NATIONAL INSTRUMENT 41-101
GENERAL PROSPECTUS REQUIREMENTS

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PART 1: Definitions and Interpretations

Definitions

1.1 In this Instrument:

"acquisition" has the same meaning as in Part 8 of NI 51-102;

"acquisition of related businesses" has the same meaning as in Part 8 of NI 51-102;

"alternative credit support" has the same meaning as in section 13.4 of NI 51-102;

"approved rating organization" has the same meaning as in section 1.1 of NI 51-102;

"asset-backed security" has the same meaning as in section 1.1 of NI 51-102;

"base offering" means the number or principal amount of the securities distributed under a prospectus by an issuer or selling securityholder, excluding

(a) any over-allotment option granted in connection with the distribution, or the securities issuable on the exercise of any such over-allotment option, and

(b) securities issued or paid as compensation to a person or company for acting as an underwriter in respect of securities that are distributed under the prospectus, on an "as-if-converted" basis if these securities include securities that are convertible or exchangeable securities;

"board of directors" has the same meaning as in section 1.1 of NI 51-102;

"business acquisition report" has the same meaning as in section 1.1 of NI 51-102;

"business day" means any day other than a Saturday, a Sunday or a statutory holiday;

"class" has the same meaning as in section 1.1 of NI 51-102;

"credit supporter" has the same meaning as in section 13.4 of NI 51-102;

"custodian" means the institution appointed by an investment fund to act as custodian of the portfolio assets of the investment fund;

"date of acquisition" has the same meaning as in section 1.1 of NI 51-102;

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

"designated foreign jurisdiction" has the same meaning as in section 1.1 of NI 52-107;

"equity investee" has the same meaning as in section 1.1 of NI 51-102;

"equity security" means a security of an issuer that carries a residual right to participate in the earnings of the issuer and, on the liquidation or winding up of the issuer, in its assets;

"executive officer" means, for an issuer, an individual who is

(a) a chair, vice-chair or president,

(b) a vice-president in charge of a principal business unit, division or function including sales, finance or production, or

(c) performing a policy-making function in respect of the issuer;

"foreign disclosure requirements" has the same meaning as in section 1.1 of NI 52-107;

"Form 41-101F1" means Form 41-101F1 *Information Required in a Prospectus* of this Instrument;

"Form 41-101F2" means Form 41-101F2 *Information Required in an Investment Fund Prospectus* of this Instrument;

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

"Form 51-101F1" means Form 51-101F1 *Statement of Reserves Data and Other Oil and Gas Information* of NI 51-101;

"Form 51-101F2" means Form 51-101F2 *Report on Reserves Data by Independent Qualified Reserves Evaluator or Auditor* of NI 51-101;

"Form 51-101F3" means Form 51-101F3 *Report of Management and Directors on Oil and Gas Disclosure* of NI 51-101;

"Form 51-102F1" means Form 51-102F1 *Management's Discussion & Analysis* of NI 51-102;

"Form 51-102F2" means Form 51-102F2 *Annual Information Form* of NI 51-102;

"Form 51-102F4" means Form 51-102F4 *Business Acquisition Report* of NI 51-102;

"Form 51-102F5" means Form 51-102F5 *Information Circular* of NI 51-102;

"Form 51-102F6" means Form 51-102F6 *Statement of Executive Compensation* of NI 51-102;

"Form 52-110F1" means Form 52-110F1 *Audit Committee Information Required in an AIF* of MI 52-110;

"Form 52-110F2" means Form 52-110F2 *Disclosure by Venture Issuers* of MI 52-110;

"Form 58-101F1" means Form 58-101F1 *Corporate Governance Disclosure* of NI 58-101;

"Form 58-101F2" means Form 58-101F2 *Corporate Governance Disclosure (Venture Issuers)* of NI 58-101;

"full and unconditional credit support" means

(a) alternative credit support that

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

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

(b) a full and unconditional guarantee of the payments to be made, as interpreted in section 1.5, by the issuer of securities, as stipulated in the terms of the securities or in an agreement governing rights of holders of the securities, that results in the holder of such securities being entitled to receive payment from the credit supporter within 15 days of any failure by the issuer to make a payment;

"income from continuing operations" has the same meaning as in section 1.1 of NI 51-102;

"independent review committee" means an independent review committee under NI 81-107;

"information circular" has the same meaning as in section 1.1 of NI 51-102;

"interim period" has the same meaning as in

(a) section 1.1 of NI 51-102 for an issuer other than an investment fund, or

(b) section 1.1 of NI 81-106 for an investment fund;

"IPO venture issuer" means an issuer that

(a) files a long form prospectus,

(b) is not a reporting issuer in any jurisdiction immediately before the date of the final long form prospectus, and

(c) at the date of the long form prospectus, does not have any of its securities listed or quoted, has not applied to list or quote any of its securities, and does not intend to apply to list or quote any of its securities, on

(i) the Toronto Stock Exchange,

(ii) a U.S. marketplace, or

(iii) a marketplace outside of Canada and the United States of America, other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc;

"issuer's GAAP" has the same meaning as in section 1.1 of NI 52-107;

"junior issuer" means an issuer

(a) that files a preliminary prospectus,

(b) that is not a reporting issuer in any jurisdiction,

(c) whose total consolidated assets as at the date of the most recent balance sheet of the issuer included in the preliminary prospectus are less than $10,000,000,

(d) whose consolidated revenue as shown in the most recent annual income statement of the issuer included in the preliminary prospectus is less than $10,000,000, and

(e) whose shareholders' equity as at the date of the most recent balance sheet of the issuer included in the preliminary prospectus is less than $10,000,000,

taking into account all adjustments to asset, revenue and shareholders' equity calculations necessary to reflect each significant proposed acquisition of a business or related business by an issuer that has progressed to a state where a reasonable person would believe that the likelihood of the issuer completing the acquisition is high, and each completed significant acquisition of a business or related business that was completed,

(f) for paragraphs (c) and (e), before the date of the preliminary prospectus and after the date of the issuer's most recent balance sheet included in the preliminary prospectus as if each acquisition had taken place as at the date of the issuer's most recent balance sheet included in the preliminary prospectus, and

(g) for paragraph (d), after the last day of the most recent annual income statement of the issuer included in the preliminary prospectus as if each acquisition had taken place at the beginning of the issuer's most recently completed financial year for which an income statement is included in the preliminary prospectus;

