in giving oral presentations at a road show, issuers should generally only discuss information that is contained in, or derived from, the prospectus;

- in responding to questions from investors, issuers should avoid making selective disclosure; in particular, issuers should take measures to ensure compliance with applicable securities laws relating to selective disclosure, insider trading and trading by "tippees" when participating in a road show;

- if an issuer discloses material facts at a road show that are not in a preliminary prospectus, the final prospectus should contain that information in order to comply with the statutory requirement that the final prospectus contain full, true and plain disclosure of all material facts;

- depending on the context, oral statements of a "responsible issuer", as defined in securities legislation, at a road show may be "public oral statements", as defined in securities legislation, and subject to statutory provisions for secondary market civil liability; and

- oral statements made during a road show are subject to the provisions of securities legislation against making misleading or untrue statements.

Media Reports and Coverage

Although the CSA recognizes that an issuer does not have control over media coverage, it believes that an issuer should take appropriate precautions to ensure that media coverage which can reasonably be considered to be in furtherance of a distribution does not occur after a decision has been made to file a preliminary prospectus or during the waiting period. The CSA may investigate the circumstances surrounding media coverage of an issuer which appears immediately prior to or during the waiting period and which can reasonably be considered as being in furtherance of a distribution of securities.

Nevertheless, the CSA recognizes that reporting issuers need to consider whether the decision to pursue a potential offering is a material change under applicable securities legislation. If the decision is a material change, the news release and material change report requirements under securities legislation apply. However, in order to avoid contravening the pre-marketing restrictions under applicable securities legislation, any news release and material change report filed before the filing of a preliminary prospectus or the announcement of a bought deal should

be carefully drafted so that it could not be reasonably regarded as intended to promote a distribution of securities or condition the market. The information in the news release and material change report should be limited to identifying the securities proposed to be issued without a summary of the commercial features of the issue (those details should instead be dealt with in the preliminary prospectus which is intended to be the main disclosure vehicle).

Furthermore, after the filing of the news release:

(i) the issuer should not grant media interviews on the proposed offering; and

(ii) an investment dealer would not be able to solicit expressions of interest until a receipt has been issued for a preliminary prospectus or a bought deal was announced in compliance with NI 44-101.

Misleading or Untrue Statements

Securities legislation generally prohibits any person or company from making any misleading or untrue statements that would reasonably be expected to have a significant effect on the market price or value of securities. In addition to ensuring that advertising and marketing activities are carried out in compliance with the prospectus requirement, issuers, dealers and their advisors must ensure that any statements made in the course of advertising or marketing activities are not untrue or misleading and otherwise comply with securities legislation.

Sanctions and Enforcement

Any contravention of the prospectus requirement through advertising or marketing activities could result in a cease trade order in respect of the preliminary prospectus to which such activities relate. In addition, a receipt for a final prospectus may be refused and, in appropriate circumstances, enforcement proceedings may be initiated.

Good Practices

An issuer should maintain the following practices prior to and during the waiting period:

(i) ***Interviews***. Prior to and during the waiting period, the directors and officers of an issuer should not give interviews to the media. Directors and officers should limit themselves to responding to unsolicited inquiries of a factual nature made by shareholders, securities analysts, financial analysts and the media. All directors and officers of an issuer should review their scheduled activities to confirm that there are no activities which might be considered in breach of the waiting period requirements (e.g. newspaper interviews or industry meetings).

(ii) ***Statements***. Directors and officers of an issuer should not make any promotional public statements regarding the issuer prior to and during the waiting period until after the closing of a pending offering, other than factual statements that would

normally be publicly disclosed in the ordinary course of business. An issuer should avoid providing information during a prospectus distribution that goes beyond what is disclosed in the prospectus. The directors and officers should not make statements which constitute a forecast, projection or prediction with respect to future financial performance (unless such statement is also contained in the prospectus).

(iii) ***Marketing Materials***. An issuer should review its website to ensure that any materials that may be viewed as promotion of the issuer's securities (e.g. analyst reports, investor presentations) be removed.

(iv) ***Consistent Information***. All communications should be consistent with the information contained in the prospectus.

(v) ***Permitted Activities***. An issuer should:

- continue to file and deliver in accordance with applicable law, financial statements and related management's discussion and analysis;
- continue to make public announcements with respect to factual business and financial developments with respect to the issuer; and
- answer unsolicited inquiries from shareholders, analysts and the press concerning factual matters.

If a director or officer of an issuer (or any other party involved with a pending offering) makes a statement to the media after a decision has been made to file a preliminary prospectus or during the waiting period, regulatory concerns include circumvention of the pre-marketing and marketing restrictions, selective disclosure and unequal access to information, conditioning of the market and the lack of prospectus liability. In addition to the sanctions and enforcement proceedings discussed above, securities regulatory authorities may require the issuer to take other remedial action, such as:

(i) explaining why the issuer's disclosure procedures failed to prevent the party from making the statement to the media and how those procedures will be improved;

(ii) instituting a "cooling-off period" before the filing of the final prospectus;

(iii) including the statement in the prospectus so that it will be subject to statutory civil liability; or

(iv) issuing a news release refuting the statement if it cannot be included in the prospectus (e.g., because the statement is incorrect or unduly promotional) and disclosing the reasons for the news release in the prospectus.

3.2 Restrictions After The Waiting Period

Application of the Waiting Period Rules after a Final Prospectus

In 2013, the CSA introduced rules with respect to the conduct of marketing activities after the receipt of a final prospectus. For the most part, the rules relating to the use of standard term sheets and marketing materials during the waiting period also apply to the use of such documents after the issuance of a final prospectus and until the distribution thereunder has been terminated, which is a matter of fact that requires confirmation from the underwriters after closing of an offering. As such, the information under the heading "*Restrictions During the Waiting Period*" is generally applicable to post-final prospectus receipt advertising and marketing activities.

Final Prospectus Notice

A final prospectus notice is a communication relating to a final prospectus that sets out some basic information regarding the securities as described above (i.e. the notice identifies the securities, states the price and states the name and address of a person from whom purchases may be made). The "identification" of a security in a final prospectus notice does not permit an issuer or dealer to include a summary of the commercial features of the proposed issuance. Rather, these details are to be included in the final prospectus.

A final prospectus notice or other communication used in connection with a prospectus offering following the issuance of a receipt for the final prospectus must contain the following legend or words to the same effect:

> This offering is only made by prospectus. The prospectus contains important detailed information about the securities being offered. Copies of the prospectus may be obtained from [insert name and contact information for dealer or other relevant person or entity.] Investors should read the prospectus before making an investment decision.

Standard Term Sheets after a Receipt of a Final Prospectus

Securities legislation permits an investment dealer to provide a standard term sheet (a written communication intended for potential investors regarding a distribution of securities under a prospectus relating to an issuer, securities or an offering) to a potential investor after a receipt for a final prospectus if: (i) the standard term sheet contains the information as prescribed by NI 41-101; (ii) other than contact information for the investment dealer or underwriter, all information in the standard term sheet concerning the issuer, the securities or the offering is disclosed in, or derived from, the final prospectus; and (iii) a receipt for the final prospectus has been issued. Accordingly, a standard term sheet distributed in connection with a final prospectus can only be provided by investment dealers and only after a receipt for the final prospectus has been issued.

The information that a standard term sheet distributed in connection with a final prospectus may only contain the information that is set out under the heading "*Restrictions During the Waiting Period – Standard Term Sheets during the Waiting Period*", along with the following legend (or words to the same effect) on the first page:

> A final prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada].
>
> Copies of the final prospectus may be obtained from [insert contact information for the investment dealer or underwriters].
>
> This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the final prospectus, and any amendment, for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

Standard term sheets are subject to provisions in applicable securities legislation which prohibit misleading or untrue statements. Accordingly, if the standard term sheet is found to contain a misrepresentation, an issuer could be found guilty of an offence under applicable securities legislation.

Marketing Materials after Receipt of the Final Prospectus

Securities legislation permits an investment dealer to provide marketing materials to a potential investor after the receipt for a final prospectus if: (i) the marketing materials contains the information as prescribed by NI 41-101; (ii) other than contact information for the investment dealer or underwriters and any comparables, all information in the marketing materials concerning the issuer, the securities or the offering is disclosed in, or derived from, the final prospectus; (iii) other than prescribed language, the marketing materials contain the same cautionary language in bold type as contained on the cover page, and in the summary, of the final prospectus; (iv) a template version of the marketing materials is approved in writing by the issuer and the lead underwriter before the marketing materials are provided; (v) a template version of the marketing materials is filed on SEDAR on or before the day that the marketing materials are first provided; (vi) a receipt for the final prospectus has been issued; and (vii) the investment dealer provides a copy of the final prospectus with the marketing materials. Marketing materials distributed in connection with a final prospectus can only be provided by investment dealers and only after a receipt for the final prospectus has been issued.

If the marketing materials include "comparables" (*i.e.*, information that compares a reporting issuer to other reporting issuers), the issuer may remove such comparables and any disclosure relating to those comparables from the template version of the marketing materials before filing it

on SEDAR if certain conditions are met. As a result, such comparables and related information would not form part of the marketing materials incorporated by reference in the final prospectus.

Marketing materials distributed in connection with a final prospectus must be dated and include the following legend, or words to the same effect, on the first page:

> A final prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada]. A copy of the final prospectus, and any amendment, is required to be delivered with this document.
>
> This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the final prospectus, and any amendment, for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

An investment dealer must not provide marketing materials in connection with a final prospectus unless the issuer has included the template version of the marketing materials in its final prospectus or incorporated by reference the template version of the marketing materials previously filed on SEDAR into its final prospectus. The issuer must also state that any template version of the marketing materials filed after the date of the final prospectus and before the termination of the distribution are deemed to be incorporated into the final prospectus.

In order to determine that the restrictions on advertising and marketing activities as noted in this section are no longer applicable, an issuer should confirm with the underwriters that the distribution period has been terminated as soon as practicable following closing of the pending offering. The issuer should not engage in any advertising or marketing activities after the issuance of a final prospectus and until the distribution thereunder has been terminated without first consulting legal counsel to the issuer.

Road Shows After a Receipt for a Final Prospectus

Securities legislation permits an investment dealer to conduct a road show for potential investors in connection with a final prospectus if a receipt for the final prospectus has been issued and the road show complies with the requirements of NI 41-101. Any marketing materials provided to an investor attending a road show must comply with the provisions outlined above under the heading *"Marketing Materials after Receipt of the Final Prospectus"*. In addition, the investment dealer must establish and follow reasonable procedures to:

(i) ask any investor attending the road show in person, by telephone conference call, on the internet or by other electronic means to provide their name and contact information;

(ii) keep a record of any information provided to the investor; and

(iii) provide the investor with a copy of the final prospectus.

If an investment dealer permits an investor, other than an accredited investor, to attend a road show, the investment dealer must commence the road show with the oral reading of the following statement or a statement to the same effect:

> This presentation does not provide full disclosure of all material facts relating to the securities offered. Investors should read the final prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

3.3 Bought Deal Offerings

Solicitation of Expressions of Interest

Securities legislation provides an exception to the prospectus requirement to a solicitation of an expression of interest made before the issuance of a receipt for a preliminary prospectus or for securities to be issued or transferred pursuant to an over-allotment option that are qualified for distribution under a short form prospectus if:

(i) before the solicitation:

(a) the issuer has entered into a bought deal agreement[2];

(b) the bought deal agreement has fixed the terms of the distribution, including, for greater certainty, the number and type of securities and the price per security, and requires that the issuer file a preliminary short form prospectus for the securities not more than four business days after: (A) the date that the bought deal agreement was entered into; or (B) in the case of a confirmation clause that complies with Section 7.4 of NI 44-101, the date that the lead underwriter provides notice in writing to the issuer that the lead underwriter the has confirmed the terms of the bought deal agreement; and

(c) immediately upon entering into the bought deal agreement, the issuer issued and filed a news release announcing the agreement,

(ii) the issuer files a preliminary short form prospectus for the securities pursuant to NI 44-101 within four business days after the date that: (a) the bought deal

[2] A "bought deal agreement" means a written agreement: (a) under which one or more underwriters has agreed to purchase all securities of an issuer that are to be offered in a distribution under a short form prospectus on a firm commitment basis, other than securities issuable on the exercise of an over-allotment option; (b) that does not have a market-out clause (meaning a provision in an agreement which permits an underwriter(s) to terminate its or their commitment to purchase securities in the event that the securities cannot be marketed profitably due to market conditions); (c) that other than an over-allotment option, does not provide an option for any party to increase the number of securities to be purchased; and (d) that, other than what is agreed to under a confirmation clause that complies with section 7.4 of NI 44-101, is not conditional on one or more additional underwriters agreeing to purchase any of the securities offered.

agreement was entered into; or (b) in the case of a confirmation clause that complies with Section 7.4 of NI 44-101, the date that the lead underwriter provides notice in writing to the issuer that the lead underwriter the has confirmed the terms of the bought deal agreement; and

(iii) 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 that, in response to the solicitation, expressed an interest in acquiring the securities, and

(iv) except for a bought deal agreement under paragraph (i) above or a more extended form of underwriting agreement referred to in subsection 7.3(6) of NI 44-101, no agreement of purchase and sale for the securities is entered into until the short form prospectus has been filed and a receipt has been issued.

Confirmation Clause

A confirmation clause means a provision in a bought deal agreement that provides that the agreement is conditional on the lead underwriter confirming that one or more additional underwriters has agreed to purchase certain of the securities offered.

A bought deal agreement must not contain a confirmation clause unless:

(i) under the bought deal agreement, the lead underwriter must provide the issuer with a copy of the agreement that has been signed by the lead underwriter;

(ii) the issuer signs the bought deal agreement on the same day that the lead underwriter provides the agreement in accordance with (i) above;

(iii) the lead underwriter has discussions with other investment dealers regarding their participation in the distribution as additional underwriters; and

(iv) on the business day after the day that the lead underwriter provides the agreement in accordance with (i) above, the lead underwriter provides notice in writing to the issuer that: (a) the lead underwriter has confirmed the terms of the bought deal agreement; or (b) the lead underwriter will not be confirming the terms of the bought deal agreement and the agreement has been terminated.

Pre-Marketing in the Context of a Bought Deal

In addition, securities legislation provides an exception to the prospectus requirement to allow an investment dealer to provide a standard term sheet, marketing materials to a potential investor, or conduct a road show to potential investors, before the issuance of a receipt for a preliminary prospectus, if the respective conditions noted above are met. The requirements provided above for standard term sheets, marketing materials and road shows during the waiting period are similar to the requirements for standard term sheets, marketing materials and road shows after the announcement of a bought deal but before a receipt for a preliminary short form prospectus.

The CSA considers that a distribution of securities commences at the time when: (a) a dealer has had discussions with an issuer or a selling securityholder, or with another dealer that has had discussions with an issuer or a selling securityholder about the distribution; and (b) those distribution discussions are of sufficient specificity that it is reasonable to expect that the dealer (alone or together with other dealers) will propose to the issuer or the selling securityholder an underwriting of the securities. CSA staff do not agree with interpretations that a distribution of securities does not commence until a later time (e.g., when a proposed engagement letter or a proposal for an underwriting of securities with indicative terms is provided by a dealer to an issuer or a selling securityholder).

The CSA has also noted that it understands that many dealers communicate on a regular basis with clients and prospective clients concerning their interest in purchasing various securities of various issuers. The CSA will not generally consider such ordinary course communications as being made in furtherance of a distribution. However, from the commencement of a distribution, communications by the dealer, with a person or company designed to have the effect of determining the interest that it, or any person or company that it represents, may have in purchasing securities of the type that are the subject of distribution discussions, that are undertaken by any director, officer, employee or agent of the dealer: (a) who participated in or had actual knowledge of the distribution discussions; or (b) whose communications were directed, suggested or induced by a person referred to in (a), or another person acting directly or indirectly at or upon the direction, suggestion or inducement of a person referred to in (a), are considered to be in furtherance of the distribution and contrary to securities legislation.

From the commencement of the distribution no communications, market making, or other principal trading activities in securities of the type that are the subject of distribution discussions may be undertaken by a person referred to in (a) in the paragraph above, or at or upon the direction, suggestion or inducement of a person or persons referred to in (a) or (b) in the paragraph above until the earliest of: (i) the issuance of a receipt for a preliminary prospectus in respect of the distribution; (ii) the time at which a news release that announces the entering into of a bought deal agreement is issued and filed in accordance with Part 7 of NI 44-101; and (iii) the time at which the dealer determines not to pursue the distribution.

4
OUT CLAUSES AND SEVERAL LIABILITY OF UNDERWRITERS [1]

4.1 Out Clauses

An "out clause" is a contractual provision included in an underwriting agreement which permits an underwriter to terminate its commitment to purchase securities for certain specified reasons without penalty. Different practices concerning out clauses have evolved depending upon the type of security being underwritten – equity, debt, preferred share or other (such as hybrid stapled unit security or flow-through share) – and the process by which the deal is done – Bought Deal or marketed offering.

4.2 Applicability of Out Clauses

Out clauses may or may not be present in a transaction depending upon the type of security offered. Essentially all offerings contain material change out and disaster out clauses. Market out clauses are found in marketed offerings, but not in Bought Deals. Other out clauses, such as a ratings change out, regulatory out, tax out, cease trade out, breach out or tax out may be used depending on the circumstances of the offering and the type of security being sold.

The Investment Industry Regulatory Organization of Canada ("IIROC") rules prescribe reduced levels of margin for members with respect to underwriting obligations if the relevant underwriting agreement contains a "disaster out" clause in the prescribed form. Similarly, margin requirements can also be reduced if the underwriting agreement contains a "market out" clause, which permits an underwriter to terminate its commitment to purchase the securities in the event that market conditions affect the stability of the securities.

4.3 Forms of Out Clauses

Disaster Out and Market Out Clauses

Set out below is the form of disaster out clause and market out clause specified in IIROC Rule 100.5:

(a) "**disaster out clause**" means a provision in an underwriting agreement substantially in the following form:

the obligations of the Underwriter (or any of them) to purchase the Securities under this agreement may be terminated by the Underwriter (or any of them) at its option by written notice to that effect to the Company at any time prior to the

[1] Current as of September 1, 2018.

Closing if there should develop, occur or come into effect or existence any event, action, state, condition or major financial occurrence of national or international consequence or any law or regulation which in the opinion of the Underwriter seriously adversely affects, or involves, or will seriously adversely affect, or involve, the financial markets or the business, operations or affairs of the Company and its subsidiaries taken as a whole;

(b) "**market out clause**" means a provision in an underwriting agreement substantially in the following form:

if, after the date hereof and prior to the Time of Closing, the state of financial markets in Canada or elsewhere where it is planned to market the Securities is such that, in the reasonable opinion of the Underwriters (or any of them), the Securities cannot be marketed profitably, any Underwriter shall be entitled, at its option, to terminate its obligations under this agreement by notice to that effect given to the Company at or prior to the Time of Closing.

Other Out Clauses

Set out below are sample forms of material change out, rating change out, regulatory out, tax out, cease trade out and breach out clauses. The precise form of these clauses in not dictated by IIROC or any other regulatory body; rather, they are determined by market precedent and negotiation between the parties:

(a) "**material change out**" means a provision in an underwriting agreement substantially in the following form:

if, after the date hereof and prior to the Time of Closing, there shall occur any material change or change in a material fact which, in the reasonable opinion of the Underwriters (or any of them), would be expected to have a significant adverse effect on the market price or value of the Securities, the Underwriters (or any of them) shall be entitled, at its option, to terminate its obligations under this agreement by written notice to that effect, given to the Company at or prior to the Time of Closing;

(b) "**rating change out**" means a provision in an underwriting agreement substantially in the following form:

if, after the date hereof and prior to the Time of Closing, there shall occur a change in the generic rating applicable to the Securities or any of the securities of the Company by one of the statistical rating organizations or if one of such organizations shall place any of the securities of the Company on credit watch the

Underwriters (or any of them) shall be entitled, at its option, to terminate its obligations under this agreement by written notice to that effect, given to the Company at or prior to the Time of Closing;

(c) "**regulatory out**" means a provision in an underwriting agreement substantially in the following form:

if, after the date hereof and prior to the Time of Closing, any Law is promulgated or changed which, in the reasonable opinion of the Underwriters (or any of them), has a materially adverse effect on the Company, or has a materially adverse effect on the financial markets generally or the business, operations, assets, affairs or profitability of the Company, the Underwriters (or any of them) shall be entitled, at its option, to terminate its obligations under this agreement by written notice to that effect, given to the Company at or prior to the Closing Time;

(d) "**tax out**" means a provision in an underwriting agreement substantially in the following form:

if there will have been, or have been announced, by the appropriate governmental authorities, any change or any proposed change in the Income Tax Act (Canada), the regulations thereunder, current administrative decisions or any other applicable rules which, in any such case, in the opinion of the Underwriters (or any of them), might reasonably be expected to have a material adverse effect on the tax consequences associated with the purchase, holding or resale of the Securities or on any distribution that would be made by the Company to the holders thereof;

(e) "**cease trade out**" means a provision in an underwriting agreement substantially in the following form:

if any order to cease or suspend trading in any securities of the Company, or prohibiting or restricting the distribution of the Securities is made, or proceedings are announced, commenced or threatened for the making or any such order, by any securities commission or similar regulatory authority, the Toronto Stock Exchange or by any other competent authority, and the same has not been rescinded, revoked or withdrawn, the Underwriters (or any of them) shall be entitled, at its option, to terminate its obligations under this agreement by written notice to that effect, given to the Company at or prior to the Time of Closing;

(f) "**breach out**" means a provision in an underwriting agreement substantially in the following form:

> if the Company is in breach of any material term, condition or covenant of this Agreement or any material representation or warranty given by this company in this Agreement is or becomes false, the Underwriters (or any of them) shall be entitled, at its option, to terminate its obligations under this agreement by written notice to that effect, given to the Company at or prior to the Time of Closing.

4.4 Several Liability

In addition to out clauses, underwriting agreements generally contain a provision substantially in the following form:

"The obligation of the Underwriters to purchase the Securities at the Time of Closing shall be several and not joint and the liability of each of the Underwriters shall be limited to the following percentages of the Securities to be purchased at that time.

No Underwriter shall be obligated to take up and pay for any of the Securities to be purchased by it unless the other Underwriters simultaneously take up and pay for the percentage of Securities set out opposite their names above."

The purpose of this provision is to make clear that each of the underwriters is responsible for purchasing only its share of the securities as set out in the underwriting agreement. Upon default by one or more of the underwriters, the non-defaulting underwriter(s) will not be required to purchase any securities for which any other underwriter is responsible under the underwriting agreement. The non-defaulting underwriter(s) usually have the option, but not the obligation, to purchase securities which would otherwise have been purchased by the defaulting underwriter(s). If a transaction does not close because the non-defaulting underwriters refuse to increase their position, the defaulting underwriter(s) will likely be liable for damages, but the non-defaulting underwriters will not be liable.

5
PRIVATE PLACEMENTS IN THE UNITED STATES [1]

5.1 Common Exemptions from the Registration Requirements

The general rule in the United States is that offers and sales of securities must be registered under the Securities Act of 1933 (the "1933 Act") unless an exemption from the registration requirement is available. The most commonly used exemptions for a U.S. private placement made simultaneously with a public offering in Canada are as follows:

Section 4(a)(2)

This is the basic exemption from registration for transactions by an issuer not involving a public offering. It does not apply to resales and hence does not apply to securities resold on a private placement basis by an underwriter. It does apply to agency transactions.

Regulation D

Regulation D provides a "safe harbour", such that if its restrictions are complied with, the securities in question will be deemed to have been offered and sold in a transaction not involving a public offering for purposes of section 4(a)(2). Rules 501 through 506 under Regulation D stipulate the informational requirements for purchasers and aggregate offering limits for private placements under Regulation D, as well as SEC Notice requirements. The restrictiveness of the requirements depends primarily on the sophistication of the investors. The requirements are least onerous for purchasers that are institutional "accredited investors" and become more onerous as the level of sophistication decreases. Securities sold pursuant to Regulation D are "restricted securities" that are subject to hold periods under Rule 144 and cannot be resold in the United States without registration under the 1933 Act or an exemption from those registration requirements (although for securities with a public market in Canada, Regulation S under the 1933 Act provides a ready path for resales outside the United States).

Rule 144A

Rule 144A applies only to resales of restricted securities previously sold by an issuer. The rule was designed to permit very large Qualified Institutional Buyers ("QIBs") to trade restricted securities among themselves, with very little regulation. They are sophisticated enough that regulation is not required. However, the resale feature had the very important side effect of opening up an underwritten market for private placements. The issuer sells

[1] Current as of September 1, 2018.

to the underwriters in a Section 4(a)(2) transaction, and the underwriters resell the securities to QIBs. Rule 144A can only be used if the class of securities being offered is not listed on a securities exchange in the United States. A requirement of Rule 144A is that the issuer must be contractually committed (usually in the underwriting agreement) to provide in the future certain basic information concerning the issuer to the initial QIB purchasers and to subsequent prospective QIB purchasers in the United States. This information requirement does not impose additional disclosure burdens on Canadian companies that are already public in Canada. Rule 144A also requires that the reseller of the securities, and any person acting on its behalf, must take reasonable steps to ensure that the purchaser is aware that the reseller may be relying on Rule 144A. This requirement may be fulfilled by a special confirmation notice.

Section 4(a)(1½)

This is a non statutory "private placement exemption" created by securities law practitioners in the United States. It draws upon the restrictions imposed by Regulation D, but applies them in circumstances where the transaction is not directly by the issuer. Principally, it is used in connection with resales of restricted securities previously sold by an issuer. It is a commonly used exemption by underwriters who wish to resell securities purchased in a Canadian offering to U.S. institutional buyers where Rule 144A is not available, either because the issuer's securities are listed in the United States or some of the institutional investors are not QIBs.

Section 4(a)(7)

In 2015, a new section 4(a)(7) was added to the 1933 Act, which provides a non-exclusive safe harbor exemption to facilitate private resales of securities by shareholders to accredited investors under certain conditions.

Section 4(a)(7) exempts from registration under the 1933 Act resales of securities meeting the following requirements:

- each purchaser must be an accredited investor, as defined under Rule 501(a) of Regulation D;
- no form of general solicitation or general advertisement may be used in the offer or sale of the securities;
- the securities must be part of a class that has been authorized and outstanding for at least 90 days prior to the date of the transaction;

- the securities must not be part of an unsold allotment to, or a subscription or participation by, a broker or dealer as an underwriter of the securities or a redistribution;

- the issuer must be engaged in a business and must not be in the organizational stage, bankruptcy or receivership, and must not be a blank check, blind pool or shell company that has no specific business plan or has indicated that its primary business plan is to engage in a merger, business combination or acquisition;

- the seller cannot be the issuer or a direct or indirect subsidiary of the issuer;

- neither the seller nor any person remunerated for offering or selling the securities, including solicitation of purchasers, may be subject to an event that would disqualify the issuer or other covered person under the "bad actor provisions of Regulation D (see below) or be subject to certain "statutory disqualifications" under the Securities Exchange Act of 1934, as amended (the “1934 Act”); and

- in the case of securities of non-reporting issuers, the seller and the purchaser must obtain from the issuer (at the request of the seller), and the seller must make available to the purchaser, specified general and financial information about the issuer and the securities; a seller who is a control person with respect to the issuer must provide a brief statement regarding the nature of the affiliation and also certify that the seller has no reasonable grounds to believe that the issuer is in violation of the securities laws or regulations.

Securities acquired under section 4(a)(7) are considered "restricted securities" and cannot be transferred by the acquirer in the absence of another exemption under the 1933 Act. In addition, securities sold under the exemption are "covered securities" under the 1933 Act and, consequently, are preempted from state "blue sky" registration requirements.

Finally, market participants may continue to rely on other available resale exemptions, such as Rule 144, Rule 144A as well as the 4(a)(1½) resale exemption. Because the new safe harbor for private resales created under section section 4(a)(7) is nonexclusive, issuers should consult counsel before relying on any available resale exemptions under the 1933 Act.

No “General Solicitation”

Subject to the exceptions summarized below, an important element of the various private placement exemptions is that there be no “general solicitation” in the United States in connection with the private placement offering. The prohibition against general solicitation is intended to prevent direct or indirect offers being made to investors that do not have access to information about the issuer that would otherwise be available in a prospectus or who do not have the financial and business knowledge required to evaluate such information.

A general solicitation may take the form of an advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over television or radio. A road show or seminar conducted in close proximity to a private placement can amount to a general solicitation, even if the offering is not contemplated at the time of the road show or seminar.

Rule 506(c) Offerings

Rule 506(c), adopted under Title II of the JOBS Act, permits general solicitation in connection with certain Regulation D offerings. In particular, Rule 506(c) permits the use of general solicitation if:

- the issuer takes "reasonable steps to verify" that purchasers are accredited investors;
- all purchasers are accredited investors, or the issuer reasonably believes that they are, at the time of the sale; and
- all requirements of Rules 501 (definitions), 502(a) (integration) and 502(d) (resale restrictions) are met.

Whether verification steps are reasonable depends on facts and circumstances. Rule 506(c) includes four specific non-exclusive methods of verifying accredited investor status:

- when verifying whether an individual meets the accredited investor *income* test, reviewing for the two most recent fiscal years any IRS forms that report the individual's income, and obtaining a written representation from the individual with respect to the expectation of income for the current year;
- when verifying whether an individual meets the accredited investor net *worth* test, reviewing certain bank, brokerage and similar documents and obtaining a written representation from the individual with respect to the disclosure of all liabilities;
- obtaining written confirmation from an SEC registered broker-dealer or investment adviser, a licensed attorney or a CPA that has itself taken reasonable steps to verify, and has determined within the prior three months, that the purchaser is an accredited investor; and
- obtaining a certification of accredited investor status at the time of sale from an individual who invested in an issuer's Rule 506(b) offering as an accredited investor prior to the effective date of Rule 506(c), for any Rule 506(c) offering conducted by the same issuer.

“Bad Actor” Disqualification From Rule 506 Offerings

Under Rule 506(d), an issuer will not be able to rely on the Rule 506 exemptions if certain “covered persons” have been subject to one or more disqualifying events, such as a conviction for securities fraud. Individuals and entities that are “covered persons” include:

- the issuer;
- a predecessor of the issuer;
- affiliated issuers, unless the event occurred prior to the commencement of the affiliation, and the affiliated issuer is not under the issuer’s control and is not “under common control with the issuer by a third party that was in control of the affiliated entity at the time of such events”;
- beneficial owners of 20% or more of the issuer’s voting equity securities (calculated on the basis of voting power);
- an issuer’s directors, executive officers and other officers, as well as general partners and managing members, who participate in the offering; and
- any person who has received or will receive direct or indirect compensation for solicitation of purchasers in connection with a securities offering.

The disqualifying events include:

- criminal convictions in connection with the purchase or sale of a security or involving the making of a false filing with the SEC, or arising out of the conduct of certain types of financial intermediaries; the criminal conviction must have occurred within five years of the proposed sale of securities in the case of the issuer and its predecessors and affiliated issuer, or within 10 years for other covered persons;
- court injunctions and restraining orders in connection with the purchase or sale of a security, or involving the making of a false filing with the SEC, or arising out of the conduct of the business of an underwriter, an SEC-regulated entity such as a broker-dealer; the injunction or restraining order must have occurred within five years of the proposed sale of securities;
- final orders from certain federal or state regulators that bar the issuer from associating with a regulated entity, or engaging in the business of securities, insurance or banking or in savings association or credit union activities or that are based on fraudulent, manipulative, or deceptive conduct and issued within ten years of the proposed sale of securities;

- certain unexpired SEC disciplinary orders relating to regulated entities in the securities industry and their associated persons;

- unexpired SEC cease-and-desist orders related to violations of scienter-based antifraud provisions of the federal securities laws or the 1933 Act Section 5 registration requirements that were entered within five years before the proposed sale of securities;

- previously filing or being named as an underwriter in a registration statement that, within five years before such sale, was the subject of a refusal order, stop order, or suspension order, or is, at the time of such sale, the subject of an investigation or proceeding to determine whether issuance of such an order is appropriate;

- suspension or expulsion from membership in a self-regulatory organization (SRO) or association with an SRO member for violating just and equitable principles of trade; and

- US Postal Service false representation orders issued within five years of the proposed sale of securities.

Any disqualifying events that occurred prior to the effectiveness of the rules will not prevent an issuer from relying on Rule 506, though they will be subject to mandatory disclosure requirements. For disqualifying events occurring after the effectiveness of the rules, an issuer may nevertheless rely on Rule 506 if the SEC determines upon a showing of good cause that denial of an exemption is not necessary under the circumstances, the court or regulator that issued the disqualifying order advises the SEC in writing that the exemption should not be denied, or the issuer can demonstrate that it did not know and, in the exercise of reasonable care, could not have known that a disqualifying event existed.

5.2 Hold Periods for Securities Issued in U.S. Private Placements

Another element of the various private placement exemptions is that the securities not be resold into the public markets for a period of time. Without this, the private placement could simply be an indirect way to conduct a public offering. During this hold period, the securities may be resold in the United States in limited circumstances that respect the private sale restrictions, and usually accompanied by a legal opinion (other than for Rule 144A resales). The hold period for unregistered securities issued in U.S. private placements will generally expire after one year from the initial sale (6 months if the issuer reports with the SEC). The hold period is not re-triggered by transfers to intervening holders who may purchase the securities on a further private placement basis.

5.3 Regulation S – Sales and Resales Outside the United States

Regulation S under the 1933 Act provides an exemption, or safe harbour, from registration requirements for offers and sales of securities outside the United States. This applies to initial

offerings by issuers and underwriters. The exemption is essentially jurisdictional. U.S. regulation should not apply to offers and sales of securities that occur outside the United States. This theory is easily applied to offerings outside the United States by foreign companies with few connections to the United States. However, if the issuer has its securities listed on a U.S. market, or a majority of its shareholders are in the United States, the restrictions upon what constitutes a valid offshore sale commensurately increase. In all cases, there cannot be "directed selling efforts" in the United States.

The Regulation S safe harbour also applies to resales outside the United States of restricted securities that have been privately placed in the United States (say, pursuant to Section 4(a)(2), Rule 144A, or the 4(a)(1½) exemption).

Resales of such securities in the United States during the applicable hold period are generally subject to restrictions that are imposed on initial private placements, in order to ensure that the securities do not drift into the public markets. A resale outside the United States in accordance with the requirements of Regulation S obviates the need to comply with these restrictions.

There are two basic conditions to the availability of Regulation S in resales. First, that the offer or sale of securities be made in an "offshore transaction" and second, that it not be accompanied by "directed selling efforts" in the United States

For an offer or sale to be an "offshore transaction", the offer must not be made to a person in the United States and either (i) the buyer must be outside the United States or (ii) the transaction must be executed on a foreign securities exchange or through the facilities of a designated offshore securities market (which includes the TSX), and neither the seller nor any person acting on its behalf knows that the transaction has been prearranged with a buyer in the United States. Practically speaking, if the U.S. private placee simply puts the shares up for sale on the TSX, and its broker does not knowingly cross the shares to a U.S. customer, this requirement will have been met.

Regulation S will not be available for resales outside the United States through the facilities of the TSX if the seller engages in "directed selling efforts" in the United States. The term "directed selling efforts" means any activity that could reasonably be expected to have the effect of conditioning the market in the United States, including placing an advertisement in a general circulation publication in the United States. In the resale context, this is rarely an issue.

For initial sales by issuers and underwriters outside the United States, there may be additional requirements for a valid Regulation S sale. If there is Substantial U.S. Market Interest ("SUSMI") in the class of securities being offered outside the United States, the issuer and distributors (underwriters) of the securities being offered may not participate in secondary market resales into the United States of such securities for a period of 40 days (a so called "distribution compliance period"). For equity issuers, Regulation S defines SUSMI as:

- U.S. securities exchanges or NASDAQ constituting in the aggregate the single largest market for the issuer's securities in the prior fiscal year; or

- 20% or more of all trading in the issuer's securities taking place through the facilities of U.S. securities exchanges or NASDAQ and less than 55% taking place through the securities markets of a single foreign country in the issuer's previous fiscal year.

5.4 Guidelines for Underwriters and Issuers

In a U.S. private placement and simultaneous Canadian public offering (or private placement), underwriters and issuers must be careful to ensure that no "general solicitation" or "directed selling efforts" occur in the United States in order to avoid triggering the registration requirements of the 1933 Act.

Issuers

- information sessions relating to the issuer in the United States that are not associated with an offering should be conducted at regularly scheduled intervals; this would support an argument that the services were not in connection with a particular offering but issuers should consult counsel as to whether to postpone any information meetings scheduled during or prior to a Canadian offering or U.S. private placement;

- there should be no advertising, articles, notices or other communication published in any newspaper, magazine or similar media or broadcast over television or radio relating to any planned Canadian public offering, Canadian private placement or U.S. private placement;

- issuers should not issue a press release relating to an offering without first discussing it with counsel and the underwriters;

- any press release issued as required under Canadian law announcing an underwriting transaction (i.e., under the bought deal rules) must contain a legend or warning designed to prohibit its release in the United States; and

- the SEC considers an internet posting of offering publicity (for instance, a press release) to be a general solicitation. The customary embargo language preventing distribution over US newswires included in offering press releases does not avoid this issue. Accordingly, an issuer (and its agents or underwriters) should not post any offering related publicity on the internet until the deal is "all sold" – ie, at closing or, potentially, after closing where the securities are not fully subscribed.