"labour sponsored or venture capital fund" has the same meaning as in section 1.1 of NI 81-106;

"long form prospectus" means a prospectus filed in the form of Form 41-101F1 or Form 41-101F2;

"marketplace" has the same meaning as in section 1.1 of NI 51-102;

"material contract" means any contract that an issuer or any of its subsidiaries is a party to, that is material to the issuer;

"mineral project" has the same meaning as in section 1.1 of NI 43-101;

"MI 52-110" means Multilateral Instrument 52-110 *Audit Committees*;

"NI 14-101" means National Instrument 14-101 *Definitions*;

"NI 33-105" means National Instrument 33-105 *Underwriting Conflicts*;

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

"NI 44-101" means National Instrument 44-101 *Short Form Prospectus Distributions*;

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

"NI 44-103" means National Instrument 44-103 *Post-Receipt Pricing*;

"NI 45-106" means National Instrument 45-106 *Prospectus and Registration Exemptions*;

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

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

"NI 52-107" means National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*;

"NI 58-101" means National Instrument 58-101 *Disclosure of Corporate Governance Practices*;

"NI 81-101" means National Instrument 81-101 *Mutual Fund Prospectus Disclosure*;

"NI 81-102" means National Instrument 81-102 *Mutual Funds*;

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

"NI 81-107" means National Instrument 81-107 *Independent Review Committee for Investment Funds*;

"non-voting security" means a restricted security that does not carry the right to vote generally, except for a right to vote that is mandated, in special circumstances, by law;

"old financial year" means the financial year of an issuer that immediately precedes a transition year;

"over-allocation position" means 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;

"over-allotment option" means 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;

"principal securityholder" means a person or company who beneficially owns, or controls or directs, directly or indirectly, voting securities carrying 10% or more of the voting rights attached to any class of voting securities of the issuer;

"private issuer" has the same meaning as in section 2.4 of NI 45-106;

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

"restricted security" means an equity security that is not a preferred security of an issuer if any of the following apply:

(a) there is another class of securities of the issuer that carries a greater number of votes per security relative to the equity security,

(b) the conditions attached to the class of equity securities, the conditions attached to another class of securities of the issuer, or the issuer's constating documents have provisions that nullify or significantly restrict the voting rights of the equity securities,

(c) the issuer has issued another class of equity securities that entitle the owners of securities of that other class to participate in the earnings or assets of the issuer to a greater extent, on a per security basis, than the owners of the first class of equity securities, or

(d) except in Ontario and British Columbia, the regulator determines that the equity security is a restricted security;

"restricted security reorganization" means any event resulting in the creation of restricted securities, directly or through the creation of subject securities or securities that are, directly or indirectly, convertible, or exercisable or exchangeable for, restricted securities or subject securities or any change in the rights attaching to restricted securities, subject securities or securities that are, directly or indirectly, convertible into, or exercisable or exchangeable for, restricted securities or subject securities, including

(a) any

(i) amendment to an issuer's constating documents,

(ii) resolution of the board of directors of an issuer setting the terms of a series of securities of the issuer, or

(iii) restructuring, recapitalization, reclassification, arrangement, amalgamation or merger, or

(b) if the issuer has one or more classes of restricted securities outstanding, an amendment to an issuer's constating documents to increase

(i) the per security voting rights attached to any class of securities without at the same time making a proportionate increase in the per security voting rights attached to any other securities of the issuer, or

(ii) the number of a class of securities authorized, other than a restricted security;

"restricted security term" means each of the terms "non-voting security", "subordinate voting security", and "restricted voting security";

"restricted voting security" means a restricted security that carries a right to vote subject to a restriction on the number or percentage of securities that may be voted or owned by one or more persons or companies, unless the restriction is

(a) permitted or prescribed by statute or regulation, and

(b) is applicable only to persons or companies that are not citizens or residents of Canada or that are otherwise considered as a result of any law applicable to the issuer to be non-Canadians;

"restructuring transaction" has the same meaning as in section 1.1 of NI 51-102;

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

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

"SEC issuer" has the same meaning as in section 1.1 of NI 52-107;

"short form prospectus" means a prospectus filed in the form of Form 44-101F1;

"special warrant" means a security that, by its terms or the terms of an accompanying contractual obligation,

(a) entitles or requires the holder to acquire another security without payment of material additional consideration and obliges the issuer of either security to undertake efforts to file a prospectus to qualify the distribution of the other security, or

(b) entitles or requires the holder to acquire another security without payment of material additional consideration and the issuer files a prospectus to qualify the distribution of the other security;

"subject security" means a security that results, or would result if and when issued, in an existing class of securities being considered restricted securities;

"subordinate voting security" means a restricted security that carries a right to vote, if there are securities of another class outstanding that carry a greater right to vote on a per security basis;

"transition year" means the financial year of an issuer or business in which the issuer or business changes its financial year-end;

"U.S. GAAP" has the same meaning as in section 1.1 of NI 52-107;

"U.S. GAAS" has the same meaning as in section 1.1 of NI 52-107;

"U.S. marketplace" has the same meaning as in section 1.1 of NI 51-102;

"venture issuer" has the same meaning as in section 1.1 of NI 51-102 except the "applicable time" is the date the prospectus is filed;

"waiting period" means the period of time between the issuance of a receipt by the regulator for a preliminary prospectus and the issuance of a receipt by the regulator for a final prospectus.

Interpretation of "prospectus", "preliminary prospectus", "final prospectus", "long form prospectus", and "short form prospectus"

1.2(1) In this Instrument, a reference to a "prospectus" includes a preliminary long form prospectus, a final long form prospectus, a preliminary short form prospectus, and a final short form prospectus.

(2) In this Instrument, a reference to a "preliminary prospectus" includes a preliminary long form prospectus and a preliminary short form prospectus.

(3) In this Instrument, a reference to a "final prospectus" includes a final long form prospectus and a final short form prospectus.

(4) In this Instrument, a reference to a "long form prospectus" includes a preliminary long form prospectus and a final long form prospectus.

(5) In this Instrument, a reference to a "short form prospectus" includes a preliminary short form prospectus and a final short form prospectus.

(6) Despite subsections (1), (2), and (3), in Form 41-101F1 and Form 41-101F2,

(a) a reference to a "prospectus" only includes a preliminary long form prospectus and a final long form prospectus,

(b) a reference to a "preliminary prospectus" only includes a preliminary long form prospectus, and

(c) a reference to a "final prospectus" only includes a final long form prospectus.

Interpretation of "business"

1.3 In this Instrument, unless otherwise stated, a reference to a business includes an interest in an oil and gas property to which reserves, as defined in NI 51-101, have been specifically attributed.

Interpretation of "affiliate"

1.4 In this Instrument, an issuer is an affiliate of another issuer if the issuer would be an affiliate of the other issuer under subsection 1.1(2) of NI 51-102.

Interpretation of "payments to be made"

1.5 For the purposes of the definition of "full and unconditional credit support", payments to be made by an issuer of securities as stipulated in the terms of the securities include

(a) any amounts to be paid as dividends in accordance with, and on the dividend payment dates stipulated in, the provisions of the securities, whether or not the dividends have been declared, and

(b) any discretionary dividends, provided that the terms of the securities or an agreement governing rights of holders of the securities expressly provides that the holder of the securities will be entitled, once the discretionary dividend is declared, to receive payment from the credit supporter within 15 days of any failure by the issuer to pay the declared dividend.

PART 2: Requirements for All Prospectus Distributions

Application of the Instrument

2.1(1) Subject to subsection (2), this Instrument applies to a prospectus filed under securities legislation and a distribution of securities subject to the prospectus requirement.

(2) This Instrument does not apply to a prospectus filed under NI 81-101 or a distribution of securities under such a prospectus.

Language

2.2(1) An issuer must file a prospectus and any other document required to be filed under this Instrument or NI 44-101 in French or in English.

(2) In Québec, a prospectus and any document required to be incorporated by reference into a prospectus must be in French or in French and English.

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

(4) If an issuer files a document under this Instrument that is a translation of a document prepared in a language other than French or English, the issuer must

(a) attach a certificate as to the accuracy of the translation to the filed document, and

(b) make a copy of the document in the original language available on request.

General requirements

2.3(1) An issuer must not file a final prospectus more than 90 days after the date of the receipt for the preliminary prospectus that relates to the final prospectus.

(2) An issuer must not file

(a) a prospectus more than three business days after the date of the prospectus, and

(b) an amendment to a prospectus more than three business days after the date of the amendment to the prospectus.

Special warrants

2.4(1) An issuer must not file a prospectus or an amendment to a prospectus to qualify the distribution of securities issued upon the exercise of special warrants or other securities acquired on a prospectus-exempt basis unless holders of the special warrants or other securities have been provided with a contractual right of rescission.

(2) A contractual right of rescission under subsection (1) must provide 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 prospectus or an amendment to the 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.

PART 3: Form of Prospectus

Form of prospectus

3.1(1) Subject to subsection (2) and (3), an issuer filing a prospectus must file the prospectus in the form of Form 41-101F1.

(2) An issuer that is an investment fund filing a prospectus must file the prospectus in the form of Form 41-101F2.

(3) An issuer that is qualified to file a short form prospectus may file a short form prospectus.

PART 4: Financial Statements and Related Documents in a Long Form Prospectus

Application

4.1(1) An issuer, other than an investment fund, that files a long form prospectus must include in the long form prospectus the financial statements and the management's discussion and analysis required by this Instrument.

(2) Subject to Part 15, an investment fund that files a long form prospectus must include in the long form prospectus the financial statements and the management reports of fund performance required by this Instrument.

(3) For the purposes of this Part, "**financial statements**" do not include pro forma financial statements.

Audit of financial statements

4.2(1) Any financial statements included in a long form prospectus filed in the form of Form 41-101F1 must be audited in accordance with NI 52-107 unless an exception in section 32.5 or subsection 35.1(3) of Form 41-101F1 applies.

(2) Any financial statements, other than interim financial statements, included in or incorporated by reference into a long form prospectus of an investment fund filed in the form of Form of 41-101F2 must meet the audit requirements of Part 2 of NI 81-106.

Review of unaudited financial statements

4.3(1) Subject to subsection (2) and (3), any unaudited financial statements included in, or incorporated by reference into, a long 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 review of financial statements by a public accountant.

(2) Subsection (1) does not apply to an investment fund's unaudited financial statements filed after the date of filing of the prospectus that are incorporated by reference into the prospectus under Part 15.

(3) 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. GAAS, the unaudited financial statements may be reviewed in accordance with U.S. review standards,

(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 person or company 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 long form prospectus includes disclosure that the unaudited financial statements have not been reviewed.

Approval of financial statements and related documents

4.4(1) An issuer must not file a long form prospectus unless each financial statement, each management's discussion and analysis, and each management report of fund performance, as applicable, of a person or company included in, or incorporated by reference into, the long form prospectus has been approved by the board of directors of the person or company.

(2) An investment fund that is a trust must not file a long form prospectus unless each financial statement and each management report of fund performance of the investment fund included in, or incorporated by reference into, the long form prospectus has been approved by the trustee or trustees of the investment fund or another person or company authorized to do so by the constating documents of the investment fund.

PART 5: Certificates

Interpretation

5.1 For the purposes of this Part,

(a) **"issuer certificate form"** means a certificate in the form set out in

(i) section 37.2 of Form 41-101F1,

(ii) section 39.1 of Form 41-101F2,

(iii) section 21.2 of Form 44-101F1,

(iv) NI 44-102 in

(A) section 1.1 of Appendix A,

(B) section 2.1 of Appendix A,

(C) section 1.1 of Appendix B, or

(D) section 2.1 of Appendix B, or

(v) NI 44-103 in

(A) paragraph 7 of subsection 3.2(1), or

(B) paragraph 3 of subsection 4.5(2), and

(b) **"underwriter certificate form"** means a certificate in the form set out in

(i) section 37.3 of Form 41-101F1,

(ii) section 39.3 of Form 41-101F2,

(iii) section 21.3 of Form 44-101F1,

(iv) NI 44-102 in

(A) section 1.2 of Appendix A,

(B) section 2.2 of Appendix A,

(C) section 1.2 of Appendix B, or

(D) section 2.2 of Appendix B, or

(v) NI 44-103 in

(A) paragraph 8 of subsection 3.2(1), or

(B) paragraph 4 of subsection 4.5(2).

Date of certificates

5.2 The date of the certificates in a prospectus or an amendment to a prospectus must be the same as the date of the prospectus or the amendment to the prospectus, as applicable.

Certificate of issuer

5.3(1) Except in Ontario, a prospectus must contain a certificate signed by the issuer.