Underwriters

- all invitations to road shows in connection with a U.S. private placement should be extended exclusively to potential investors (A) who meet the investor criteria for the offering (i.e., QIBs or accredited investors), and (B) with whom the underwriter has a pre-existing relationship that gives rise to knowledge of the investor's sophistication and ability to meet the applicable investment criteria;

- U.S. road shows should not be used to encourage potential private placement investors to invest in any concurrent offerings in Canada;

- there should be no advertising, articles, notices or other communication published in any newspaper or magazine or similar media or broadcast over television or radio relating to a U.S. private placement or any concurrent Canadian offering;

- information meetings or other forms of contact between underwriters and potential U.S. private placement investors should be made by officers or employees of registered U.S. dealer affiliates of one or more of the Canadian underwriters;

- if direct contact must be made between a Canadian broker or dealer and a potential U.S. private placement investor, it must fall within the registration exemption afforded by Rule 15a-6 of the 1934 Act;

- in 4(a)(1½) transactions, the securities should be offered through the underwriters' U.S. dealer affiliates to no more than 50 accredited investors with whom they have pre-existing relationships and the minimum investment should be not less than US$250,000;

- prior to completing the sales in the United States:

    the Canadian final prospectus accompanied by a U.S. "wrap " memorandum must be delivered to each U.S. purchaser;

    each U.S. purchaser must deliver or previously have delivered a representation letter or QIB letter to the underwriters' U.S. dealer affiliates; and

    the purchaser must receive legended securities restricting their resale in the United States (although this is increasingly not the case in Rule 144A transactions where there is no SUSMI);

- in order to ensure that Regulation S will be available to permit resales of the securities sold to U.S. investors through the facilities of the TSX, it is essential that there be no efforts undertaken in the United States that could constitute "directed selling efforts" as defined in Regulation S (legitimate private placement sales efforts are not "directed selling efforts");

- the initial bid letter signed between the underwriters and an issuer for a Canadian public offering should contain an agreement by the issuer not to issue a press release unless it bears a legend restricting its distribution in the United States;

- as a general matter, offers and sales in the United States can only be conducted by U.S. registered broker dealers and U.S. private placements by Canadian issuers need to involve either U.S. affiliates of Canadian dealers (as is usually the case) or a U.S. registered broker-dealer who can assist;

- Canadian underwriters are subject to Regulation M which restricts the trading activities of persons participating in a distribution, including under a private placement, in the United States; Regulation M generally prohibits bids for or purchases of securities by underwriters, including marketmaking or stabilization activities in Canada or the United States, except in compliance with certain U.S. trading rules; and

- Regulation M is very similar to the trading restrictions under OSC Rule 48-501 – *Trading during Distributions, Formal Bids and Share Exchange Transactions* during prospectus distributions; it provides exemptions for offerings made under Rule 144A and offerings by an issuer whose common shares have an average daily trading value of US$1.0 million and a public float of US$150 million.

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STATUTORY INSTRUMENTS [1]

6.1 National Instrument 44-101 – Short Form Prospectus Distributions

Table of Contents

[1] Current as of September 1, 2018.

PART 1 DEFINITIONS AND INTERPRETATIONS

1.1 Definitions – In this Instrument

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

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

"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 of Canada,

(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 a designated 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 a designated rating from any designated rating organization or its DRO affiliate;

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

"current AIF" means,

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

(b) the issuer's AIF filed for the financial year immediately preceding its most recently completed financial year if

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

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

"current annual financial statements" means,

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

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

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

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

"designated rating" means the following:

(a) for the purposes of paragraph 2.6 (1) (c), a credit rating from a designated rating organization listed in this paragraph, from a DRO affiliate of an organization listed in this paragraph, from a designated rating organization that is a successor credit rating organization of an organization listed in this paragraph or from a DRO affiliate of such successor credit rating organization, that is at or above one of the following corresponding rating categories or that is at or above a category that replaces one of the following corresponding rating categories:

Designated Rating Organization	**Long Term Debt**	**Short Term Debt**	**Preferred Shares**
DBRS Limited	BBB	R-2	Pfd-3
Fitch Ratings, Inc.	BBB	F3	BBB
Kroll Bond Rating Agency, Inc.	BBB	K3	BBB
Moody's Canada Inc.	Baa	Prime-3	Baa
S&P Global Ratings Canada	BBB	A-3	P-3

(b) except as described in paragraph (a), a credit rating from a designated rating organization listed in this paragraph, from a DRO affiliate of an organization listed in this paragraph, from a designated rating organization that is a successor credit rating organization of an organization listed in this paragraph or from a DRO affiliate of such successor credit rating organization, that is at or above one of the following corresponding rating categories or that is at or above a category that replaces one of the following corresponding rating categories:

Designated Rating Organization	**Long Term Debt**	**Short Term Debt**	**Preferred Shares**
DBRS Limited	BBB	R-2	Pfd-3
Fitch Ratings, Inc.	BBB	F3	BBB
Moody's Canada Inc.	Baa	Prime-3	Baa
S&P Global Ratings Canada	BBB	A-3	P-3

"designated rating organization" means

(a) if designated under securities legislation, any of

(i) DBRS Limited, Fitch Ratings, Inc., Kroll Bond Rating Agency, Inc., Moody's Canada Inc. or S&P Global Ratings Canada, or

(ii) a successor credit rating organization of a credit rating organization listed in subparagraph (i), or

(b) any other credit rating organization designated under securities legislation;

"DRO affiliate" has the same meaning as in section 1 of National Instrument 25-101 *Designated Rating Organizations*;

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

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

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

"NI 41-101" means National Instrument 41-101 *General Prospectus Requirements*;

"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;

"reverse takeover acquiree" has the same meaning as in section 1.1 of NI 51-102;

"short form eligible exchange" means each of the Toronto Stock Exchange, Tier 1 and Tier 2 of the TSX Venture Exchange, Aequitas NEO Exchange Inc., and the Canadian Securities Exchange;

"successor credit rating organization" means, with respect to a credit rating organization, any credit rating organization that succeeded to or otherwise acquired all or substantially all of another credit rating organization's business in Canada, whether through a restructuring transaction or otherwise, if that business was, at any time, owned by the first-mentioned credit rating organization;

"successor issuer" means

(a) except for an issuer which, in the case where the restructuring transaction involved a divestiture of a portion of a reporting issuer's business, succeeded to or otherwise acquired less than substantially all of the business divested, an issuer that meets any of the following requirements:

    (i) it was a reverse takeover acquiree in a completed reverse takeover;

    (ii) it was formed as a result of a completed restructuring transaction;

    (iii) it participated in a restructuring transaction and its existence continued following the completion of the restructuring transaction; or

(b) an issuer that issued securities to the securityholders of a second issuer that was a reporting issuer, in a reorganization that did not alter those securityholders' proportionate interest in the second issuer or the second issuer's proportionate interest in its assets;

"underlying interest" means, for a derivative, the security, commodity, financial instrument, currency, interest rate, foreign exchange rate, economic indicator, index, basket, agreement, benchmark or any other reference, interest or variable, and, if applicable, the relationship between

any of the foregoing, from, to or on which the market price, value or any payment obligation of the derivative is derived, referenced or based; and

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

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

(b) either

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

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

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

(d) is not registered or required to be registered as an investment company under the Investment Company Act of 1940 of the United States of America, and

(e) is not a commodity pool issuer as defined in National Instrument 71-101 *The Multijurisdictional Disclosure System*.

1.1.1 Definitions in NI 41-101 – Every term that is defined or interpreted in NI 41-101, the definition or interpretation of which is not restricted to a specific portion of NI 41-101, has, if used in this Instrument, the meaning ascribed to it in NI 41-101, unless otherwise defined or interpreted in this Instrument.

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

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

1.4 Interpretation of "short form prospectus" – In this Instrument, other than in Parts 4 through 8 or unless otherwise 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 44-101F1 of this Instrument unless the issuer is qualified under any of sections 2.2 through 2.6 to file a prospectus in the form of a short form prospectus.

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

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

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

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

(a) the issuer is an electronic filer under NI 13-101;

(b) the issuer is a reporting issuer in at least one jurisdiction of Canada;

(c) the issuer has filed with the securities regulatory authority in each jurisdiction in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction

(i) under applicable securities legislation,

(ii) pursuant to an order issued by the securities regulatory authority, or

(iii) pursuant to an undertaking to the securities regulatory authority*;*

(d) the issuer has, in at least one jurisdiction in which it is a reporting issuer,

(i) current annual financial statements, and

(ii) a current AIF;

(e) the issuer’s equity securities are listed and posted for trading on a short form eligible exchange and the issuer is not an issuer

(i) whose operations have ceased, or

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

2.3 Alternative Qualification Criteria for Issuers of Designated 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 the following criteria are satisfied:

(a) the issuer is an electronic filer under NI 13-101;

(b) the issuer is a reporting issuer in at least one jurisdiction of Canada;

(c) the issuer has filed with the securities regulatory authority in each jurisdiction in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction

(i) under applicable securities legislation,

(ii) pursuant to an order issued by the securities regulatory authority, or

(iii) pursuant to an undertaking to the securities regulatory authority;

(d) the issuer has, in at least one jurisdiction in which it is a reporting issuer,

(i) current annual financial statements, and

(ii) a current AIF;

(e) the securities to be distributed

(i) have received a designated rating on a provisional basis,

(ii) are not the subject of an announcement by a designated rating organization or its DRO affiliate, of which the issuer is or ought reasonably to be aware, that the designated rating given by the organization may be down graded to a rating category that would not be a designated rating, and

(iii) have not received a provisional or final rating lower than a designated rating from any designated rating organization or its DRO affiliate.

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

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

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

(a) a credit supporter has provided full and unconditional credit support for the securities being distributed,

(b) at least one of the following is true:

(i) the credit supporter satisfies the criteria in paragraphs 2.2(a), (b), (c) and (d) if the word "issuer" is replaced with "credit supporter" wherever it occurs;

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

(c) unless the credit supporter satisfies the criteria in paragraph 2.2(e) if the word "issuer" is replaced with "credit supporter" wherever it occurs, at the time the preliminary short form prospectus is filed

(i) the credit supporter has outstanding non convertible securities that

(A) have received a designated rating,

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

(C) have not received a rating lower than a designated rating from any designated rating organization or its DRO affiliate, and

(ii) the securities to be issued by the issuer

(A) have received a designated rating on a provisional basis,

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

(C) have not received a provisional or final rating lower than a designated rating from any designated rating organization or its DRO affiliate.

(2) Subparagraph (1)(c)(ii) does not apply to an issuer filing a short form prospectus that is a base shelf prospectus under NI 44-102.

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

(a) the debt securities or the preferred shares are convertible into securities of a credit supporter that has provided full and unconditional credit support for the securities being distributed;

(b) the credit supporter satisfies the criteria in section 2.2 if the word "issuer" is replaced with "credit supporter" wherever it occurs.

2.6 Alternative Qualification Criteria for Issuers of Asset Backed Securities

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

(a) the issuer is an electronic filer under NI 13-101;

(b) the issuer has, in at least one jurisdiction of Canada,

(i) current annual financial statements, and

(ii) a current AIF;

(c) the asset backed securities to be distributed

(i) have received a designated rating on a provisional basis,

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

(iii) have not received a provisional or final rating lower than a designated rating from any designated rating organization or its DRO affiliate.

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

2.7 Exemptions for Reporting Issuers that Previously Filed a Prospectus and Successor Issuers

(1) Paragraphs 2.2(d), 2.3(1)(d) and 2.6(1)(b) do not apply to an issuer if

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

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

(1.1) Subparagraphs 2.2(d)(ii), 2.3(1)(d)(ii) and 2.6(1)(b)(ii) do not apply to an issuer if

(a) the issuer has filed annual financial statements as required under the applicable CD rule, and

(b) unless the issuer is seeking qualification under section 2.6, the issuer has filed and obtained a receipt for a final prospectus that included the issuer's or each predecessor entity's comparative annual financial statements for its most recently completed financial year or the financial year immediately preceding its most recently completed financial year, together with the auditor's report accompanying those financial statements and, if there has

been a change of auditors since the comparative period, an auditor's report on the financial statements for the comparative period.

(2) Paragraphs 2.2(d), 2.3(1)(d) and 2.6(1)(b) do not apply to a successor issuer if

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

(b) an information circular relating to the restructuring transaction or the reorganization described in paragraph (b) of the definition of "successor issuer", in which the successor issuer participated or which resulted in the successor issuer was filed by the successor issuer or an issuer that was a party to the restructuring transaction or reorganization, and such information circular

(i) complied with applicable securities legislation, and

(ii) in the case of a restructuring transaction, included disclosure in accordance with section 14.2 or 14.5 of Form 51-102F5 for the successor issuer.

(3) Paragraphs 2.2(d), 2.3(1)(d) and 2.6(1)(b) do not apply to an issuer if

(a) the issuer is not exempt from the requirement in the applicable CD rule to file annual financial statements within a prescribed period after its financial year end, but the issuer has not yet, since the completion of a qualifying transaction or reverse takeover (as both terms are defined in the TSX Venture Exchange Corporate Finance Manual, as amended from time to time) been required under the applicable CD rule to file annual financial statements, and

(b) a CPC filing statement as defined in the TSX Venture Exchange Corporate Finance Manual as amended from time to time, or other filing statement of the TSX Venture Exchange was filed by the issuer and,

(i) in the case of a CPC filing statement, the statement

(A) was filed in connection with a qualifying transaction, and

(B) complied with the TSX Venture Exchange Corporate Finance Manual, as amended from time to time, in respect of the qualifying transaction; or

(ii) in the case of a TSX Venture Exchange filing statement, other than a CPC filing statement, the statement

(A) was filed in connection with a reverse takeover, and

(B) complied with TSX Venture Exchange Corporate Finance Manual, as amended from time to time, in respect of the reverse takeover.

2.8 Notice of Intention and Transition

(1) An issuer is not qualified to file a short form prospectus under this Part unless it has filed a notice declaring its intention to be qualified to file a short form prospectus at least 10 business days prior to the issuer filing its first preliminary short form prospectus after the notice

(a) with its notice regulator, and

(b) in substantially the form of Appendix A.

(2) The notice under subsection (1) is effective until withdrawn.

(3) For the purposes of subsection (1), "notice regulator" means, as determined on the date the notice is filed, the securities regulatory authority or regulator of the jurisdiction of Canada

(a) in which the issuer's head office is located, if the issuer is not an investment fund and the issuer is a reporting issuer in that jurisdiction,

(b) in which the investment fund manager's head office is located, if the issuer is an investment fund and the issuer is a reporting issuer in that jurisdiction, or

(c) with which the issuer has determined that it has the most significant connection, if paragraphs (a) and (b) do not apply to the issuer.

(4) For the purposes of this section, if, on December 29, 2005, an issuer had a current AIF under National Instrument 44 101 Short Form Prospectus Distributions that was in force on December 29, 2005, the issuer is deemed to have filed a notice on

December 14, 2005 declaring its intention to be qualified to file a short form prospectus.

(5) [Repealed]

(6) The 10 business day period referred to in subsection (1) does not apply if

(a) an issuer is relying on section 2.4 or 2.5 and the following requirements are met:

(i) the issuer satisfies section 2.4 or 2.5, as applicable, at the time of filing its short form prospectus;

(ii) the issuer files its notice of intention before or concurrently with the filing of its preliminary short form prospectus; and

(iii) the issuer's credit supporter

(A) previously filed a notice of intention under subsection (1) which has not been withdrawn; or

(B) is deemed to have filed a notice of intention under subsection (4); or

(b) an issuer is a successor issuer and the following requirements are met:

(i) the issuer satisfies

(A) section 2.2, 2.3 or 2.6, and

(B) subsection 2.7(2);

(ii) the issuer files its notice of intention before or concurrently with the filing of its preliminary short form prospectus; and

(iii) the issuer has acquired substantially all of its business from a person or company that

(A) previously filed a notice of intention under subsection (1) which has not been withdrawn; or

(B) is deemed to have filed a notice of intention under subsection (4).

PART 3 DEEMED INCORPORATION BY REFERENCE

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

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

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

PART 4 FILING REQUIREMENTS FOR A SHORT FORM PROSPECTUS

4.1 (1) 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:

(i) Signed Copy – a signed copy of the preliminary short form prospectus;

(ii) Qualification Certificate – a certificate, dated as of the date of the preliminary short form prospectus, executed on behalf of the issuer by one of its executive officers

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

(B) certifying that

(I) all of those qualification criteria have been satisfied, and

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

(iii) Material Incorporated by Reference – copies of all material incorporated by reference in the preliminary short form prospectus and not previously filed;

(iv) Documents Affecting the Rights of Securityholders – a copy of any document required to be filed under subsection 12.1(1) of NI 51-102 or section 16.4 of NI 81-106, as applicable, that relates to the securities being distributed, and that has not previously been filed;

(iv.1) Material Contracts – a copy of any material contract required to be filed under section 12.2 of NI 51-102 or section 16.4 of NI 81-106 that has not previously been filed;

(v) Mining Reports if the issuer has a mineral project, the technical reports required to be filed with a preliminary short form prospectus under NI 43-101;

(vi) 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 10.1 of NI 41-101 and that has not previously been filed, other than a technical report that

(A) deals with a mineral project or oil and gas activities, and

(B) is not otherwise required to be filed under paragraph (v); and

(vii) Marketing Materials – a copy of any template version of the marketing materials required to be filed under paragraph 7.6(1)(e) of this Instrument or paragraph 13.7(1)(e) of NI 41-101 that has not previously been filed; and

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

(i) Personal Information Form and Authorization to Collect, Use and Disclose Personal Information – a completed personal information form for,

(A) each director and executive officer of an issuer;

(B) if the issuer is an investment fund, each director and executive officer of the manager of the issuer;

(C) each promoter of the issuer; and

(D) if the promoter is not an individual, each director and executive officer of the promoter;

(ii) Auditor's Comfort Letter Regarding Audited Financial Statements – if a financial statement of an issuer or a business included in, or incorporated by reference into, a preliminary short form prospectus is accompanied by an unsigned auditor's report, a signed letter addressed 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 in the Handbook; and

(iii) Marketing Materials – a copy of any template version of the marketing materials required to be delivered under paragraph 7.6(4)(c) or 7.8(2)(c) of this Instrument or paragraph 13.7(4)(c) or 13.12(2)(c) of NI 41-101 that has not previously been delivered.

(2) Despite subparagraph (1)(b)(i), an issuer is not required to deliver to the regulator a personal information form for an individual if the issuer, another issuer or, if the issuer is an investment fund, the manager of the investment fund issuer or another investment fund issuer, previously delivered a personal information form for the individual and all of the following are satisfied:

(a) the certificate and consent included in or attached to the personal information form was executed by the individual within three years preceding the date of filing of the preliminary short form prospectus;

(b) the responses given by the individual to questions 6 through 10 of the individual's personal information form are correct as at a date that is within 30 days of the filing of the preliminary short form prospectus;

(c) if the personal information form was previously delivered to the regulator by another issuer, the issuer delivers to the regulator, concurrently with the filing of the preliminary short form prospectus, a copy of the previously delivered personal information form, or alternative information that is satisfactory to the regulator.

(3) Until May 14, 2016, subparagraph (1)(b)(i) does not apply to an issuer in respect of the delivery of a personal information form for an individual if the issuer or, if the issuer is an investment fund, the manager of the investment fund issuer, previously delivered to the regulator a predecessor personal information form for the individual and all of the following are satisfied:

(a) the certificate and consent included in or attached to the predecessor personal information form was executed by the individual within three years preceding the date of filing of the preliminary short form prospectus;

(b) the responses given by the individual to questions 4(B) and (C) and questions 6 through 9 or, in the case of a TSX/TSXV personal information form in effect after September 8, 2011, questions 6 through 10, of the individual's predecessor personal information form are correct as at a date that is within 30 days of the filing of the preliminary short form prospectus.

4.2 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:

(i) Signed Copy – a signed copy of the short form prospectus;

(ii) Material Incorporated by Reference – copies of all material incorporated by reference in the short form prospectus and not previously filed;

(iii) Documents Affecting the Rights of Securityholders – a copy of any document described under subparagraph 4.1(a)(iv) that has not previously been filed;

(iii.1) Material Contracts – a copy of any material contract described under subparagraph 4.1(a)(iv.1) that has not previously been filed;

(iv) Other Reports and Valuations – a copy of any report or valuation referred to in the short form prospectus, for which a consent is required to be filed under section 10.1 of NI 41-101 and that has not previously been filed, other than a technical report that

(A) deals with a mineral project or oil and gas activities of the issuer, and

(B) is not otherwise required to be filed under subparagraph 4.1(a)(v) or (vi);

(v) 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 of NI 41-101, if an issuer is incorporated or organized in a foreign jurisdiction and does not have an office in Canada;

(vi) Non-Issuer's Submission to Jurisdiction a submission to jurisdiction and appointment of agent for service of process of

(A) each selling securityholder,

(A.1) each director of the issuer, and

(B) any other person or company that provides or signs a certificate under Part 5 of NI 41-101 or other securities legislation, other than an issuer,

in the form set out in Appendix C of NI 41-101, if the person or company 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;

(vii) Expert's Consents – the consents required to be filed under section 10.1 of NI 41-101;

(viii) 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 section 12.1 of Form 44-101F1 to be included in a short form prospectus and a certificate of the credit supporter is not required under section 5.12 of NI 41-101 to be included in the short form prospectus;

(ix) Undertaking in Respect of Credit Supporter Disclosure – an undertaking of the issuer to file the periodic and timely disclosure of a credit supporter similar to the disclosure provided under section 12.1 of Form 44-101F1, for so long as the securities being distributed are issued and outstanding;

(x) Undertaking to File Agreements, Contracts and Material Contracts – if an agreement or contract referred to in subparagraph (iii) or a material contract under subparagraph (iii.1) has not been executed before the filing

of the final short form prospectus but will be executed on or before the completion of the distribution, the issuer must file with the securities regulatory authority, no later than the time of filing of the final short form prospectus, an undertaking of the issuer to the securities regulatory authority to file the agreement, contract or material contract promptly and in any event no later than seven days after the execution of the agreement, contract or material contract;

(x.1) Undertaking to File Unexecuted Documents – if a document referred to in subparagraph (iii) does not need to be executed in order to become effective and has not become effective before the filing of the final short form prospectus, but will become effective on or before the completion of the distribution, the issuer must file with the securities regulatory authority, no later than the time of filing of the final short form prospectus, an undertaking of the issuer to the securities regulatory authority to file the document promptly and in any event no later than seven days after the document becomes effective;

(xi) Undertaking in Respect of Restricted Securities – for distributions of non voting securities an undertaking of the issuer to give notice to holders of non voting securities of a meeting of securityholders if a notice of such meeting is given to its registered holders of voting securities; and

(xii) Marketing Materials – a copy of any template version of the marketing materials required to be filed under paragraph 7.6(1)(e) or 7.6(7)(a) of this Instrument or paragraph 13.7(1)(e), 13.7(7)(a) or 13.8(1)(e) of NI 41-101 that has not previously been filed; and

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

(i) a copy of the short form prospectus, blacklined to show changes from the preliminary short form prospectus,

(ii) if the issuer has made an application to list the securities being distributed on an exchange in Canada, a copy of a communication in writing from the exchange stating that the application for listing has been made and has been accepted subject to the issuer meeting the requirements for listing of the exchange,

(iii) a copy of any template version of the marketing materials required to be delivered under paragraph 7.6(4)(c) or 7.8(2)(c) of this Instrument or

paragraph 13.7(4)(c) or 13.12(2)(c) of NI 41-101 that has not previously been delivered,

(iv) the evidence of financial ability required to be delivered under section 8A.4 of NI 41-101 if it has not previously been delivered, and

(v) the evidence of fair value required to be delivered under subsection 8A.2(2) of NI 41-101 if it has not previously been delivered.

4.2.1 Alternative Consent

(1) Despite subparagraph 4.2(a)(vii), if the expert whose consent is required is a "qualified person" as defined in NI 43-101, the issuer is not required to file the consent of the qualified person if

(a) the qualified person's consent is required in connection with a technical report that was not required to be filed with the preliminary short form prospectus,

(b) the qualified person was employed by a person or company at the date of signing the technical report,

(c) the principal business of the person or company is providing engineering or geoscientific services, and

(d) the issuer files the consent of the person or company.

(2) A consent filed under subsection (1) must be signed by an individual who is an authorized signatory of the person or company and who falls within paragraphs (a), (b), (d) and (e) of the definition of "qualified person" in NI 43-101.

4.3 Review of Unaudited Financial Statements

(1) Subject to subsection (2), any unaudited financial statements, other than *pro forma* financial statements, included in, or incorporated by reference into, a short form prospectus must have been reviewed in accordance with the relevant standards set out in the Handbook for a review of financial statements by the person or company's auditor or a public accountant's review of financial statements.

(2) If NI 52-107 permits the financial statements of the person or company in subsection (1) to be audited in accordance with

(a) U.S. AICPA GAAS, the unaudited financial statements may be reviewed in accordance with the review standards issued by the American Institute of Certified Public Accountants,

(a.1) U.S. PCAOB GAAS, the unaudited financial statements may be reviewed in accordance with the review standards issued by the Public Company Accounting Oversight Board (United States of America),

(b) International Standards on Auditing, the unaudited financial statements may be reviewed in accordance with International Standards on Review Engagement issued by the International Auditing and Assurance Standards Board, or

(c) auditing standards that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the issuer is subject, the unaudited financial statements

(i) may be reviewed in accordance with review standards that meet the foreign disclosure requirements of the designated foreign jurisdiction, or

(ii) do not have to be reviewed if

(A) the designated foreign jurisdiction does not have review standards for unaudited financial statements, and

(B) the short form prospectus includes disclosure that the unaudited financial statements have not been reviewed.

PART 5 [REPEALED]

PART 6 [REPEALED]

PART 7 SOLICITATIONS OF EXPRESSIONS OF INTEREST

7.1 Definitions and Interpretations

(1) In this Part:

"bought deal agreement" means a written agreement

(a) under which one or more underwriters has agreed to purchase all securities of an issuer that are to be offered in a distribution under a short form prospectus on a

firm commitment basis, other than securities issuable on the exercise of an over allotment option,

(b) that does not have a market out clause,

(c) that, other than an over allotment option, does not provide an option for any party to increase the number of securities to be purchased, and

(d) that, other than what is agreed to under a confirmation clause that complies with section 7.4, is not conditional on one or more additional underwriters agreeing to purchase any of the securities offered;

"comparables" means information that compares an issuer to other issuers;

"confirmation clause" means a provision in a bought deal agreement that provides that the agreement is conditional on the lead underwriter confirming that one or more additional underwriters has agreed to purchase certain of the securities offered;

"market out clause" means a provision in an agreement which permits an underwriter to terminate its commitment, or underwriters to terminate their commitment, to purchase securities in the event that the securities cannot be marketed profitably due to market conditions;

"U.S. cross-border offering" means an offering of securities of an issuer being made contemporaneously in the United States of America and Canada by way of a prospectus filed with a securities regulatory authority in a jurisdiction of Canada and a U.S. prospectus filed with the SEC;

"U.S. prospectus" means a prospectus that has been prepared in accordance with the disclosure and other requirements of U.S. federal securities law for an offering of securities registered under the 1933 Act.

(2) In this Part, for greater certainty, a reference to "provides" includes showing a document to a person without allowing the person to retain or make a copy of the document.

7.2 Solicitations of Expressions of Interest – Subject to subsection 7.4(2), the prospectus requirement does not apply to a solicitation of an expression of interest made before the issuance of a receipt for a preliminary short form prospectus for securities to be qualified for distribution under a short form prospectus pursuant to this Instrument or for securities to be issued or transferred pursuant to an over allotment option that are qualified for distribution under a short form prospectus pursuant to this Instrument, if

(a) before the solicitation,

(i) the issuer has entered into a bought deal agreement;

(ii) the bought deal agreement has fixed the terms of the distribution, including, for greater certainty, the number and type of securities and the price per security, and requires that the issuer file a preliminary short form prospectus for the securities not more than four business days after the date that the bought deal agreement was entered into; and

(iii) immediately upon entering into the bought deal agreement, the issuer issued and filed a news release announcing the agreement,

(b) the issuer files a preliminary short form prospectus for the securities pursuant to this Instrument within four business days after the date that the bought deal agreement was entered into,

(c) 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 that, in response to the solicitation, expressed an interest in acquiring the securities, and

(d) except for a bought deal agreement under paragraph (a) or a more extended form of underwriting agreement referred to in subsection 7.3(6), no agreement of purchase and sale for the securities is entered into until the short form prospectus has been filed and a receipt has been issued.

7.3 Amendment or Termination of Bought Deal Agreement

(1) Except as provided in subsections (2) to (7), a party to a bought deal agreement referred to in paragraph 7.2(a) must not agree to modify the terms of a distribution provided for under a bought deal agreement.

(2) The parties to a bought deal agreement referred to in paragraph 7.2(a) may increase the number of securities to be purchased by an underwriter or underwriters, if

(a) the number of additional securities to be purchased does not exceed 100% of the total of the base offering contemplated by the original agreement plus any securities that would be acquired upon the exercise of an over allotment option;

(b) the type of securities to be purchased, and the price per security, is the same as under the original agreement;

(c) the issuer files a preliminary short form prospectus for the increased number of securities in accordance with this Instrument within four business days after the date that the original agreement was entered into;

(d) immediately upon agreeing to change the number of securities to be purchased, the issuer issued and filed a news release announcing the amendment;

(e) no previous amendment has been made to the original agreement to increase the number of securities to be purchased; and

(f) the amended agreement is a bought deal agreement and the conditions in section 7.2 are complied with.

(3) The parties to a bought deal agreement referred to in paragraph 7.2(a) may reduce the number of securities to be purchased, or the price of the securities, if the amendment is made on or after the date which is four business days after the date the original agreement was entered into.

(4) The parties to a bought deal agreement referred to in paragraph 7.2(a) may provide for a different type of securities to be purchased by the underwriter or underwriters, and a different price for the securities, if

(a) in the case where a different type of securities is to be substituted in whole or in part for the securities that were the subject of the original agreement, or offered in addition to the securities that were the subject of the original agreement, the aggregate dollar amount of the securities to be purchased by the underwriter or underwriters on a firm commitment basis under the amended agreement is the same as the aggregate dollar amount of the securities that were to be purchased by the underwriter or underwriters on a firm commitment basis under the original agreement or under an agreement amended in accordance with subsection (2);

(b) before a solicitation of an expression of interest in the different type of securities and immediately upon entering into the amendment to the original agreement, the issuer issued and filed a news release announcing the amendment;

(c) the issuer files a preliminary short form prospectus for the different type of securities pursuant to this Instrument within four business days after the date that the original agreement was entered into;

(d) no previous amendment has been made to the original agreement to provide for a different type of securities to be purchased; and

(e) the amended agreement is a bought deal agreement and the conditions in section 7.2 are complied with.

(5) The parties to a bought deal agreement referred to in paragraph 7.2(a) may add or remove an underwriter or adjust the number of securities to be purchased by each underwriter on a proportionate basis, if

(a) the aggregate dollar amount of the securities to be purchased by the underwriter or underwriters on a firm commitment basis under the amended agreement is the same as the aggregate dollar amount of the securities that were to be purchased by the underwriter or underwriters on a firm commitment basis under the original agreement or under an agreement amended in accordance with subsection (2); and

(b) the amended agreement is a bought deal agreement and the conditions in section 7.2 are complied with.

(6) The parties to a bought deal agreement referred to in paragraph 7.2(a) may replace the bought deal agreement with a more extended form of underwriting agreement that includes, without limitation, termination rights, if the more extended form of underwriting agreement complies with the terms and conditions that apply to a bought deal agreement under this Part.

(7) The parties to a bought deal agreement referred to in paragraph 7.2(a) may agree to terminate the agreement if the parties decide not to proceed with the distribution.

7.4 Confirmation Clause

(1) A bought deal agreement referred to in paragraph 7.2(a) must not contain a confirmation clause unless

(a) under the bought deal agreement, the lead underwriter must provide the issuer with a copy of the agreement that has been signed by the lead underwriter;

(b) the issuer signs the bought deal agreement on the same day that the lead underwriter provides the agreement in accordance with paragraph (a);

(c) the lead underwriter has discussions with other investment dealers regarding their participation in the distribution as additional underwriters; and

(d) on the business day after the day that the lead underwriter provides the agreement in accordance with paragraph (a), the lead underwriter provides notice in writing to the issuer that

(i) the lead underwriter has confirmed the terms of the bought deal agreement, or

(ii) the lead underwriter will not be confirming the terms of the bought deal agreement and the agreement has been terminated.

(2) Where an issuer has entered into a bought deal agreement that has been confirmed in accordance with subsection (1), the prospectus requirement does not apply to a solicitation of an expression of interest made before the issuance of a receipt for a preliminary short form prospectus for securities to be qualified for distribution under a short form prospectus pursuant to this Instrument, or for securities to be issued or transferred pursuant to an over allotment option that are qualified for distribution under a short form prospectus pursuant to this Instrument, if

(a) before the solicitation,

(i) the bought deal agreement has fixed the terms of the distribution, including, for greater certainty, the number and type of securities and the price per security, and requires that the issuer file a preliminary short form prospectus for the securities not more than four business days after the date that the lead underwriter provides the notice in accordance with subparagraph (1)(d)(i); and

(ii) immediately after the lead underwriter provides the notice in accordance with subparagraph (1)(d)(i), the issuer issues the news release referred to in subparagraph 7.2(a)(iii),

(b) the issuer files a preliminary short form prospectus for the securities pursuant to this Instrument within four business days after the date that the lead underwriter provides the notice in accordance with subparagraph (1)(d)(i),

(c) 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

that, in response to the solicitation, expressed an interest in acquiring the securities, and

(d) except for a bought deal agreement under paragraph 7.2(a), no agreement of purchase and sale for the securities is entered into until the short form prospectus has been filed and a receipt has been issued.

7.5 Standard Term Sheets after Announcement of Bought Deal but before a Receipt for a Preliminary Short Form Prospectus

(1) An investment dealer that provides a standard term sheet to a potential investor before the issuance of a receipt for a preliminary short form prospectus is exempt from the prospectus requirement with respect to providing the standard term sheet if

(a) the standard term sheet complies with subsections (2) and (3);

(b) the issuer is relying on the exemption in section 7.2 and has complied with paragraph 7.2(a);

(c) other than contact information for the investment dealer or underwriters, all information in the standard term sheet concerning the issuer, the securities or the offering

(i) is disclosed in, or derived from,

(A) the news release described in subparagraph 7.2(a)(iii), or

(B) a document referred to in subsection 11.1(1) of Form 44-101F1 that the issuer has filed, or

(ii) will be disclosed in, or derived from, the preliminary short form prospectus that is subsequently filed; and

(d) the preliminary short form prospectus will be filed in the local jurisdiction.

(2) A standard term sheet provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

> A preliminary short form prospectus containing important information relating to the securities described in this document has not yet been filed with the securities regulatory authorit*[y/ies]* in *[each of/certain of the provinces/provinces and territories of Canada]*.

Copies of the preliminary short form prospectus may be obtained from *[insert contact information for the investment dealer or underwriters]*. There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final short form prospectus has been issued.

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary short form prospectus, final short form prospectus and any amendment, for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

(3) A standard term sheet provided under subsection (1) may contain only the information referred to in subsection (2) and the information referred to in subsection 13.5(3) of NI 41-101.

7.6 Marketing Materials after Announcement of Bought Deal but before a Receipt for a Preliminary Short Form Prospectus

(1) An investment dealer that provides marketing materials to a potential investor before the issuance of a receipt for a preliminary short form prospectus is exempt from the prospectus requirement with respect to providing the marketing materials if

(a) the marketing materials comply with subsections (2) to (8);

(b) the issuer is relying on the exemption in section 7.2 and has complied with paragraph 7.2(a);

(c) other than contact information for the investment dealer or underwriters and any comparables, all information in the marketing materials concerning the issuer, the securities or the offering

(i) is disclosed in, or derived from,

(A) the news release described in subparagraph 7.2(a)(iii), or

(B) a document referred to in subsection 11.1(1) of Form 44-101F1 that the issuer has filed, or

(ii) will be disclosed in, or derived from, the preliminary short form prospectus that is subsequently filed;

(d) a template version of the marketing materials is approved in writing by the issuer and the lead underwriter before the marketing materials are provided;

(e) a template version of the marketing materials is filed on or before the day that the marketing materials are first provided;

(f) the preliminary short form prospectus will be filed in the local jurisdiction; and

(g) 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 that received the marketing materials and expressed an interest in acquiring the securities.

(2) If a template version of the marketing materials is approved in writing by the issuer and lead underwriter under paragraph (1)(d) and filed under paragraph (1)(e), an investment dealer may provide a limited use version of the marketing materials that

(a) has a date that is different than the template version;

(b) contains a cover page referring to the investment dealer or underwriters or a particular investor or group of investors;

(c) contains contact information for the investment dealer or underwriters; or

(d) has text in a format, including the type's font, colour or size, that is different than the template version.

(3) If a template version of the marketing materials is divided into separate sections for separate subjects and is approved in writing by the issuer and lead underwriter under paragraph (1)(d), and that template version is filed under paragraph (1)(e), an investment dealer may provide a limited use version of the marketing materials that includes only one or more of those separate sections.

(4) The issuer may remove any comparables, and any disclosure relating to those comparables, from the template version of the marketing materials before filing it under paragraph (1)(e) or (7)(a) if

(a) the comparables, and any disclosure relating to the comparables, are in a separate section of the template version of the marketing materials;

(b) the template version of the marketing materials that is filed contains a note advising that the comparables, and any disclosure relating to the comparables, were removed in accordance with this subsection, provided that the note appears immediately after where the removed comparables and related disclosure would have been;

(c) if the preliminary short form prospectus is subsequently filed in the local jurisdiction, a complete template version of the marketing materials is delivered to the securities regulatory authority; and

(d) the complete template version of the marketing materials contains the disclosure referred to in paragraph 13.7(4)(d) of NI 41-101.

(5) Marketing materials provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

> A preliminary short form prospectus containing important information relating to the securities described in this document has not yet been filed with the securities regulatory authorit*[y/ies]* in *[each of/certain of the provinces/provinces and territories of Canada]*. A copy of the preliminary short form prospectus is required to be delivered to any investor that received this document and expressed an interest in acquiring the securities.
>
> There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final short form prospectus has been issued.
>
> This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary short form prospectus, final short form prospectus and any amendment, for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

(6) If marketing materials are provided before the issuance of a receipt for a preliminary short form prospectus under subsection (1), the issuer must include the template version of the marketing materials filed under paragraph (1)(e) in its final short form prospectus or incorporate by reference the template version of the marketing materials filed under paragraph (1)(e) into its final short form prospectus in the manner described in subsection 11.6(1) of Form 44-101F1.

(7) If the final short form prospectus or any amendment modifies a statement of a material fact that appeared in marketing materials provided before the issuance of a receipt for the preliminary short form prospectus under subsection (1), the issuer must

(a) prepare and file, at the time the issuer files the final short form prospectus or any amendment, a revised template version of the marketing materials that is blacklined to show the modified statement, and

(b) include in the final short form prospectus, or any amendment, the disclosure required by subsection 11.6(3) of Form 44-101F1.

(8) A revised template version of the marketing materials filed under subsection (7) must comply with section 13.8 of NI 41-101.

(9) If marketing materials are provided before the issuance of a receipt for a preliminary short form prospectus under subsection (1) but the issuer does not comply with subsection (6), the marketing materials are deemed for purposes of securities legislation to be incorporated into the issuer's final short form prospectus as of the date of the final short form prospectus to the extent not otherwise expressly modified or superseded by a statement contained in the final short form prospectus.

7.7 Road Shows after Announcement of Bought Deal but before a Receipt for a Preliminary Short Form Prospectus

(1) An investment dealer that conducts a road show for potential investors before the issuance of a receipt for a preliminary short form prospectus is exempt from the prospectus requirement with respect to the road show if

(a) the road show complies with subsections (2) to (4);

(b) the issuer is relying on the exemption in section 7.2 and has complied with paragraph 7.2(a); and

(c) the preliminary short form prospectus will be filed in the local jurisdiction.