[**Note:** In Ontario, section 58 of the *Securities Act* (Ontario) imposes a similar requirement that a prospectus contain a certificate of the issuer.][1]

(2) A prospectus certificate that is required to be signed by the issuer under this Instrument or other securities legislation must be in the applicable issuer certificate form.

Corporate issuer

5.4(1) Except in Ontario, if the issuer is a company, a prospectus certificate that is required to be signed by the issuer under this Instrument or other securities legislation must be signed

(a) by the chief executive officer and the chief financial officer of the issuer, and

(b) on behalf of the board of directors, by

(i) any two directors of the issuer, other than the persons referred to in paragraph (a) above, or

(ii) if the issuer has only three directors, two of whom are the persons referred to in paragraph (a), all of the directors of the issuer.

[1] In Ontario, a number of prospectus related requirements in this Instrument are either set out in the *Securities Act* (Ontario) or Ontario does not have a similar requirement. We have identified carve-outs from the Instrument where a similar requirement is set out in the Securities Act (Ontario). Where no corresponding statutory provision has been identified for an Ontario carve-out, Ontario has generally not adopted a similar requirement. Notes included in this Instrument have been inserted for convenience of reference only and do not form part of this Instrument or have any force or effect as a rule or policy.

(2) Except in Ontario, if the regulator is satisfied that either or both of the chief executive officer or chief financial officer cannot sign a certificate in a prospectus, the regulator may accept a certificate signed by another officer.

[**Note:** In Ontario, section 58 of the *Securities Act* (Ontario) imposes similar requirements regarding who must sign the issuer certificate.]

Trust issuer

5.5(1) If the issuer is a trust, a prospectus certificate that is required to be signed by the issuer under this Instrument or other securities legislation must be signed by

(a) the individuals who perform functions for the issuer similar to those performed by the chief executive officer and the chief financial officer of a company, and

(b) two trustees of the issuer, on behalf of the trustees of the issuer.

(2) If a trustee that is signing the certificate of the issuer is

(a) an individual, the individual must sign the certificate,

(b) a company, the certificate must be signed

(i) by the chief executive officer and the chief financial officer of the trustee, and

(ii) on behalf of the board of directors of the trustee, by

(A) any two directors of the trustee, other than the persons referred to in subparagraph (i), or

(B) if the trustee has only three directors, two of whom are the persons referred to in subparagraph (i), all of the directors of the trustee,

(c) a limited partnership, the certificate must be signed by each general partner of the limited partnership as described in subsection 5.6(2) in relation to an issuer that is a limited partnership, or

(d) not referred to in paragraphs (a), (b) or (c), the certificate may be signed by any person or company with authority to bind the trustee.

(3) Despite subsections (1) and (2), if the issuer is an investment fund and the declaration of trust, trust indenture or trust agreement establishing the investment fund delegates the authority to do so, or otherwise authorizes an individual or company to do so, the certificate may be signed by the individual or company to whom the authority is delegated or that is authorized to sign the certificate.

(4) Despite subsections (1) and (2), if the trustees of an issuer, other than an investment fund, do not perform functions for the issuer similar to those performed by the directors of a company, the trustees are not required to sign the prospectus certificate of the issuer provided that at least two individuals who do perform functions for the issuer similar to those performed by the directors of a company sign the certificate.

(5) If the regulator is satisfied that an individual who performs functions for the issuer similar to those performed by either the chief executive officer or the chief financial officer of a company cannot sign a certificate in a prospectus, the regulator may accept a certificate signed by another individual.

Limited partnership issuer

5.6(1) If the issuer is a limited partnership, a prospectus certificate that is required to be signed by the issuer under this Instrument or other securities legislation must be signed by

(a) the individuals who perform functions for the issuer similar to those performed by the chief executive officer and the chief financial officer of a company, and

(b) each general partner of the issuer.

(2) If a general partner of the issuer is

(a) an individual, the individual must sign the certificate,

(b) a company, the certificate must be signed

(i) by the chief executive officer and the chief financial officer of the general partner, and

(ii) on behalf of the board of directors of the general partner, by

(A) any two directors of the general partner, other than the persons referred to in subparagraph (i), or

(B) if the general partner has only three directors, two of whom are the persons referred to in subparagraph (i), all of the directors of the general partner,

(c) a limited partnership, the certificate must be signed by each general partner of the limited partnership and, for greater certainty, this subsection applies to each general partner required to sign,

(d) a trust, the certificate must be signed by the trustees of the general partner as described in subsection 5.5(2) in relation to an issuer that is a trust, or

(e) not referred to in paragraphs (a) to (d), the certificate may be signed by any person or company with authority to bind the general partner.

(3) If the regulator is satisfied that an individual who performs functions for the issuer similar to those performed by either the chief executive officer or the chief financial officer of a company cannot sign a certificate in a prospectus, the regulator may accept a certificate signed by another individual.

Other issuer

5.7 If an issuer is not a company, trust or limited partnership, a prospectus certificate that is required to be signed by the issuer under this Instrument or other securities legislation must be signed by the persons or companies that, in relation to the issuer, are in a similar position or perform a similar function to the persons or companies required to sign under sections 5.4, 5.5 and 5.6.

Reverse takeovers

5.8 Except in Ontario, if an 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, a prospectus must contain a certificate, in the applicable issuer certificate form, signed

(a) by the chief executive officer and the chief financial officer of the reverse takeover acquirer, and

(b) on behalf of the board of directors of the reverse takeover acquirer, by

(i) any two directors of the reverse takeover acquirer, other than the persons referred to in paragraph (a) above, or

(ii) if the reverse takeover acquirer has only three directors, two of whom are the persons referred to in paragraph (a), all of the directors of the reverse takeover acquirer.

Certificate of underwriter

5.9(1) Except in Ontario, a prospectus must contain a certificate signed by each underwriter who, with respect to the securities offered by the prospectus, is in a contractual relationship with the issuer or a securityholder whose securities are being offered by the prospectus.

[**Note:** In Ontario, subsection 59(1) of the *Securities Act* (Ontario) imposes a similar requirement that a prospectus contain a certificate signed by each underwriter in a contractual relationship with the issuer.]

(2) A prospectus certificate that is required to be signed by an underwriter under this Instrument or other securities legislation must be in the applicable underwriter certificate form.

(3) Except in Ontario, with the consent of the regulator, a certificate in a prospectus may be signed by the underwriter's agent duly authorized in writing by the underwriter.