(2) Subject to section 7.8, an investment dealer must not provide marketing materials to an investor attending a road show conducted under subsection (1) unless the marketing materials are provided in accordance with section 7.6.

(3) If an investment dealer conducts a road show, the investment dealer must establish and follow reasonable procedures to

(a) ask any investor attending the road show in person, by telephone conference call, on the internet or by other electronic means to provide their name and contact information;

(b) keep a record of any information provided by the investor; and

(c) upon issuance of a receipt for the preliminary prospectus, provide the investor with a copy of the preliminary prospectus and any amendment.

(4) If an investment dealer permits an investor, other than an accredited investor, to attend a road show, the investment dealer must commence the road show with the oral reading of the following statement or a statement to the same effect:

> This presentation does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary prospectus, the final prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

7.8 Exception from Filing and Incorporation Requirements for Road Shows for Certain U.S. Cross-border Offerings

(1) Subject to subsections (2) to (4), if an investment dealer provides marketing materials to a potential investor in connection with a road show for a U.S. cross border offering, the following provisions do not apply to the template version of the marketing materials relating to the road show:

(a) paragraph 7.6(1)(e);

(b) subsections 7.6(6) to (9);

(c) paragraphs 11.6(1)(b) and (c), paragraph 11.6(3)(b) and subsection 11.6(4) of Form 44-101F1.

(2) Subsection (1) does not apply unless

(a) the underwriters have a reasonable expectation that the securities offered under the U.S. cross border offering will be sold primarily in the United States of America;

(b) the issuer and the underwriters who sign the final short form prospectus filed in the local jurisdiction provide a contractual right containing the language set out in subsection 36A.1(5) of Form 41-101F1, or words to the same effect, except that the language may specify that the contractual right does not apply to any comparables provided in accordance with subsection (3); and

(c) if the prospectus is filed in the local jurisdiction, the template version of the marketing materials relating to the road show is delivered to the securities regulatory authority.

(3) If the template version of the marketing materials relating to the road show contains comparables, the template version of the marketing materials must contain the disclosure referred to in paragraph 13.7(4)(d) of NI 41-101.

(4) For greater certainty, subsection (1) does not apply to marketing materials other than the marketing materials provided in connection with the road show.

PART 8 EXEMPTION

8.1 Exemption

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

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

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

(4) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

8.2 Evidence of Exemption

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

(2) The issuance of a receipt for a final short form prospectus or an amendment to a final short form prospectus is not evidence that the exemption has been granted unless

(a) the person or company that sought the exemption sent to the regulator

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

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

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

PART 9 TRANSITION, REPEAL AND EFFECTIVE DATE

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

9.2 Repeal – National Instrument 44-101 *Short Form Prospectus Distributions* and Form 44-101F3 *Short Form Prospectus*, both of which came into force on December 31, 2000, are repealed on December 30, 2005.

9.3 Effective Date – This Instrument comes into force on December 30, 2005.

APPENDIX A NOTICE DECLARING INTENTION TO BE QUALIFIED UNDER NATIONAL INSTRUMENT 44 101 SHORT FORM PROSPECTUS DISTRIBUTIONS ("NI 44-101")

[date]

To: [the issuer's notice regulator (as defined in subsection 2.8(2) of NI 44-101), and any other securities regulatory authority or regulator of a jurisdiction of Canada with whom the issuer may voluntarily file this notice]

[name of issuer] (the "Issuer") intends to be qualified to file a short form prospectus under NI 44-101. The Issuer acknowledges that it must satisfy all applicable qualification criteria prior to filing a preliminary short form prospectus. This notice does not evidence the Issuer's intent to file a short form prospectus, to enter into any particular financing or transaction or to become a reporting issuer in any jurisdiction. This notice will remain in effect until withdrawn by the Issuer.

[signature of Issuer]
[name and title of duly authorized signing officer of Issuer]

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FORM 44-101F1
Short Form Prospectus

INSTRUCTIONS

(1) The objective of the short form prospectus is to provide information concerning the issuer that an investor needs in order to make an informed investment decision. This Form sets out specific disclosure requirements that are in addition to the general requirement under securities legislation to provide full, true and plain disclosure of all material facts relating to 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 the Instrument or NI 41-101 bear that definition or interpretation. Other definitions are set out in NI 14-101.

(3) In determining the degree of detail required, a standard of materiality must be applied. Materiality is a matter of judgement in the particular circumstance, and is 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 must be considered individually rather than on a net basis, if the items have an offsetting effect.

(4) Unless an item specifically requires disclosure only in the preliminary short form prospectus, the disclosure requirements set out in this Form apply to both the preliminary short form prospectus and the short form prospectus. Details concerning the price and other matters dependent upon or relating to price, such as the number of securities being distributed, may be left out of the preliminary short form prospectus, along with specifics concerning the plan of distribution, to the extent that these matters have not been decided.

(5) Any information required in a short form prospectus may be incorporated by reference in the short form prospectus, other than confidential material change reports. Clearly identify in a short form prospectus any document incorporated by reference. If an excerpt of a document is incorporated by reference, clearly identify the excerpt in the short form prospectus by caption and paragraph of the document. Any material incorporated by reference in a short form prospectus is required under sections 4.1 and 4.2 of the Instrument 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 an easy to read format. The presentation of information should comply with the plain language principles listed in section 4.2 of Companion Policy 44-101CP Short Form Prospectus Distributions. If technical terms are required, clear and concise explanations should be included.

(7) No reference need be made to inapplicable items and, unless otherwise required in this Form, negative answers to items may be omitted.

(8) Where the term "issuer" is used, it may be necessary, in order to meet the requirement for full, true and plain disclosure of all material facts, to also include disclosure with respect to persons or companies that the issuer is required, under the issuer's GAAP, to consolidate, proportionately consolidate or account for using the equity method (for example, including "subsidiaries" as that term is used in Canadian GAAP applicable to publicly accountable enterprises). If it is more likely than not that a person or company will become an entity that the issuer will be required, under the issuer's GAAP, to consolidate, proportionately consolidate or account for using the equity method, it may be necessary to also include disclosure with respect to the person or company.

(9) An issuer that is a special purpose entity may have to modify the disclosure items to reflect the special purpose nature of its business.

(10) If disclosure is required as of a specific date and there has been a material change or change that is otherwise significant in the required information subsequent to that date, present the information as of the date of the change or a date subsequent to the change instead.

(11) If the term "class" is used in any item to describe securities, the term includes a series of a class.

(12) Disclosure in a preliminary short form prospectus or short form prospectus must be consistent with NI 51-101 if the issuer is engaged in oil and gas activities (as defined in NI 51-101).

(13) Forward looking information included in a short form prospectus must comply with section 4A.2 of NI 51-102 and must include the disclosure described in section 4A.3 of NI 51-102. In addition to the foregoing, FOFI or a financial outlook, each as defined in NI 51-102, included in a short form prospectus must comply with Part 4B of NI 51-102. If the forward looking information relates to an issuer or other entity that is not a reporting issuer, section 4A.2, section 4A.3 and Part 4B of NI 51-102 apply as if the issuer or other entity were a reporting issuer.

(14) If an issuer discloses financial information in a short form prospectus in a currency other than the Canadian dollar, prominently display the presentation currency.

(15) Except as otherwise required or permitted, include information in a narrative form. The issuer may include graphs, photographs, maps, artwork or other forms of illustration, if relevant to the business of the issuer or the distribution and not misleading. Include descriptive headings. Except for information that appears in a summary, information required under more than one Item need not be repeated.

(16) Certain requirements in this Form make reference to requirements in another instrument or form. Unless this Form states otherwise, issuers must also follow the instructions or requirements in the other instrument or form.

(17) Wherever this Form uses the word "subsidiary", the term includes companies and other types of business organizations such as partnerships, trusts, and other unincorporated business entities.

(18) Issuers must supplement any disclosure incorporated by reference into a short form prospectus if that supplemented disclosure is necessary to ensure that the short form prospectus provides full, true and plain disclosure of all material facts related to the securities to be distributed as required under Item 18 of this Form.

Item 1 - Cover Page Disclosure

1.1 Required Language – State in italics at the top of the cover page the following:

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

1.2 Preliminary 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

(a) inserting the names of each jurisdiction in which the issuer intends to offer securities under the short form prospectus;

(b) stating that the filing has been made in each of the provinces of Canada or each of the provinces and territories of Canada; or

(c) identifying the filing jurisdictions by exception (i.e., every province of Canada or every province and territory of Canada, except [excluded jurisdiction]).

1.3 Disclosure Concerning Documents Incorporated by Reference – State the following in italics on the cover page, with the first sentence in boldface type and the bracketed information completed:

> "Information has been incorporated by reference in this prospectus from documents filed with securities commissions or similar authorities in Canada. Copies of the documents incorporated herein by reference may be obtained on request without charge from the secretary of the issuer at [insert complete address and telephone number], and are also available electronically at www.sedar.com.

1.4 Basic Disclosure about the Distribution – State the following, immediately below the disclosure required under sections 1.1, 1.2 and 1.3, with the bracketed information completed:

[PRELIMINARY] SHORT FORM PROSPECTUS

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

(Date)

[Name of Issuer]

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

1.5 Name and Address of Issuer – State the full corporate name of the issuer or, if the issuer is an unincorporated entity, the full name under which the entity exists and carries on business and the address(es) of the issuer's head and registered office.

1.6 Distribution

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

	Price to public (a)	Underwriting discounts or commissions (b)	Proceeds to issuer or selling securityholders (c)
Per security			
Total			

(2) Describe the terms of any over allotment option or any option to increase the size of the distribution before closing.

(2.1) If there may be an over allocation position provide the following disclosure:

A purchaser who acquires *[insert type of securities qualified for distribution under the prospectus]* forming part of the underwriters' over allocation position acquires those securities under this short form prospectus, regardless of whether the over allocation position is ultimately filled through the exercise of the over allotment option or secondary market purchases.

(3) If the distribution of the securities is to be on a best efforts basis, and a minimum offering amount

(a) is required for the issuer to achieve one or more of the purposes of the offering, provide totals for both the minimum and maximum offering amount, or

(b) is not required for the issuer to achieve any of the purposes of the offering, state the following in boldface type:

"There is no minimum amount of funds that must be raised under this offering. This means that the issuer could complete this offering after raising only a small proportion of the offering amount set out above."

(3.1) If a minimum subscription amount is required from each subscriber, provide details of the minimum subscription requirements in the table required under subsection (1).

(4) If debt securities are distributed at a premium or a discount, state in boldface type the effective yield if held to maturity.

(5) Disclose separately those securities that are underwritten, those under option and those to be sold on a best efforts basis and, in the case of a best efforts distribution, the latest date that the distribution is to remain open.

(6) In column (b) of the table, disclose only commissions paid or payable in cash by the issuer or selling securityholder and discounts granted. Set out in a note to the table

(a) commissions or other consideration paid or payable by persons or companies other than the issuer or selling securityholder;

(b) consideration other than discounts granted and cash paid or payable by the issuer or selling securityholder, other than securities described in section 1.10 below; and

(c) any finder's fees or similar required payment.

(7) If a security is being distributed for the account of a selling securityholder, state the name of the selling securityholder and a cross reference to the applicable section in the short form prospectus where further information about the selling securityholder is provided. State the portion of expenses of the distribution to be borne by the selling securityholder and, if none of the expenses of the distribution are being borne by the selling securityholder, include a statement to that effect and discuss the reasons why this is the case.

INSTRUCTIONS

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

(2) If debt securities are being distributed, also express the information in the table as a percentage.

1.6.1 *Offering price in currency other than Canadian dollar* – If the offering price of the securities being distributed is disclosed in a currency other than the Canadian dollar, disclose in boldface type the currency.

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

(a) the discount allowed or commission payable to the underwriter;

(b) any other compensation payable to the underwriter and, if applicable, that the underwriter's compensation will be increased or decreased by the amount by which the aggregate price paid for the securities by the purchasers exceeds or is less than the gross proceeds paid by the underwriter to the issuer or selling securityholder;

(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 from purchaser to purchaser 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 securityholder.

1.7.1 Pricing Disclosure – If the offering price or the number of securities being distributed, or an estimate of the range of the offering price or of the number of securities being distributed, has been publicly disclosed in a jurisdiction or a foreign jurisdiction as of the date of the preliminary short form prospectus, include this information in the preliminary short form prospectus.

1.8 Reduced Price Distributions – If an underwriter wishes to be able to decrease the price at which securities are distributed for cash from the initial offering price disclosed in the short form prospectus, include in boldface type a cross reference to the section in the short form prospectus where disclosure concerning the possible price decrease is provided.

1.9 Market for Securities

(1) Identify the exchange(s) and quotation system(s), if any, on which securities of the issuer of the same class or series 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 expected to exist upon completion of the distribution, state the following in boldface type:

"There is no market through which the securities may be sold and purchasers may not be able to resell securities purchased under the short form prospectus. This may affect the pricing of the securities in the secondary market, the transparency and availability of trading prices, the liquidity of the securities, and the extent of issuer regulation. See Risk Factors."

1.10 Underwriter(s)

(1) State the name of each underwriter.

(2) If applicable, comply with the requirements of NI 33-105 for front 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 boldface type to the effect that no underwriter has been involved in the preparation of the short form prospectus or performed any review of the contents of the short form prospectus.

(6) Provide the following tabular information:

Underwriter's Position	Maximum size or number of securities available	Exercise period or Acquisition date	Exercise price or average acquisition price
Over-allotment option			
Compensation option			
Any other option granted by issuer or insider of issuer to underwriter			
Total securities under option issuable to underwriter			
Other compensation securities issuable to underwriter			

INSTRUCTION

If the underwriter has been granted compensation securities, state, in a footnote, whether the prospectus qualifies the grant of all or part of the compensation securities and provide a cross reference to the applicable section in the prospectus where further information about the compensation securities is provided.

1.11 Enforcement of Judgments Against Foreign Persons or Companies

If the issuer, a director of the issuer, a selling securityholder, or any other person or company that is signing or providing a certificate under Part 5 of NI 41-101 or other securities legislation, or any person or company for whom the issuer is required to file a consent under Part 10 of NI 41-101, 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 [issuer, director of the issuer, selling securityholder, or other person or company] is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada.

[the person or company named below] has appointed the following agent(s) for service of process:

Name of Person or Company	Name and Address of Agent

Purchasers are advised that it may not be possible for investors to enforce judgments obtained in Canada against any person or company that is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada, even if the party has appointed an agent for service of process.

1.12 Restricted Securities

(1) Describe the number and class or classes of restricted securities being distributed using the appropriate restricted security terms in the same type face and type size as the rest of the description.

(2) If the securities being distributed are restricted securities and the holders of the securities do not have the right to participate in a takeover bid made for other equity securities of the issuer, disclose that fact.

1.13 Earnings Coverage Ratios – If any of the earnings coverage ratios required to be disclosed under section 6.1 is less than one to one, disclose this fact in boldface type.

Item 2 - Summary Description of Business

2.1 Summary of Description of Business – Provide a brief summary on a consolidated basis of the business carried on and intended to be carried on by the issuer.

Item 3 - Consolidated Capitalization

3.1 Consolidated Capitalization – Describe any material change in, and the effect of the material change on, the share and loan capital of the issuer, on a consolidated basis, since the date of the issuer's financial statements most recently filed in accordance with the applicable CD rule, including any material change that will result from the issuance of the securities being distributed under the short form prospectus.

Item 4 - Use of Proceeds

4.1 Proceeds

(1) State the estimated net proceeds to be received by the issuer or selling securityholder or, in the case of a non fixed price distribution or a distribution to be made on a best efforts basis, the minimum amount, if any, of net proceeds to be received by the issuer or selling securityholder from the sale of the securities distributed.

(2) State the particulars of any provision or arrangements made for holding any part of the net proceeds of the distribution in trust or escrow subject to the fulfillment of conditions.

(3) If the short form prospectus is used for a special warrant or similar transaction, state the amount that has been received by the issuer of the special warrants or similar securities on the sale of the special warrants or similar securities.

4.2 Principal Purposes – Generally

(1) Describe in reasonable detail and, if appropriate, using tabular form, each of the principal purposes, with approximate amounts, for which the net proceeds will be used by the issuer.

(2) If the closing of the distribution is subject to a minimum offering amount, provide disclosure of the use of proceeds for the minimum and maximum offering amounts.

(3) If the following apply, disclose how the proceeds will be used by the issuer, with reference to various potential thresholds of proceeds raised, in the event that the issuer raises less than the maximum offering amount:

(a) the closing of the distribution is not subject to a minimum offering amount;

(b) the distribution is to be on a best efforts basis; and

(c) the issuer has significant short term non discretionary expenditures including those for general corporate purposes, or significant short term capital or contractual commitments, and may not have other readily accessible resources to satisfy those expenditures or commitments.

(4) If the issuer is required to provide disclosure under subsection (3), the issuer must discuss, in respect of each threshold, the impact, if any, of raising each threshold amount on its liquidity, operations, capital resources and solvency.

INSTRUCTIONS

If the issuer is required to disclose the use of proceeds at various thresholds under subsections 4.2(3) and (4), include as an example a threshold that reflects the receipt of 15% of the offering or less.

4.3 Principal Purposes – Indebtedness

(1) If more than 10% of the net proceeds will be used to reduce or retire indebtedness and the indebtedness was incurred within the two preceding years, describe the principal purposes for which the proceeds of the indebtedness were used.

(2) If the creditor is an insider, associate or affiliate of the issuer, identify the creditor and the nature of the relationship to the issuer and disclose the outstanding amount owed.

4.4 Principal Purposes – Asset Acquisition

(1) If more than 10% of the net proceeds are to be used to acquire assets, describe the assets.

(2) If known, disclose the particulars of the purchase price being paid for or being allocated to the assets or categories of assets, including intangible assets.

(3) If the vendor of the assets is an insider, associate or affiliate of the issuer, identify the vendor and the nature of the relationship to the issuer, and disclose the method used in determining the purchase price.

(4) Describe the nature of the title to or interest in the assets to be acquired by the issuer.

(5) If part of the consideration for the acquisition of the assets consists of securities of the issuer, give brief particulars of the class, number or amount, voting rights, if any, and other appropriate information relating to the securities, including particulars of the issuance of securities of the same class within the two preceding years.

4.5 Principal Purposes – Insiders, etc. – If an insider, associate or affiliate of the issuer will receive more than 10% of the net proceeds, identify the insider, associate or affiliate and the nature of the relationship to the issuer, and disclose the amount of net proceeds to be received.

4.6 Principal Purposes – Research and Development – If more than 10% of the net proceeds from the distribution will be used for research and development of products or services, describe

(a) the timing and stage of research and development programs that management anticipates will be reached using such proceeds,

(b) the major components of the proposed programs that will be funded using the proceeds from the distribution, including an estimate of anticipated costs,

(c) if the issuer is conducting its own research and development, is subcontracting out the research and development or is using a combination of those methods, and

(d) the additional steps required to reach commercial production and an estimate of costs and timing.

4.7 Business Objectives and Milestones

(1) State the business objectives that the issuer expects to accomplish using the net proceeds of the distribution under section 4.1.

(2) Describe each significant event that must occur for the business objectives described under subsection (1) to be accomplished and state the specific time period in which each event is expected to occur and the costs related to each event.

4.8 Unallocated Funds in Trust or Escrow

(1) Disclose that unallocated funds will be placed in a trust or escrow account, invested or added to the working capital of the issuer.

(2) Give details of the arrangements made for, and the persons or companies responsible for,

(a) the supervision of the trust or escrow account or the investment of unallocated funds, and

(b) the investment policy to be followed.

4.9 Other Sources of Funding – If any material amounts of other funds are to be used in conjunction with the proceeds, state the amounts and sources of the other funds.

4.10 Financing by Special Warrants, etc.

(1) If the short form prospectus is used to qualify the distribution of securities issued upon the exercise of special warrants or the exercise of other securities acquired on a prospectus exempt basis, describe the principal purposes for which the proceeds of the prospectus exempt financing were used or are to be used.

(2) If all or a portion of the funds have been spent, explain how the funds were spent.

Item 5 - Plan of Distribution

5.1 *Disclosure of Conditions to Underwriters' Obligations* – 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,

(a) include a statement in substantially the following form, with the bracketed information completed and with modifications necessary to reflect the terms of the distribution:

"Under an agreement dated [insert date of agreement] between [insert name of issuer or selling securityholder] and [insert name(s) of underwriter(s)], as underwriter[s], [insert name of issuer or selling securityholder] has agreed to sell and the underwriter[s] [has/have] agreed to purchase on [insert closing date] the securities at a price of [insert offering price], payable in cash to [insert name of issuer or selling securityholder] against delivery. The obligations of the underwriter[s] under the agreement may be terminated at [its/their] discretion on the basis of [describe any "market out", "disaster out", "material change out" or similar provision] 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.", and

(b) describe any other conditions and indicate any information known that is relevant to whether such conditions will be satisfied.

5.2 *Best Efforts Offering* – Outline briefly the plan of distribution of any securities being distributed other than on the basis described in section 5.1.

5.3 *Determination of Price* – Disclose the method by which the distribution price has been or will be determined and, if estimates have been provided, explain the process for determining the estimates.

5.4 *Stabilization* – If the issuer, a selling securityholder or an underwriter knows or has reason to believe that there is an intention to over allot or that the price of any security may be stabilized to facilitate the distribution of the securities, describe the nature of these transactions, including the anticipated size of any over allocation position, and explain how the transactions are expected to affect the price of the securities.

5.4.1 *Underwriting Discounts* – Interests of Management and Others in Material Transactions – Disclose any material underwriting discounts or commissions on the sale of securities by the issuer if any of the persons or companies listed under section 13.1 of Form 51-102F2

were or are to be an underwriter or are associates, affiliates or partners of a person or company that was or is to be an underwriter.

5.5 *Minimum Distribution* – If securities are being distributed on a best efforts basis and minimum funds are to be raised, state

(a) the minimum funds to be raised,

(b) that the issuer must appoint a registered dealer authorized to make the distribution, a Canadian financial institution, or a lawyer who is a practicing member in good standing with a law society of a jurisdiction in which the securities are being distributed, or a notary in Québec, to hold in trust all funds received from subscriptions until the minimum amount of funds stipulated in paragraph (a) has been raised, and

(c) that if the minimum amount of funds is not raised within the distribution period, the trustee must return the funds to the subscribers without any deduction.

5.5.1 *Approvals* – If the proceeds of the distribution will be used to substantially fund a material undertaking that would constitute a material departure from the business or operations of the issuer and the issuer has not obtained all material licences, registrations and approvals necessary for the stated principal use of proceeds, include a statement that

(a) the issuer must appoint a registered dealer authorized to make the distribution, a Canadian financial institution, or a lawyer who is a practicing member in good standing with a law society of a jurisdiction in which the securities are being distributed, or a notary in Québec, to hold in trust all funds received from subscriptions until all material licences, registrations and approvals necessary for the stated principal use of proceeds have been obtained, and

(b) if all material licences, registrations and approvals necessary for the operation of the material undertaking have not been obtained within 90 days from the date of receipt of the final short form prospectus, the trustee must return the funds to subscribers.

5.6 *Reduced Price Distributions* – If the underwriter may decrease the offering price after the underwriter has made a reasonable effort to sell all of the securities at the initial offering price disclosed in the short form prospectus in accordance with the procedures permitted by the Instrument, disclose this fact and that the compensation realised by the underwriter will be decreased by the amount that the aggregate price paid by purchasers for the securities is less than the gross proceeds paid by the underwriter to the issuer or selling securityholder.

5.7 *Listing Application* – If application has been made to list or quote the securities being distributed, include a statement in substantially the following form with the bracketed information completed:

> "The issuer has applied to [list/quote] the securities distributed under this short form prospectus on [name of exchange or other market]. [Listing/Quotation] will be subject to the issuer fulfilling all the listing requirements of [name of exchange or other market]."

5.8 *Conditional Listing Approval* – If application has been made to list or quote the securities being distributed and conditional listing approval has been received, include a statement in substantially the following form, with the bracketed information completed:

> "[name of exchange or other market] has conditionally approved the [listing/quotation] of these securities. [Listing/Quotation] is subject to the [name of the issuer] fulfilling all of the requirements of the [name of exchange or market] on or before [date], [including distribution of these securities to a minimum number of public securityholders.]"

5.9 *Constraints* – If there are constraints imposed on the ownership of securities of the issuer to ensure that the issuer has a required level of Canadian ownership, describe the mechanism, if any, by which the level of Canadian ownership of the securities of the issuer will be monitored and maintained.

5.10 *Special Warrants Acquired by Underwriters or Agents* – Disclose the number and dollar value of any special warrants acquired by any underwriter or agent and the percentage of the distribution represented by those special warrants.

Item 6 - Earnings Coverage Ratios

6.1 *Earnings Coverage Ratios*

(1) If the securities being distributed are debt securities having a term to maturity in excess of one year or are preferred shares, disclose the following earnings coverage ratios adjusted in accordance with subsection (2):

(a) the earnings coverage ratio based on the most recent 12 month period included in the issuer's current annual financial statements included in the short form prospectus,

(b) if there has been a change in year end and the issuer's most recent financial year is less than nine months in length, the earnings coverage calculation for its old financial year, and

(c) the earnings coverage ratio based on the 12 month period ended on the last day of the most recently completed period for which an interim financial report of the issuer has been included in the short form prospectus.

(2) Adjust the ratios referred to in subsection (1) to reflect

(a) the issuance of the securities being distributed under the short form prospectus, based on the price at which these securities are expected to be distributed;

(b) in the case of a distribution of preferred shares,

(i) the issuance of all preferred shares since the date of the annual financial statements or interim financial report, and

(ii) the repurchase, redemption or other retirement of all preferred shares repurchased, redeemed, or otherwise retired since the date of the annual financial statements or interim financial report and of all preferred shares to be repurchased, redeemed, or otherwise retired from the proceeds to be realized from the sale of securities under the short form prospectus;

(c) the issuance of all financial liabilities, as defined in accordance with the issuer's GAAP since the date of the annual financial statements or interim financial report; and

(d) the repayment, redemption or other retirement of all financial liabilities, as defined in accordance with the issuer's GAAP, since the date of the annual financial statements or interim financial report and all financial liabilities to be repaid or redeemed from the proceeds to be realized from the sale of securities distributed under the short form prospectus.

(3) If the earnings coverage ratio is less than one to one, disclose in the short form prospectus the dollar amount of the numerator required to achieve a ratio of one to one.

(4) If the short form prospectus includes a pro forma income statement, calculate the pro forma earnings coverage ratios for the periods of the pro forma income statement, and disclose them in the short form prospectus.

INSTRUCTIONS

(1) Cash flow coverage may be disclosed but only as a supplement to earnings coverage and only if the method of calculation is fully disclosed.

(2) Earnings coverage is calculated by dividing an entity's profit or loss attributable to owners of the parent (the numerator) by its borrowing costs and dividend obligations (the denominator).

(3) For the earnings coverage calculation

(a) the numerator should be calculated using consolidated profit or loss attributable to owners of the parent before borrowing costs and income taxes;

(b) imputed interest income from the proceeds of a distribution should not be added to the numerator;

(c) for distributions of debt securities, the appropriate denominator is borrowing costs, after giving effect to the new debt securities issue and any retirement of obligations, plus the borrowing costs that have been capitalized during the period;

(d) 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 borrowing cost requirements, including the borrowing costs that have been capitalized during the period, less any retirement of obligations, and

(ii) dividends should be grossed up to a before tax equivalent using the issuer's effective income tax rate; and

(e) 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 securities being offered pursuant to the short form prospectus.

(4) The denominator represents a pro forma calculation of the aggregate of an issuer's borrowing cost obligations on all financial liabilities 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 financial liabilities and, in addition in the case of an issuance of preferred shares, all preferred shares issued, since the date of the annual financial statements or interim financial report;

(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; and

(c) the repayment or redemption of all financial liabilities since the date of the annual financial statements or interim financial report, all financial liabilities 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 financial statements or interim financial report 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.

(5) For debt securities, disclosure of earnings coverage shall include language similar to the following, with the bracketed and bulleted information completed:

"[Name of the issuer]'s borrowing cost requirements, after giving effect to the issue of [the debt securities to be distributed under the short form prospectus], amounted to $• for the 12 months ended •. [Name of the issuer]'s profit or loss attributable to owners of the parent before borrowing costs and income tax for the 12 months then ended was $•, which is • times [name of the issuer]'s borrowing cost requirements for this period."

(6) For preferred share issues, disclosure of earnings coverage shall include language similar to the following, with the bracketed and bulleted information completed:

"[Name of the issuer]'s dividend requirements on all of its preferred shares, after giving effect to the issue of [the preferred shares to be distributed under the short form prospectus], and adjusted to a before tax equivalent using an effective income tax rate of •%, amounted to $• for the 12 months ended •. [Name of the issuer]'s borrowing cost requirements for the 12 months then ended amounted to $•. [Name of the issuer]'s profit or loss attributable to owners of the parent before borrowing costs and income tax for the 12 months ended • was $•, which is • times [name of the issuer]'s aggregate dividend and borrowing cost requirements for this period."

(7) Other earnings coverage calculations may be included as supplementary disclosure to the required earnings coverage calculations outlined above as long as their derivation is disclosed and they are not given greater prominence than the required earnings coverage calculations.

Item 7 - Description of Securities Being Distributed

7.1 Equity Securities – If equity securities are being distributed, state the description or the designation of the class of the equity securities and describe all material attributes and characteristics that are not described elsewhere in a document incorporated by reference in the short form prospectus including, as applicable,

(a) dividend rights;

(b) voting rights;

(c) rights upon dissolution or winding up;

(d) pre emptive rights;

(e) conversion or exchange rights;

(f) redemption, retraction, purchase for cancellation or surrender provisions;

(g) sinking or purchase fund provisions;

(h) provisions permitting or restricting the issuance of additional securities and any other material restrictions; and

(i) provisions requiring a securityholder to contribute additional capital.

7.2 Debt Securities – If debt securities are being distributed, describe all material attributes and characteristics of the indebtedness and the security, if any, for the debt that are not described elsewhere in a document incorporated by reference in the short form prospectus, including

(a) provisions for interest rate, maturity and premium, if any;

(b) conversion or exchange rights;

(c) redemption, retraction, purchase for cancellation or surrender provisions;

(d) sinking or purchase fund provisions;

(e) the nature and priority of any security for the debt securities, briefly identifying the principal properties subject to lien or charge;

(f) provisions permitting or restricting the issuance of additional securities, the incurring of additional indebtedness and other material negative covenants including restrictions against payment of dividends and restrictions against giving security on the assets of the issuer or its subsidiaries and provisions as to the release or substitution of assets securing the debt securities;

(g) the name of the trustee under any indenture relating to the debt securities and the nature of any material relationship between the trustee or any of its affiliates and the issuer or any of its affiliates; and

(h) any financial arrangements between the issuer and any of its affiliates or among its affiliates that could affect the security for the indebtedness.

7.3 Asset backed Securities

(1) This section applies only if any asset backed securities are being distributed.

(2) Describe the material attributes and characteristics of the asset backed securities, including

(a) the rate of interest or stipulated yield and any premium,

(b) 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,

(c) provisions for the accumulation of cash flows to provide for the repayment of principal or return of capital,

(d) provisions permitting or restricting the issuance of additional securities and any other material negative covenants applicable to the issuer,

(e) 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

(f) 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.

(3) Provide financial disclosure that describes 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

(a) the composition of the pool as at the end of the period,

(b) profit and losses from the pool for the period presented on at least an annual basis or such shorter period as is reasonable given the nature of the underlying pool of assets,

(c) 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,

(d) servicing and other administrative fees, and

(e) any significant variances experienced in the matters referred to in paragraphs (a) through (d).

(4) Describe the type of 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.

(5) Describe any person or company who

(a) originated, sold or deposited a material portion of the financial assets comprising the pool, or has agreed to do so,

(b) 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,

(c) 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

(i) finding a replacement provider of the services at a cost comparable to the cost of the current provider is not reasonably likely,

(ii) a replacement provider of the services is likely to achieve materially worse results than the current provider,

(iii) the current provider of the services is likely to default in its service obligations because of its current financial condition, or

(iv) the disclosure is otherwise material,

(d) 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

(e) 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.

(6) Describe the general business activities and material responsibilities under the asset backed securities of a person or company referred to in subsection (5).

(7) Describe the terms of any material relationships between

(a) any of the persons or companies referred to in subsection (5) or any of their respective affiliates, and

(b) the issuer.

(8) Describe any provisions relating to termination of services or responsibilities of any of the persons or companies referred to in subsection (5) and the terms on which a replacement may be appointed.

(9) Describe 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 subsection (3) in a manner that will enable a reader to easily determine whether, and the extent to which, the events, covenants, standards and preconditions referred to in paragraph (2)(f) have occurred, are being satisfied or may be satisfied.

(2) If the information required under subsection (3) 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 so that the performance of the larger pool is representative of the performance of the pool of securitized assets, then an issuer may comply with subsection (3) by providing the financial disclosure 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 subsection (5) and the contractual arrangements underlying the asset backed securities is encouraged.

7.4 Derivatives –If derivatives are being distributed, describe fully the material attributes and characteristics of the derivatives, including

(a) the calculation of the value or payment obligations under the derivatives;

(b) the exercise of the derivatives;

(c) settlements that are the result of the exercise of the derivatives;

(d) the underlying interest of the derivatives;

(e) the role of a calculation expert in connection with the derivatives;

(f) the role of any credit supporter of the derivatives; and

(g) the risk factors associated with the derivatives.

7.5 Other Securities – If securities other than equity securities, debt securities, asset backed securities or derivatives are being distributed, describe fully the material attributes and characteristics of those securities.

7.6 Special Warrants, etc. – If the short form prospectus is used to qualify the distribution of securities issued upon the exercise of special warrants or other securities acquired on a prospectus exempt basis, state the following:

"The issuer has granted to each holder of a special warrant a contractual right of rescission of the prospectus exempt transaction under which the special warrant was initially acquired. The contractual right of rescission provides that if a holder of a special warrant who acquires another security of the issuer on exercise of the special warrant as provided for in the prospectus is, or becomes, entitled under the

securities legislation of a jurisdiction to the remedy of rescission because of the short form prospectus or an amendment to the short form prospectus containing a misrepresentation,

(a) the holder is entitled to rescission of both the holder's exercise of its special warrant and the private placement transaction under which the special warrant was initially acquired,

(b) the holder is entitled in connection with the rescission to a full refund of all consideration paid to the underwriter or issuer, as the case may be, on the acquisition of the special warrant, and

(c) if the holder is a permitted assignee of the interest of the original special warrant subscriber, the holder is entitled to exercise the rights of rescission and refund as if the holder was the original subscriber."

7.7 Restricted Securities

(1) If the issuer has outstanding, or proposes to distribute under a short form prospectus restricted securities, subject securities or securities that are, directly or indirectly, convertible into or exercisable or exchangeable for restricted securities or subject securities, provide a detailed description of

(a) the voting rights attached to the restricted securities that are the subject of the distribution or that will result from the distribution, either directly or following a conversion, exchange or exercise, and the voting rights, if any, attached to the securities of any other class of securities of the issuer that are the same as or greater than, on a per security basis, those attached to the restricted securities,

(b) any significant provisions under applicable corporate and securities law that do not apply to the holders of the restricted securities that are the subject of the distribution or that will result from the distribution, either directly or following a conversion, exchange or exercise, but do apply to the holders of another class of equity securities, and the extent of any rights provided in the constating documents or otherwise for the protection of holders of the restricted securities,

(c) any rights under applicable corporate law, in the constating documents or otherwise, of holders of restricted securities that are the subject of the distribution or that will result from the distribution, either directly or following a conversion, exchange or exercise, to attend, in person or by proxy,

meetings of holders of equity securities of the issuer and to speak at the meetings to the same extent that holders of equity securities are entitled, and

(d) how the issuer complied with, or basis upon which it was exempt from, the requirements of Part 12 of NI 41-101.

(2) If holders of restricted securities do not have all of the rights referred to in subsection (1) the detailed description referred to in that subsection must include, in boldface, a statement of the rights the holders do not have.

(3) If the issuer is required to include the disclosure referred to in subsection (1), state the percentage of the aggregate voting rights attached to the issuer's securities that will be represented by restricted securities after effect has been given to the issuance of the securities being offered.

7.8 Modification of Terms – Describe provisions about the modification, amendment or variation of any rights or other terms attached to the securities being distributed. If the rights of holders of securities may be modified otherwise than in accordance with the provisions attached to the securities or the provisions of the governing statute relating to the securities, explain briefly.

7.9 Ratings

(1) If the issuer has asked for and received a credit rating, or if the issuer is aware that it has received any other kind of rating, including a stability rating or a provisional rating, from one or more credit rating organizations for the securities being distributed, and the rating or ratings continue in effect, disclose

(a) each rating received from a credit rating organization,

(b) for each rating disclosed under paragraph (a), the name of the credit rating organization that has assigned the rating,

(c) a definition or description of the category in which each credit rating organization rated the securities 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 are not addressed by the rating,

(e) any factors or considerations identified by the credit rating organization as giving rise to unusual risks associated with the securities,

(f) a statement that a credit rating or a stability rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time by the credit rating organization, and

(g) any announcement made by, or any proposed announcement known to the issuer that is to be made by, a credit rating organization to the effect that the organization is reviewing or intends to revise or withdraw a rating previously assigned and required to be disclosed under this section.

(2) If payments were, or reasonably will be, made to a credit rating organization that provided a rating described in subsection (1), state that fact and state whether any payments were made to the credit rating organization in respect of any other service provided to the issuer by the credit rating organization during the last two years.

INSTRUCTIONS

There may be factors relating to a security that are not addressed by a credit rating organization when they give a rating. For example, in the case of cash settled derivative instruments, factors in addition to the creditworthiness of the issuer, 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. Rather than being addressed in the rating itself, these factors may be described by a credit rating organization by way of a superscript or other notation to a rating. Any such attributes must be discussed in the disclosure under this section.

A provisional rating received before the issuer's most recently completed financial year is not required to be disclosed under this section.

7.10 Other Attributes

(1) If the rights attaching to the securities being distributed are materially limited or qualified by the rights of any other class of securities, or if any other class of securities ranks ahead of or equally with the securities being distributed, include information about the other securities that will enable investors to understand the rights attaching to the securities being distributed.

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

INSTRUCTION

This Item requires only a brief summary of the provisions that are material from an investment standpoint. The provisions attaching to the securities being distributed or any other class of

securities do not need to be set out in full. They may, in the issuer's discretion, be attached as a schedule to the short form prospectus.