[**Note:** In Ontario, subsection 59(2) of the *Securities Act* (Ontario) provides a similar discretion to the Director to permit the certificate to be signed by an underwriter's agent.]

Certificate of investment fund manager

5.10(1) If the issuer has an investment fund manager, a prospectus must contain a certificate, in the applicable issuer certificate form, signed by the investment fund manager.

(2) If the investment fund manager is a company, the certificate must be signed

(a) by the chief executive officer and the chief financial officer of the investment fund manager, and

(b) on behalf of the board of directors, by

(i) any two directors of the investment fund manager, other than the persons referred to in paragraph (a) above, or

(ii) if the investment fund manager has only three directors, two of whom are the persons referred to in paragraph (a), all of the directors of the investment fund manager.

(3) If the investment fund manager is a limited partnership, the certificate must be signed by the general partner of such limited partnership as described in subsection 5.6(2) in relation to an issuer that is a limited partnership.

Certificate of promoter

5.11(1) Except in Ontario, a prospectus must contain a certificate signed by each promoter of the issuer.

[**Note:** In Ontario, subsection 58(1) of the *Securities Act* (Ontario) imposes a similar requirement that a prospectus shall contain a certificate signed by each promoter of the issuer.]

(2) A prospectus certificate required to be signed by a promoter under this Instrument or other securities legislation must be in the applicable issuer certificate form.

(3) Except in Ontario, the regulator may require any person or company who was a promoter of the issuer within the two preceding years to sign a certificate to the prospectus, in the applicable issuer certificate form.

[**Note:** In Ontario, subsection 58(6) of the *Securities Act* (Ontario) provides the Director with similar discretion to require a person or company who was a promoter of the issuer within the two preceding years to sign a prospectus certificate, subject to such conditions as the Director considers proper.]

(4) Despite subsection (3), in British Columbia, the powers of the regulator with respect to the matters described in subsection (3) are set out in the *Securities Act* (British Columbia).

(5) Except in Ontario, with the consent of the regulator, a certificate of a promoter in a prospectus may be signed by an agent duly authorized in writing by the person or company required to sign the certificate.

[**Note:** In Ontario, subsection 58(7) of the *Securities Act* (Ontario) provides the Director with similar discretion to permit a certificate in a prospectus to be signed by an agent of a promoter.

Certificate of credit supporter

5.12(1) If there is a related credit supporter of the issuer or a subsidiary of the issuer, a prospectus must contain a certificate of the related credit supporter, in the applicable issuer certificate form, signed

(a) by the chief executive officer and the chief financial officer of the credit supporter, and

(b) on behalf of the board of directors of the credit supporter, by

(i) any two directors of the credit supporter, other than the persons referred to in paragraph (a) above, or

(ii) if the credit supporter has only three directors, two of whom are the persons referred to in paragraph (a), all of the directors of the credit supporter.

(2) With the consent of the regulator, a certificate in a prospectus may be signed by the credit supporter's agent duly authorized in writing by the credit supporter.

(3) Except in Ontario, the regulator may require any other person or company that is a credit supporter of either the issuer or a subsidiary of the issuer to sign a certificate to the prospectus, in the applicable issuer certificate form.

[**Note:** In Ontario, subsection 58(6) of the *Securities Act* (Ontario) provides the Director with similar discretion to require a person or company who is a guarantor of the securities being distributed to sign a prospectus certificate, subject to such conditions as the Director considers proper.]

(4) Despite subsection (3), in British Columbia, the powers of the regulator with respect to the matters described in subsection (3) are set out in the *Securities Act* (British Columbia).

Certificate of selling securityholders

5.13(1) Except in Ontario, the regulator may require any person or company that is a selling securityholder to sign a certificate to the prospectus, in the applicable issuer certificate form.

(2) Despite subsection (1), in British Columbia, the powers of the regulator with respect to the matters described in subsection (1) are set out in the *Securities Act* (British Columbia).

Certificate of operating entity

5.14(1) For the purposes of this section, the term "operating entity" means, in relation to an issuer, a person or company through which the business of the issuer, or a material part of the business of the issuer, is conducted and for which the issuer is required under securities legislation, or has undertaken, to provide to its securityholders separate financial statements of the person or company if the issuer's financial statements do not include consolidated information concerning the person or company.

(2) A prospectus of an issuer that is a trust must contain a certificate, in the applicable issuer certificate form, signed

(a) by the chief executive officer and the chief financial officer of the operating entity, and

(b) on behalf of the board of directors of the operating entity, by

(i) any two directors of the operating entity, other than the persons referred to in paragraph (a) above, or

(ii) if the operating entity has only three directors, two of whom are the persons referred to in paragraph (a), all of the directors of the operating entity.

Certificate of other persons

5.15(1) Except in Ontario, the regulator may, in its discretion, require any person or company to sign a certificate to the prospectus, in the form that the regulator considers appropriate.

(2) Despite subsection (1), in British Columbia, the powers of the regulator with respect to the matters described in subsection (1) are set out in the *Securities Act* (British Columbia).

PART 6: Amendments

Form of amendment

6.1(1) An amendment to a prospectus must be either

(a) an amendment that does not fully restate the text of the prospectus, or

(b) an amended and restated prospectus.

(2) An amendment to a prospectus must be identified as follows:

(a) for an amendment that does not restate the text of the prospectus:

> *"Amendment no. [insert amendment number] dated [insert date of amendment] to [identify prospectus] dated [insert date of prospectus being amended]."*; or

(b) for an amended and restated prospectus:

> *"Amended and restated [identify prospectus] dated [insert date of amendment], amending and restating [identify prospectus] dated [insert date of prospectus being amended]."*

Required documents for filing an amendment

6.2 An issuer that files an amendment to a prospectus must

(a) file a signed copy of the amendment,

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

(c) file or deliver any supporting documents required under this Instrument or other securities legislation to be filed or delivered with a prospectus, unless the

documents originally filed or delivered with the prospectus are correct as of the date the amendment is filed, and

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

Auditor's comfort letter

6.3 An issuer must deliver a new auditor's comfort letter, if an amendment to

(a) a preliminary long form prospectus materially affects, or relates to, an auditor's comfort letter delivered under subparagraph 9.1(b)(iii),

(b) a preliminary short form prospectus materially affects, or relates to, an auditor's comfort letter delivered under subparagraph 4.1(b)(ii) of NI 44-101.