Item 7A - Prior Sales

7A.1 *Prior Sales* – For each class or series of securities of the issuer distributed under the short form prospectus and for securities that are convertible or exchangeable into those classes or series of securities, state, for the 12 month period before the date of the short form prospectus,

(a) the price at which the securities have been issued or are to be issued by the issuer or sold by the selling securityholder,

(b) the number of securities issued or sold at that price, and

(c) the date on which the securities were issued or sold.

7A.2 *Trading Price and Volume*

(1) For the following securities of the issuer that are traded or quoted on a Canadian marketplace, identify the marketplace and the price ranges and volume traded or quoted on the Canadian marketplace on which the greatest volume of trading or quotation for the securities generally occurs:

(a) each class or series of securities of the issuer distributed under the short form prospectus;

(b) securities of the issuer into which those classes or series of securities are convertible or exchangeable.

(2) For the following securities of the issuer that are not traded or quoted on a Canadian marketplace, but are traded or quoted on a foreign marketplace, identify the foreign marketplace and the price ranges and volume traded or quoted on the foreign marketplace on which the greatest volume or quotation for the securities generally occurs:

(a) each class or series of securities of the issuer distributed under the short form prospectus;

(b) securities of the issuer into which those classes or series of securities are convertible or exchangeable.

(3) Provide the information required under subsections (1) and (2) on a monthly basis for each month or, if applicable, partial months of the 12 month period before the date of the short form prospectus.

Item 8 - Selling Securityholder

8.1 Selling Securityholder

(1) If any securities are being distributed for the account of a securityholder, provide the following information for each securityholder:

1. The name.

2. The number or amount of securities owned, controlled or directed of the class being distributed.

3. The number or amount of securities of the class being distributed for the account of the securityholder.

4. The number or amount of securities of the issuer of any class to be owned, controlled or directed 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.

(2) If securities are being distributed in connection with a restructuring transaction, indicate, to the extent known, the holdings of each person or company described in paragraph 1. of subsection (1) that will exist after effect has been given to the transaction.

(3) If any of the securities being distributed are being distributed for the account of a securityholder and those securities were purchased by the selling securityholder within the two years preceding the date of the short form prospectus, state the date the selling securityholder acquired the securities and, if the securities were acquired in the 12 months preceding the date of the short form prospectus, the cost to the securityholder in the aggregate and on an average cost per security basis.

(4) If, to the knowledge of the issuer or the underwriter of the securities being distributed, any selling securityholder is an associate or affiliate of another person or company named as a principal holder of voting securities in the issuer's information circular required to be incorporated by reference under paragraph 7. of subsection 11.1(1), disclose, to the extent known, the material facts of the

relationship, including any basis for influence over the issuer held by the person or company other than the holding of voting securities of the issuer.

(5) In addition to the above, include in a footnote to the table the required calculation(s) on a fully diluted basis.

(6) Describe any material change to the information required to be included in the short form prospectus under subsection (1) to the date of the short form prospectus.

INSTRUCTION

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

Item 9 - Mineral Property

9.1 Mineral Property – If a material part of the proceeds of the distribution is to be expended on a particular mineral property and if the current AIF does not contain the disclosure required under section 5.4 of Form 51-102F2 for the property or that disclosure is inadequate or incorrect due to changes, disclose the information required under section 5.4 of Form 51-102F2.

Item 10 - Recently Completed and Probable Acquisitions

10.1 Application and Definitions – This Item does not apply to a completed or proposed transaction by the issuer that was or will be accounted for as a reverse takeover or a transaction that is a proposed reverse takeover that has progressed to a state where a reasonable person would believe that the likelihood of the reverse takeover being completed is high.

10.2 Significant Acquisitions

(1) Describe any acquisition

(a) that the issuer has completed within 75 days prior to the date of the short form prospectus;

(b) that is a significant acquisition for the purposes of Part 8 of NI 51-102; and

(c) for which the issuer has not yet filed a business acquisition report under NI 51-102.

(2) Describe any proposed acquisition by an issuer that

(a) has progressed to a state where a reasonable person would believe that the likelihood of the issuer completing the acquisition is high; and

(b) would be a significant acquisition for the purposes of Part 8 of NI 51-102 if completed as of the date of the short form prospectus.

(3) If disclosure about an acquisition or proposed acquisition is required under subsection (1) or (2), include financial statements or other information about the acquisition or proposed acquisition if the inclusion of the financial statements is necessary for the short form prospectus to contain full, true and plain disclosure of all material facts relating to the securities being distributed.

(4) The requirement to include financial statements or other information under subsection (3) must be satisfied by including

(a) the financial statements or other information that will be required to be included in, or incorporated by reference into, a business acquisition report filed under Part 8 of NI 51-102, or

(b) satisfactory alternative financial statements or other information.

INSTRUCTION

For the description of the acquisition or proposed acquisition, include the information required by sections 2.1 through 2.6 of Form 51-102F4. For a proposed acquisition, modify this information as necessary to convey that the acquisition is not yet completed.

Item 10A - Reverse Takeover and Probable Reverse Takeover

10A.1 Completed Reverse Takeover Disclosure – If the issuer has completed a reverse takeover since the end of the financial year in respect of which the issuer's current AIF is incorporated by reference into the short form prospectus under paragraph 1. of subsection 11.1(1), provide disclosure about the reverse takeover acquirer by complying with the following:

(1) If the reverse takeover acquirer satisfies the criteria set out in paragraphs 2.2(a), (b), (c), and (d) of the Instrument, incorporate by reference into the short form prospectus all documents that would be required to be incorporated by reference under Item 11 if the reverse takeover acquirer were the issuer of the securities.

(2) If paragraph 1 does not apply to the reverse takeover acquirer, include in the short form prospectus the same disclosure about the reverse takeover acquirer that would

be required to be contained in Form 41-101F1 if the reverse takeover acquirer were the issuer of the securities being distributed and the reverse takeover acquirer were distributing those securities by way of the short form prospectus.

10A.2 Probable Reverse Takeover Disclosure – If the issuer is involved in a proposed reverse takeover that has progressed to a state where a reasonable person would believe that the likelihood of the reverse takeover being completed is high, provide disclosure about the reverse takeover acquirer by complying with the following:

(1) If the reverse takeover acquirer satisfies the criteria set out in paragraphs 2.2(a), (b), (c), and (d) of the Instrument, incorporate by reference into the short form prospectus all documents that would be required to be incorporated by reference under Item 11 if the reverse takeover acquirer were the issuer of the securities.

(2) If paragraph 1 does not apply to the reverse takeover acquirer, include in the short form prospectus the same disclosure about the reverse takeover acquirer that would be required to be contained in Form 41-101F1 if the reverse takeover acquirer were the issuer of the securities being distributed and the reverse takeover acquirer were distributing those securities by way of the short form prospectus.

Item 11 - Documents Incorporated by Reference

11.1 Mandatory Incorporation by Reference

(1) In addition to any other document that an issuer may choose to incorporate by reference, specifically incorporate by reference in the short form prospectus, by means of a statement in the short form prospectus to that effect, the documents set forth below:

1. The issuer’s current AIF, if it has one.

2. The issuer’s current annual financial statements, if any, and related MD&A.

3. The issuer’s interim financial report most recently filed or required to have been filed under the applicable CD rule in respect of an interim period, if any, subsequent to the financial year in respect of which the issuer has filed its current annual financial statements or has included annual financial statements in the short form prospectus, and the related interim MD&A.

4. If, before the short form prospectus is filed, historical financial information about the issuer for a financial period more recent than the period for which financial statements are required under paragraphs 2 and 3 is publicly

disseminated by, or on behalf of, the issuer through news release or otherwise, the content of the news release or public communication.

5. Any material change report, except a confidential material change report, filed under Part 7 of NI 51-102 or Part 11 of NI 81-106 since the end of the financial year in respect of which the issuer's current AIF is filed.

6. Any business acquisition report filed by the issuer under Part 8 of NI 51-102 for acquisitions completed since the beginning of the financial year in respect of which the issuer's current AIF is filed, unless the issuer

   (a) incorporated the BAR by reference into its current AIF, or

   (b) incorporated at least 9 months of the acquired business or related businesses operations into the issuer's current annual financial statements.

7. Any information circular filed by the issuer under Part 9 of NI 51-102 or Part 12 of NI 81-106 since the beginning of the financial year in respect of which the issuer's current AIF is filed, other than an information circular prepared in connection with an annual general meeting if the issuer has filed and incorporated by reference an information circular for a subsequent annual general meeting.

8. The most recent Form 51-101F1, Form 51-101F2 and Form 51-101F3, filed by an SEC issuer, unless

   (a) the issuer's current AIF is in the form of Form 51-102F2; or

   (b) the issuer is otherwise exempted from the requirements of NI 51-101.

9. Any other disclosure document which the issuer has filed pursuant to an undertaking to a provincial and territorial securities regulatory authority since the beginning of the financial year in respect of which the issuer's current AIF is filed.

10. Any other disclosure document of the type listed in paragraphs 1 through 8 that the issuer has filed pursuant to an exemption from any requirement under securities legislation since the beginning of the financial year in respect of which the issuer's current AIF is filed.

(2) In the statement incorporating the documents listed in subsection (1) by reference in a short form prospectus, clarify that applicable portions of 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) Despite paragraph 7 of subsection (1), an issuer may exclude from its short form prospectus a report, valuation, statement or opinion of a person or company contained in an information circular prepared in connection with a special meeting of securityholders of the issuer, and any references therein, if

(a) the report is not an auditor's report in respect of financial statements of a person or company; and

(b) the report, valuation, statement or opinion was prepared in respect of a specific transaction contemplated in the information circular, unrelated to the distribution of securities under the short form prospectus, and that transaction has been abandoned or completed.

INSTRUCTIONS

(1) Paragraph 4 of subsection (1) requires issuers to incorporate only the news release or other public communication through which more recent financial information is released to the public. However, if the financial statements from which the information in the news release has been derived have been filed, then the financial statements must be incorporated by reference.

(2) Issuers must provide a list of the material change reports and business acquisition reports required under paragraphs 5 and 6 of subsection (1), giving the date of filing and briefly describing the material change or acquisition, as the case may be, in respect of which the report was filed.

(3) Any material incorporated by reference in a short form prospectus is required under sections 4.1 and 4.2 of the Instrument to be filed with the short form prospectus unless it has been previously filed.

11.2 Mandatory Incorporation by Reference of Future Documents - State that any documents, of the type described in section 11.1, if filed by the issuer after the date of the short form prospectus and before the termination of the distribution, are deemed to be incorporated by reference in the short form prospectus.

11.3 Issuers without a Current AIF or Current Annual Financial Statements

(1) If the issuer does not have a current AIF or current annual financial statements and is relying on the exemption in subsection 2.7(1) of the Instrument, include the

disclosure, including financial statements and related MD&A, that would otherwise have been required to have been included in a current AIF and current annual financial statements and related MD&A under section 11.1.

(2) If the issuer does not have a current AIF or current annual financial statements and is relying on the exemption in subsection 2.7(2) or 2.7(3) of the Instrument, include the disclosure, including financial statements, provided in accordance with

(a) Section 14.2 or 14.5 of Form 51-102F5 in the information circular referred to in paragraph 2.7(2)(b) of the Instrument; or

(b) the policies and requirements of the TSX Venture Exchange for disclosure of a qualifying transaction in a CPC filing statement or a reverse takeover in a filing statement referred to in paragraph 2.7(3)(b) of the Instrument.

INSTRUCTION

(1) If an issuer is required to include disclosure under subsection 11.3(2), it must include the historical financial statements of any entity that was a party to the restructuring transaction and any other information contained in the information circular, CPC filing statement or other filing statement of the TSX Venture Exchange that was used to construct financial statements for the issuer.

(2) The disclosure referenced in instruction (1) must be presented in a way that supplements, but does not replace, the disclosure required to be made for a transaction that constitutes a significant acquisition for the issuer or a reverse takeover in which the issuer was involved.

11.4 Significant Acquisition for Which No Business Acquisition Report is Filed

(1) If the issuer has,

(a) since the beginning of the most recently completed financial year in respect of which annual financial statements are included in the short form prospectus; and

(b) more than 75 days prior to the date of filing the preliminary short form prospectus;

completed a transaction that would have been a significant acquisition for the purposes of Part 8 of NI 51-102 if the issuer had been a reporting issuer at the time of the transaction, and the issuer has not filed a business acquisition report in respect of the transaction, include the financial statements and other information in respect of the transaction that is prescribed by Form 51-102F4.

(2) If the issuer was exempt from the requirement to file a business acquisition report in respect of a transaction because the disclosure that would normally be included in a business acquisition report was included in another document, include that disclosure in the short form prospectus.

INSTRUCTION

Disclosure required by section 11.3 or 11.4 to be included in the short form prospectus may be incorporated by reference from another document or included directly in the short form prospectus.

11.5 Additional Disclosure for Issuers of Asset Backed Securities

If the issuer has not filed or has not been required to file interim financial statements and related MD&A in respect of an interim period subsequent to the financial year in respect of which it has included annual financial statements in the short form prospectus because it is not a reporting issuer and is qualifying to file the short form prospectus under section 2.6 of the Instrument, include the interim financial statements and related MD&A that the issuer would have been required to incorporate by reference under paragraph 3 of subsection 11.1(1) if the issuer were a reporting issuer at the relevant time.

11.6 Marketing Materials

(1) If marketing materials were provided under subsection 7.6(1) of the Instrument or subsection 13.7(1) or 13.8(1) of NI 41-101, the issuer must

(a) include a section under the heading “Marketing Materials” proximate to the beginning of the short form prospectus that contains the disclosure required by this Item,

(b) subject to subsection (2), include the template version of the marketing materials filed under the Instrument or NI 41-101 in the final short form prospectus, or incorporate by reference the template version of the marketing materials filed under the Instrument or NI 41-101 into the final short form prospectus, and

(c) indicate that the template version of the marketing materials is not part of the final short form prospectus to the extent that the contents of the template version of the marketing materials have been modified or superseded by a statement contained in the final short form prospectus.

(2) An issuer may comply with paragraph (1)(b) by including the template version of the marketing materials filed under the Instrument or NI 41-101 in the section of the

short form prospectus under the heading "Marketing Materials" or in an appendix to the short form prospectus that is referred to in that section.

(3) If the final short form prospectus or any amendment modifies a statement of material fact that appeared in marketing materials provided earlier,

(a) provide details of how the statement in the marketing materials has been modified, and

(b) disclose that, pursuant to subsection 7.6(7) of the Instrument or subsection 13.7(8) or 13.8(8) of NI 41-101,

(i) the issuer has prepared a revised template version of the marketing materials which has been blacklined to show the modified statement, and

(ii) the revised template version of the marketing materials can be viewed under the issuer's profile on www.sedar.com.

(4) State that any template version of the marketing materials filed under NI 41-101 after the date of the final short form prospectus and before the termination of the distribution is deemed to be incorporated into the final short form prospectus.

(5) If the issuer relies on the exception in subsection 7.8(1) of the Instrument or subsection 13.12(1) of NI 41-101, include the statement set out in subsection 36.A.1(5) of Form 41-101F1, or words to the same effect.

GUIDANCE

Marketing materials do not, as a matter of law, amend a preliminary short form prospectus, a final short form prospectus or any amendment.

Item 12 - Additional Disclosure for Issues of Guaranteed Securities

12.1 *Credit Supporter Disclosure* – Provide disclosure about each credit supporter, if any, that has provided a guarantee or alternative credit support for all or substantially all of the payments to be made under the securities to be distributed, by complying with the following:

(1) If the credit supporter is a reporting issuer in at least one jurisdiction and has a current AIF, incorporating by reference into the short form prospectus all documents that would be required to be incorporated by reference under Item 11 if the credit supporter were the issuer of the securities.

(2) If the credit supporter is not a reporting issuer in any jurisdiction and has a class of securities registered under section 12(b) or 12(g) of the 1934 Act, or is required to file reports under section 15(d) of the 1934 Act, incorporating by reference into the short form prospectus all 1934 Act filings that would be required to be incorporated by reference in a Form S 3 or Form F 3 registration statement filed under the 1933 Act if the securities distributed under the short form prospectus were being registered on Form S 3 or Form F 3.

(3) If neither paragraph 1 nor paragraph 2 applies to the credit supporter, providing directly in the short form prospectus the same disclosure that would be contained in the short form prospectus through the incorporation by reference of the documents referred to in Item 11 if the credit supporter were the issuer of the securities and those documents had been prepared by the credit supporter.

(4) Providing such other information about the credit supporter as is necessary to provide full, true and plain disclosure of all material facts concerning the securities to be distributed, including the credit supporter's earnings coverage ratios under Item 6 as if the credit supporter were the issuer of the securities.

Item 13 - Exemptions for Certain Issues of Guaranteed Securities

13.1 Definitions and Interpretation

(1) In this Item

(a) the impact of subsidiaries, on a combined basis, on the financial results of the parent entity is "minor" if each item of the summary financial information of the subsidiaries, on a combined basis, represents less than 3% of the total consolidated amounts,

(b) a parent entity has "limited independent operations" if each item of its summary financial information represents less than 3% of the total consolidated amounts,

(c) a subsidiary is a "finance subsidiary" if it has minimal assets, operations, revenue or cash flows other than those related to the issuance, administration and repayment of the security being distributed and any other securities guaranteed by its parent entity,

(d) "parent credit supporter" means a credit supporter of which the issuer is a subsidiary,

(e) "parent entity" means a parent credit supporter for the purposes of sections 13.2 and 13.3 and an issuer for the purpose of section 13.4,

(f) "subsidiary credit supporter" means a credit supporter that is a subsidiary of the parent credit supporter, and

(g) "summary financial information" includes the following line items:

(i) revenue;

(ii) profit or loss from continuing operations attributable to owners of the parent;

(iii) profit or loss attributable to owners of the parent; and

(iv) unless the issuer's GAAP permits the preparation of the credit support issuer's statement of financial position without classifying assets and liabilities between current and non current and the credit support issuer provides alternative meaningful financial information which is more appropriate to the industry,

(A) current assets;

(B) non current assets;

(C) current liabilities; and

(D) non current liabilities.

INSTRUCTION

See section 1.1 of NI 41-101 for the definitions of "profit or loss attributable to owners of the parent" and "profit or loss from continuing operations attributable to owners of the parent".

(2) For the purpose of this Item, consolidating summary financial information must be prepared on the following basis

(a) an entity's annual or interim summary financial information must be derived from the entity's financial information underlying the corresponding consolidated financial statements of the parent entity included in the short form prospectus,

(b) the parent entity column must account for investments in all subsidiaries under the equity method, and

(c) all subsidiary entity columns must account for investments in non credit supporter subsidiaries under the equity method.

13.2 Issuer is Wholly owned Subsidiary of Parent Credit Supporter – Despite Items 6 and 11, an issuer is not required to incorporate by reference into the short form prospectus any of its documents under paragraphs 1 to 4 and 6 to 8 of subsection 11.1(1) or include in the short form prospectus its earning coverage ratios under section 6.1, if

(a) a parent credit supporter has provided full and unconditional credit support for the securities being distributed;

(b) the parent credit supporter satisfies the criterion in paragraph 2.4(1)(b) of the Instrument;

(c) the securities being distributed are non convertible debt securities, non convertible preferred shares, or convertible debt securities or convertible preferred shares that are convertible, in each case, into non convertible securities of the parent credit supporter;

(d) the parent credit supporter is the beneficial owner of all the issued and outstanding equity securities of the issuer;

(e) no other subsidiary of the parent 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;

(f) the issuer includes in the short form prospectus either

(i) a statement that the financial results of the issuer are included in the consolidated financial results of the parent credit supporter, if

(A) the issuer is a finance subsidiary, and

(B) the impact of any subsidiaries of the parent credit supporter on a combined basis, excluding the issuer, on the consolidated financial results of the parent credit supporter is minor, or

(ii) for the periods covered by the parent credit supporter's consolidated interim financial report and consolidated annual financial statements included in the short form prospectus under section 12.1, consolidating summary financial information for the parent credit supporter presented with a separate column for each of the following:

(A) the parent credit supporter;

(B) the issuer;

(C) any other subsidiaries of the parent credit supporter on a combined basis;

(D) consolidating adjustments;

(E) the total consolidated amounts.

13.3 Issuer is Wholly owned Subsidiary of, and One or More Subsidiary Credit Supporters Controlled by, Parent Credit Supporter

(1) Despite Items 6, 11 and 12, an issuer is not required to incorporate by reference into the short form prospectus any of its documents under paragraphs 1 to 4 and 6 to 8 of subsection 11.1(1), or include in the short form prospectus its earning coverage ratios under section 6.1, or include in the short form prospectus the disclosure of one or more subsidiary credit supporters required by section 12.1, if

(a) a parent credit supporter and one or more subsidiary credit supporters have each provided full and unconditional credit support for the securities being distributed;

(b) the parent credit supporter satisfies the criterion in paragraph 2.4(1)(b) of the Instrument;

(c) the guarantees or alternative credit supports are joint and several;

(d) the securities being distributed are non-convertible debt securities, non-convertible preferred shares, or convertible debt securities or convertible preferred shares that are convertible in each case into non-convertible securities of the parent credit supporter;

(e) the parent credit supporter is the beneficial owner of all the issued and outstanding equity securities of the issuer;

(f) the parent credit supporter controls each subsidiary credit supporter and the parent credit supporter has consolidated the financial statements of each subsidiary credit supporter into the parent credit supporter's financial statements that are included in the short form prospectus; and

(g) the issuer includes in the short form prospectus for the periods covered by the parent credit supporter's financial statements included in the short form prospectus under section 12.1, consolidating summary financial information

for the parent credit supporter presented with a separate column for each of the following:

(i) the parent credit supporter;

(ii) the issuer;

(iii) each subsidiary credit supporter on a combined basis;

(iv) any other subsidiaries of the parent credit supporter on a combined basis;

(v) consolidating adjustments;

(vi) the total consolidated amounts.

(2) Despite paragraph (1)(g)

(a) if the impact of any subsidiaries of the parent credit supporter on a combined basis, excluding the issuer and all subsidiary credit supporters, on the consolidated financial results of the parent credit supporter is minor, column (iv) may be combined with another column, and

(b) if the issuer is a finance subsidiary, column (ii) may be combined with another column.

13.4 One or More Credit Supporters Controlled by Issuer – Despite Item 12, an issuer is not required to include in the short form prospectus the credit supporter disclosure for one or more credit supporters required by section 12.1, if

(a) one or more credit supporters have each provided full and unconditional credit support for the securities being distributed,

(b) if there is more than one credit supporter, the guarantee or alternative credit supports are joint and several,

(c) the securities being distributed are non convertible debt securities or non convertible preferred shares, or convertible debt securities or convertible preferred shares that are convertible, in each case, into non convertible securities of the issuer,

(d) the issuer controls each credit supporter and the issuer has consolidated the financial statements of each credit supporter into the issuer's financial statements that are included in the short form prospectus, and

(e) the issuer includes in the short form prospectus either

(i) a statement that the financial results of the credit supporter(s) are included in the consolidated financial results of the issuer, if

(A) the issuer has limited independent operations, and

(B) the impact of any subsidiaries of the issuer on a combined basis, excluding the credit supporter(s) but including any subsidiaries of the credit supporter(s) that are not themselves credit supporters, on the consolidated financial results of the issuer is minor, or

(ii) for the periods covered by the issuer's financial statements included in the short form prospectus under Item 11, consolidating summary financial information for the issuer, presented with a separate column for each of the following:

(A) the issuer;

(B) the credit supporters on a combined basis;

(C) any other subsidiaries of the issuer on a combined basis;

(D) consolidating adjustments;

(E) the total consolidated amounts.

Item 14 - Relationship between Issuer or Selling Securityholder and Underwriter

14.1 Relationship between Issuer or Selling Securityholder and Underwriter

(1) If the issuer or selling securityholder is a connected issuer or related issuer of an underwriter of the distribution, or if the issuer or selling securityholder is also an underwriter of the distribution, comply with the requirements of NI 33-105.

(2) For the purposes of subsection (1), "connected issuer" and "related issuer" have the same meaning as in NI 33-105.

Item 15 - Interest of Experts

15.1 Names of Experts – Name each person or company

(a) who is named as having prepared or certified a report, valuation, statement or opinion in the short form prospectus or an amendment to the short form prospectus, either directly or in a document incorporated by reference; and

(b) whose profession or business gives authority to the report, valuation, statement or opinion made by the person or company.

15.2 Interest of Experts – For each person or company referred to in section 15.1, provide the disclosure that would be required under section 16.2 of Form 51-102F2, as of the date of the short form prospectus, as if that person or company were a person or company referred to in section 16.1 of Form 51-102F2.

15.3 Exemption – Sections 15.1 and 15.2 do not apply to a person or company if the disclosure regarding the person or company required under section 15.2 is already disclosed in the issuer's current AIF and the disclosure is correct as at the date of the prospectus.

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 short form prospectus, a promoter of the issuer or subsidiary of the issuer, state, to the extent not disclosed elsewhere in a document incorporated by reference in the short form prospectus,

(a) the person or company's name,

(b) the number and percentage of each class of voting securities and equity securities of the issuer or any of its subsidiaries beneficially owned, or controlled or directed, directly or indirectly, by the person or company,

(c) the nature and amount of anything of value, including money, property, contracts, options or rights of any kind received or to be received by the promoter, directly or indirectly, from the issuer or from a subsidiary of the issuer, and the nature and amount of any assets, services or other consideration received or to be received by the issuer or a subsidiary of the issuer in return, and

(d) for an asset acquired within the two years before the date of the preliminary short form prospectus, or to be acquired, by the issuer or by a subsidiary of the issuer from a promoter,

(i) the consideration paid or to be paid for the asset and the method by which the consideration has been or will be determined,

(ii) the person or company making the determination referred to in subparagraph (i) and the person or company's relationship with the issuer or the promoter or an affiliate of the issuer or 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 referred to in subsection (1) is, as at the date of the preliminary short form prospectus, or was within 10 years before the date of the preliminary short form prospectus, a director, chief executive officer or chief financial officer of any person or company that

(a) was subject to an order that was issued while the promoter was acting in the capacity as director, chief executive officer or chief financial officer, or

(b) was subject to an order that was issued after the promoter ceased to be a director, chief executive officer or chief financial officer and which resulted from an event that occurred while the promoter was acting in the capacity as director, chief executive officer or chief financial officer,

state the fact and describe the basis on which the order was made and whether the order is still in effect.

(3) For the purposes of subsection (2), "order" means:

(a) a cease trade order,

(b) an order similar to a cease trade order, or

(c) an order that denied the relevant person or company access to any exemption under securities legislation,

that was in effect for a period of more than 30 consecutive days.

(4) If a promoter referred to in subsection (1)

(a) is, at the date of the preliminary short form prospectus, or has been within the 10 years before the date of the preliminary short form prospectus, a director or executive officer of any person or company that, while the promoter was acting in that capacity, or within a year of that person ceasing to act in that capacity, became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or 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, or

(b) 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 became 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.

(5) 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 referred to in subsection (1) has been subject to

(a) any penalties or sanctions imposed by a court relating to provincial and territorial securities legislation or by a provincial and territorial securities regulatory authority or has entered into a settlement agreement with a provincial and territorial securities regulatory authority, or

(b) any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor in making an investment decision.

(6) Despite subsection (5), no disclosure is required of a settlement agreement entered into before December 31, 2000 unless the disclosure would likely be considered important to a reasonable investor in making an investment decision.

INSTRUCTIONS

(1) The disclosure required by subsections (2), (4) and (5) also applies to any personal holding companies of any of the persons referred to in subsections (2), (4) and (5).

(2) A management cease trade order which applies to a promoter referred to in subsection (1) is an "order" for the purposes of paragraph (2)(a) and must be disclosed, whether or not the director, chief executive officer or chief financial officer was named in the order.

(3) For the purposes of this section, a late filing fee, such as a filing fee that applies to the late filing of an insider report, is not a "penalty or sanction".

(4) The disclosure in paragraph (2)(a) only applies if the promoter was a director, chief executive officer or chief financial officer when the order was issued against the person or company. The issuer does not have to provide disclosure if the promoter became a director, chief executive officer or chief financial officer after the order was issued.

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.

INSTRUCTIONS

(1) *Issuers may cross reference to specific risk factors relevant to the securities being distributed that are discussed in their current AIF.*

(2) *Disclose risks in the order of seriousness from the most serious to the least serious.*

(3) *A risk factor should not be de-emphasized by including excessive caveats or conditions.*

Item 18 - Other Material Facts

18.1 *Other Material Facts* – Give particulars of any material facts about the securities being distributed that are not disclosed under any other items or in the documents incorporated by reference into the short form prospectus and are necessary in order for the short form prospectus to contain full, true and plain disclosure of all material facts relating to the securities to be distributed.

Item 19 - Exemptions from the Instrument

19.1 *Exemptions from the Instrument* – List all exemptions from the provisions of the Instrument, including this Form, granted to the issuer applicable to the distribution or the short form prospectus, including all exemptions to be evidenced by the issuance of a receipt for the short form prospectus pursuant to section 8.2 of the Instrument.

Item 20 - Statutory Rights of Withdrawal and Rescission

20.1 *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,] revisions of the price or damages] if the prospectus and any amendment contains a misrepresentation or is not delivered to the purchaser, provided that the remedies for rescission [, revision of the price 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."

20.2 Non fixed Price Offerings – In the case of a non fixed price offering, replace, if applicable in the jurisdiction in which the short form prospectus is filed, the second sentence in the legend in section 20.1 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."

20.3 Convertible, Exchangeable or Exercisable Securities – In the case of an offering of convertible, exchangeable or exercisable securities in which additional amounts are payable or may become payable upon conversion, exchange or exercise, provide a statement in the following form:

"In an offering of [state name of convertible, exchangeable or exercisable securities], investors are cautioned that the statutory right of action for damages for a misrepresentation contained in the prospectus is limited, in certain provincial [and territorial] securities legislation, to the price at which the [state name of convertible, exchangeable or exercisable securities] is offered to the public under the prospectus offering. This means that, under the securities legislation of certain provinces [and territories], if the purchaser pays additional amounts upon [conversion, exchange or exercise] of the security, those amounts may not be recoverable under the statutory right of action for damages that applies in those provinces [and territories]. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province [or territory] for the particulars of this right of action for damages or consult with a legal adviser.

INSTRUCTION

For greater certainty, in the case of a short form prospectus that is a base shelf prospectus under NI 44-102, issuers must include the above statement, unless it is stated in the base shelf prospectus that no convertible, exchangeable or exercisable securities will be offered, or that such securities may be offered but no amounts will be payable to convert, exchange or exercise those securities.

Item 21 - Certificates

21.1 Certificates – Include the certificates required by Part 5 of NI 41-101 or by other securities legislation.

21.2 Issuer Certificate Form – An issuer certificate form must state

> "This short form prospectus, together with the documents incorporated by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this short form prospectus as required by the securities legislation of [insert the jurisdictions in which qualified]."

21.3 Underwriter Certificate Form – An underwriter certificate form must state

"To the best of our knowledge, information and belief, this short form prospectus, together with the documents incorporated by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this short form prospectus as required by the securities legislation of [insert the jurisdictions in which qualified]."

21.4 Amendments

(1) For an amendment to a short form prospectus that does not restate the short form prospectus, change "short form prospectus" to "short form prospectus dated [insert date] as amended by this amendment" wherever it appears in the statements in sections 21.2 and 21.3.

(2) For an amended and restated short form prospectus, change "short form prospectus" to "amended and restated short form prospectus" wherever it appears in the statements in sections 21.2 and 21.3.

6.3 Companion Policy 44-101CP to National Instrument 44-101 – Short Form Prospectus Distributions

PART 1 INTRODUCTION AND DEFINITIONS

1.1 Introduction and Purpose – National Instrument 44-101 *Short Form Prospectus Distributions* ("NI 44-101") sets out the substantive tests for an issuer to qualify to file a prospectus in the form of a short form prospectus. The purpose of NI 44-101 is to shorten the time period in which, and streamline the procedures by which, qualified issuers and their selling securityholders can obtain access to the Canadian capital markets through a prospectus offering.

British Columbia, Alberta, Ontario, Manitoba, Nova Scotia and New Brunswick have adopted NI 44-101 by way of rule. Saskatchewan and Québec have adopted it by way of regulation. All other jurisdictions have adopted NI 44-101 by way of related blanket ruling or order. Each jurisdiction implements NI 44-101 by one or more instruments forming part of the law of that jurisdiction (referred to as the "implementing law of the jurisdiction"). Depending on the jurisdiction, the implementing law of the jurisdiction can take the form of regulation, rule, ruling or order.

This Companion Policy to NI 44-101 (also referred to as "this Companion Policy" or this "Policy") provides information relating to the manner in which the provisions of NI 44-101 are intended to be interpreted or applied by the provincial and territorial securities regulatory authorities, as well as the exercise of discretion under NI 44-101. The Companion Policy to NI 41-101 provides guidance for prospectuses filed under securities legislation including short form prospectuses. Issuers should refer to the Companion Policy to NI 41-101 as well as this Policy.

Terms used and not defined in this Companion Policy that are defined or interpreted in NI 44-101, NI 41-101 or a definition instrument in force in the jurisdiction should be read in accordance with NI 44-101, NI 41-101 or the definition instrument, unless the context otherwise requires.

To the extent that any provision of this Policy is inconsistent or conflicts with the applicable provisions of NI 44-101 and NI 41-101 in those jurisdictions that have adopted NI 44-101 by way of related blanket ruling or order, the provisions of NI 44-101 and NI 41-101 prevail over the provisions of this Policy.

1.2 Interrelationship with Local Securities Legislation – NI 44-101 and NI 41-101, while being the primary instruments regulating short form prospectus distributions, are not exhaustive. Issuers are reminded to refer to the implementing law of the jurisdiction and

other securities legislation of the local jurisdiction for additional requirements that may be applicable to the issuer's short form prospectus distribution.

1.3 *Interrelationship with Continuous Disclosure (NI 51-102 and NI 81-106)* – The short form prospectus distribution system established under NI 44-101 is based on the continuous disclosure filings of reporting issuers pursuant to NI 51-102 or, in the case of an investment fund, NI 81-106. Issuers who wish to use the system should be mindful of their ongoing disclosure and filing obligations under the applicable CD rule. Issues raised in the context of a continuous disclosure review may be taken into consideration by the regulator when determining whether it is in the public interest to refuse to issue a receipt for a short form prospectus. Consequently, unresolved issues may delay or prevent the issuance of a receipt.

1.4 *Process for Prospectus Reviews in Multiple Jurisdictions (NP 11-202)* – National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions* ("NP 11-202") describes the process for filing and review of prospectuses, including investment fund and shelf prospectuses, amendments to prospectuses and related materials in multiple jurisdictions. NP 11-202 represents the means by which an issuer can enjoy the benefits of co ordinated review by the securities regulatory authorities in the various jurisdictions in which the issuer has filed a prospectus. Under NP 11-202, one securities regulatory authority acts as the principal regulator for all materials relating to a filer.

1.5 *Interrelationship with Shelf Distributions (NI 44-102)* – Issuers qualified under NI 44-101 to file a prospectus in the form of a short form prospectus and their securityholders can distribute securities under a short form prospectus using the shelf distribution procedures under NI 44-102. The Companion Policy to NI 44-102 explains that the distribution of securities under the shelf system is governed by the requirements and procedures of NI 44-101 and securities legislation, except as supplemented or varied by NI 44-102. Therefore, issuers qualified to file a prospectus in the form of a short form prospectus and selling securityholders of those issuers that wish to distribute securities under the shelf system should have regard to NI 44-101 and this Policy first, and then refer to NI 44-102 and the accompanying policy for any additional requirements.

1.6 *Interrelationship with PREP Procedures (NI 44-103)* – NI 44-103 contains the post receipt pricing procedures (the "PREP procedures"). All issuers and selling securityholders can use the PREP procedures of NI 44-103 to distribute securities, other than rights under a rights offering. Issuers and selling securityholders that wish to distribute securities under a prospectus in the form of a short form prospectus using the PREP procedures should have regard to NI 44-101 and this Policy first, and then refer to NI 44-103 and the accompanying policy for any additional requirements.

1.7 Definitions

(1) Designated 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 designated rating organization or its DRO affiliate 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 a designated rating does not detract from the rating being considered to be a designated rating for the purposes of NI 44-101.

A designated rating organization or its DRO affiliate 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 a designated rating does not detract from the rating being considered to be a designated rating for the purposes of NI 44-101.

(1.1) Predecessor terms – We recognize there are existing contracts that use the predecessor terms "approved credit rating", "approved rating" and "approved credit rating organization". The content of the new definitions "designated rating" and "designated rating organization" is substantially the same as the content of their respective predecessor terms, only the terminology has changed. Therefore, it is reasonable to interpret the predecessor terms as having the same meaning as the definition of "designated rating" and "designated rating organization" in NI 44-101, as applicable.

(2) Asset backed security – Issuers should refer to section 1.3(1) of the Companion Policy to NI 41-101.

(3) Current AIF – An issuer's AIF filed under the applicable CD rule is a "current AIF" until the issuer files an AIF for the next financial year, or is required by the applicable CD rule to have filed its annual financial statements for the next financial year. If an issuer fails to file a new AIF by the filing deadline under the applicable CD rule for its annual financial statements, it will not have a current AIF and will not qualify under NI 44-101 to file a prospectus in the form of a short form prospectus. If an issuer files a revised or amended AIF for the same financial year as an AIF that has previously been filed, the most recently filed AIF will be the issuer's current AIF.

An issuer that is a venture issuer for the purpose of NI 51-102, and certain investment funds, may have no obligation under the applicable CD rule to file an AIF. However, to qualify under NI 44-101 to file a prospectus in the form of a short form prospectus, that issuer will be required to file an AIF in accordance with the applicable CD rule so as to have a "current AIF". A current AIF filed by an issuer that is a venture issuer for the purposes of NI 51-102 can be expected to expire later than a non venture issuer's AIF, due to the fact that the deadlines for filing annual financial statements under NI 51-102 are later for venture issuers than for other issuers.

(4) Current annual financial statements – An issuer's comparative annual financial statements filed under the applicable CD rule, together with the accompanying auditor's report, are "current annual financial statements" until the issuer files, or is required under the applicable CD rule to have filed, its comparative annual financial statements for the next financial year. If an issuer fails to file its comparative annual financial statements by the filing deadline under the applicable CD rule, it will not have current annual financial statements and will not be qualified under NI 44-101 to file a prospectus in the form of a short form prospectus.

Where there has been a change of auditor and the new auditor has not audited the comparative period, the report of the predecessor auditor on the comparative period must be included in the prospectus. The issuer may file the report of the predecessor auditor on the comparative period with the annual financial statements that are being incorporated by reference into the short form prospectus, and clearly incorporate by reference the predecessor auditor's report in addition to the new auditor's report. Alternatively, the issuer can incorporate by reference into the short form prospectus its comparative financial statements filed for the previous year, including the audit reports thereon.

(5) Successor Issuer – A successor issuer is defined to include a reverse takeover acquiree in a completed reverse takeover. Alternatively, the definition of "successor issuer" requires that the issuer was formed "as a result of a restructuring transaction" or that the issuer participate in the restructuring transaction and continue to exist following completion of the restructuring transaction. In both instances, prospectus level disclosure or comparable disclosure prescribed by the TSX Venture Exchange for such issuer must be provided in an information circular or similar disclosure document pursuant to subsections 2.7(2) and (3) of NI 44-101. In the case of an amalgamation, the amalgamated corporation is regarded by the securities regulatory authorities as having been formed "as a result of a restructuring transaction". The definition of "successor issuer" also contains an exclusion applicable to divestitures. For example, an issuer may carry out a restructuring

transaction that results in the distribution to securityholders 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.

However, if the divestiture represents a divestiture of substantially all of the business of the predecessor entity to the issuer, the issuer would be considered a successor issuer. In such circumstances, the financial information concerning the predecessor entity should be representative of the financial information of the successor issuer. Therefore, if an issuer is relying on this basis for short form prospectus qualification, it must ensure that the financial statements of the predecessor entity are a relevant, accurate proxy for its financial statements as a successor issuer.

An issuer may also be considered a successor issuer to a second issuer where there has been an internal reorganization of the second issuer, provided that the conditions in paragraph (b) of the definition of "successor issuer" are met. In particular, the internal reorganization must not result in an alteration of the securityholders' proportionate interest in the second issuer nor the second issuer's proportionate interest in its assets. For example, this may arise in an internal reorganization in which all of the securityholders of the second issuer exchange their securities in the second issuer for securities of the successor issuer. The second issuer would become a subsidiary of the successor issuer and its ownership in its assets would remain the same. The successor issuer definition was expanded to include this type of internal reorganization as it may not be considered a "restructuring transaction" as defined in NI 51-102 by virtue of the exclusion found at the end of the definition of "restructuring transaction".

1.8 *Bought Deal Provisions* – Issuers and investment dealers relying on the bought deal provisions in Part 7 of NI 44-101 should refer to the guidance in Part 6 of the Companion Policy to NI 41-101.

1.9 *Marketing Activities* – Issuers and investment dealers should also refer to the guidance on marketing activities in Part 6 of the Companion Policy to NI 41-101. While NI 44-101 has provisions on marketing after the announcement of a bought deal and before a receipt for a preliminary short form prospectus, NI 41-101 has general provisions that apply to marketing during the waiting period and after a receipt for a final prospectus.

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

2.1 *Basic Qualification Criteria* – Reporting Issuers with Equity Securities Listed on a Short Form Eligible Exchange (Section 2.2 of NI 44-101)

(1) Section 2.2 of NI 44-101 provides that an issuer with equity securities listed and posted for trading on a short form eligible exchange and that is up to date in its periodic and timely disclosure filings in all jurisdictions in which it is a reporting issuer satisfies the criteria for being qualified to file a prospectus in the form of a short form prospectus if it meets the other general qualification criteria. In addition to the listing requirement, the issuer may not be an issuer whose operations have ceased or whose principal asset is its exchange listing. The purpose of this requirement is to ensure that eligible issuers have an operating business in respect of which the issuer must provide current disclosure through application of the applicable CD rule.

The basic qualification criteria are structured to allow most Canadian listed issuers to participate in the expedited offering system created by NI 44-101, provided their public disclosure record provides investors with satisfactory and sufficient information about the issuer and its business, operations or capital. The securities regulatory authorities believe that it is in the public interest to allow an issuer's public disclosure to be incorporated into a short form prospectus, provided that the resulting prospectus provides prospective investors with full, true and plain disclosure about the issuer and the securities being distributed. The securities regulatory authority may not be prepared to issue a receipt for a short form prospectus if the prospectus, together with the documents incorporated by reference, fails to provide such full, true and plain disclosure. In such circumstances, the securities regulatory authority may require, in the public interest, that the issuer utilize the long form prospectus regime. In addition, the securities regulatory authority may also require that the issuer utilize the long form prospectus regime if the offering is, in essence, an initial public offering by a business or if:

(a) the offering is for the purpose of financing a dormant or inactive issuer whether or not the issuer intends to use the proceeds to reactivate the issuer or to acquire an active business; or

(b) the offering is for the purpose of financing a material undertaking that would constitute a material departure from the business or operations of the issuer as at the date of its current annual financial statements and current AIF.

(2) A new reporting issuer or a successor issuer may satisfy the criteria to have current annual financial statements or a current AIF by filing its comparative annual financial statements or an AIF, respectively, in accordance with NI 51-102 or NI 81-106, as applicable, for its most recently completed financial year. It is not necessary that the issuer be required by the applicable CD rule to have filed such documents. An issuer may voluntarily choose to file either of these documents in accordance with the applicable CD rule for the purposes of satisfying the eligibility criteria under NI 44-101.

Alternatively, an issuer may rely on the exemption from the requirement to file such documents in section 2.7 of NI 44-101. That section provides an exemption from the current AIF and current annual financial statement requirements for new reporting issuers and successor issuers who have not yet been required to file such documents and who have filed a prospectus or information circular containing disclosure which would have been included in such documents had they been filed under the applicable CD rule.

(3) An issuer need not have filed all of its continuous disclosure filings in the local jurisdiction in order to be qualified to file a short form prospectus, but under sections 4.1 and 4.2 of NI 44-101 it will be required to file in the local jurisdiction all documents incorporated by reference into the short form prospectus no later than the date of filing the preliminary short form prospectus.

2.2 *Alternative Qualification Criteria* – Issuers that are Not Listed (Sections 2.3, 2.4, 2.5 and 2.6 of NI 44-101) – Issuers that do not have equity securities listed and posted for trading on a short form eligible exchange in Canada may nonetheless be qualified to file a prospectus in the form of a short form prospectus under the following alternative qualification criteria of NI 44-101:

(1) Section 2.3, which applies to issuers which are reporting issuers in at least one jurisdiction, and who are intending to issue non convertible securities with a provisional designated rating.

(2) Section 2.4, which applies to issuers of non convertible debt securities, non convertible preferred shares or non convertible cash settled derivatives, if another person or company that satisfies prescribed criteria provides full and unconditional credit support for the payments to be made by the issuer of the securities.

(3) Section 2.5, which applies to issuers of convertible debt securities or convertible preferred shares, if the securities are convertible into securities of a credit supporter that satisfies prescribed criteria and provides full and unconditional credit support for the payments to be made by the issuer of the securities.

(4) Section 2.6, which applies to issuers of asset backed securities.

Under sections 2.4, 2.5 and 2.6 of NI 44-101, an issuer is not required to be a reporting issuer in any jurisdiction in order to qualify to file a prospectus in the form of a short form prospectus. Section 2.3 requires the issuer to be a reporting issuer in at least one jurisdiction of Canada.

2.3 *Alternative Qualification Criteria* – Issuers of Guaranteed Debt Securities, Preferred Shares and Cash Settled Derivatives (Sections 2.4 and 2.5 of NI 44-101) – Sections 2.4 and 2.5 of NI 44-101 allow an issuer to qualify to file a prospectus in the form of a short form prospectus based on full and unconditional credit support, which may take the form of a guarantee or alternative credit support. The securities regulatory authorities are of the view that a person or company that provides the full and unconditional guarantee or alternative credit support is not, simply by providing that guarantee or alternative credit support, issuing a security.

2.4 *Alternative Qualification Criteria* – Issuers of Asset Backed Securities (Section 2.6 of NI 44-101)

(1) In order to be qualified to file a prospectus in the form of a short form prospectus under section 2.6 of NI 44-101, an issuer must have been established in connection with a distribution of asset backed securities. Ordinarily, asset backed securities are issued by special purpose issuers established for the sole purpose of purchasing financial assets with the proceeds of one or more distributions of these securities. This ensures that the credit and performance attributes of the asset backed securities are dependent on the underlying financial assets, rather than upon concerns relating to ancillary business activities and their attendant risks. Qualification to file a prospectus in the form of a short form prospectus under section 2.6 of NI 44-101 has been limited to special purpose issuers to avoid the possibility that an otherwise ineligible issuer would structure securities falling within the definition of "asset backed security".

(2) The qualification criteria for a distribution of asset backed securities under a prospectus in the form of a short form prospectus are intended to provide sufficient flexibility to accommodate future developments. To qualify under section 2.6 of NI 44-101, the securities to be distributed must satisfy the following two criteria:

(a) 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.

(b) Second, the securities must (i) receive a designated rating on a provisional basis, (ii) not have been the subject of an announcement regarding a downgrade to a rating that is not, a designated rating, and (iii) not have received a provisional or final rating lower than a designated rating from any designated rating organization or its DRO affiliate.

The qualification criteria do not distinguish between pass through (i.e., equity) and pay through (i.e., debt) asset backed securities. Consequently, both pay through and pass through securities, as well as residual or subordinate interests, may be distributed under a prospectus in the form of a short form prospectus if all other applicable requirements are met.

2.5 *Timely and Periodic Disclosure Documents* – To be qualified to file a short form prospectus under sections 2.2 and 2.3 of NI 44-101, an issuer must file with the securities regulatory authority in each jurisdiction in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction under applicable securities legislation, pursuant to an order issued by the securities regulatory authority, or pursuant to an undertaking to the securities regulatory authority. Similarly, a credit supporter must satisfy this qualification criterion for an issuer to be qualified to file a short form prospectus under sections 2.4 and 2.5 of NI 44-101.

This qualification criterion applies to all disclosure documents including, if applicable, a disclosure document the issuer or credit supporter (i) has undertaken to file with a provincial or territorial securities regulatory authority, (ii) must file pursuant to a condition in a written order or decision granting exemptive relief to the issuer or credit supporter from a requirement to file periodic and timely disclosure documents, (iii) must file pursuant to a condition in securities legislation exempting the issuer or credit supporter from a requirement to file periodic and timely disclosure documents, and (iv) has represented that it will file pursuant to a representation in a written order or decision granting exemptive relief to the issuer or credit supporter from a requirement to file periodic and timely disclosure documents. These disclosure documents must be incorporated by reference into a short form prospectus pursuant to paragraph 9 or 10 of subsection 11.1(1) of Form 44-101F1.

2.6 *Notice Declaring Intention* – Subsection 2.8(1) of NI 44-101 provides that an issuer is not qualified to file a short form prospectus under Part 2 of NI 44-101 unless it has filed, with its notice regulator, a notice declaring its intention to be qualified to file a short form prospectus under NI 44-101. This notice must be filed in substantially the form of Appendix A of NI 44-101 at least 10 business days prior to the issuer filing its first preliminary short form prospectus. This is a new requirement that came into effect on December 30, 2005. The securities regulatory authorities expect that this notice will be a one time filing for issuers that intend to be participants in the short form prospectus

distribution system established under NI 44-101. Subsection 2.8(2) provides that this notice is operative until withdrawn. Though the notice must be filed with the notice regulator, an issuer may voluntarily file the notice with any other securities regulatory authority or regulator of a jurisdiction of Canada.

Subsection 2.8(4) of NI 44-101 is a transitional provision that has the effect of deeming issuers that, as of December 29, 2005, have a current AIF under the pre December 30, 2005 short form prospectus distribution system to have filed this notice and no additional filing is required to satisfy the notice requirements set out in subsection 2.8(1) of NI 44-101.

PART 3 FILING AND RECEIPTING OF SHORT FORM PROSPECTUS

3.1 *Previously filed documents* – Sections 4.1 and 4.2 of NI 44-101 require the filing of specified documents that have not been previously filed. Issuers that are relying on previous filing of these specified documents are reminded that the documents should have been filed on the issuer's filer profile for SEDAR.

3.2 *Confidential Material Change Reports* – Confidential material change reports cannot be incorporated by reference into a short form prospectus. Issuers should refer to section 3.2 of the Companion Policy to NI 41-101 for further guidance.

3.2.3 Personal information forms –

(1) If issuers are relying upon a previously delivered personal information form or predecessor personal information form pursuant to subsections 4.1(2) or 4.1(3) of NI 44-101, issuers are reminded of paragraphs 4.1(2)(b) and 4.1(3)(b), which require that the responses to certain questions in the form must still be correct. Accordingly, in order to meet these requirements issuers should obtain appropriate confirmations from the individual concerned.

(2) Paragraph 4.1(2)(c) of NI 44-101 requires that in certain circumstances an issuer deliver a copy of a previously delivered personal information form, or "alternative information that is satisfactory to the regulator". Our interpretation of what would potentially be alternative information that is satisfactory to the regulator is, with respect to the previous delivery of an individual's personal information form, the System for Electronic Document Analysis and Retrieval (SEDAR) project number and name of issuer. In most cases this information will be sufficient. Staff will contact issuers in cases where it is not. Issuers wishing to proceed in this manner should provide the information in the cover letter for the preliminary short form prospectus.

(3) If an issuer is delivering a copy of a previously delivered personal information form pursuant to paragraph 4.1(2)(c) of NI 44-101, the issuer should deliver it as a personal information form on SEDAR, in the same way that a new personal information form would be delivered.

3.3 *Supporting Documents* – Issuers should refer to section 3.3 of the Companion Policy to NI 41 101.

3.4 *Experts' Consent* – Issuers are reminded that under section 10.1 of NI 41-101 an auditor's consent is required to be filed for audited financial statements that are included as part of other continuous disclosure filings that are incorporated by reference into a short form prospectus. For example, a separate auditor's consent is required for each set of audited financial statements that are included as part of a business acquisition report or an information circular incorporated by reference into a short form prospectus. Issuers should also refer to section 3.4 of the Companion Policy to NI 41-101 for further guidance.

3.4.1 *Special meeting information circular* – Subsection 11.1(3) of Form 44-101F1 sets out certain circumstances where an issuer is not required to incorporate by reference into its prospectus a report, valuation, statement or opinion of an expert that is indirectly incorporated by reference into its prospectus through the incorporation by reference of an information circular prepared for a special meeting of the issuer. A special meeting information circular often relates to a restructuring transaction of an issuer or other special business of the issuer. In these circumstances, the issuer or its board of directors may engage an expert to provide an opinion that is specific to the business that will be considered at the special meeting of securityholders. For example, the board may retain a person or company to provide a fairness opinion which would assist the board in determining whether to recommend the approval of the proposed transaction to its securityholders. Similarly, the issuer may include a tax opinion in the information circular to illustrate the tax consequences of the proposed transaction to its securityholders. Pursuant to subsection 11.1(3), we would not require the incorporation by reference of these particular opinions, provided that these opinions were prepared in respect of the specific transaction contemplated in the information circular and this transaction has been completed or abandoned prior to the filing of the prospectus.

3.5 *Undertaking in Respect of Credit Supporter Disclosure* – Under subparagraph 4.2(a)(ix) of NI 44-101, an issuer must file an undertaking to file the periodic and timely disclosure of a credit supporter. For credit supporters that are reporting issuers with a current AIF, the undertaking will likely be to continue to file the documents it is required to file under NI 51-102. For credit supporters registered under the 1934 Act, the undertaking will likely be to file the types of documents that would be required to be incorporated by reference into a Form S 3 or Form F 3 registration statement. For other credit supporters, the types

of documents to be filed pursuant to the undertaking will be determined through discussions with the regulators on a case by case basis.

If an issuer, a parent credit supporter, and a subsidiary credit supporter satisfy the conditions of the exemption in section 13.3 of Form 44-101F1, an undertaking may provide that the subsidiary credit supporter will file periodic and timely disclosure if the issuer and the credit supporters no longer satisfy the conditions of the exemption in that section.

If an issuer and a credit supporter satisfy the conditions of the exemption in section 13.4 of Form 44-101F1, an undertaking may provide that the credit supporter will file periodic and timely disclosure if the issuer and the credit supporter no longer satisfy the conditions of the exemption in that section.

For the purposes of such an undertaking, references to disclosure included in the short form prospectus should be replaced with references to the issuer or parent credit supporter's continuous disclosure filings. For example, if an issuer and subsidiary credit supporter(s) plan to continue to satisfy the conditions of the exemption in section 13.4 of Form 44-101F1 for continuous disclosure filings, the undertaking should provide that the issuer will file with its consolidated financial statements,

(a) a statement that the financial results of the credit supporter(s) are included in the consolidated financial results of the issuer if

  (i) the issuer continues to have limited independent operations, and

  (ii) the impact of any subsidiaries of the issuer on a combined basis, excluding the credit supporter(s) but including any subsidiaries of the credit supporter(s) that are not themselves credit supporters, on the consolidated financial statements of the issuer continues to be minor, or

(b) for any periods covered by issuer's consolidated financial statements, consolidating summary financial information for the issuer presented in the format set out in subparagraph 13.4(e)(ii) of Form 44-101F1.

3.6 Amendments and Incorporation by Reference of Subsequently Filed Material Change Reports or Marketing Materials – The requirement in NI 41-101 and 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 or a subsequently filed template version of marketing materials. Issuers should refer to the Companion Policy to NI 41-101 for further guidance regarding amendments.

3.7 *Short Form Prospectus Review* – No target time frame applies to the review of a short form prospectus of an issuer if the issuer has not elected to use the process set out in NP 11-202.

3.8 *Review time frames for "equity line" short form prospectuses* – An issuer that is eligible to use the short form prospectus system may file a preliminary short form prospectus relating to the distribution of securities in connection with an "equity line" financing. Under an equity line arrangement, the issuer typically enters into an agreement with one or more purchasers which provides that, over a certain term, the issuer may from time to time require the purchasers to subscribe for a certain number of securities of the issuer usually at a discount from the market price. Equity line financing raises a number of important policy issues relating to the appropriate treatment of such offerings under existing securities law. Accordingly, these prospectuses will generally be reviewed within the time periods applicable to a long form prospectus.

3.9 *Registration Requirements* – Issuers should refer to section 3.13 of the Companion Policy to NI 41-101 for further guidance.

3.10 *No Minimum Offering Amount* – Issuers distributing securities on a best efforts basis that have not specified a minimum offering amount in their prospectus, should refer to section 2.2.1 and subsection 4.3(3) of the Companion Policy to NI 41-101 for further guidance.

PART 4 CONTENT OF SHORT FORM PROSPECTUS

4.1 *Prospectus Liability* – Nothing in the short form prospectus regime established by NI 44-101 is intended to provide relief from liability arising under the provisions of securities legislation of any jurisdiction in which a short form prospectus is filed if the short form prospectus contains an untrue statement of a material fact or omits to state a material fact that is required to be stated therein or that is necessary to make a statement not misleading in light of the circumstances in which it was made.

4.2 *Style of Short Form Prospectus* – Securities legislation requires that a short form prospectus contain "full, true and plain" disclosure of the securities to be distributed. Issuers should apply plain language principles when they prepare a short form prospectus, including:

- using short sentences;
- using definite everyday language;
- using the active voice;
- avoiding superfluous words;
- organizing the document into clear, concise sections, paragraphs and sentences;

- avoiding jargon;
- using personal pronouns to speak directly to the reader;
- avoiding reliance on glossaries and defined terms unless it facilitates understanding of the disclosure;
- avoiding vague boilerplate wording;
- avoiding abstract terms by using more concrete terms or examples;
- avoiding multiple negatives;
- using technical terms only when necessary and explaining those terms;
- using charts, tables and examples where it makes disclosure easier to understand.

Question and answer and bullet point formats are consistent with the disclosure requirements of NI 44-101.

4.3 Pricing Disclosure

(1) If the offering price or the number of securities being distributed, or an estimate of the range of the offering price or the number of securities being distributed, has been publicly disclosed in a jurisdiction or a foreign jurisdiction as of the date of the preliminary short form prospectus, section 1.7.1 of Form 44-101F1 requires the issuer to disclose that information in the preliminary short form prospectus. For example, if an issuer has previously disclosed this information in a public filing or a press release, in a foreign jurisdiction, the information must also be disclosed in the preliminary short form prospectus. If the issuer discloses this information in the preliminary short form prospectus, we will not consider a difference between this information and the actual offering price or number of securities being distributed to be, in itself, a material adverse change for which the issuer must file an amended preliminary short form prospectus.

(2) No disclosure is required under section 1.7.1 of Form 44-101F1 if the offering price or size of the offering has not been disclosed as of the date of the preliminary short form prospectus. However, given the materiality of pricing or offering size information, subsequent disclosure of this information on a selective basis could constitute conduct that is prejudicial to the public interest.

4.4 Principal Purposes – Generally

(1) Section 4.2 of Form 44-101F1 requires disclosure of each of the principal purposes for which the net proceeds will be used by an issuer. If an issuer has negative cash flow from operating activities in its most recently completed financial year for which financial statements have been included in the short form prospectus, the issuer should prominently disclose that fact in the use of proceeds section of the short form prospectus. The issuer should also disclose whether, and if so, to what

extent, the proceeds of the distribution will be used to fund any anticipated negative cash flow from operating activities in future periods. An issuer should disclose negative cash flow from operating activities as a risk factor under subsection 17.1(1) of Form 44-101F1 or section 5.2 in NI 51-102F2. For the purposes of this section, in determining cash flow from operating activities, the issuer must include cash payments related to dividends and borrowing costs.

(2) For the purposes of the disclosure required under section 4.2 of Form 44-101F1, the phrase "for general corporate purposes" is not generally sufficient.

4.5 Distribution of Asset backed Securities – Section 7.3 of Form 44-101F1 specifies additional disclosure that applies to distributions of asset backed securities. Disclosure for a special purpose issuer of asset backed securities will generally explain

(1) the nature, performance and servicing of the underlying pool of financial assets,

(2) the structure of the securities and dedicated cash flows, and

(3) 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.

An issuer of asset backed securities should consider these factors when preparing its short form prospectus:

(a) 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 securityholders; 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.

(b) Requested disclosure respecting the business and affairs of the issuer should be interpreted to apply to the financial assets underlying the asset backed securities.

(c) 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.

Subsection 7.3(5) of Form 44-101F1 requires issuers of asset backed securities to describe any person or company who originated, sold or deposited a material portion of the financial assets comprising the pool, irrespective of whether the person or company has an on going relationship with the assets comprising the pool. The securities regulatory authorities consider 33⅓% of the dollar value of the financial assets comprising the pool to be a material portion in this context.

4.6 *Distribution of Derivatives* – Section 7.4 of Form 44-101F1 specifies additional disclosure applicable to distributions of derivatives. This prescribed disclosure is formulated in general terms for issuers to customize appropriately in particular circumstances.

4.7 *Underlying Securities* – 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 being distributed.

4.8 *Restricted Securities* – Section 7.7 of Form 44-101F1 specifies additional disclosure applicable to restricted securities, including a detailed description of any significant provisions under applicable corporate and securities law that do not apply to the holders of the restricted securities but do apply to the holders of another class of equity securities. An example of such provisions would be rights under takeover bids.

4.9 *Recent and Proposed Acquisitions*

(1) Subsection 10.2(2) of Form 44-101F1 requires prescribed disclosure of a proposed acquisition that has progressed to a state "where a reasonable person would believe that the likelihood of the acquisition being completed is high" and that would, if

completed on the date of the short form prospectus, be a significant acquisition for the purposes of Part 8 of NI 51-102. When interpreting the phrase "where a reasonable person would believe that the likelihood of the acquisition being completed is high", it is our view that the following factors may be relevant in determining whether the likelihood of an acquisition being completed is high:

(a) whether the acquisition has been publicly announced;

(b) whether the acquisition is the subject of an executed agreement; and

(c) the nature of conditions to the completion of the acquisition including any material third party consents required.

The test of whether a proposed acquisition "has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high" is an objective, rather than subjective, test in that the question turns on what a "reasonable person" would believe. It is not sufficient for an officer of an issuer to determine that he or she personally believes that the likelihood of the acquisition being completed is or is not high. The officer must form an opinion as to what a reasonable person would believe in the circumstances. In the event of a dispute, an objective test requires an adjudicator to decide whether a reasonable person would believe in the circumstances that the likelihood of an acquisition being completed was high. By contrast, if the disclosure requirement involved a subjective test, the adjudicator would assess an individual's credibility and decide whether the personal opinion of the individual as to whether the likelihood of the acquisition being completed was high was an honestly held opinion. Formulating the disclosure requirement using an objective test rather than a subjective test strengthens the basis upon which the regulator may object to an issuer's application of the test in particular circumstances.

(2) Subsection 10.2(3) of Form 44-101F1 requires inclusion of the financial statements or other information relating to certain acquisitions or proposed acquisitions if the inclusion of the financial statements or other information is necessary in order for the short form prospectus to contain full, true and plain disclosure of all material facts relating to the securities being distributed. We generally presume that the inclusion of financial statements or other information is required for all acquisitions that are, or would be, significant under Part 8 of NI 51-102. Issuers can rebut this presumption if they can provide evidence that the financial statements or other information are not required for full, true and plain disclosure.

Subsection 10.2(4) of Form 44-101F1 provides that issuers must satisfy the requirements of subsection 10.2(3) of Form 44-101F1 by including either:

(i) the financial statements or other information that would be required by Part 8 of NI 51-102; or

(ii) satisfactory alternative financial statements or other information.

Satisfactory alternative financial statements or other information may be provided to satisfy the requirements of subsection 10.2(3) when the financial statements or other information that would be required by Part 8 of NI 51-102 relate to a financial year ended within 90 days before the date of the prospectus or an interim period ended within 60 days before the date of the prospectus for issuers that are venture issuers, and 45 days for issuers that are not venture issuers. In these circumstances, we believe that satisfactory alternative financial statements or other information would not have to include any financial statements or other information for the acquisition or probable acquisition related to:

(a) a financial year ended within 90 days before the date of the short form prospectus; or

(b) an interim period ended within 60 days before the date of the short form prospectus for issuers that are venture issuers, and 45 days for issuers that are not venture issuers.

An example of satisfactory alternative financial statements or other information that we will generally find acceptable would be:

(c) comparative annual financial statements or other information for the acquisition or probable acquisition for at least the number of financial years as would be required under Part 8 of NI 51-102 that ended more than 90 days before the date of the short form prospectus, audited for the most recently completed financial period in accordance with NI 52-107, and reviewed for the comparative period in accordance with section 4.3 of NI 44-101;

(d) a comparative interim financial report or other information for the acquisition or probable acquisition for any interim period ended subsequent to the latest annual financial statements included in the short form prospectus and more than 60 days before the date of the short form prospectus for issuers that are venture issuers, and 45 days for issuers that are not venture issuers reviewed in accordance with section 4.3 of NI 44-101; and

(e) pro forma financial statements or other information required under Part 8 of NI 51-102.

If the issuer intends to include financial statements as set out in the example above as satisfactory alternative financial statements or other information, we ask that this be highlighted in the cover letter to the prospectus. If the issuer does not intend to include financial statements or other information, or intends to file financial statements or other information that are different from those set out above, we encourage the utilization of pre filing procedures.

(3) When an issuer acquires a business or related businesses that has itself recently acquired another business or related businesses (an "indirect acquisition"), the issuer should consider whether prospectus disclosure about the indirect acquisition, including historical financial statements, is necessary to satisfy the requirement that the prospectus contain full, true and plain disclosure of all material facts relating to the securities being distributed. In making this determination, the issuer should consider the following factors:

- if the indirect acquisition would meet any of the significance tests in Part 8 of NI 51-102 when the issuer applies each of those tests to its proportionate interest in the indirect acquisition of the business; and

- if the amount of time between the separate acquisitions is such that the effect of the first acquisition is not adequately reflected in the results of the business or related businesses the issuer is acquiring.

(4) Subsection 10.2(3) discusses financial statements or other information for the completed or proposed acquisition of the business or related businesses. This "other information" is intended to capture the financial information disclosures required under Part 8 of NI 51-102 other than financial statements. An example of "other information" would include the operating statements, property descriptions, production volumes and reserves disclosures described under section 8.10 of NI 51-102.

4.10 Updated pro forma financial statements to date of prospectus – In addition to the pro forma financial statements for completed acquisitions that are required to be included in a business acquisition report incorporated by reference into a prospectus under Item 11 of Form 44-101F1, an issuer may include a set of pro forma financial statement prepared as at the date of the prospectus.

4.11 General Financial Statement Requirements – A reporting issuer is required under the applicable CD rule to file its annual financial statements and related MD&A 90 days after year end (or 120 days if the issuer is a venture issuer as defined in NI 51-102). Certain transition rules in the applicable CD rule apply to the first interim financial report required to be filed in the year of adopting IFRS in respect of an interim period beginning

on or after January 1, 2011. Otherwise, an interim financial report and related MD&A must be filed 45 days after the last day of an interim period (or 60 days for a venture issuer). The financial statement requirements in NI 44-101 are based on these continuous disclosure reporting time frames and do not impose accelerated filing deadlines for a reporting issuer's financial statements. However, to the extent an issuer has filed financial statements in advance of the deadline for doing so, those financial statements must be incorporated by reference in the short form prospectus. We are of the view that directors of an issuer should endeavor to consider and approve financial statements in a timely manner and should not delay the approval and filing of the financial statements for the purpose of avoiding their inclusion in a short form prospectus. Once the financial statements have been approved, they should be filed as soon as possible.

4.12 Credit Supporter Disclosure – In addition to the issuer's documents required to be incorporated by reference under sections 11.1 and 11.2 of Form 44-101F1 and the issuer's earnings coverage ratios required to be included under Item 6 of Form 44-101F1, a short form prospectus must include, under section 12.1 of Form 44-101F1, disclosure about any credit supporters that have provided a guarantee or alternative credit support for all or substantially all of the payments to be made under the securities being distributed. Accordingly, disclosure about a credit supporter may be required even if the credit supporter has not provided full and unconditional credit support.

4.13 Exemptions for Certain Issuers of Guaranteed Securities – Requiring disclosure about the issuer and any applicable credit supporters in a short form prospectus may result in unnecessary disclosure in some instances. Item 13 of Form 44-101F1 provides exemptions from the requirement to include both issuer and credit supporter disclosure where such disclosure is not necessary to ensure that the short form prospectus includes full, true and plain disclosure of all material facts concerning the securities to be distributed.

The exemptions in Item 13 of Form 44-101F1 are based on the principle that, in these instances, investors will generally require either issuer disclosure or credit supporter disclosure to make an informed investment decision. The exemptions set out in Item 13 of Form 44-101F1 are not intended to be comprehensive and issuers may apply for exemptive relief from the requirement to provide both issuer and credit supporter disclosure, as appropriate.

4.14 Previously Disclosed Material Forward Looking Information – If an issuer, at the time it files a short form prospectus,

(a) has previously disclosed to the public material forward looking information for a period that is not yet complete;

(b) is aware of events and circumstances that are reasonably likely to cause actual results to differ materially from the material forward looking information; and

(c) has not filed an MD&A with the securities regulatory authorities that discusses those events and circumstances and expected differences from the material forward looking information, as required by section 5.8 of NI 51-102,

the issuer should discuss those events and circumstances, and the expected differences from the material forward looking information, in the short form prospectus.

PART 5 CERTIFICATES

5.1 General – Issuers should refer to section 2.6 of the Companion Policy to NI 41-101.

PART 6 TRANSITION

6.1 Transition – The amendments to NI 44-101 and this Policy which came into effect on January 1, 2011 only apply to a preliminary short form prospectus, an amendment to a preliminary short form prospectus, a final short form prospectus or an amendment to a final short form prospectus of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning on or after January 1, 2011.

6.4 National Instrument 41-101 – General Prospectus Requirements

PART 11 OVER-ALLOCATION AND UNDERWRITERS

11.1 Over-allocation – Securities that are sold to create the over allocation position in connection with a distribution under a prospectus must be distributed under the prospectus.

11.2 Distribution of securities under a prospectus to an underwriter – Except as required under section 11.3, no person or company may distribute securities under a prospectus to any person or company acting as an underwriter in connection with the distribution of securities under the prospectus, other than

(a) an over-allotment option granted to one or more persons or companies for acting as an underwriter in connection with the distribution or any security issuable or transferable on the exercise of such an over-allotment option; or

(b) securities issued or paid as compensation to one or more persons or companies for acting as an underwriter in respect of other securities that are distributed under the prospectus, where the number or principal amount of the securities issued as compensation, on an as if converted basis, does not in the aggregate exceed 10% of the total of the base offering on an as if converted basis plus any securities that would be acquired upon the exercise of an over-allotment option.

11.3 Take up by underwriter – If an underwriter has agreed to purchase a specified number or principal amount of the securities at a specified price, the underwriter must take up the securities, if at all, within 42 days after the date of the receipt for the final prospectus.

PART 13 ADVERTISING AND MARKETING IN CONNECTION WITH PROSPECTUS OFFERINGS OF ISSUERS OTHER THAN INVESTMENT FUNDS

13.0 Application –

(1) This Part applies to issuers other than investment funds filing a prospectus in the form of Form 41-101F2 or Form 41-101F3.

(2) In this Part,

"comparables" means information that compares an issuer to other issuers;

"convertible security" has the same meaning as in section 1.1 of National Instrument 45-102 Resale of Securities;

"exchangeable security" has the same meaning as in section 1.1 of National Instrument 45-102 Resale of Securities;

"underlying security" has the same meaning as in section 1.1 of National Instrument 45-102 Resale of Securities;

"U.S. cross border initial public offering" means an initial public offering of securities of an issuer being made contemporaneously in the United States of America and Canada by way of a prospectus filed with a securities regulatory authority in a jurisdiction of Canada and a U.S. prospectus filed with the SEC;

"U.S. cross border offering" means an offering of securities of an issuer being made contemporaneously in the United States of America and Canada by way of a prospectus filed with a securities regulatory authority in a jurisdiction of Canada and a U.S. prospectus filed with the SEC, and includes a U.S. cross border initial public offering;

"U.S. prospectus" means a prospectus that has been prepared in accordance with the disclosure and other requirements of U.S. federal securities law for an offering of securities registered under the 1933 Act.

(3) In this Part, for greater certainty, a reference to "provides" includes showing a document to a person without allowing the person to retain or make a copy of the document.

13.1 - Legend for communications during the waiting period –

(1) A preliminary prospectus notice or other communication used in connection with a prospectus offering during the waiting period must contain the following legend or words to the same effect:

> "A preliminary prospectus containing important information relating to these securities has been filed with securities commissions or similar authorities in certain jurisdictions of Canada. The preliminary prospectus is still subject to completion or amendment. Copies of the preliminary prospectus may be obtained from [insert name and contact information for dealer or other relevant person or entity.] There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final prospectus has been issued."

(2) If the preliminary prospectus notice or other communication is in writing, include the wording required under subsection (1) in bold type that is at least as large as that used generally in the body of the text.

(3) Subsection (1) does not apply to standard term sheets and marketing materials.

13.2 Legend for communications following receipt for the final prospectus –

(1) A final prospectus notice or other communication used in connection with a prospectus offering following the issuance of a receipt for the final prospectus must contain the following legend or words to the same effect:

"This offering is only made by prospectus. The prospectus contains important detailed information about the securities being offered. Copies of the prospectus may be obtained from [insert name and contact information for dealer or other relevant person or entity.] Investors should read the prospectus before making an investment decision."

(2) If the final prospectus notice or other communication is in writing, include the wording required under subsection (1) in bold type that is at least as large as that used generally in the body of the text.

(3) Subsection (1) does not apply to standard term sheets and marketing materials.

13.3 [Repealed]

13.4 Testing of the waters exemption – IPO issuers –

(1) In this section, "public issuer" means an issuer that

(a) is a reporting issuer in a jurisdiction of Canada;

(b) is an SEC issuer;

(c) has a class of securities that has been assigned a ticker symbol by the Financial Industry Regulatory Authority in the United States of America for use on any of the over the counter markets in the United States of America;

(d) has a class of securities that have been traded on an over the counter market with respect to which trade data is publicly reported; or

(e) has any of its securities listed, quoted or traded on a marketplace outside of Canada or any other facility outside of Canada for bringing together buyers and sellers of securities and with respect to which trade data is publicly reported.

(2) Subject to subsections (3) to (7), the prospectus requirement does not apply to a solicitation of an expression of interest in order to ascertain if there would be

sufficient interest in an initial public offering of securities by an issuer pursuant to a long form prospectus if

(a) the issuer has a reasonable expectation of filing a preliminary long form prospectus in respect of an initial public offering in at least one jurisdiction of Canada;

(b) the issuer is not a public issuer before the date of the preliminary long form prospectus;

(c) an investment dealer makes the solicitation on behalf of the issuer;

(d) the issuer provided written authorization to the investment dealer to act on its behalf before the investment dealer made the solicitation;

(e) the solicitation is made to an accredited investor; and

(f) subject to subsection (3), the issuer and the investment dealer keep all information about the proposed offering confidential until the earlier of

(i) the information being generally disclosed in a preliminary long form prospectus or otherwise, or

(ii) the issuer confirming in writing that it will not be pursuing the potential offering.

(3) An investment dealer must not solicit an expression of interest from an accredited investor pursuant to subsection (2) unless

(a) all written material provided to the accredited investor

(i) is approved in writing by the issuer before it is provided,

(ii) is marked confidential, and

(iii) contains a legend stating that the material does not provide full disclosure of all material facts relating to the issuer, the securities or the offering and is not subject to liability for misrepresentations under applicable securities legislation; and

(b) before providing the investor with any information about the issuer, the securities or the offering, the investment dealer obtains confirmation in writing from the investor that the investor will keep information about the proposed offering confidential, and will not use the information for any

purpose other than assessing the investor's interest in the offering, until the earlier of

(i) the information being generally disclosed in a preliminary long form prospectus or otherwise, or

(ii) the issuer confirming in writing that it will not be pursuing the potential offering.

(4) If any investment dealer solicits an expression of interest pursuant to subsection (2), the issuer must not file a preliminary long form prospectus in respect of an initial public offering until the date which is at least 15 days after the date on which any investment dealer last solicited an expression of interest from an accredited investor pursuant to that subsection.

(5) An issuer relying on the exemption in subsection (2) must keep

(a) a written record of any investment dealer that it authorized to act on its behalf in making solicitations in reliance on the exemption; and

(b) a copy of any written authorizations referred to in paragraph (2)(d).

(6) If an investment dealer solicits an expression of interest pursuant to subsection (2), the investment dealer must keep

(a) a written record of any accredited investor that it solicited in reliance on the exemption;

(b) a copy of any written material and written approval referred to in subparagraph\(3)(a)(i); and

(c) any written confirmations referred to in paragraph (3)(b).

(7) Subsection (2) does not apply if

(a) any of the issuer's securities are held by a control person that is a public issuer; and

(b) the initial public offering of the issuer would be a material fact or material change with respect to the control person.