Delivery of amendments

6.4 Except in Ontario, an issuer must deliver an amendment to a preliminary prospectus as soon as practicable to each recipient of the preliminary prospectus according to the record of recipients required to be maintained under securities legislation.

[**Note:** In Ontario, subsection 57(3) of the *Securities Act* (Ontario) imposes a similar requirement regarding the delivery of amendments to a preliminary prospectus.]

Amendment to a preliminary prospectus

6.5(1) Except in Ontario, if, after a receipt for a preliminary prospectus is issued but before a receipt for the final prospectus is issued, a material adverse change occurs, an amendment to the preliminary prospectus must be filed as soon as practicable, but in any event within 10 days after the day the change occurs.

[**Note:** In Ontario, subsection 57(1) of the *Securities Act* (Ontario) imposes a similar requirement to file an amendment to a preliminary prospectus where there has been a material adverse change.]

(2) The regulator must issue a receipt for an amendment to a preliminary prospectus as soon as practicable after the amendment is filed.

Amendment to a final prospectus

6.6(1) Except in Ontario, if, after a receipt for a final prospectus is issued but before the completion of the distribution under the final prospectus, a material change occurs, an issuer must file an amendment to the final prospectus as soon as practicable, but in any event within 10 days after the day the change occurs.

[**Note:** In Ontario, subsection 57(1) of the *Securities Act* (Ontario) imposes a similar requirement to file an amendment to a final prospectus where there has been a material change.]

(2) Except in Ontario, if, after a receipt for a final prospectus or an amendment to the final prospectus is issued but before the completion of the distribution under the final prospectus or the amendment to the final prospectus, securities in addition to the securities previously disclosed in the final prospectus or the amendment to the final prospectus are to be distributed, an amendment to the final prospectus disclosing the additional securities must be filed, as soon as practicable, but in any event within 10 days after the decision to increase the number of securities offered.

[**Note:** In Ontario, subsection 57(2) of the *Securities Act* (Ontario) imposes a similar requirement to file an amendment to a prospectus any time there is a proposed distribution of securities in addition to that disclosed under the prospectus.]

(3) Except in Ontario, the regulator must issue a receipt for an amendment to a final prospectus filed under this section unless the regulator considers that there are grounds set out in securities legislation that would cause the regulator not to issue the receipt for a prospectus.

[**Note:** In Ontario, subsection 57(2.1) of the *Securities Act* (Ontario) imposes a similar obligation for the Director to issue a receipt for an amendment to a prospectus unless there are proper grounds for refusing the receipt.]

(4) Except in Ontario, the regulator must not refuse to issue a receipt under subsection (3) without giving the issuer who filed the prospectus an opportunity to be heard.

[**Note:** In Ontario, subsections 57(2.1) and 61(3) of the *Securities Act* (Ontario) impose a similar restriction on the Director to refuse to issue a receipt for a prospectus without first giving an issuer an opportunity to be heard.]

(5) Except in Ontario, an issuer must not proceed with a distribution or additional distribution if an amendment to a final prospectus is required to be filed until a receipt for the amendment to the final prospectus is issued by the regulator.

[**Note:** In Ontario, subsection 57(2.2) of the *Securities Act* (Ontario) imposes a similar restriction in respect of a distribution or additional distribution before a receipt is issued for an amendment to the final prospectus.]

(6) Subsection (5) does not apply to an investment fund in continuous distribution.

[**Note:** In Ontario, section 2.2 of OSC Rule 41-801 *Implementing National Instrument 41-101 General Prospectus Requirements and Consequential Amendments* provides a similar exemption for an investment fund in continuous distribution from the requirement to obtain a receipt prior to making a distribution or additional distribution under an amendment to a final prospectus.]

PART 7: Non-fixed Price Offerings and Reduction of Offering Price under a Final Prospectus

Application

7.1 This Part does not apply to an investment fund in continuous distribution.

Non-fixed price offerings and reduction of offering price

7.2(1) A person or company distributing a security under a prospectus must do so at a fixed price.

(2) Despite subsection (1), securities may be distributed for cash at non-fixed prices under a prospectus if the securities have received a rating, on a provisional or final basis, from at least one approved rating organization at the time of

(a) the filing of the preliminary short form prospectus, if the issuer is filing a prospectus in the form of a short form prospectus under NI 44-101, or

(b) the filing of the long form prospectus.

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

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

(b) the proceeds to be received by the issuer or selling securityholders are disclosed in the prospectus as being fixed, and

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

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

PART 8: Best Efforts Distributions

Application

8.1 This Part does not apply to an investment fund in continuous distribution.

Distribution period

8.2(1) Unless an amendment to the final prospectus is filed and the regulator has issued a receipt for the amendment, if securities are being distributed on a best efforts basis, the distribution must cease within 90 days after the date of the receipt for the final prospectus.

(2) Unless a further amendment to the final prospectus is filed and the regulator has issued a receipt for the further amendment, if an amendment to a final prospectus is filed and the regulator has issued a receipt for the amendment under subsection (1), the distribution must cease within 90 days after the date of the receipt for the amendment to the final prospectus.

(3) The total period of the distribution under subsections (1) and (2) must not end more than 180 days from the date of receipt for the final prospectus.

Minimum amount of funds

8.3 If securities are being distributed on a best efforts basis, other than an offering of securities to be distributed continuously, and the prospectus discloses that a minimum amount of funds must be raised,

(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 the minimum amount of funds stipulated in the final prospectus has been raised, and

(b) if the minimum amount of funds is not raised within the appropriate period of the distribution prescribed by section 8.2, the person or company holding the funds in trust referred to in paragraph (a) must return the funds to the subscribers without any deductions.