13.5 Standard term sheets during the waiting period –

(1) An investment dealer that provides a standard term sheet to a potential investor during the waiting period is exempt from the prospectus requirement with respect to providing the standard term sheet if

(a) the standard term sheet complies with subsections (2) and (3);

(b) other than contact information for the investment dealer or underwriters, all information in the standard term sheet concerning the issuer, the securities or the offering is disclosed in, or derived from, the preliminary prospectus or any amendment; and

(c) a receipt for the preliminary prospectus has been issued in the local jurisdiction.

(2) A standard term sheet provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A preliminary prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada].

The preliminary prospectus is still subject to completion. Copies of the preliminary prospectus may be obtained from [insert contact information for the investment dealer or underwriters]. There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final prospectus has been issued.

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary prospectus, the final prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

(3) A standard term sheet provided under subsection (1) may contain only the information referred to in subsection (2) and the following information in respect of the issuer, the securities or the offering:

(a) the name of the issuer;

(b) the jurisdiction or foreign jurisdiction in which the issuer’s head office is located;

(c) 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;

(d) a brief description of the business of the issuer;

(e) a brief description of the securities;

(f) the price or price range of the securities;

(g) the total number or dollar amount of the securities, or range of the total number or dollar amount of the securities;

(h) the terms of any over-allotment option;

(i) the names of the underwriters;

(j) whether the offering is on a firm commitment or best efforts basis;

(k) the amount of the underwriting commission, fee or discount;

(l) the proposed or expected closing date of the offering;

(m) a brief description of the use of proceeds;

(n) the exchange on which the securities are proposed to be listed, provided that the standard term sheet complies with the requirements of securities legislation for listing representations;

(o) in the case of debt securities, the maturity date of the debt securities and a brief description of any interest payable on the debt securities;

(p) in the case of preferred shares, a brief description of any dividends payable on the securities;

(q) in the case of convertible securities, a brief description of the underlying securities into which the convertible securities are convertible;

(r) in the case of exchangeable securities, a brief description of the underlying securities into which the exchangeable securities are exchangeable;

(s) in the case of restricted securities, a brief description of the restriction;

(t) in the case of securities for which a credit supporter has provided a guarantee or alternative credit support, a brief description of the credit supporter and the guarantee or alternative credit support provided;

(u) whether the securities are redeemable or retractable;

(v) a statement that the securities are eligible, or are expected to be eligible, for investment in registered retirement savings plans, tax free savings accounts or other registered plans, if the issuer has received, or reasonably expects to receive, a legal opinion that the securities are so eligible;

(w) contact information for the investment dealer or underwriters.

(4) For the purposes of subsection (3), "brief description" means a description consisting of no more than three lines of text in type that is at least as large as that used generally in the body of the standard term sheet.

13.6 Standard term sheets after a receipt for a final prospectus –

(1) An investment dealer must not provide a standard term sheet to a potential investor after a receipt for a final prospectus or any amendment is issued unless

(a) the standard term sheet complies with subsections (2) and (3);

(b) other than contact information for the investment dealer or underwriters, all information in the standard term sheet concerning the issuer, the securities or the offering is disclosed in, or derived from, the final prospectus or any amendment; and

(c) a receipt for the final prospectus has been issued in the local jurisdiction.

(2) A standard term sheet provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A final prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada].

Copies of the final prospectus may be obtained from [insert contact information for the investment dealer or underwriters].

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the final prospectus, and any amendment,

for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

(3) A standard term sheet provided under subsection (1) may contain only the information referred to in subsection (2) and the information referred to in subsection 13.5(3).

13.7 Marketing materials during the waiting period –

(1) An investment dealer that provides marketing materials to a potential investor during the waiting period is exempt from the prospectus requirement with respect to providing the marketing materials if

(a) the marketing materials comply with subsections (2) to (8);

(b) other than contact information for the investment dealer or underwriters and any comparables, all information in the marketing materials concerning the issuer, the securities or the offering is disclosed in, or derived from, the preliminary prospectus or any amendment;

(c) other than prescribed language, the marketing materials contain the same cautionary language in bold type as contained on the cover page, and in the summary, of the preliminary prospectus;

(d) a template version of the marketing materials is approved in writing by the issuer and the lead underwriter before the marketing materials are provided;

(e) a template version of the marketing materials is filed on or before the day that the marketing materials are first provided;

(f) a receipt for the preliminary prospectus has been issued in the local jurisdiction; and

(g) the investment dealer provides a copy of the preliminary prospectus and any amendment with the marketing materials.

(2) If a template version of the marketing materials is approved in writing by the issuer and lead underwriter under paragraph (1)(d) and filed under paragraph (1)(e), an investment dealer may provide a limited use version of the marketing materials that

(a) has a date that is different than the template version;

(b) contains a cover page referring to the investment dealer or underwriters or a particular investor or group of investors;

(c) contains contact information for the investment dealer or underwriters; or

(d) has text in a format, including the type's font, colour or size, that is different than the template version.

(3) If a template version of the marketing materials is divided into separate sections for separate subjects and is approved in writing by the issuer and lead underwriter under paragraph (1)(d), and that template version is filed under paragraph (1)(e), an investment dealer may provide a limited use version of the marketing materials that includes only one or more of those separate sections.

(4) The issuer may remove any comparables, and any disclosure relating to those comparables, from the template version of the marketing materials before filing it under paragraph (1)(e) or (7)(a) if

(a) the comparables, and any disclosure relating to the comparables, are in a separate section of the template version of the marketing materials;

(b) the template version of the marketing materials that is filed contains a note advising that the comparables, and any disclosure relating to the comparables, were removed in accordance with this subsection, provided that the note appears immediately after where the removed comparables and related disclosure would have been;

(c) if the prospectus is filed in the local jurisdiction, a complete template version of the marketing materials containing the comparables, and any disclosure relating to the comparables, is delivered to the securities regulatory authority; and

(d) the complete template version of the marketing materials contains disclosure proximate to the comparables which

(i) explains what comparables are;

(ii) explains the basis on which the other issuers were included in the comparables and why the other issuers are considered to be an appropriate basis for comparison with the issuer;

(iii) explains the basis on which the compared attributes were included;

(iv) states that the information about the other issuers was obtained from public sources and has not been verified by the issuer or the underwriters;

(v) discloses any risks relating to the comparables, including risks in making an investment decision based on the comparables; and

(vi) states that if the comparables contain a misrepresentation, the investor does not have a remedy under securities legislation.

(5) Marketing materials provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A preliminary prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada]. A copy of the preliminary prospectus, and any amendment, is required to be delivered with this document.

The preliminary prospectus is still subject to completion. There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final prospectus has been issued.

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary prospectus, the final prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

(6) If marketing materials are provided during the waiting period under subsection (1), the issuer must include the template version of the marketing materials filed under paragraph 1(e) in its final prospectus, or incorporate by reference the template version of the marketing materials filed under paragraph 1(e) into its final prospectus, in the manner described in subsection 36A.1(1) of Form 41-101F1 or subsection 11.6(1) of Form 44-101F1, as applicable.

(7) If the final prospectus or any amendment modifies a statement of a material fact that appeared in marketing materials provided during the waiting period under subsection (1), the issuer must

(a) prepare and file, at the time the issuer files the final prospectus or any amendment, a revised template version of the marketing materials that is blacklined to show the modified statement, and

(b) include in the final prospectus, or any amendment, the disclosure required by subsection 36A.1(3) of Form 41-101F1 or subsection 11.6(3) of Form 44-101F1, as applicable.

(8) A revised template version of the marketing materials filed under subsection (7) must comply with section 13.8.

(9) If marketing materials are provided during the waiting period under subsection (1) but the issuer does not comply with subsection (6), the marketing materials are deemed for purposes of securities legislation to be incorporated into the issuer's final prospectus as of the date of the final prospectus to the extent not otherwise expressly modified or superseded by a statement contained in the final prospectus.

13.8 Marketing materials after a receipt for a final prospectus –

(1) An investment dealer must not provide marketing materials to a potential investor after a receipt for a final prospectus or any amendment is issued unless

(a) the marketing materials comply with subsections (2) to (8);

(b) other than contact information for the investment dealer or underwriters and any comparables, all information in the marketing materials concerning the issuer, the securities or the offering is disclosed in, or derived from, the final prospectus and any amendment;

(c) other than prescribed language, the marketing materials contain the same cautionary language in bold type as contained on the cover page, and in the summary, of the final prospectus;

(d) a template version of the marketing materials is approved in writing by the issuer and the lead underwriter before the marketing materials are provided;

(e) a template version of the marketing materials is filed on or before the day that the marketing materials are first provided;

(f) a receipt for the final prospectus has been issued in the local jurisdiction; and

(g) the investment dealer provides a copy of the final prospectus, and any amendment, with the marketing materials.

(2) If a template version of the marketing materials is approved in writing by the issuer and lead underwriter under paragraph (1)(d) and filed under paragraph (1)(e), an investment dealer may provide a limited use version of the marketing materials that

(a) has a date that is different than the template version;

(b) contains a cover page referring to the investment dealer or underwriters or a particular investor or group of investors;

(c) contains contact information for the investment dealer or underwriters; or

(d) has text in a format, including the type's font, colour or size, that is different than the template version.

(3) If a template version of the marketing materials is divided into separate sections for separate subjects and is approved in writing by the issuer and lead underwriter under paragraph (1)(d), and that template version is filed under paragraph (1)(e), an investment dealer may provide a limited use version of the marketing materials that includes only one or more of those separate sections.

(4) The issuer may remove any comparables, and any disclosure relating to those comparables, from the template version of the marketing materials before filing it under paragraph (1)(e) or (7)(b) if

(a) the comparables, and any disclosure relating to the comparables, are in a separate section of the template version of the marketing materials;

(b) the template version of the marketing materials that is filed contains a note advising that the comparables, and any disclosure relating to the comparables, were removed in accordance with this subsection, provided that the note appears immediately after where the removed comparables and related disclosure would have been;

(c) if the prospectus is filed in the local jurisdiction, a complete template version of the marketing materials containing the comparables, and any disclosure relating to the comparables, is delivered to the securities regulatory authority; and

(d) the complete template version of the marketing materials contains the disclosure referred to in paragraph 13.7(4)(d).

(5) Marketing materials provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A final prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada]. A copy of the final prospectus, and any amendment, is required to be delivered with this document.

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the final prospectus, and any amendment,

for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

(6) An investment dealer must not provide marketing materials under subsection (1) unless the issuer

(a) has included the template version of the marketing materials filed under paragraph 1(e) in its final prospectus, and any amendment, or incorporated by reference the template version of the marketing materials filed under paragraph 1(e) into its final prospectus, and any amendment, in the manner described in subsection 36A.1(1) of Form 41-101F1 or subsection 11.6(1) of Form 44-101F1, as applicable, or

(b) has included in its final prospectus, and any amendment, the statement described in subsection 36A.1(4) of Form 41-101F1 or subsection 11.6(4) of Form 44-101F1, as applicable.

(7) If an amendment to a final prospectus modifies a statement of material fact that appeared in marketing materials provided under subsection (1), the issuer must

(a) indicate in the amendment to the final prospectus that the marketing materials are not part of the final prospectus, as amended, to the extent that the contents of the marketing materials have been modified or superseded by a statement contained in the amendment;

(b) prepare and file, at the time the issuer files the amendment to the final prospectus, a revised template version of the marketing materials that is blacklined to show the modified statement; and

(c) include in the amendment to the final prospectus the disclosure required by subsection 36A.1(3) of Form 41-101F1 or subsection 11.6(3) of Form 44-101F1, as applicable.

(8) Any revised template version of the marketing materials filed under subsection (7) must comply with this section.

(9) If marketing materials are provided under subsection (1) but the issuer did not comply with subsection (6), the marketing materials are deemed for purposes of securities legislation to be incorporated into the issuer's final prospectus as of the date of the final prospectus to the extent not otherwise expressly modified or superseded by a statement contained in the final prospectus.

13.9 Road shows during the waiting period –

(1) An investment dealer that conducts a road show for potential investors during the waiting period is exempt from the prospectus requirement with respect to that road show if

(a) the road show complies with subsections (2) to (4); and

(b) a receipt for the preliminary prospectus has been issued in the local jurisdiction.

(2) Subject to section 13.12, an investment dealer must not provide marketing materials to an investor attending a road show conducted under subsection (1) unless the marketing materials are provided in accordance with section 13.7.

(3) If an investment dealer conducts a road show, the investment dealer must establish and follow reasonable procedures to

(a) ask any investor attending the road show in person, by telephone conference call, on the internet or by other electronic means to provide their name and contact information;

(b) keep a record of any information provided by the investor; and

(c) provide the investor with a copy of the preliminary prospectus and any amendment.

(4) If an investment dealer permits an investor, other than an accredited investor, to attend a road show, the investment dealer must commence the road show with the oral reading of the following statement or a statement to the same effect:

This presentation does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary prospectus, the final prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

13.10 Road shows after a receipt for a final prospectus –

(1) An investment dealer must not conduct a road show for potential investors after a receipt for a final prospectus or any amendment is issued unless

(a) the road show complies with subsections (2) to (4); and

(b) a receipt for the final prospectus has been issued in the local jurisdiction.

(2) Subject to section 13.12, an investment dealer must not provide marketing materials to an investor attending a road show conducted under subsection (1) unless the marketing materials are provided in accordance with section 13.8.

(3) If an investment dealer conducts a road show, the investment dealer must establish and follow reasonable procedures to

(a) ask any investor attending the road show in person, by telephone conference call, on the internet or by other electronic means to provide their name and contact information;

(b) keep a record of any information provided by the investor; and

(c) provide the investor with a copy of the final prospectus and any amendment.

(4) If an investment dealer permits an investor, other than an accredited investor, to attend a road show, the investment dealer must commence the road show with the oral reading of the following statement or a statement to the same effect:

This presentation does not provide full disclosure of all material facts relating to the securities offered. Investors should read the final prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

13.11 Exception from procedures for road shows for certain U.S. cross border initial public offerings –

(1) Subject to subsection (2), the following provisions do not apply to an investment dealer that conducts a road show in connection with a U.S. cross border initial public offering:

(a) paragraphs 13.9(3)(a) and (b);

(b) paragraphs 13.10(3)(a) and (b).

(2) Subsection (1) does not apply unless

(a) the issuer is relying on the exemption from United States filing requirements in Rule 433(d)(8)(ii) under the 1933 Act in respect of the road show; and

(b) the investment dealer establishes and follows reasonable procedures to

(i) ask any investor attending the road show in person, by telephone conference call, on the internet or by other electronic means to voluntarily provide their name and contact information; and

(ii) keep a record of any information voluntarily provided by the investor.

13.12 Exception from filing and incorporation requirements for road shows for certain U.S. cross border offerings –

(1) Subject to subsections (2) to (4), if an investment dealer provides marketing materials to a potential investor in connection with a road show for a U.S. cross border offering, the following provisions do not apply to the template version of the marketing materials relating to the road show:

(a) paragraphs 13.7(1)(e) and 13.8(1)(e);

(b) subsections 13.7(6) to (9);

(c) subsections 13.8(6) to (9);

(d) paragraphs 36A.1(1)(b) and (c), paragraph 36A.1(3)(b), subsection 36A.1(4) and section 37.6 of Form 41 101F1;

(e) paragraphs 11.6(1)(b) and (c), paragraph 11.6(3)(b) and subsection 11.6(4) of Form 44-101F1.

(2) Subsection (1) does not apply unless

(a) the underwriters have a reasonable expectation that the securities offered under the U.S. cross border offering will be sold primarily in the United States of America;

(b) the issuer and the underwriters who sign the prospectus filed in the local jurisdiction provide a contractual right containing the language set out in subsection 36A.1(5) of Form 41-101F1, or words to the same effect, except that the language may specify that the contractual right does not apply to any comparables provided in accordance with subsection (3); and

(c) if the prospectus is filed in the local jurisdiction, the template version of the marketing materials relating to the road show is delivered to the securities regulatory authority.

(3) If the template version of the marketing materials relating to the road show contains comparables, the template version of the marketing materials must contain the disclosure referred to in paragraph 13.7(4)(d).

(4) For greater certainty, subsection (1) does not apply to marketing materials other than the marketing materials provided in connection with the road show.

6.5 Companion Policy 41-101CP to National Instrument 41-101 – General Prospectus Requirement

PART 2 GENERAL REQUIREMENTS

2.4 Over-allocation – Underwriters of a distribution may over-allocate a distribution in order to hold a short position in the securities following closing. This over-allocation position allows the underwriters to engage in limited market stabilization to compensate for the increased liquidity in the market following the distribution. If the market price of the securities decreases following the closing of the distribution, the short position created by the over-allocation position may be filled through purchases in the market. This creates upward pressure on the price of the securities. If the market price of the securities increases following the closing of the distribution, the over-allocation position may be filled through the exercise of an over-allotment option (at the issue offering price). Underwriters would not generally engage in market stabilization activities without the protection provided by an over-allotment option.

Over-allotment options are permitted solely to facilitate the over-allocation of the distribution and consequent market stabilization. Accordingly, an over-allotment option may only be exercised for the purpose of filling the underwriters' over-allocation position. The exercise of an over-allotment option for any other purpose would raise public policy concerns.

To form part of the over-allocation position, securities must be sold to bona fide purchasers as of the closing of the offering. Securities held by an underwriter or in proprietary accounts of an underwriter for sale at a future date do not form part of the over-allocation position. Further, as discussed below, section 11.2 of the Instrument restricts the distribution of securities under a prospectus to an underwriter. Since section 11.1 of the Instrument requires that all securities that are sold to create the over-allocation position be distributed under the prospectus, securities cannot be sold to an underwriter to increase the size of the over-allocation position.

PART 6 ADVERTISING OR MARKET ACTIVITIES IN CONNECTION WITH PROSPECTUS OFFERINGS OF ISSUERS OTHER THAN INVESTMENT FUNDS

6.0 Application – This Part applies to issuers other than investment funds filing a prospectus in the form of Form 41-101F2 or Form 41-101F3.

6.1 Scope –

(1) The discussion below is focused on the impact of the prospectus requirement on advertising or marketing activities in connection with a prospectus offering.

(2) Issuers and other persons or companies that engage in advertising or marketing activities should also consider the impact of the requirement to register as a dealer

in each jurisdiction where such advertising or marketing activities are undertaken. In particular, the persons or companies would have to consider whether their activities result in the party being in the business of trading in securities. For further information, refer to section 1.3 of Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

(3) Advertising or marketing activities are also subject to regulation under securities legislation and other rules, including those relating to disclosure, and insider trading and registration, which are not discussed below.

6.2 The prospectus requirement –

(1) Securities legislation generally provides that no one may trade in a security where that trade would be a distribution unless the prospectus requirement has been satisfied, or an exemption is available.

(2) The analysis of whether any particular advertising or marketing activities is prohibited by virtue of the prospectus requirement turns largely on whether the activities constitute a trade and, if so, whether such a trade would constitute a distribution.

(3) In Québec, since securities legislation has been designed without the notion of a "trade", the analysis is dependent solely on whether the advertising or marketing activities constitute a distribution.

(4) Definition of "trade" – Securities legislation (other than the securities legislation of Québec) defines a "trade" in a non exhaustive manner to include, among other things

- any sale or disposition of a security for valuable consideration,
- any receipt by a registrant of an order to buy or sell a security, and
- any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing.

(5) Any advertising or marketing activities that can be reasonably regarded as intended to promote a distribution of securities would be "conduct directly or indirectly in furtherance" of the distribution of a security and, therefore, would fall within the definition of a trade.

(6) *Definition of distribution* – Even though advertising or marketing activities constitute a "trade" for the purposes of securities legislation (other than the

securities legislation of Québec), they would be prohibited by virtue of the prospectus requirement only if they also constitute a distribution under securities legislation. Securities legislation (other than the securities legislation of Québec) defines a distribution to include a "trade" in, among other things, previously unissued securities and securities that form part of a control block.

(7) The definition of distribution under the securities legislation of Québec includes the endeavour to obtain or the obtaining of subscribers or purchasers of previously unissued securities.

(8) *Prospectus exemptions* – It has been suggested by some that advertising or marketing activities, even if clearly made in furtherance of a distribution, could be undertaken in certain circumstances on a prospectus exempt basis. Specifically, it has been suggested that if an exemption from the prospectus requirement is available in respect of a specific distribution (even though the securities will be distributed under a prospectus), advertising or marketing related to such distribution would be exempt from the prospectus requirement. This analysis is premised on an argument that the advertising or marketing activities constitute one distribution that is exempt from the prospectus requirement while the actual sale of the security to the purchaser constitutes a second discrete distribution effected pursuant to the prospectus.

(9) We are of the view that this analysis is contrary to securities legislation. In these circumstances, the distribution in respect of which the advertising or marketing activities are undertaken is the distribution pursuant to the anticipated prospectus. Advertising or marketing must be viewed in the context of the prospectus offering and as an activity in furtherance of that distribution. If it were otherwise, the overriding concerns implicit and explicit in securities legislation regarding equal access to information, conditioning of the market, tipping and insider trading, and the provisions of the legislation designed to ensure such access to information and curb such abuses, could be easily circumvented.

Although the "testing of the waters" exemption in subsection 13.4(2) of the Instrument allows an investment dealer to solicit expressions of interest from accredited investors before the filing of a preliminary prospectus for an initial public offering, we note that the exemption is

- a limited accommodation to issuers and investment dealers that want a greater opportunity to confidentially test the waters before filing a preliminary prospectus for an initial public offering, and

- subject to a number of conditions to address our regulatory concerns, including conditions to deter conditioning of the market.

(10) We recognize that an issuer and a dealer may have a demonstrable bona fide intention to effect an exempt distribution and this distribution may be abandoned in favour of a prospectus offering. In these very limited circumstances, there may be two separate distributions. From the time when it is reasonable for a dealer to expect that a bona fide exempt distribution will be abandoned in favour of a prospectus offering, the general rules relating to advertising or marketing activities that constitute an act in furtherance of a distribution will apply.

6.3 Advertising or marketing activities –

(1) The prospectus requirement applies to any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a distribution unless a prospectus exemption is available. Accordingly, advertising or marketing activities intended to promote the distribution of securities, in any form, would be prohibited by virtue of the prospectus requirement. Advertising or marketing activities subject to the prospectus requirement may be oral, written or electronic and include the following:

- television or radio advertisements or commentaries;
- published materials;
- correspondence;
- records;
- videotapes or other similar material;
- market letters;
- research reports;
- circulars;
- promotional seminar text;
- telemarketing scripts;
- reprints or excerpts of any other sales literature.

(2) Advertising or marketing activities that are not in furtherance of a distribution of securities would not generally fall within the definition of a distribution and, therefore, would not be prohibited by virtue of the prospectus requirement. The following activities would not generally be subject to the prospectus requirement:

- advertising and publicity campaigns that are aimed at either selling products or services of the issuer or raising public awareness of the issuer;
- communication of factual information concerning the business of the issuer that is released in a manner, timing and form that is consistent with the regular past communications practices of the issuer if that communication does not refer to or suggest the distribution of securities;
- the release or filing of information that is required to be released or filed pursuant to securities legislation.

(3) Any activities that form part of a plan or series of activities undertaken in anticipation or in furtherance of a distribution would usually trigger the prospectus requirement, even if they would be permissible if viewed in isolation. Similarly, we may still consider advertising or marketing activities that do not indicate that a distribution of securities is contemplated to be in furtherance of a distribution by virtue of their timing and content. In particular, where a private placement or other exempt distribution occurs prior to or contemporaneously with a prospectus offering, we may consider activities undertaken in connection with the exempt distribution as being in furtherance of the prospectus offering.

6.3A Research reports –

(1) In order to address regulatory concerns such as conditioning of the market, an investment dealer involved with a potential prospectus offering for an issuer should not issue a research report on the issuer or provide media commentary on the issuer prior to the filing of a preliminary prospectus, the announcement of a bought deal under section 7.2 of NI 44-101 or the filing of a shelf prospectus supplement under NI 44-102, unless the investment dealer has appropriate “ethical wall” policies and procedures in place between:

- the business unit that proposes to issue the research report or provide media commentary, and
- the business unit that proposes to act as underwriter for the distribution.

We understand that many investment dealers have adopted written ethical wall policies and procedures designed to contain non public information about an issuer

and assist the investment dealer and its officers and employees in complying with applicable securities laws relating to insider trading and trading by "tippees" (these laws are summarized in sections 3.1 and 3.2 of National Policy 51-201 Disclosure Standards).

(2) Any research reports would have to comply with section 7.7 of the Universal Market Integrity Rules of the Investment Industry Regulatory Organization of Canada and any applicable local rule.

6.4 Pre marketing and solicitation of expressions of interest in the context of a bought deal –

(1) In general, any advertising or marketing activities undertaken in connection with a prospectus prior to the issuance of a receipt for the preliminary prospectus are prohibited under securities legislation by virtue of the prospectus requirement.

(2) In the context of a bought deal, a limited exemption from the prospectus requirement has been provided in Part 7 of NI 44-101. The exemption is limited to communications by a dealer, directly or through any of its directors, officers, employees or agents, with any person or company (other than another dealer) for the purpose of obtaining from that person or company information as to the interest that it, or any person or company that it represents, may have in purchasing securities of the type that are proposed to be distributed, prior to a preliminary prospectus relating to those securities being filed with the relevant securities regulatory authorities.

(3) The conditions set out in Part 7 of NI 44-101, including the entering into of a bought deal agreement between the issuer and an underwriter or underwriters who have agreed to purchase the securities and the issuance and filing of a news release announcing the agreement, must be satisfied prior to any solicitation of expressions of interest.

(4) We consider that a distribution of securities commences at the time when

- a dealer has had discussions with an issuer or a selling securityholder, or with another dealer that has had discussions with an issuer or a selling securityholder about the distribution, and

- those distribution discussions are of sufficient specificity that it is reasonable to expect that the dealer (alone or together with other dealers) will propose to the issuer or the selling securityholder an underwriting of the securities.

CSA staff do not agree with interpretations that a distribution of securities does not commence until a later time (e.g., when a proposed engagement letter or a proposal

for an underwriting of securities with indicative terms is provided by a dealer to an issuer or a selling securityholder).

Similarly, we do not agree with interpretations that if an issuer rejects a proposed engagement letter or a proposal for an underwriting from a dealer, the "distribution" has ended and the dealer could immediately resume communications with potential investors concerning their interest in purchasing securities from the issuer. In these situations, we expect the dealer not to resume communications with potential investors until after a "cooling off" period. We have concerns that such interpretations would allow dealers to circumvent the pre marketing restrictions by continuing to test the waters between a series of rejected proposals in close succession until the issuer finally accepts a proposal.

By way of example, the following are situations which would indicate that "sufficient specificity" has occurred and a distribution of securities has commenced:

- Following discussions with an issuer, a dealer provides the issuer with a document outlining possible prospectus financing scenarios at one or more specified share price ranges. Subsequently, management of the issuer recommends to its board of directors that the issuer pursue a prospectus financing at a share price range contemplated by the dealer, the directors of the issuer give management broad authority to execute on a prospectus financing opportunity within that share price range if one arose and the dealer is advised of this approval.

- Following discussions with an issuer, a dealer advises the issuer that the market was looking good for a possible prospectus offering and that the dealer would likely provide indicative terms for an offering later that day.

CSA staff are aware that a practice has developed for "non deal road shows" where issuers and dealers will meet with institutional investors to discuss the business and affairs of the issuer. If such a non deal road show was undertaken in anticipation of a prospectus offering, it would generally be prohibited under securities legislation by virtue of the prospectus requirement.

CSA staff would also have selective disclosure concerns if the issuer provided the institutional investors with material information that has not been publicly disclosed. In this regard, see the guidance in Part V of National Policy 51-201 *Disclosure Standards*.

(5) We understand that many dealers communicate on a regular basis with clients and prospective clients concerning their interest in purchasing various securities of

various issuers. We will not generally consider such ordinary course communications as being made in furtherance of a distribution. However, from the commencement of a distribution, communications by the dealer, with a person or company designed to have the effect of determining the interest that it, or any person or company that it represents, may have in purchasing securities of the type that are the subject of distribution discussions, that are undertaken by any director, officer, employee or agent of the dealer

(a) who participated in or had actual knowledge of the distribution discussions, or

(b) whose communications were directed, suggested or induced by a person referred to in (a), or another person acting directly or indirectly at or upon the direction, suggestion or inducement of a person referred to in (a),

are considered to be in furtherance of the distribution and contrary to securities legislation.

(6) From the commencement of the distribution no communications, market making, or other principal trading activities in securities of the type that are the subject of distribution discussions may be undertaken by a person referred to in paragraph 5(a), above, or at or upon the direction, suggestion or inducement of a person or persons referred to in paragraph 5(a) or (b) above until the earliest of

- the issuance of a receipt for a preliminary prospectus in respect of the distribution,
- the time at which a news release that announces the entering into of a bought deal agreement is issued and filed in accordance with Part 7 of NI 44-101, and
- the time at which the dealer determines not to pursue the distribution.

(7) We note that the Investment Industry Regulatory Organization of Canada has adopted IIROC Rule 29.13 which is consistent with the above discussion relating to pre marketing of bought deals of equity securities. However, the principles articulated above apply to all offerings, whether of debt or equity securities, or a combination.

(8) The bought deal exemption in Part 7 of NI 44-101 is a limited accommodation to facilitate issuers seeking certainty of financing. This policy rationale is reflected in the terms and conditions of the exemption. In particular, in order for the exemption to be available for use, the issuer must have entered into a bought deal agreement with an underwriter who has, or underwriters who have, agreed to purchase the securities on a firm commitment basis. The definition of bought deal agreement in

subsection 7.1(1) in NI 44-101 provides that a bought deal agreement must not have:

- a "market out clause" (as defined in subsection 7.1(1) of NI 44-101),
- an upsizing option (other than an over allotment option as defined in section 1.1 of the Instrument), or
- a confirmation clause (other than a confirmation clause that complies with section 7.4 of NI 44-101).

(9) Section 7.3 of NI 44-101 allows a bought deal agreement to be modified in certain circumstances. Subsection 7.3(2) sets out conditions for any amendment to increase the number of securities to be purchased by the underwriters. Subsection 7.3(4) sets out conditions for any amendment to provide for a different type of securities to be purchased by the underwriters, and a different price for the securities. Subsection 7.3(5) sets out conditions for any amendment to add additional underwriters or remove an underwriter. Subsection 7.3(6) provides that a bought deal agreement may be replaced with a more extended form of underwriting agreement if the more extended form of underwriting agreement complies with the terms and conditions that apply to a bought deal agreement under Part 7 of NI 44-101. Subsection 7.3(7) provides that the parties may agree to terminate a bought deal agreement if the parties decide not to proceed with the distribution. However, section 7.3 is not intended to prevent a party from exercising a termination right under a provision in a bought deal agreement, or a more extended form of underwriting agreement, that permits a party to terminate the agreement if:

- another party or person performs, or fails to perform, certain actions, or
- certain events occur or fail to occur.

(10) Subsection 7.3(3) of NI 44-101 provides that a bought deal agreement may be amended to reduce the number of securities to be purchased, or the price of the securities, provided the amendment is made on or after the date which is four business days after the date the original agreement was entered into. As noted above, the policy rationale of the bought deal exemption is to facilitate issuers seeking certainty of financing. This policy rationale has not been met when a bought deal agreement is amended to provide for a smaller offering or a lower share price, particularly within a short period of time after the original agreement has been signed. If an underwriter does not wish to assume the risk of a bought deal, the underwriter may want to consider proposing a fully marketed offering to the issuer, rather than a bought deal.

(11) Section 7.4 of NI 44-101 provides that a bought deal agreement may not contain a confirmation clause (as defined in section 7.1 of NI 44-101) unless certain conditions apply. In particular, confirmation clauses are not permitted unless the confirmation period is only between the day on which the bought deal agreement is signed, and the next business day.

Since "sufficient specificity", as discussed in subsection (4), will have occurred before the time the signed bought deal agreement is presented to the issuer pursuant to paragraph 7.4(1)(a) of NI 44-101, underwriters cannot communicate with investors about the issuer or the distribution until the bought deal agreement is signed by the issuer, confirmed by the lead underwriter in accordance with section 7.4 of NI 44-101, and announced in a news release. Furthermore, the issuer and underwriters would be bound by insider trading and tippee prohibitions in securities legislation until the news release announcing the bought deal has been broadly disseminated.

(12) We note that the use of confirmation clauses in bought deal agreements under Part 7 of NI 44-101 is different from the practice of "overnight marketed deals". In an overnight marketed offering, the issuer is not relying on the bought deal exemption in Part 7 of NI 44-101. Instead, in a typical overnight marketing offering,

- On the first day (day 1), the issuer will file a preliminary prospectus with "bullets" for size of the offering and the price per security.

- After a receipt for the preliminary prospectus is issued on day 1, the underwriters will, after the close of trading, market the deal "overnight" to institutional and other investors.

- On the morning of the second day (day 2), the underwriters will provide the issuer with details of the proposed size of the offering and the price per security. If the issuer accepts the proposed terms, the issuer and the underwriters will sign an agreement in which the underwriters agree to purchase the base amount of the offering on a firm commitment basis. The issuer will then issue and file a news release announcing the agreement.

- Later on day 2, the issuer will file an amended and restated preliminary prospectus that discloses the agreement, the size of the offering and the price per security.

- Alternatively, if the issuer does not accept the terms proposed by the underwriters after the overnight marketing, the issuer will withdraw the preliminary prospectus.

(13) We note that underwriters often specify in a bought deal agreement, or a more extended form of underwriting agreement, that the issuer must file and obtain a receipt for the final prospectus within a short period of time after the first comment letter in respect of the preliminary prospectus is issued by staff of the principal regulator under National Policy 11-202 Process for Prospectus Reviews in Multiple Jurisdictions. However, issues may arise in the first comment letter that cannot be resolved within the time frame contemplated in the bought deal agreement or the underwriting agreement. Accordingly, issuers and underwriters should not expect that all comments can be resolved within a particular period of time.

As noted above, the policy rationale of the bought deal exemption is to facilitate issuers seeking certainty of financing. This policy rationale may not have been met if a bought deal agreement is terminated because regulatory comments are not settled within a short period of time after the first comment letter. If an underwriter does not want to assume the risk of a bought deal and allow for a reasonable period of time for the issuer to settle any comments from staff of the principal regulator, the underwriter may want to consider proposing a fully marketed offering to the issuer, rather than a bought deal.

(14) If an underwriter enters into an engagement letter, or similar agreement, with an issuer solely for the purpose of conducting due diligence before a potential bought deal under Part 7 of NI 44-101, that event will not, in and of itself, indicate that "sufficient specificity" has been achieved as discussed in subsection (4), provided that the engagement letter does not contain any other information which indicates that "it is reasonable to expect that the dealer will propose to the issuer an underwriting of securities".

If permitted by the issuer, an underwriter may want to conduct sufficient due diligence before proposing a bought deal under Part 7 of NI 44-101. Where an issuer is required to file technical reports under National Instrument 43-101 Standards of Disclosure for Mineral Projects, the underwriter may want to confirm, as part of its due diligence before proposing a bought deal, that the issuer's technical reports are compliant with the requirements of that instrument.

As noted above, the policy rationale of the bought deal exemption is to facilitate issuers seeking certainty of financing. While we recognize that a bought deal agreement or a more extended form of underwriting agreement often contain provisions giving the underwriters a right to terminate the agreement under a "due diligence out", these provisions should not be used in a way that would defeat the policy rationale of the bought deal exemption.

Where underwriters are not willing or able to conduct sufficient due diligence in advance of proposing a bought deal to an issuer, the underwriters may want to consider proposing a fully marketed offering to the issuer, rather than a bought deal.

6.4A Testing of the waters exemption – IPO issuers –

(1) The testing of the waters exemption for issuers planning to conduct an initial public offering (IPO issuers) in subsection 13.4(2) of the Instrument is intended for issuers that have a reasonable expectation of filing a long form prospectus in respect of an initial public offering (IPO) in at least one jurisdiction of Canada. The exemption permits an IPO issuer, through an investment dealer, to determine interest in a potential IPO through limited confidential communication with accredited investors. The purpose of the exemption is to provide a way for an IPO issuer to ascertain if there is adequate investor interest before starting the IPO process and incurring costs (e.g., retaining advisors to engage in formal due diligence activities and draft a preliminary prospectus).

The exemption is not intended to allow an investment dealer to "pre sell" the IPO and "fill their book" before the filing of a preliminary prospectus. Consequently, subsection 13.4(4) of the Instrument provides that if any investment dealer solicits an expression of interest under the exemption, the issuer must not file a preliminary prospectus in respect of an IPO until the date which is at least 15 days after the date on which an investment dealer last solicited an expression of interest from an accredited investor under the exemption.

(2) The testing of the waters exemption for IPO issuers permits an investment dealer to solicit expressions of interest from accredited investors if the conditions of the exemption are met. Any investment dealer relying on this exemption would be required to be registered as an investment dealer (unless an exemption from registration is available in the circumstances) in any jurisdiction where it engages in the business of trading, including engaging in acts in furtherance of a trade (which would include soliciting expressions of interest).

(3) In order for the exemption to be used, paragraph 13.4(2)(b) of the Instrument provides that the IPO issuer must not be a "public issuer", as defined in subsection 13.4(1). This means that the IPO issuer must not be a public company in any country, and must not have its securities traded in any country on a stock exchange, marketplace or any other facility for bringing together buyers and sellers of securities and with respect to which trade data is publicly reported. Similarly, subsection 13.4(7) of the Instrument provides that the exemption is not available for use if:

- any of the IPO issuer's securities are held by a control person that is a public issuer, and
- the IPO of the IPO issuer would be a material fact or material change with respect to the control person.

(4) Subsection 13.4(5) of the Instrument requires an issuer to keep a written record of any investment dealer that it authorized to act on its behalf in making solicitations in reliance on the testing of the waters exemption for IPO issuers in subsection 13.4(2) of the Instrument. The issuer must also keep copies of the written authorizations referred to in paragraph 13.4(2)(d) of the Instrument. To meet this requirement, we would expect the issuer to record the name of a contact person for each investment dealer that it authorized and contact information for that person. During compliance reviews, securities regulators may ask the issuer to provide them with copies of these documents.

(5) The testing of the waters exemption for IPO issuers may be used at the same time by more than one investment dealer in respect of the same issuer, provided that the issuer has authorized each investment dealer in accordance with paragraph 13.4(2)(d) of the Instrument.

(6) Paragraph 13.4(6)(a) of the Instrument requires an investment dealer to keep a written record of the accredited investors that it solicits pursuant to the exemption, a copy of any written material and written approval referred to in subparagraph 13.4(3)(a)(i) and a copy of the written confirmations referred to in paragraph 13.4(3)(b). To meet this requirement, we would expect the investment dealer to record the name of the contact person for each accredited investor that it solicited and contact information for that person. During compliance reviews, securities regulators may ask the investment dealer to provide them with copies of these documents.

(7) An investment dealer soliciting expressions of interest in accordance with the testing of the waters exemption for IPO issuers in subsection 13.4(2) of the Instrument may only solicit expressions of interest from an accredited investor if certain conditions are met. One condition in paragraph 13.4(3)(b) of the Instrument is that before providing the investor with information about the proposed offering, the investment dealer must obtain confirmation in writing from the investor that the investor will keep information about the proposed offering confidential, and will not use the information for any purpose other than assessing the investor's interest in the offering, until the earlier of the information being generally disclosed in a preliminary long form prospectus, or the issuer confirming in writing that it will not be pursuing the potential offering. An investment dealer may obtain this written

confirmation from an accredited investor by return email. Here is a sample email that an investment dealer could use:

"We want to provide you with information about a proposed initial public offering of securities. Before we can provide you with this information, you must confirm by return email that:

- You agree to receive certain confidential information about a proposed initial public offering by an issuer.
- You agree to keep the information about the proposed offering confidential and not to use the information for any purpose other than assessing your interest in the offering, until the earlier of (i) the information being generally disclosed in a preliminary prospectus or otherwise, or (ii) the issuer confirming in writing that it will not be pursuing the potential offering."

An accredited investor may respond to this email by simply stating "I so confirm".

We remind investment dealers and accredited investors that they should not be using the information received under the testing of the waters exemption for IPO issuers in a way that may be considered abusive. For example, we would consider it inappropriate for an accredited investor to use information about the IPO issuer to make decisions about trading in securities of competitors of the IPO issuer. We note that CSA staff may investigate subsequent trading in securities of competitors of IPO issuers that have used the testing of the waters exemption.

(8) Subparagraph 13.4(3)(a)(i) of the Instrument requires that any written materials used by an investment dealer to solicit expressions of interest under the testing of the waters exemption be approved by the issuer. We remind issuers and investment dealers that:

- Any preliminary prospectus filed by the issuer subsequent to the solicitation must contain full, true and plain disclosure of all material facts.
- Selective disclosure concerns would arise if accredited investors were provided with material facts that are not disclosed in any subsequent preliminary prospectus.

(9) We would expect an investment dealer seeking to solicit accredited investors in reliance on the testing of the waters exemption for IPO issuers to:

- conduct reasonable diligence to determine that an investor is an accredited investor before soliciting the investor, and

- retain all documentation that they receive in this regard.

(10) Since soliciting accredited investors under the testing of the waters exemption for IPO issuers would be an act in furtherance of a trade, an issuer and an investment dealer acting on behalf of the issuer would not be able to rely on the exemption if the issuer was subject to a cease trade order.

(11) We refer issuers and investment dealers to the guidance in section 6.10 of this Policy. We note that issuers and investment dealers should have procedures in place to prevent "leaks" of information before the filing of a preliminary prospectus for an initial public offering.

6.5 Advertising or marketing activities during the waiting period –

(1) Securities legislation provides for certain exceptions to the prospectus requirement for limited advertising or marketing activities during the waiting period between the issuance of the receipt for the preliminary prospectus and the receipt for the final prospectus. Despite the prospectus requirement, it is permissible during the waiting period to

(a) distribute a preliminary prospectus notice (as defined in the Instrument) that

- "identifies" the securities proposed to be issued,
- states the price of such securities, if then determined, and
- states the name and address of a person or company from whom purchases of securities may be made,

provided that any such notice states the name and address of a person or company from whom a preliminary prospectus may be obtained and contains the legend required by subsection 13.1(1) of the Instrument;

(b) distribute the preliminary prospectus;

(c) provide standard term sheets, if the conditions in section 13.5 of the Instrument are complied with;

(d) provide marketing materials, if the conditions in section 13.7 of the Instrument are complied with; and

(e) solicit expressions of interest from a prospective purchaser, if prior to such solicitation or forthwith after the prospective purchaser indicates an interest in

purchasing the securities, a copy of the preliminary prospectus is forwarded to the prospective purchaser.

(2) The use of any other marketing information or materials during the waiting period would result in the violation of the prospectus requirement.

(3) The "identification" of the security contemplated by paragraph 6.5(1)(a) above does not permit an issuer or dealer to include a summary of the commercial features of the issue. These details are set out in the preliminary prospectus which is intended as the main disclosure vehicle pending the issuance of the final receipt. The purpose of the permitted advertising or marketing activities during the waiting period is essentially to alert the public to the availability of the preliminary prospectus.

(4) For the purpose of identifying a security as contemplated by paragraph 6.5(1)(a) above, the advertising or marketing material may only

- indicate whether a security represents debt or a share in a company or an interest in a non corporate entity (e.g. a unit of undivided ownership in a film property) or a partnership interest,
- name the issuer if the issuer is a reporting issuer, or name and describe briefly the business of the issuer if the issuer is not already a reporting issuer (the description of the business should be cast in general terms and should not attempt to summarize the proposed use of proceeds),
- indicate, without giving details, whether the security qualifies the holder for special tax treatment, and
- indicate how many securities will be made available.

6.5A Standard term sheets –

(1) The standard term sheet provisions in sections 13.5 and 13.6 of the Instrument, section 7.5 of NI 44-101, section 9A.2 of NI 44-102 and section 4A.2 of NI 44-103 permit an investment dealer to provide a standard term sheet to a potential investor if the conditions of the applicable provision are met.

Any investment dealer relying on these provisions would be required to be registered as an investment dealer (unless an exemption from registration is available in the circumstance) in any jurisdiction where it engages in the business of trading, including engaging in acts in furtherance of a trade (which would include providing a standard term sheet to an investor).

(2) The Instrument defines "standard term sheet" to mean a written communication regarding a distribution of securities under a prospectus that contains no information other than that referred to in subsections 13.5(2) and (3) or subsections 13.6(2) and (3) of the Instrument, subsections 7.5(2) and (3) of NI 44-101, subsections 9A.2(2) and (3) of NI 44-102 or subsections 4A.2(2) and (3) of NI 44-103 relating to an issuer, securities or an offering. A standard term sheet does not include a preliminary prospectus notice or a final prospectus notice, each as defined in the Instrument.

(3) Standard term sheets are subject to the provisions in applicable securities legislation which prohibit misleading or untrue statements. Furthermore, standard term sheets must contain the legends required by subsections 13.5(2) and 13.6(2) of the Instrument, subsection 7.5(2) of NI 44-101, subsection 9A.2(2) of NI 44-102 and subsection 4A.2(2) of NI 44-103, as applicable.

(4) In the case of a standard term sheet provided during the waiting period or after a receipt for the final prospectus, paragraphs 13.5(1)(b) and 13.6(1)(b) of the Instrument require that, other than contact information for the investment dealer or underwriters, all information in the standard term sheet concerning the issuer, the securities or the offering must be disclosed in, or derived from, the preliminary prospectus or the final prospectus, respectively.

Similarly, in the case of a standard term sheet for a bought deal under Part 7 of NI 44-101 that is provided before the filing of the preliminary prospectus, paragraph 7.5(1)(c) of NI 44-101 requires that all information in the standard term sheet must either:

- currently be disclosed in, or derived from, a document referred to in subparagraph 7.5(1)(c)(i) of NI 44-101, or
- later be disclosed in, or derived from, the preliminary prospectus that is subsequently filed.

In the case of a standard term sheet for a tranche of securities to be offered under the shelf procedures (a draw down) pursuant to a final base shelf prospectus, paragraph 9A.2(1)(b) of NI 44-102 provides that all information in the standard term sheet must either:

- currently be disclosed in, or derived from, a document referred to in subparagraph 9A.2(1)(b)(i) of NI 44-102, or
- later be disclosed in, or derived from, an applicable shelf prospectus supplement that is subsequently filed.

In the case of a standard term sheet after a receipt for a final base PREP prospectus, paragraph 4A.2(1)(b) of NI 44-103 provides that all information in the standard term sheet must either:

- currently be disclosed in, or derived from, a document referred to in subparagraph 4A.2(1)(b)(i) of NI 44-103, or
- later be disclosed in, or derived from, the supplemented PREP prospectus that is subsequently filed.

In this regard, if an investment dealer includes information in a standard term sheet for a bought deal, a draw down under a shelf prospectus or an offering under the PREP procedures that is not currently on the public record, the investment dealer and the issuer should be mindful of selective disclosure concerns and take measures to ensure compliance with applicable securities laws relating to selective disclosure, insider trading and trading by "tippees" (these laws are summarized in sections 3.1 and 3.2 of National Policy 51-201 Disclosure Standards). For example, if the information could affect the market price of the issuer's securities, it should be broadly disseminated in a news release before being included in a standard term sheet. If the information was a material change, it would be subject to the material change news release and reporting requirements set out in Part 7 of National Instrument 51-102 *Continuous Disclosure Obligations*.

(5) A standard term sheet must not be provided unless a receipt for the relevant prospectus has been issued in the local jurisdiction. Similarly, in the case of a standard term sheet for a bought deal under Part 7 of NI 44-101 that is provided before the filing of the preliminary prospectus, the standard term sheet must not be provided unless the preliminary prospectus will be filed in the local jurisdiction.

6.5B Marketing materials –

(1) The marketing materials provisions in sections 13.7 and 13.8 of the Instrument, section 7.6 of NI 44-101, section 9A.3 of NI 44-102 and section 4A.3 of NI 44-103 permit an investment dealer to provide marketing materials to a potential investor if the conditions of the applicable provision are met.

Any investment dealer relying on these provisions would be required to be registered as an investment dealer (unless an exemption from registration is available in the circumstance) in any jurisdiction where it engages in the business of trading, including engaging in acts in furtherance of a trade (which would include providing marketing materials to an investor).

(2) The Instrument defines "marketing materials" to mean written communications intended for potential investors regarding a distribution of securities under a prospectus that contain material facts relating to an issuer, securities or an offering. The definition does not include a standard term sheet, a preliminary prospectus notice or a final prospectus notice. The definition is not intended to include other communications from an investment dealer to an investor, such as a cover letter or email that encloses a copy of a prospectus, a standard term sheet or marketing materials, but does not include any material facts about issuer, securities or an offering.

(3) The applicable interpretation provisions in the prospectus rules clarify that a reference to "provide" in sections 13.7 and 13.8 of the Instrument, section 7.6 of NI 44-101, section 9A.3 of NI 44-102 and section 4A.3 of NI 44-103 includes showing marketing materials to an investor without allowing the investor to retain or make a copy of the materials. This means that the rules apply not only to situations where marketing materials are physically provided to a potential investor, but also to situations where a potential investor is shown marketing materials but is not permitted to retain a copy. For example, the rules would apply where a potential investor is shown a paper copy of marketing materials during a meeting or other interaction with a broker, but is not permitted to retain the paper copy. Similarly, the rules would apply where a potential investor is shown a version of marketing materials on a projector screen or laptop computer.

(4) Marketing materials are subject to provisions in applicable securities legislation which prohibit misleading or untrue statements. Accordingly, the issuer and investment dealers involved should have a reasonable, factual basis for any statement in marketing materials. We remind issuers to be cautious when including disclosure in marketing materials about mineral projects. Where this is the case, the disclosure would be considered "written disclosure" within the meaning of National Instrument 43-101 *Standards of Disclosure for Mineral Projects* and would have to comply with the requirements of that instrument.

Marketing materials must contain the legends, or words to the same effect, referred to in subsections 13.7(5) and 13.8(5) of the Instrument, subsection 7.6(5) of NI 44-101, subsection 9A.3(5) of NI 44-102 and subsection 4A.3(6) of NI 44-103, as applicable.

Furthermore, paragraphs 13.7(1)(c) and 13.8(1)(c) of the Instrument, paragraph 9A.3(1)(c) of NI 44-102 and paragraph 4A.3(1)(c) of NI 44-103 provide that if the cover page or the summary of the prospectus contains cautionary language, other than prescribed language, in bold type (e.g., the suitability of the investment, a material condition to the closing of the offering or a key risk factor),

the marketing materials must contain the same cautionary language. For example, if the cover page of the prospectus contained cautionary language in bold type that the offering is suitable only to those investors who are prepared to risk the loss of their entire investment, the marketing materials must contain the same warning. In contrast, the requirement would not apply to prescribed language that is required to be presented in bold type on the cover page of a prospectus (e.g., section 1.8 and subsections 1.9(3) and 1.11(5) of Form 41-101F1).

(5) In the case of marketing materials provided during the waiting period or after a receipt for the final prospectus, paragraphs 13.7(1)(b) and 13.8(1)(b) of the Instrument require that, other than contact information for the investment dealer or underwriters and any comparables, all information in the marketing materials concerning the issuer, the securities or the offering must be disclosed in, or derived from, the preliminary prospectus or the final prospectus, respectively. For example, marketing materials provided during the waiting period could only include an estimate of the range of the offering price or the number of securities if that estimate was in the preliminary prospectus or any amendment.

Similarly, in the case of marketing materials for a bought deal under Part 7 of NI 44-101 that are provided before the filing of the preliminary prospectus, paragraph 7.6(1)(c) of NI 44-101 requires that all information in the marketing materials must either:

- currently be disclosed in, or derived from, a document referred to in subparagraph 7.6(1)(c)(i) of NI 44-101, or
- later be disclosed in, or derived from, the preliminary prospectus that is subsequently filed.

In the case of marketing materials for a draw down under a final base shelf prospectus, paragraph 9A.3(1)(b) of NI 44-102 provides that all information in the marketing materials must either:

- currently be disclosed in, or derived from, a document referred to in subparagraph 9A.3(1)(b)(i) of NI 44-102, or
- later be disclosed in, or derived from, an applicable shelf prospectus supplement that is subsequently filed.

In the case of marketing materials after a receipt for a final base PREP prospectus, paragraph 4A.3(1)(b) of NI 44-103 provides that all information in the marketing materials must either:

- currently be disclosed in, or derived from, a document referred to in subparagraph 4A.3(1)(b)(i) of NI 44-103, or

- later be disclosed in, or derived from, the supplemented PREP prospectus that is subsequently filed.

In this regard, if an issuer and an investment dealer include information in marketing materials for a bought deal, a draw down under a shelf prospectus or an offering under the PREP procedures that is not currently on the public record, the issuer and the investment dealer should be mindful of selective disclosure concerns and take measures to ensure compliance with applicable securities laws relating to selective disclosure, insider trading and trading by "tippees" (these laws are summarized in sections 3.1 and 3.2 of National Policy 51-201 *Disclosure Standards*). For example, if the information could affect the market price of the issuer's securities, it should be broadly disseminated in a news release before being included in marketing materials. If the information was a material change, it would be subject to the material change news release and reporting requirements set out in Part 7 of National Instrument 51-102 *Continuous Disclosure Obligations*.

Under the above provisions, it is permissible for marketing materials to include information derived from the prospectus and information that is presented in a manner that differs from the manner of presentation in the prospectus. For example, it is permissible for marketing materials to summarize information from the relevant prospectus or to include graphs or charts based on numbers in the relevant prospectus.

(6) The term "comparables" is defined in each of the prospectus rules to mean information that compares an issuer to other issuers. Comparables may be based on various factors including, but not limited to, market capitalization, the trading price of the securities on a marketplace or other attributes. If an issuer and an investment dealer want to avoid statutory civil liability for comparables in marketing materials, they must comply with subsections 13.7(4) and 13.8(4) of the Instrument, subsection 7.6(4) of NI 44-101, subsection 9A.3(4) of NI 44-102 and subsection 4A.3(5) of NI 44-103, as applicable. Under these provisions, the issuer may remove any comparables and any disclosure relating to those comparables from the template version of the marketing materials before filing it if:

- The comparables, and any disclosure relating to the comparables, are in a separate section of the template version of the marketing materials.

- The template version of the marketing materials that is filed contains a note advising that the comparables, and any disclosure relating to the comparables,

were removed. The note must appear immediately after where the removed comparables and related disclosure would have been.

- If the prospectus is filed in the local jurisdiction, a complete template version of the marketing materials containing the comparables, and any disclosure relating to the comparables, is delivered to the securities regulatory authority. Subject to access to information legislation in each jurisdiction, if a complete template version of the marketing materials is delivered under the applicable prospectus rule, the securities regulatory authority or regulator in each jurisdiction will not make these documents available to the public.

- The complete template version of the marketing materials contains the disclosure referred to in paragraph 13.7(4)(d) of the Instrument.

However, any comparables included in marketing materials provided to an investor would be subject to the provisions in applicable securities legislation which prohibit misleading or untrue statements.

(7) Paragraphs 13.7(1)(d) and 13.8(1)(d) of the Instrument, paragraph 7.6(1)(d) of NI 44-101, paragraph 9A.3(1)(d) of NI 44-102 and paragraph 4A.3(1)(d) of NI 44-103 provide that a template version of the marketing materials must be approved in writing by the issuer and the lead underwriter before the marketing materials are provided to an investor. This written approval may be given by email.

"Template version" is defined in section 1.1 of the Instrument to mean a version of a document with spaces for information to be added in accordance with subsection 13.7(2) or 13.8(2) of the Instrument, subsection 7.6(2) of NI 44-101, subsection 9A.3(2) of NI 44-102 or subsection 4A.3(3) of NI 44-103. "Limited use version" is defined to mean a template version in which the spaces for information have been completed in accordance with those provisions. A template version can have no other spaces for information to be added in a limited use version.

The above provisions specify that if a template version of the marketing materials is approved in writing by the issuer and the lead underwriter and filed, an investment dealer may provide a limited use version of the marketing materials that:

- has a date that is different than the template version,

- contains a cover page referring to the investment dealer or underwriters or a particular investor or group of investors,

- contains contact information for the investment dealer or underwriters,

- has text in a format, including the type's font, colour or size, that is different than the template version, or

- in the case of a limited use version of the marketing materials provided after a receipt for a final base PREP prospectus, contains the information referred to in paragraph 4A.3(3)(e) of NI 44-103 (the PREP information).

Consequently, other than spaces for a date, a cover page, the contact information or the PREP information described above, a template version of the marketing materials must contain all the information that the issuer and the underwriters would like an investment dealer to be able to provide in a limited use version.

However, the prospectus rules provide that if the template version of the marketing materials is divided into separate sections for separate subjects, an investment dealer may provide a limited use version of the marketing materials that includes only one or more of those separate sections.

(8) In the case of marketing materials provided during the waiting period or after a receipt for the final prospectus, paragraphs 13.7(1)(g) and 13.8(1)(g) of the Instrument require that the marketing materials be provided with a copy of the preliminary prospectus or the final prospectus, respectively, and any amendment. The marketing materials can only be provided if a receipt for the relevant prospectus has been issued in the local jurisdiction.

Similarly, in the case of marketing materials for a bought deal under Part 7 of NI 44-101 that are provided before the filing of the preliminary prospectus, the marketing materials can only be provided if the prospectus will be filed in the local jurisdiction. Paragraph 7.6(1)(g) of NI 44-101 requires that upon issuance of a receipt for the preliminary prospectus for the bought deal, a copy of that prospectus must be sent to each potential investor that received the marketing materials and expressed an interest in acquiring the securities.

In the case of marketing materials for a draw down under a final base shelf prospectus, the marketing materials can only be provided if a receipt for the final base shelf prospectus has been issued in the local jurisdiction. Paragraph 9A.3(1)(g) of NI 44-102 requires that the marketing materials be provided with a copy of the final base shelf prospectus, any amendment to the final base shelf prospectus and any applicable shelf prospectus supplement that has been filed.

In the case of marketing materials provided after a receipt for a final base PREP prospectus, the marketing materials can only be provided if a receipt for the final base PREP prospectus has been issued in the local jurisdiction.

Paragraph 4A.3(1)(g) of NI 44-103 requires that the marketing materials be provided with a copy of:

- the final base PREP prospectus and any amendment, or
- if it has been filed, the supplemented PREP prospectus and any amendment.

National Policy 11-201 *Electronic Delivery of Documents* sets out the circumstances in which a prospectus can be delivered by electronic means. If the investment dealer previously delivered a paper or electronic copy of the prospectus and any amendment to an investor in accordance with applicable securities legislation, it can include a hyperlink to an electronic copy of the prospectus and any amendment with any subsequent marketing materials sent to the investor if no additional amendment to the prospectus has been filed and receipted. The investment dealer should ensure that it is clear to the recipient which of the documents being delivered in the hyperlink constitute the prospectus.

(9) Paragraphs 13.7(1)(e) and 13.8(1)(e) of the Instrument, paragraph 7.6(1)(e) of NI 44-101, paragraph 9A.3(1)(e) of NI 44-102 and paragraph 4A.3(1)(e) of NI 44-103 require that a template version of the marketing materials must be filed on SEDAR on or before the day that the marketing materials are first provided to an investor. In this regard,

- If an investment dealer wants to rely on section 13.7 of the Instrument and provide marketing materials to an investor on the same day that the preliminary prospectus is filed and receipted, the template version of the marketing materials should be filed with the preliminary prospectus pursuant to subparagraph 9.1(1)(a)(vii) of the Instrument or subparagraph 4.1(1)(a)(vii) of NI 44-101, as applicable.
- If an investment dealer wants to rely on section 13.8 of the Instrument and provide marketing materials to an investor on the same day that the final prospectus is filed and receipted, the template version of the marketing materials should be filed with the final prospectus pursuant to subparagraph 9.2(a)(xiv) of the Instrument or subparagraph 4.2(a)(xii) of NI 44-101, as applicable.
- When a template version of the marketing materials is filed on SEDAR as part of a prospectus filing, they will generally be made public within one business day. However, in the case of a template version of marketing materials for a bought deal under section 7.6 of NI 44-101, the template version of the

marketing materials will not be made public on SEDAR until after the preliminary prospectus is filed and receipted.

- Staff of securities regulatory authorities will not be "pre clearing" a template version of the marketing materials.

- If an issuer files a template version of marketing materials after staff of a securities regulatory authority have completed their review of a preliminary prospectus filing and indicated that they are "clear for final" on SEDAR, the filing of the template version of the marketing materials may result in staff revising the filing's SEDAR status to indicate that staff are "not clear for final" so that staff may have an opportunity to review the template version of the marketing materials.

(10) As noted in Item 36A.1 of Form 41-101F1 and Item 11.6 of Form 44-101F1, marketing materials do not, as a matter of law, amend a preliminary prospectus, a final prospectus or any amendment.

(11) The template version of the marketing materials filed on SEDAR is required to be included in the final prospectus or incorporated by reference into the final prospectus. An investor who purchases a security distributed under the final prospectus may therefore have remedies under the civil liability provisions of applicable securities legislation if the template version of the marketing materials contains a misrepresentation. Furthermore, an investor who purchases a security of the issuer on the secondary market may have remedies under the civil liability for secondary market disclosure provisions of applicable securities legislation if the template version of the marketing materials contains a misrepresentation since:

- the template version of the marketing materials is required to be included in the final prospectus or incorporated by reference into the final prospectus (a final prospectus is a "core document" under the secondary market liability provisions), and

- the template version of the marketing materials is required to be filed and is therefore a "document" under the secondary market liability provisions.

(12) If a final prospectus or any amendment modifies a statement of material fact that appeared in marketing materials provided during the waiting period, the issuer is required to:

- prepare and file, at the time the issuer files the final prospectus or any amendment, a revised template version of the marketing materials that is blacklined to show the modified statement, and

- include in the final prospectus, or any amendment, the disclosure referred to in subsection 36A.1(3) of Form 41-101F1 or subsection 11.6(3) of Form 44-101F1, as applicable.

Similar provisions apply for a draw down under a base shelf prospectus or an offering under the PREP procedures.

If the blacklining software of the issuer or the issuer's service provider has formatting problems or does not function well with certain kinds of documents or formats, the issuer should try to correct the formatting problems or use another method to reflect changes to the marketing materials, such as using the bold type and underlining features of a software package in order to provide easy to read blacklines for filing on SEDAR.

(13) For guidance on marketing materials for income trusts and other indirect offerings, see Part 5 of National Policy 41-201 *Income Trusts and Other Indirect Offerings*.

6.5C Standard term sheets and marketing materials – general –

In addition to the requirements on standard term sheets and marketing materials in the applicable prospectus rule, issuers and investment dealers should review other securities legislation for limitations and prohibitions on advertising intended to promote interest in an issuer or its securities. For example,

- A standard term sheet and any marketing materials must not contain any representations prohibited by securities legislation, such as:
    - prohibited representations on resales, repurchases or refunds, and
    - prohibited representations on future value.
- A standard term sheet and any marketing materials must comply with the requirements of securities legislation on listing representations.

6.6 Green sheets –

(1) Some dealers prepare summaries of the principal terms of an offering, sometimes referred to as green sheets, for the information of their registered representatives during the waiting period. However, distributing the green sheet to the public would generally contravene the prospectus requirement unless the green sheet complies with the provisions in the applicable prospectus rule relating to standard term sheets or marketing materials, or other securities legislation relating to information that can be distributed during a prospectus offering.

(2) Including material information in a green sheet or other marketing communication that is not contained in the preliminary prospectus could indicate a failure to provide in the preliminary prospectus full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and result in the prospectus certificate constituting a misrepresentation. For additional guidance on pricing information in a green sheet, see subsection 4.2(2) of this Policy and subsection 4.3(2) of 44-101CP.

(3) We may request copies of green sheets as part of our prospectus review procedures. Any discrepancies between the content of a green sheet and the preliminary prospectus could result in the delay or refusal of a receipt for a final prospectus and, in appropriate circumstances, could result in enforcement action.

(4) For guidance on green sheets for income trusts or other indirect offerings, see Part 5 Sales and Marketing Materials of National Policy 41-201 *Income Trusts and Other Indirect Offerings*.

6.7 Advertising or marketing activities following the issuance of a receipt for a final prospectus –

Advertising or marketing activities that are permitted during the waiting period may also be undertaken on a similar basis after a receipt has been issued for the final prospectus. In addition, the prospectus and any document filed with or referred to in the prospectus may be distributed.

6.8 Sanctions and enforcement –

Any contravention of the prospectus requirement through advertising or marketing activities is a serious matter that could result in a cease trade order in respect of the preliminary prospectus to which such advertising or marketing activities relate. In addition, a receipt for a final prospectus relating to any such offering may be refused. In appropriate circumstances, enforcement proceedings may be initiated.

6.9 Media reports and coverage –

(1) We recognize that an issuer does not have control over media coverage; however, an issuer should take appropriate precautions to ensure that media coverage which can reasonably be considered to be in furtherance of a distribution of securities does not occur after a decision has been made to file a preliminary prospectus or during the waiting period.

(2) We may investigate the circumstances surrounding media coverage of an issuer which appears immediately prior to or during the waiting period and which can

reasonably be considered as being in furtherance of a distribution of securities. Action will be taken in appropriate circumstances.

(3) Nevertheless, we realize that reporting issuers need to consider whether the decision to pursue a potential offering is a material change under applicable securities legislation. If the decision is a material change, the news release and material change report requirements in Part 7 of NI 51-102 and other securities legislation apply. However, in order to avoid contravening the pre marketing restrictions under applicable securities legislation, any news release and material change report filed before the filing of a preliminary prospectus or the announcement of a bought deal under section 7.2 of NI 44-101 should be carefully drafted so that it could not be reasonably regarded as intended to promote a distribution of securities or condition the market. The information in the news release and material change report should be limited to identifying the securities proposed to be issued without a summary of the commercial features of the issue (those details should instead be dealt with in the preliminary prospectus which is intended to be the main disclosure vehicle).

Furthermore, after the filing of the news release,

- the issuer should not grant media interviews on the proposed offering, and
- an investment dealer would not be able to solicit expressions of interest until a receipt has been issued for a preliminary prospectus or a bought deal was announced in compliance with section 7.2 of NI 44-101.

6.10 Disclosure practices –

At a minimum, participants in all prospectus distributions should consider the following to avoid contravening securities legislation:

- We do not consider it appropriate for a director or an officer of an issuer to give interviews to the media immediately prior to or during the waiting period. It may be appropriate, however, for a director or officer to respond to unsolicited inquiries of a factual nature made by shareholders, securities analysts, financial analysts, the media and others who have an interest in such information.
- Because of the prospectus requirement, an issuer should avoid providing information during a prospectus distribution that goes beyond what is disclosed in the prospectus. Therefore, during the prospectus distribution (which commences as described in subsection 6.4(4) of this Policy and ends following closing), a director or officer of an issuer should only make a statement constituting a forecast, projection or prediction with respect to future financial performance if the statement is also contained in the prospectus.

Forward looking information included in a prospectus must comply with sections 4A.2 and 4A.3 and Part 4B, as applicable, of NI 51-102.

- We understand that underwriters and legal counsel sometimes only advise the working group members of the pre marketing and marketing restrictions under securities legislation. However, there are often situations where officers and directors of the issuer outside of the working group also come into contact with the media before or after the filing of a preliminary prospectus. Any discussions between these individuals and the media will also be subject to these same restrictions. Working group members, including underwriters and legal counsel, will usually want to ensure that any other officers and directors of the issuer (as well as the officers and directors of a promoter or a selling securityholder) who may come into contact with the media are also fully aware of the marketing and disclosure restrictions.
- One way for issuers, dealers and other market participants to ensure that advertising or marketing activities contrary to securities legislation are not undertaken (intentionally or through inadvertence) is to develop, implement, maintain and enforce disclosure procedures.

If a director or officer of an issuer (or a promoter, selling securityholder, underwriter or any other party involved with a pending offering) makes a statement to the media after a decision has been made to file a preliminary prospectus or during the waiting period, our regulatory concerns include circumvention of the pre marketing and marketing restrictions, selective disclosure and unequal access to information, conditioning of the market and the lack of prospectus liability. In addition to the sanctions and enforcement proceedings discussed in section 6.8 of this Policy, staff of a securities regulatory authority may require the issuer to take other remedial action, such as:

- explaining why the issuer's disclosure procedures failed to prevent the party from making the statement to the media and how those procedures will be improved,
- instituting a "cooling off period" before the filing of the final prospectus,
- including the statement in the prospectus so that it will be subject to statutory civil liability, or
- issuing a news release refuting the statement if it cannot be included in the prospectus (e.g., because the statement is incorrect or unduly promotional) and disclosing the reasons for the news release in the prospectus.

6.11 Misleading or untrue statements –

In addition to the prohibitions on advertising or marketing activities that result from the prospectus requirement, securities legislation in certain jurisdictions prohibits any person

or company from making any misleading or untrue statements that would reasonably be expected to have a significant effect on the market value of securities. Therefore, in addition to ensuring that advertising or marketing activities are carried out in compliance with the prospectus requirement, issuers, dealers and their advisors must ensure that any statements made in the course of advertising or marketing activities are not untrue or misleading and otherwise comply with securities legislation.

6.12 Road shows –

(1) Sections 13.9 and 13.10 of the Instrument, section 7.7 of NI 44-101, section 9A.4 of NI 44-102 and section 4A.4 of NI 44-103 provide for road shows for investors. These provisions and the definition of "road show" in section 1.1 of NI 41-101 apply to road shows conducted in person, by telephone conference call, on the internet or by other electronic means. The provisions also apply if an investment dealer records a live road show and later makes an audio or audio visual version of the recorded road show available to investors.

(2) Although members of the media may attend a road show, they should not be specifically invited to the road show by the issuer or by an investment dealer. We note that road shows are intended to be presentations for potential investors and not press conferences for members of the media. Furthermore, issuers and investment dealers should not market a prospectus offering in the media. In this regard, see the guidance in sections 6.9 and 6.10 of this Policy.

(3) Subsections 13.9(3) and 13.10(3) of the Instrument, subsection 7.7(3) of NI 44-101, subsection 9A.4(3) of NI 44-102 and subsection 4A.4(3) of NI 44-103 provide that if an investment dealer conducts a road show, the investment dealer must establish and follow reasonable procedures to:

- ask any investor attending the road show in person, by telephone conference call, on the internet or by other electronic means to provide their name and contact information;
- keep a record of any information provided by the investor; and
- provide the investor with a copy of the relevant prospectus and any amendment.

However, section 13.11 of the Instrument and section 4A.5 of NI 44-103 provide an exception so that, in the case of a road show for certain U.S. cross border initial public offerings, an investor attending the road show can provide their name and contact information on a voluntary basis.

For a road show held on the internet or by other electronic means, please see the recommended procedures in section 2.7 of National Policy 47-201 *Trading Securities Using the Internet and Other Electronic Means* and, in Québec, Notice 47-201 *relating to Trading Securities Using the Internet and Other Electronic Means*.

(4) An investment dealer must not provide marketing materials to investors attending a road show unless the materials comply with the relevant marketing materials provisions in sections 13.7 and 13.8 of the Instrument, section 7.6 of NI 44-101, section 9A.3 of NI 44-102 and section 4A.3 of NI 44-103, as applicable. In this context, see the discussion on the meaning of "provide" in subsection 6.5B(3) of this Policy. For example, the provisions would apply where a potential investor is shown a version of marketing materials on a projector screen during a road show conducted in person. Similarly, the provisions would apply where a potential investor is able to view a slide show version of marketing materials during a road show presented online, whether live or recorded.

The above provisions require that a template version of the marketing materials be filed on SEDAR on or before the day they are first provided and included in, or incorporated by reference into, the relevant prospectus.

However, section 13.12 of the Instrument, section 7.8 of NI 44-101, section 9A.5 of NI 44-102 and section 4A.6 of NI 44-103 provide an exception from these filing and incorporation requirements for marketing materials in connection with road shows for certain U.S. cross border offerings. The exception does not apply to marketing materials other than the marketing materials provided in connection with the road show. Among other things, an issuer relying on the exception must deliver a template version of the marketing materials to the securities regulatory authority in each jurisdiction of Canada where the prospectus was filed. Subject to access to information legislation in each jurisdiction, it is the policy of the securities regulatory authority or regulator in each jurisdiction that the template version of the marketing materials delivered under the applicable prospectus rule will not be made available to the public.

(5) In the past, issuers conducting internet road shows for cross border IPOs applied for relief from the waiting period restrictions in Canadian securities legislation. However, given the above noted road show provisions and the exceptions for certain U.S. cross border offerings, we do not anticipate a need for similar relief in the future and will instead expect these issuers to comply with the applicable road show provision.

In the past, issuers conducting internet road shows for cross border IPOs also applied for relief from the dealer registration requirements of Canadian securities legislation. However, if a road show is conducted on behalf of an issuer under the above noted road show provisions, the issuer will not require relief from the dealer registration requirement since the road show will be conducted by an investment dealer that is registered in the appropriate jurisdictions (see subsection 6.12(6) of this Policy). Consequently, we do not expect to grant the relief from the dealer registration requirements that has been granted in the past to cross border IPO issuers.

(6) The road show provisions permit an investment dealer to conduct a road show for potential investors if the conditions of the applicable provision are met. As noted above, a road show may be conducted in person, by telephone conference call, on the internet or by other electronic means. Unless an exemption from the requirement to register as a dealer is available in the circumstances, any investment dealer relying on one of these provisions would have to be registered as an investment dealer in any jurisdiction where it engages in the business of trading, including engaging in acts in furtherance of a trade (which would include conducting a road show for potential investors). For example, if one or more investment dealers acting as underwriters for a prospectus offering allow potential investors in each jurisdiction of Canada to participate in a road show that the dealers conduct by telephone conference call, then at least one of those dealers must be registered as an investment dealer in every jurisdiction of Canada.

(7) Issuers should note the following with respect to oral statements made at a road show:

- In giving oral presentations at a road show, issuers should generally only discuss information that is contained in, or derived from, the relevant prospectus that has been filed on SEDAR.

- We recognize that issuers need to respond to questions from investors at a road show. In responding to these questions, issuers should avoid making selective disclosure.

- In particular, issuers should take measures to ensure compliance with applicable securities laws relating to selective disclosure, insider trading and trading by “tippees” when:

    - participating in a road show, and

- including information in marketing materials for a bought deal road show before the filing of a preliminary prospectus that is not in the bought deal news release or the other continuous disclosure documents filed by the issuer.

These laws are summarized in sections 3.1 and 3.2 of National Policy 51-201 *Disclosure Standards*.

- If an issuer discloses material facts at a road show that are not in a preliminary prospectus that has been filed on SEDAR, the final prospectus should contain that information in order to comply with the statutory requirement that the final prospectus contain full, true and plain disclosure of all material facts.

- Depending on the context, oral statements of a "responsible issuer", as defined in securities legislation, at a road show may be "public oral statements", as defined in securities legislation, and subject to statutory provisions for secondary market civil liability.

- Depending on the nature of the statement, oral statements of an issuer at a road show in relation to mineral projects may fall within the purview of National Instrument 43-101 *Standards of Disclosure for Mineral Projects*.

- Oral statements made during a road show are subject to the provisions of securities legislation against making misleading or untrue statements.