PART 9: Requirements for Filing a Long Form Prospectus

Required documents for filing a preliminary or pro forma long form prospectus

9.1 An issuer that files a preliminary or pro forma long form prospectus must

(a) file the following with the preliminary or pro forma long form prospectus

(i) **Signed Copy** – in the case of a preliminary long form prospectus, a signed copy of the preliminary long form prospectus;

(ii) **Documents Affecting the Rights of Securityholders** – a copy of the following documents, and any amendments to the following documents, that have not previously been filed:

(A) articles of incorporation, amalgamation, continuation or any other constating or establishing documents of the issuer, unless the constating or establishing document is a statutory or regulatory instrument,

(B) by-laws or other corresponding instruments currently in effect,

(C) any securityholder or voting trust agreement that the issuer has access to and that can reasonably be regarded as material to an investor in securities of the issuer,

(D) any securityholders' rights plans or other similar plans, and

(E) any other contract of the issuer or a subsidiary of the issuer that creates or can reasonably be regarded as materially affecting the rights or obligations of the issuer's securityholders generally;

(iii) **Material Contracts** – a copy of any material contract required to be filed under section 9.3;

(iv) **Investment Fund Documents** – if the issuer is an investment fund, the documents filed under subparagraphs (ii) and (iii) must include a copy of

(A) any declaration of trust or trust agreement of the investment fund, limited partnership agreement, or any other constating or establishing documents of the investment fund,

(B) any agreement of the investment fund or the trustee with the manager of the investment fund,

(C) any agreement of the investment fund, the manager or trustee with the portfolio advisers of the investment fund,

(D) any agreement of the investment fund, the manager or trustee with the custodian of the investment fund, and

(E) any agreement of the investment fund, the manager or trustee with the principal distributor of the investment fund;

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

(vi) **Reports and Valuations** – a copy of each report or valuation referred to in the preliminary long form prospectus for which a consent is required to be filed under section 10.1 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 subparagraph (v); and

(b) deliver to the regulator, concurrently with the filing of the preliminary or pro forma long form prospectus, the following:

(i) **Blacklined Copy** – in the case of a pro forma prospectus, a copy of the pro forma prospectus blacklined to show changes and the text of deletions from the latest prospectus previously filed;

(ii) **Personal Information Form and Authorization to Collect, Use and Disclose Personal Information** – a completed Appendix A 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,

for whom the issuer has not previously filed or delivered,

(E) a completed personal information form and authorization in the form set out in Appendix A,

(F) before March 17, 2008, a completed authorization in

(I) the form set out in Appendix B of NI 44-101,

(II) the form set out in Ontario Form 41-501F2 *Authorization of Indirect Collection of Personal Information*, or

(III) the form set out in Appendix A of Québec Regulation Q-28 *Respecting General Prospectus Requirements*, or

(G) before March 17, 2008, a completed personal information form or authorization in a form substantially similar to a personal information form or authorization in clause (E) or (F), as permitted under securities legislation; and

(iii) **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 or pro forma long 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.

Required documents for filing a final long form prospectus

9.2 An issuer that files a final long form prospectus must

(a) file the following with the final long form prospectus:

(i) **Signed Copy** – a signed copy of the final long form prospectus;

(ii) **Documents Affecting the Rights of Securityholders** – a copy of any document described under subparagraph 9.1(a)(ii) that has not previously been filed;

(iii) **Material Contracts** – a copy of each material contract required to be filed under section 9.3 that has not previously been filed under subparagraph 9.1(a)(iii);

(iv) **Investment Fund Documents** – a copy of any document described under subparagraph 9.1(a)(iv) that has not previously been filed;

(v) **Other Reports and Valuations** – a copy of any report or valuation referred to in the final long form prospectus, for which a consent is required to be filed under section 10.1 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 9.1(a)(v) or 9.1(a)(vi);

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

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

(A) each selling securityholder, and

(B) each person or company required to sign a certificate under Part 5 or other securities legislation, other than an issuer,

in the form set out in Appendix C, if the person or company is incorporated or organized in a foreign jurisdiction and does not have an office in Canada or is an individual who resides outside of Canada;

(viii) **Expert's Consents** – the consents required to be filed under section 10.1;

(ix) **Credit Supporter's Consent** – the written consent of the credit supporter to the inclusion of its financial statements in the final long form prospectus, if financial statements of a credit supporter are required under Item 33 of Form 41-101F1 to be included in a final long form prospectus and a certificate of the credit supporter is not required under section 5.12 to be included in the final long form prospectus;

(x) **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, so long as the securities being distributed are issued and outstanding;

(xi) **Undertaking in Respect of Continuous Disclosure** – An undertaking of the issuer to provide to its securityholders separate financial statements for an operating entity that investors need to make an informed decision about investing in the issuer's securities if

(A) the issuer is an income trust that is formed as a mutual fund trust as that term is used in the *Income Tax Act* (Canada), other than an "investment fund" as defined in section 1.1 of NI 81-106,

(B) the underlying business or income producing assets of the operating entity generate net cash flow available for distribution to the issuer's securityholders, and

(C) the issuer's performance and prospects depend primarily on the performance and operations of the operating entity;

(xii) **Undertaking to File Documents and Material Contracts** – if a document referred to in subparagraph (ii), (iii) or (iv) has not been executed or become effective before the filing of the final long form prospectus but will be executed or 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 long form prospectus, an undertaking of the issuer to the securities regulatory authority to file the document promptly and in any event within seven days after the completion of the distribution; and

(xiii) **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 a meeting is given to its registered holders of voting securities; and

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

(i) **Blackline Copy** – a copy of the final long form prospectus blacklined to show changes from the preliminary or pro forma long form prospectus; and

(ii) **Communication with Exchange** – 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.

Material contracts

9.3(1) Unless previously filed, an issuer that files a long form prospectus must file a material contract entered into

(a) since the beginning of the last financial year ending before the date of the prospectus, or

(b) before the beginning of the last financial year ending before the date of the prospectus if that material contract is still in effect.

(2) Despite subsection (1), an issuer is not required to file a material contract entered into in the ordinary course of business unless the material contract is

(a) a contract to which directors, officers, promoters, selling securityholders or underwriters are parties, other than a contract of employment,

(b) a continuing contract to sell the majority of the issuer's products or services or to purchase the majority of the issuer's requirements of goods, services, or raw materials,

(c) a franchise or licence or other agreement to use a patent, formula, trade secret, process or trade name,

(d) a financing or credit agreement with terms that have a direct correlation with anticipated cash distributions,

(e) an external management or external administration agreement, or

(f) a contract on which the issuer's business is substantially dependent.

(3) A provision in a material contract filed pursuant to subsections (1) or (2) may be omitted or marked to be unreadable if an executive officer of the issuer reasonably believes that disclosure of that provision would be seriously prejudicial to the interests of the issuer or would violate confidentiality provisions.

(4) Subsection (3) does not apply if the provision relates to

(a) debt covenants and ratios in financing or credit agreements,

(b) events of default or other terms relating to the termination of the material contract, or

(c) other terms necessary for understanding the impact of the material contract on the business of the issuer.