7
HELPFUL PRECEDENTS [1]

7.1 Sample Transaction Checklist for a Short Form Prospectus Offering

1. Initial Matters

   (a) check issuer's AIF filing and financial statement filings and confirm filing of Notice of Intention to be Qualified to File a Short Form Prospectus† (pursuant to s. 2.8 of National Instrument 44-101 – *Short Form Prospectus Distributions* (*on or after December 8, 2015*) ("NI 44-101") (see exceptions at s.2.8(6) of NI 44-101)

   (b) ensure that all documents incorporated by reference are not just filed on SEDAR, but that each of the jurisdictions in which the prospectus is being filed is added as a recipient agency to these documents

   (c) confirm that all unaudited financial statements to be incorporated by reference in the short form prospectus have been reviewed by the issuer's auditor (s. 4.3 of NI 44-101)

   (d) confirm SEC compliant press release requirement (distribution warning) in bid letter

   (e) check status of issuer's website; determine whether there is any promotional material which should be deleted (e.g., analysts' reports, conference presentations)

   (f) ensure issuer is advised about restrictions on promotional activities during the period of distribution and limitations on what may be said in any press articles, etc. (See Part 13 of National Instrument 41-101 – *General Prospectus Requirements* and Part 6 of Companion Policy 41-101CP – to National Instrument 41-101 *General Prospectus Requirements*)

   (g) check scheduled activities of issuer to confirm there are no activities which might be considered in breach of the waiting period requirements or which need to be modified to ensure U.S. private placement requirements are not breached (e.g., meetings with analysts, investor presentations, industry meetings or presentations, product launches, newspaper interviews)

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[1] Current as of September 1, 2018

† All references in this sample Transaction Checklist to "preliminary prospectus" and "final prospectus" are to a preliminary short form and final short form prospectus, respectively

(h) determine whether the issuer has completed any significant acquisitions during the past 75 days for which the issuer has not filed a business acquisition report pursuant to Part 8 of National Instrument 51-102 – *Continuous Disclosure Obligations* ("NI 51-102") that requires additional financial statement disclosure within the short form prospectus pursuant to Item 10 of Form 44-101F1

(i) consider any proposed significant acquisitions that require disclosure under Part 10 of Form 44-101F1

(j) if the issuer is a forest products company, ensure that the share issuance will not trigger a change of control under the *Forest Act* (British Columbia)

(k) if the issuer is a mining company, ensure that:

(i) it is registered as such in Québec

(ii) it has up-to-date technical reports prepared in accordance with National Instrument 43-101 – *Standards of Disclosure for Mineral Projects*

(l) confirm compliance with Part 3 of OSC Rule 48-501 – *Trading during Distributions, Formal Bids and Share Exchange Transactions* regarding trading in securities during distribution

2. Underwriting Agreement

(a) determine if issuer is "connected" or "related" to any of the underwriters pursuant to National Instrument 33-105 – *Underwriting Conflicts*

(b) review translation opinion wording in underwriting agreement for conformity to Québec local counsel opinion

(c) confirm that no underwriter has plans to issue any analyst reports during distribution

(d) confirm at least one member of the underwriting syndicate is registered in each offering jurisdiction and has signed a certificate with respect to s. 7.2(2)(d) of National Policy 11-202 – *Process for Prospectus Reviews in Multiple Jurisdictions* ("NP 11-202") (preliminary prospectus) and s. 7.3(4)(d) of NP 11-202 (final prospectus)

(e) identify any restrictions on share issuances or exercise price or conversion adjustment provisions contained in previous underwriting agreements, credit facility agreements, trust indentures, warrant indentures or preferred stock

(f) ensure that underwriters' compliance departments will make necessary filings under IIROC requirements

(g) ensure underwriting agreement has been reviewed by the Financial Industry Regulatory Authority (FINRA) (for MJDS offering only)

(h) verify if there is the need for a request for waiver re: IIROC Rule 29.13 (Pre-Marketing Rules) for special warrant offerings that are qualified by a prospectus

(i) warn syndicate that if transaction size is close to 20% of the outstanding equity, purchases for the syndicate's account for market stabilization purposes could trigger an inadvertent take-over bid (Note: only applicable after firm commitment to purchase is entered into)

3. Before Filing Preliminary Prospectus

(a) check short form prospectus against NI 44-101 and Form 44-101F1 requirements

(b) check to ensure that AIF, information circular and other documents incorporated by reference in the prospectus have been translated for Québec filing (or appropriate exemptive relief is obtained)

(c) check to ensure that personal information forms for each director and executive officer of the issuer have been previously filed with the securities regulatory authorities, and that all information is up to date. Obtain new personal information forms as required

(d) check to ensure no confidential material change reports have been filed and remain confidential

(e) finalize U.S. "wrap" language

(f) issuer board meeting to approve the preliminary and final prospectus and related items

(g) due diligence request letter to issuer's counsel

(h) prepare due diligence questions and circulate directors' and officers' questionnaire

(i) conduct underwriters' due diligence conference call or meeting

(j) check the eligibility requirements of the proposed institutional purchasers (U.S. only)

(k) check to ensure audit committee review of all financial statements contained in or incorporated by reference in the short form prospectus

(l) review all documents incorporated by reference in the short form prospectus

(m) review and confirm availability of all filing material, and obtain all necessary signature pages (prospectus, qualification certificate, confirmation letter of issuer under NP 11-202, SEDAR Form 6)

(n) file all material documents and agreements to comply with Part 12 of NI 51-102

(o) file preliminary prospectus and all supporting documents on SEDAR by 12:00 p.m. (Toronto time) for receipt same day

4. After Filing Preliminary Prospectus

(a) status and control of standard term sheet, if any

(b) ensure U.S. “wrap” is delivered to U.S. affiliates of underwriters with preliminary short form prospectus

(c) stock exchange listing application(s)

(d) ensure that the auditors are working on the long form comfort letter to the underwriters

(e) negotiate and finalize auditor’s long form comfort letter to the underwriters

(f) request draft translation opinions of Québec local counsel and of the auditors

(g) request draft eligibility opinion of the auditors, if necessary

(h) prepare update due diligence questions

(i) file translations of documents incorporated by reference in the prospectus if not filed at the preliminary prospectus stage

(j) negotiate and finalize underwriting agreement

(k) obtain comment letter from securities regulatory authorities and settle comments

5. Before Filing Final Prospectus

(a) receive signed auditor’s long form comfort letter to the underwriters

(b) receive signed translation opinions of Québec local counsel and the auditors

(c) receive stock exchange conditional listing approval letter(s)

(d) finalize due diligence investigations and conduct underwriters' due diligence update conference call or meeting

(e) underwriters' counsel presents due diligence report to the underwriting syndicate

(f) finalize U.S. "wrap" language for the final short form prospectus

(g) confirm all signature pages signed and available (underwriting agreement, prospectus, consents, comfort letters, SEDAR Form 6)

(h) file all material documents and agreements not previously filed (including underwriting agreement)

6. Post-Closing

(a) Obtain distribution certificate from lead underwriter and file filing fees with Alberta and British Columbia along with the notice of proceeds

7.2 Sample Detailed Timetable for a Short Form Prospectus Offering

Date	Time	Step or Action
T-10 (at least)		• Issuer to file Notice of Intention to be Qualified to File a Short Form Prospectus (if not previously filed, and if the issuer did not have a current AIF as of December 29, 2005)† • For Issuers who have filed Technical Reports in British Columbia, consider application to the BC Securities Commission to initiate review of reports
T-5 (or earlier)		• Counsel and Underwriters meet to discuss process, timing and due diligence • Underwriter's counsel commence due diligence • Preliminary prospectus drafting session(s) • Auditor to confirm financial statement timing/readiness and begin preparation of longform comfort letter to be delivered in connection with the final prospectus • Commence translation of draft preliminary prospectus and all documents incorporated by reference not previously translated
T-3		• Circulate due diligence questions • Select commercial printer and arrange print schedule • For an over-night marketed deal, begin drafting Underwriting Agreement and circulate draft to the working group. Otherwise, this step is usually commenced following the filing of the preliminary prospectus (see T+1 to T+3 below) • Revise and work towards finalizing preliminary prospectus (Board to review)

† All references in this sample Timetable to "preliminary prospectus" and "final prospectus" are to a preliminary short form prospectus and final short form prospectus, respectively.

Date	Time	Step or Action
T-1		• Due diligence call with Lead Underwriter, Issuer, Auditor and any outside experts • Finalize draft press release • Collect executed filing documents (including applicable consents) • Complete translation of draft preliminary prospectus • Issuer board meeting to approve preliminary and final prospectus and possibly appoint pricing committee • Circulate draft press release re: filing of preliminary prospectus to working group • Sign-off on draft preliminary prospectus
T	7:00 am 7:30 am	• Lead Underwriter to update Issuer re: market conditions and perhaps even indicative offering terms • Issuer to make final decision to proceed, call to Lead Underwriter re: approval to call syndicate (Note: assumes full syndicate decision is made prior to signing preliminary prospectus) • Communicate to working group
	7:45 am 8:00 am	• Lead Underwriter to call proposed syndicate members re: syndicate meeting • Syndicate conference call • Update syndicate on due diligence session details and collect information re: signing authorities
	10:15 am 12:20 pm 1:05 pm	• Bring-down due diligence session • Underwriters' call with syndicate to confirm terms of participation and communicate any syndicate changes to team • Check to ensure that personal information forms for each director and executive officer have been previously filed with the security regulatory authorities, and that all information is up to date. Obtain new personal information forms as required • File preliminary prospectus (French and English) without any pricing information via SEDAR

Date	Time	Step or Action
	5:00 pm (or earlier)	• Obtain receipt for preliminary prospectus and issue press release re: filing of preliminary prospectus and file press release on SEDAR
	5:00 pm (or earlier)	• Immediately after the receipt is issued, authorize financial printer to commence printing of commercial copies of the preliminary prospectus and provide delivery instructions
Over-Night Marketed Deal		• Follow the steps outlined above with the additions noted below up to T and follow the steps outlined below for T
T-2		• Contact the review officer at the principal regulator to make arrangements for the filing of the preliminary prospectus and the timing for the posting of the receipt • For example, in Ontario, it is recommended that the preliminary prospectus be filed by noon so that a receipt can be issued on the same day. An issuer can make arrangements with the principal regulator to have the receipt posted either at a specified time or when contacted by the issuer following the launch of the offering, so that the receipt is not made public until after the close of the market
T	10:00 am	• Lead Underwriter to update Issuer re: market conditions and indicative offering terms
	10:30 am	• Issuer to make final decision to proceed
	12:00 noon	• File preliminary prospectus without any pricing information
	4:00 pm	• Receipt issued by the principal regulator for the preliminary prospectus
	4:15 pm	• Issue press release re filing of preliminary prospectus and file on SEDAR
	4:30 pm	• Lead Underwriter to call proposed syndicate members re: syndicate meeting
	6:00 pm	• Syndicate conference call • Update syndicate on due diligence session details and collect information re: signing authorities
	7:30 pm	• Syndicate markets the deal

Date	Time	Step or Action
T+1	8:00 am	• Bring-down due diligence session
	9:00 am	• Underwriters' call with syndicate to confirm terms of participation and communicate any syndicate changes to team
	11:00 am	• Finalize amended and restated preliminary prospectus (English and French) with pricing and syndicate information
	11:00 am	• Finalize Underwriting Agreement
	12:00 noon	• File amended and restated preliminary prospectus (English and French) with pricing and syndicate information and the Underwriting Agreement via SEDAR
	5:00 pm (or earlier)	• Obtain receipt for amended and restated preliminary prospectus and issue press release re: filing of preliminary prospectus and file press release on SEDAR
	5:00 pm (or earlier)	• Immediately after the receipt is issued, authorize financial printer to commence printing of commercial copies of the amended and restated preliminary prospectus
Note: For each of the steps below, add one day to each time period in the case of an over-night marketed deal. In addition, the pricing and underwriting agreement steps below will not apply in the case of an over-night marketed deal.		
T+1 to T+3		• Deliver commercial copies of preliminary prospectus or amended and restated preliminary prospectus, as applicable (Marketing can commence upon delivery of commercial copies, and the period of marketing can be shorter or longer based upon marketing efforts and the road show) Note: If there is marketing and a road show planned the timelines below will be adjusted to accommodate the marketing period • Begin drafting Underwriting Agreement and circulate draft to the working group • File application re: listing offered securities with relevant stock exchange
T+3BD		• Deadline to receive comments from principal regulator

Date	Time	Step or Action
T+3BD Cont'd.		• Complete translation of documents incorporated by reference if an exemption has been granted by the Autorité des marchés financiers allowing the Issuer to file translated versions of the documents incorporated by reference with the final prospectus • It is most prudent to ensure that all of the documents incorporated by reference are translated and filed on SEDAR prior to or concurrent with the filing of the preliminary prospectus • Auditors circulate draft long-form comfort letter
T+[5BD]		• Finalize Underwriting Agreement and all documents required by Underwriting Agreement
T+[6BD]		• Underwriters to execute and deliver Underwriting Agreement and SEDAR Form 6s • Issuer and Lead Underwriter to execute and deliver Underwriting Agreement • Lead Underwriter to present pricing to the Board or, if previously appointed, the pricing committee on behalf of syndicate • Underwriters' due diligence session • Auditors provide executed long-form comfort letter • File final prospectus along with Underwriting Agreement and all other material contracts • Obtain receipt for final prospectus • Issue press release re: filing of final prospectus and file on SEDAR • Authorize financial printer to commence printing of commercial copies of the final prospectus
T+[12BD]		• Many underwriters still have a pre-closing due diligence update • Pre-closing
T+[13BD]		• Closing • Issue press release re: closing and file on SEDAR
T+[30BD]		• Post-closing – Obtain distribution certificate from Lead Underwriter and file filing fees with Alberta and British Columbia along with the notice of proceeds

7.3 Sample Transaction Checklist for a Short Form Prospectus Offering – Bought Deal

1. Bid Letter and Underwriting Agreement

   (a) check issuer's AIF filing and financial statement filings and confirm filing of Notice of Intention to be Qualified to File a Short Form Prospectus† pursuant to s.2.8(1)-(3) of National Instrument 44-101 – *Short Form Prospectus Distributions* (*on or after December 8, 2015*) ("NI 44-101") (see exceptions at s.2.8(6) of NI 44-101)

   (b) ensure that all documents incorporated by reference are not just filed on SEDAR, but that each of the jurisdictions in which the prospectus is being filed is added as a recipient agency to these documents

   (c) confirm that all unaudited financial statements to be incorporated by reference in the short form prospectus have been reviewed by the issuer's auditor (s. 4.3 of NI 44-101)

   (d) ensure bid letter constitutes a "bought deal agreement" pursuant to Section 7.1 and 7.2(1) of NI 44-101 for the purposes of solicitations of expressions of interest (especially if form of underwriting agreement is not attached)

   (e) a news release must be issued after the bought deal agreement is signed, or, where there is a confirmation clause pursuant to Sections 7.2(1) and 7.2(4) of NI 44-101, after the confirmation that the condition in the confirmation clause has been met

   (f) determine if issuer is "connected" or "related" to any of the underwriters pursuant to National Instrument 33-105 – *Underwriting Conflicts*

   (g) review translation opinion wording in underwriting agreement for conformity to Québec local counsel opinion

   (h) confirm SEC compliant press release requirement (distribution warning) in bid letter

   (i) check status of issuer's website; determine whether there is any promotional material which should be deleted (e.g., analysts' reports, conference presentations)

   (j) ensure issuer is advised about restrictions on promotional activities during the period of distribution and limitations on what may be said in any press articles, etc. (See Part 13 of National Instrument 41-101 – *General Prospectus*

† All references in this sample Transaction Checklist to "preliminary prospectus" and "final prospectus" are to a preliminary short form and final short form prospectus, respectively

Requirements and Part 6 of Companion Policy 41-101CP – to National Instrument 41-101 *General Prospectus Requirements*)

(k) check scheduled activities of issuer to confirm there are no activities which might be considered in breach of the waiting period requirements or which need to be modified to ensure U.S. private placement requirements are not breached (e.g., meetings with analysts, investor presentations, industry meetings or presentations, product launches, newspaper interviews)

(l) confirm that no underwriter has plans to issue any analyst reports during distribution

(m) identify any restrictions on share issuances or exercise price or conversion adjustment provisions contained in previous underwriting agreements, credit facility agreements, trust indentures, warrant indentures or preferred stock

(n) determine whether the issuer has completed any significant acquisitions during the past 75 days for which the issuer has not filed a business acquisition report pursuant to Part 8 of National Instrument 51-102 – *Continuous Disclosure Obligations* ("NI 51-102") that requires additional financial statement disclosure within the short form prospectus pursuant to Item 10 of Form 44-101F1

(o) consider any proposed significant acquisitions that require disclosure under Part 10 of Form 44-101F1

(p) if the issuer is a forest products company, ensure that the share issuance will not trigger a change of control under the *Forest Act* (British Columbia)

(q) if the issuer is a mining company, ensure that:

- it is registered as such in Québec
- it has up-to-date technical reports prepared in accordance with National Instrument 43-101 – *Standards of Disclosure for Mineral Projects*

(r) ensure that underwriters' compliance departments will make necessary filings under IIROC requirements respecting bought deals

(s) ensure underwriting agreement has been reviewed by the Financial Industry Regulatory Authority (FINRA) (for MJDS offering only)

(t) confirm at least one member of the underwriting syndicate is registered in each offering jurisdiction and has signed a certificate with respect to s. 7.2(2)(d) of National Policy 11-202 – *Process for Prospectus Reviews in Multiple*

Jurisdictions (“NP 11-202”) (preliminary prospectus) and s. 7.3(4)(d) of NP 11-202 (final prospectus)

(u) confirm compliance with Part 3 of OSC Rule 48-501 – *Trading during Distributions, Formal Bids and Share Exchange Transactions* regarding trading in securities during distribution

(v) warn syndicate that if transaction size is close to 20% of the outstanding equity, purchases for the syndicate’s account for market stabilization purposes could trigger an inadvertent take-over bid (Note: only applicable after firm commitment to purchase is entered into)

2. Before Filing Preliminary Prospectus

(a) check short form prospectus against NI 44-101 and Form 44-101F1 requirements

(b) check to ensure that AIF, information circular and other documents incorporated by reference in the prospectus have been translated for Québec filing (or appropriate exemptive relief is obtained)

(c) check to ensure that personal information forms for each director and executive officer of the issuer have been previously filed with the securities regulatory authorities and that all information is up to date. Obtain new personal information forms as required

(d) check to ensure no confidential material change reports have been filed and remain confidential

(e) finalize U.S. “wrap” language

(f) issuer board meeting to approve the preliminary and final prospectus and related items (if not completed at the bid letter/underwriting agreement stage)

(g) due diligence request letter to issuer’s counsel

(h) prepare due diligence questions and circulate directors’ and officers’ questionnaire

(i) conduct underwriters’ due diligence conference call or meeting

(j) check the eligibility requirements of the proposed institutional purchasers (U.S. only)

(k) check to ensure audit committee review of all financial statements contained in or incorporated by reference in the short form prospectus

(l) review and confirm availability of all filing material, and obtain all necessary signature pages (prospectus, qualification certificate, confirmation letter of issuer under NP 11-202, SEDAR Form 6)

(m) review all documents incorporated by reference in the short form prospectus

(n) file all material documents and agreements to comply with Part 12 of NI 51-102

(o) file preliminary prospectus, executed underwriting agreement and all supporting documents on SEDAR within four business days of bid letter (OSC filing deadline of 12:00 p.m. (Toronto time) for receipt same day); however, for bought deals, it may be issued the same day if acceptable material is filed before 3:00 p.m. (OSC staff notice 41-701). Note: ASC has an "unofficial" 3:00 p.m. deadline to get receipted the same day

3. After Filing Preliminary Prospectus

(a) status and control of standard term sheet, if any

(b) ensure U.S. "wrap" is delivered to U.S. affiliates of underwriters with preliminary short form prospectus

(c) stock exchange listing application(s)

(d) ensure that the auditors are working on the long form comfort letter to the underwriters

(e) negotiate and finalize auditor's long form comfort letter to the underwriters

(f) request draft translation opinions of Québec local counsel and of the auditors

(g) request draft eligibility opinion of the auditors, if necessary

(h) prepare update due diligence questions

(i) file translations of documents incorporated by reference in the prospectus if not filed at the preliminary prospectus stage

(j) obtain comment letter from securities regulatory authorities and settle comments

4. Before Filing Final Prospectus

(a) receive signed auditor's long form comfort letter to the underwriters

(b) receive signed translation opinions of Québec local counsel and the auditors

(c) receive stock exchange conditional listing approval letter(s)

(d) finalize due diligence investigations and conduct underwriters' due diligence update conference call or meeting

(e) underwriters' counsel presents due diligence report to the underwriting syndicate

(f) finalize U.S. "wrap" language for the final short form prospectus

(g) confirm all signature pages signed and available (underwriting agreement, prospectus, consents, comfort letters, SEDAR Form 6)

(h) file all material documents and agreements not previously filed

5. Post-Closing

(a) Obtain distribution certificate from lead underwriter and file filing fees with Alberta and British Columbia along with the notice of proceeds

7.4 Sample Detailed Timetable for a Short Form Prospectus Offering – Bought Deal

Date	Time	Step or Action
T-10 (at least)		• Issuer to file Notice of Intention to be Qualified to File a Short Form Prospectus (if not previously filed, and if the issuer did not have a current AIF as of December 29, 2005)† • For Issuers who have filed Technical Reports in British Columbia, consider application to the BC Securities Commission to initiate review of reports
T-5 (or earlier)		• Counsel and Underwriters meet to discuss process, timing and due diligence

T-4		• Syndicate meeting
		  • Allows Lead Underwriter to gauge syndicate interest prior to issuing the bid letter to the Issuer
		  • Alternative approach is to bring the full syndicate on board after the launch. See T below

T-4		• Execute bid letter by Lead Underwriter and the Issuer • Often a board meeting is held prior to the execution of the bid letter to approve the transaction within a price range determined by the directors with the final price for the securities approved by management or a pricing committee • Issue press release announcing agreement and file on SEDAR (Marketing can commence ONLY after press release issued)
T-4		• Underwriters' Counsel commences due diligence • Preliminary prospectus drafting session(s) • Auditors to confirm financial statement timing/readiness and begin preparation of long-form comfort letter
T-4		• Commence translation of draft preliminary prospectus and all documents incorporated by reference not previously translated • Circulate due diligence questions

† All references in this sample Timetable to "preliminary prospectus" and "final prospectus" are to a preliminary short form prospectus and final short form prospectus, respectively.

Date	Time	Step or Action
T-3		• Select commercial printer and arrange print schedule • Circulate draft underwriting agreement (may have been attached as schedule to bid letter) • Revise and work towards finalizing preliminary prospectus (Board to review)
T-1		• Due diligence call with Lead Underwriter, Issuer, Auditor and any outside experts • This call may include the full syndicate if they were involved at T-4 • Confirm proposed syndicate, if not previously settled at T-4 • Finalize underwriting agreement • Finalize draft press release • Collect executed filing documents (including applicable consents) • Complete translation of draft preliminary prospectus • Auditors circulate draft long-form comfort letter • Issuer board meeting to approve preliminary and final prospectus, if not previously completed at T-4 • Circulate draft press release re: filing of preliminary prospectus to working group • Sign-off on draft preliminary prospectus
T	7:45 am 8:00 am 8:00 am 10:15 am	• Lead Underwriter to call proposed syndicate members re syndicate meeting • This and the next 2 items are only required if the full syndicate was not involved at T-4 • Syndicate conference call • Update syndicate on due diligence session details and collect information re: signing authorities • Bring-down due diligence session
T Cont'd.	10:30 pm 11:00 am	• Underwriters to execute and deliver SEDAR Form 6s and underwriting agreement • Issuer and Lead Underwriter to execute and deliver underwriting agreement

Date	Time	Step or Action
	12:20 pm	• Underwriters' call with syndicate to confirm terms of participation and communicate any syndicate changes to team • Check to ensure that personal information forms for each director and executive officer have been previously filed with the security regulatory authorities, and that all information is up to date. Obtain new personal information forms as required
	1:05 pm	• File preliminary prospectus (French and English) and underwriting agreement via SEDAR
	1:05 pm	• Issue press release re: filing of preliminary prospectus and file on SEDAR
	2:00 pm	• Issuer management available for investor calls
	5:00 pm (or earlier)	• Obtain receipt for preliminary prospectus
	5:00 pm (or earlier)	• Immediately after the receipt is issued, authorize financial printer to commence printing of commercial copies of the preliminary prospectus and provide delivery instructions
T+1 to T+3		• Deliver commercial copies of preliminary prospectus
T+1 to T+3		• File application re: listing offered securities with relevant stock exchange
T+3BD		• Deadline to receive comments from principal regulator
T+[5BD]		• Settle all comments with the principal regulator and update prospectus as required • Complete translation of documents incorporated by reference if an exemption has been granted by the Autorité des marchés financiers allowing the Issuer to file translated versions of the documents incorporated by reference with the final prospectus • It is most prudent to ensure that all of the documents incorporated by reference are translated and filed on SEDAR prior to or concurrent with the filing of the preliminary prospectus

Date	Time	Step or Action
T+[6BD]		• Underwriters' due diligence session • File final prospectus (English and French) along with all other material contracts via SEDAR • Obtain receipt for final prospectus • Issue press release re: filing of final prospectus and file on SEDAR • Authorize financial printer to commence printing of commercial copies of the final prospectus and provide delivery instructions
T+[12BD]		• Due diligence update session • Many underwriters still have a pre-closing diligence update • Pre-closing
T+[13BD]		• Closing • Issue press release re: closing and file on SEDAR
T+[30BD]		• Post-closing – Obtain distribution certificate from Lead Underwriter and file filing fees with Alberta and British Columbia along with the notice of proceeds

7.5 Sample Bid Letter

<Insert Date>

<Insert Company>
<Insert Address>

Dear **<Insert Name>:**

This letter will confirm that <**Insert Underwriter**> ("**Underwriter**"), on behalf of the Underwriters' (as defined below), hereby offers to purchase from the Company (the "**Company**") • common shares (the "**Shares**") of the Company at a price of $• per Share, representing gross proceeds of $•, according to the terms and conditions in this letter and the term sheet attached as Schedule B of this letter (the "**Offer**"). Underwriter undertakes to syndicate the transaction to the underwriters listed in Schedule A of this letter (the "**Underwriters**").

The Offer is subject to the following conditions:

1. The Offer is open for acceptance until <insert time> on <insert date> unless otherwise extended or withdrawn by the Underwriters;

2. The Company represents that it is qualified under National Instrument 44-101 – *Short Form Prospectus Distributions* ("**NI 44-101**") to file a prospectus in the form of a short form prospectus qualified to distribute the Shares;

3. Upon acceptance of the Offer (which acceptance confirms that the acceptance of this Offer and the issuance of the Shares has been authorized by the board of directors of the Company (the "**Directors**"), the Company will, following consultation with the Toronto Stock Exchange (the "**TSX**"), advise the TSX and the Investment Industry Regulatory Organization of Canada and request that its existing Shares **[and any other securities of the Company]** be halted for trading to permit public dissemination of this matter, as reasonably required and appropriate;

4. Upon acceptance of the Offer, and following the giving of notice contemplated by Paragraph 3 above, the Company authorizes the Underwriters to issue the press release (other than in the United States) as attached as Schedule C of this letter and the Company will forthwith cause such press release to be filed on SEDAR, and agrees to seek approval from the Underwriters regarding all public disclosure, such approval not to be arbitrarily withheld, from the date of the acceptance of the Offer until the closing of this offering;

5. Each of the Company and the Underwriter hereby approve the term sheet attached as Schedule B of this letter as the "template version" of the "marketing materials" for the

Offer and consents to the filing thereof on SEDAR. Such template version of the "marketing materials" will be incorporated by reference into the Preliminary Prospectus (as defined in paragraph 6 below) and the Final Prospectus (as defined in paragraph 6 below), and the Company agrees that it will file the same with each of the securities regulatory authorities having jurisdiction over the Company and the Offer. The Company further agrees that it will fully comply with all requirements of National Instrument 41-101 – *General Prospectus Requirements* ("**NI 41-101**") with respect to such "template version" of the "marketing materials", including filing a revised template version of the "marketing materials" in accordance with the requirements of Section 7.6(7) of NI 44-101, if applicable. Moreover, the Underwriter represents, warrants and covenants that: (i) no "marketing materials" in respect of the Shares or the Offer that would be required to be incorporated by reference into the Preliminary Prospectus or the Final Prospectus have been provided by it to any potential investors of the Shares prior to the execution of this letter; and (ii) other than the "marketing materials" approved herein, no other marketing materials in respect of the Shares will be provided by it to any potential investors of the Shares without the prior written agreement of the parties hereto approving such additional marketing materials and the filing of such template version on SEDAR pursuant to and with the template specified in NI 41-101. For purposes of the foregoing, "template version", "marketing materials" and "provide" have the respective meaning ascribed to them in NI 41-101;

6. The Company will file a preliminary short form prospectus ("**Preliminary Prospectus**") under Multilateral Instrument 11-102 – *Passport System* ("**MI 11-102**") and National Policy 11-202 – *Process for Prospectus Reviews in Multiple Jurisdictions* ("**NP 11-202**") qualifying the distribution of the Shares in each of the provinces **[and territories]** of Canada by no later than the day that is four business days following the date of acceptance of the Offer and obtain a receipt thereafter dated no later than the date on which the Preliminary Prospectus is filed. The Company will file under MI 11-102, and obtain a receipt for a final short form prospectus in form and content satisfactory to the Underwriters ("**Final Prospectus**"), in each of the provinces **[and territories]** of Canada, within [6] business days after obtaining a receipt for the Preliminary Prospectus or such later date to which the Underwriters may agree;

7. Completion of due diligence satisfactory to the Underwriters and their counsel, such due diligence not to reveal any existing material adverse information concerning the Company that has not been previously publicly disclosed and to enable the Underwriters to execute the certificate required of them in the Preliminary Prospectus and the Final Prospectus. The Company represents and warrants that, as of the date hereof, subject to the disclosure contained in the press release attached as Schedule C of this letter, there are no material facts or material changes relating to the Company that have not been publicly disclosed other than this offering and the Company's intended use of proceeds therefrom;

8. Execution of an underwriting agreement between the Underwriters and the Company (the "**Underwriting Agreement**") mutually satisfactory to the Company and the Underwriters at or prior to the time of filing the Preliminary Prospectus, which will contain industry standard representations and warranties concerning the Company, its properties and assets and an indemnity in favour of the Underwriters, customary Underwriters' termination rights for a "bought deal". **[NTD: If any portion of the Underwriters' counsel legal fees are to be paid by the Company, address here.]**;

9. The Company will not, at any time prior to 90 days after the closing date, without the prior written consent of the Underwriter, on behalf of the Underwriters, not to be unreasonably withheld; create, issue or sell or announce any intention to create, issue or sell any Shares of the Company, or securities exchangeable or convertible into Shares, except for **[NTD: modify as applicable:]** (i) Shares offered through the Company's existing dividend reinvestment plan, the deferred share plan and long term incentive plan or pursuant to the exchange of <**Insert Type of Shares**> of the Company (the "<**Insert Type of Shares**>"), (ii) Shares issued in connection with an acquisition or merger transaction to which the Company and/or one of its subsidiaries may be a party, and (iii) Shares issued upon exercise, from time to time, of the Company's outstanding convertible debentures;

10. The Company will not, without the prior written consent of the Underwriter, not to be unreasonably withheld, take any action which would have the effect of causing a material change to occur in the business or affairs of the Company from the date of the execution of this letter until the completion of the distribution of the Shares;

11. It will be a condition of this offering that the Shares offered will be conditionally listed and posted for trading on the TSX;

12. To deal with the possibility that the Shares may be sold to United States purchasers, by way of private placement or in such other manner as not to require registration under the United States Securities Act of 1933, as amended (the "**U.S. Securities Act**"), an appropriate legend concerning United States sales shall be included on each page of the press release announcing this transaction as follows: **"NOT FOR DISTRIBUTION TO U.S. NEWS WIRE SERVICES OR DISSEMINATION IN THE U.S."** and the Company undertakes to otherwise comply with applicable U.S. securities laws;

13. The Shares may only be offered and sold in the United States to "qualified institutional buyers," as defined in Rule 144A under the U.S. Securities Act and/or to institutional "accredited investors" that satisfy the requirements of Rule 501(a) (1), (2), (3) or (7) of Regulation D under the U.S. Securities Act. The Company undertakes to provide such supplementary disclosure as required in connection with the private placement in the United States;

14. The issuance of the Shares will be subject to approval of the TSX and all other securities regulatory authorities having jurisdiction over the Company and this Offer is subject to compliance with any conditions of those approvals. The Company hereby agrees to obtain any regulatory, listing and other consents which may be required to permit the offering of the Shares in Canada contemplated above and in the term sheet attached as Schedule B of this letter and the listing of the Shares on the TSX;

15. Pursuant to applicable securities laws, any applicable consents and orders of securities regulators, and other than as proposed to be included in the Preliminary Prospectus and the Final Prospectus, the Company represents that it is not required to disclose in the Preliminary Prospectus and the Final Prospectus any historical financial statements of, or pro forma financial statements incorporating, the financial position or results of any entities;

16. The Company will indemnify and hold harmless each of the Underwriters and their respective affiliates, officers, directors, employees; partners and agents and each other person that controls such Underwriter and any of such person's affiliates and each shareholder of such Underwriter against all losses, costs, damages, claims, liabilities and expenses (including, without limitation, expenses of investigation and defending any claims or litigation as the same are incurred) ("**Claims**"), related to or arising out of the offering of the Shares, including an Underwriter's performance of its obligations under this agreement, except to the extent that such Claims result from breach of law by the Underwriters;

17. The closing date will be on or about <**insert date**> ("**Closing Date**"), or such other date as may be mutually agreed to by the Company and the Underwriter, on behalf of the Underwriters; and

18. The Company agrees that each Underwriter may terminate its obligations hereunder, by written notice to the Company, under the industry standard termination clauses outlined in Schedule D of this letter.

The provisions of this letter agreement shall be superseded in their entirety by the Underwriting Agreement when executed.

We welcome the opportunity to lead this issue on behalf of the Company. Should you wish to accept the Offer, please return a signed copy of this letter to my attention prior to 3:30 pm on <**insert date**>.

Yours very truly,

<**Insert Underwriter**>

Accepted and agreed to this • day of •, 20•

<**Insert Company**>

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE A

<**Insert Company**>

TREASURY OFFERING OF COMMON SHARES

SYNDICATE

<**Insert Underwriter**>	•%
<**Insert Underwriter**>	•%
<**Insert Underwriter**>	•%
<**Insert Underwriter**>	•%
<**Insert Underwriter**>	•%
<**Insert Underwriter**>	•%
<**Insert Underwriter**>	•%
<**Insert Underwriter**>	•%
<**Insert Underwriter**>	•%
	100.0%

SCHEDULE B

<Insert Company>

Treasury Offering of Common Shares

Issuer:	<**Insert Company**>
Offering:	Offering of • Shares of the Company (the "Shares") to be issued from treasury
Base Amount:	$•
Offering Price:	$• per Share representing a discount of approximately % to the Adjusted Closing Price and a discount of approximately •% to the Adjusted VWAP (defined below).
Reference Price:	Closing price as of <**Insert Date**> of $• ("Closing Price") and 3-day volume weighted average trading price ("VWAP") for the Shares as of close on <**Insert Date**> of $• [Both the Closing Price and VWAP will be adjusted for the <**Insert Date**> dividend, which purchasers in the Offering will not be entitled to receive (referred to as the "Adjusted Closing Price" and "Adjusted VWAP", respectively).]
Over-Allotment Option:	The Company has granted to the Underwriters (the "Underwriters Over-allotment Option"), exercisable in whole or in part up to 30 days after Closing, to purchase up to an additional •% of the above number of Shares on the same terms as set forth above.
Intended Use of Proceeds:	The net proceeds from the Share offering will be utilized by the Company to •.
Listing:	The Shares are listed on the Toronto Stock Exchange under the symbol "•".
Eligibility:	The Shares are eligible for Canadian RRSPs, RRIFs, DPSPs, TFSAs and RESPs.
Offering Basis:	The Shares will be offered and qualified for distribution in all the provinces **[and Territories]** in Canada and in the United States the Shares will be offered and sold on a private placement basis to "qualified institutional buyers" as defined in Rule 144A under the United States Securities Act of 1933, as amended (the "U.S. Securities Act") and/or to institutional "accredited investors" that satisfy the requirements of Rule 501(a)(1), (2), (3) or (7) of Regulation D under the U.S. Securities Act.

Hold Period: In the United States, the Shares will be "restricted securities" as defined in Rule 144 under the U.S. Securities Act. Shares may be resold (1) through the TSX in compliance with Regulation S under the U.S. Securities Act for offshore resales or (2) in compliance with another exemption from the registration requirements of the U.S. Securities Act and any applicable state securities laws.

Underwriting Basis: "Bought Deal" subject to due diligence and the signing of a definitive underwriting agreement including conventional indemnity and termination provisions.

Underwriting Fee: •%

Closing Date: On or about <**Insert Date**> or such other date as may be agreed to by the Company and Underwriter.

SCHEDULE C

[INSERT DRAFT PRESS RELEASE]

SCHEDULE D

Each Underwriter may terminate its obligations hereunder, by written notice to the Company, in the event that after the date hereof and at, or prior to, the Closing Date:

a. any order to cease or suspend trading in any securities of the Company, or prohibiting or restricting the distribution of the Shares, is made or proceedings are announced or commenced for the making of any such order, by any securities commission or similar regulatory authority, a stock exchange on which the securities of the Company are listed or by any other competent authority, and has not been rescinded, revoked or withdrawn;

b. any inquiry, investigation (whether formal or informal) or other proceeding in relation to the Company, or any of its directors or senior officers is announced or commenced by any securities commission or similar regulatory authority, a stock exchange on which the securities of the Company are listed or by any other competent authority (unless based exclusively on the activities or alleged activities of the Underwriters or their sub-agents), or there is any change of law, regulation or policy or the interpretation or administration thereof, if, in the sole opinion of the Underwriters, or any one of them, acting reasonably, the announcement or commencement thereof or change, as the case may be, materially adversely affects the trading or distribution of the Shares;

c. there should develop, occur or come into effect or existence any event, action, state, condition or major financial occurrence of national or international consequence, including any act of terrorism, war or like event, or any law or regulation, or any occurrence of any nature whatsoever, which, in the sole opinion of the Underwriters, or any one of them, acting reasonably, seriously adversely affects or involves, or will seriously adversely affect or involve, the financial markets generally or the business, operations or affairs of the Company (taken as a whole);

d. there should occur any material change, change of a material fact, occurrence or event or any development that could result in a material change or change of a material fact in the business, operations or condition of the Company which, in the sole opinion and determination of the Underwriters, or any one of them, in their sole discretion, acting reasonably, could reasonably be expected to have a material adverse effect on the business, operations or condition of the Company (taken as a whole) or the market price, value or the marketability of the Shares;

e. the Underwriters, or any one of them, acting reasonably, determine that the Company shall be in breach of, default under or non-compliance in any material respect with any material representation, warranty, covenant, term or condition of this letter agreement, the underwriting agreement or the subscription agreement that is either not susceptible of being cured or which remains uncured following the completion of any cure period prescribed by such agreement; or

f. the Underwriters shall become aware, as a result of their due diligence review or otherwise, of any adverse material change with respect to the Company (taken as a whole) (in the sole opinion of the Underwriters, or any one of them, acting reasonably) which had not been publicly disclosed or disclosed to the Underwriters prior to the date hereof or which occurred after the date hereof but prior to the closing time of the Offer and which would have a material adverse effect or the market price or value of the Shares.

in any of which cases, the Underwriter shall be entitled, at its option, to terminate and cancel its obligations to the Company under this letter agreement by written notice to that effect given to the Company, with a copy to the other Underwriters. In the event of any such termination pursuant to the provisions of this paragraph by any one of the Underwriters, the other Underwriters shall be deemed contemporaneously to have terminated the obligations under this letter agreement unless any such other Underwriter shall, within 24 hours after notice of termination is given, notify the Company to the effect that it is assuming the obligations of the Underwriter(s) terminating its obligations. In the event of any such termination, the Company's liabilities to the Underwriter(s) who has so terminated shall be at an end except for any liability of the Company provided for in this letter agreement which by its terms survives termination.

Notes

Notes

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