(5) If a provision is omitted or marked to be unreadable under subsection (3), the issuer must include a description of the type of information that has been omitted or marked to be unreadable immediately after the provision in the copy of the material contract filed by the issuer.

(6) Despite subsections (1) and (2), an issuer is not required to file a material contract entered into before January 1, 2002 if the issuer is a reporting issuer in at least one jurisdiction immediately before filing the prospectus.

PART 10: Consents and Licences, Registrations and Approvals

Consents of experts

10.1(1) An issuer must file the written consent of

(a) any solicitor, auditor, accountant, engineer, or appraiser,

(b) any notary in Québec, and

(c) any person or company whose profession or business gives authority to a statement made by that person or company

if that person or company is named in a prospectus or an amendment to a prospectus, directly or, if applicable, in a document incorporated by reference,

(d) as having prepared or certified any part of the prospectus or the amendment,

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

(f) as having prepared or certified a report, valuation, statement or opinion referred to in the prospectus or the amendment, directly or in a document incorporated by reference.

(2) A consent referred to in subsection (1) must

(a) be filed no later than the time the final prospectus or the amendment to the final prospectus is filed or, for the purposes of future financial statements that have been incorporated by reference in a prospectus under subsection 15.2(3), no later than the date that those financial statements are filed,

(b) state that the person or company being named consents

(i) to being named, and

(ii) to the use of that person or company's report, valuation, statement or opinion,

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

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

(i) has read the prospectus, and

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

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

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

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

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

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

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

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

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

Licences, registrations and approvals

10.2 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,

(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 stated principal use of proceeds have not been obtained within 90 days from the date of receipt of the final prospectus, the trustee must return the funds to subscribers.

PART 11: Over-Allocation and Underwriters

Over-allocation

11.1 Securities that are sold to create the over-allocation position in connection with a distribution under a prospectus must be distributed under the prospectus.

Distribution of securities under a prospectus to an underwriter

11.2 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 plus any securities that would be acquired upon the exercise of an over-allotment option.

Take-up by underwriter

11.3 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 12: Restricted Securities

Application

12.1 This Part does not apply to

(a) securities of mutual funds,

(b) securities that carry a right to vote subject to a restriction on the number or percentage of securities that may be voted or owned by persons or companies that are not citizens or residents of Canada or that are otherwise considered as a result of any law applicable to the issuer to be non-Canadians, but only to the extent of the restriction, and

(c) securities that are subject to a restriction, imposed by any law governing the issuer, on the level of ownership of the securities by a person, company or combination of persons or companies, but only to the extent of the restriction.

Use of restricted security term

12.2(1) An issuer must not refer to a security in a prospectus by a term or a defined term that includes the word "common" unless the security is an equity security to which are attached voting rights exercisable in all circumstances, irrespective of the number or percentage of securities owned, that are not less, per security, than the voting rights attached to any other outstanding security of the issuer.

(2) An issuer must not refer in a prospectus to a term or defined term that includes the word "preference" or "preferred", unless the security is a security, other than an equity security, to which is attached a preference or right over any class of equity security of the issuer.

(3) If restricted securities are referred to in the constating documents of the issuer by a term that is different from the appropriate restricted security term, the restricted securities may be described, in one place only in the prospectus, by the term used in the constating documents of the issuer; provided that, the description is not on the front page of the prospectus and is in the same type face and type size as that used generally in the body of the prospectus.

(4) A class of securities that is or may become restricted securities must be referred to in a prospectus using a term or a defined term that includes the appropriate restricted security term.

Prospectus filing eligibility

12.3(1) Subject to subsection (3), an issuer must not file a prospectus under which restricted securities, subject securities or securities that are, directly or indirectly, convertible into, or exercisable or exchangeable for, restricted securities or subject securities, are distributed unless

(a) the distribution has received prior majority approval of the securityholders of the issuer in accordance with applicable law, including approval on a class basis if required and excluding any votes attaching at the time to securities held, directly or indirectly, by affiliates of the issuer or control persons of the issuer, or

(b) at the time of any restricted security reorganization related to the securities to be distributed

(i) the restricted security reorganization received prior majority approval of the securityholders of the issuer in accordance with applicable law, including approval on a class basis if required and excluding any votes

attaching at the time to securities held, directly or indirectly, by affiliates of the issuer or control persons of the issuer,

(ii) the issuer was a reporting issuer in at least one jurisdiction, and

(iii) no purposes or business reasons for the creation of restricted securities were disclosed that are inconsistent with the purpose of the distribution.

(2) Subject to subsection (3), for each approval referred to in subsection (1), the issuer must have provided prior written disclosure in an information circular or notice to its securityholders that included

(a) the name of each affiliate of the issuer that was a beneficial owner of securities of the issuer and the number of securities beneficially owned, directly or indirectly, by the affiliate as of the date of the information circular or notice to the extent known to the issuer after reasonable inquiry,

(b) the name of each control person and the number of securities beneficially owned, directly or indirectly, by the control person as of the date of the information circular or notice, to the extent known to the issuer after reasonable inquiry,

(c) a statement of the number of votes attaching to the securities that were excluded for the purpose of the approval to the extent known to the issuer after reasonable inquiry, and

(d) the purpose and business reasons for the creation of restricted securities.

(3) Subsections (1) and (2) do not apply if

(a) the securities offered by the prospectus are of an existing class of restricted securities that were created before December 21, 1984,

(b) the issuer was a private issuer immediately before filing the prospectus,

(c) the securities offered by the prospectus are of the same class as securities distributed under a previous prospectus that was filed by an issuer that was, at the time of filing the previous prospectus, a private issuer,

(d) the securities offered by the prospectus are previously unissued restricted securities distributed by way of stock dividend in the ordinary course to securityholders instead of a cash dividend if at the time of distribution there is a published market for the restricted securities,

(e) the securities offered by the prospectus are distributed as a stock split that takes the form of a distribution of previously unissued restricted securities by way of stock dividend to holders of the same class of restricted securities if at the time of

distribution there is a published market for the restricted securities and the distribution is part of a concurrent distribution by way of stock dividend to holders of all equity securities under which all outstanding equity securities of the issuer are increased in the same proportion, or

(f) as of a date not more than seven days before the date of the prospectus, the issuer expects that in each local jurisdiction in which the prospectus will be filed the number of securities of each class of equity securities held by registered holders whose last address as shown on the books of the issuer is in the local jurisdiction, or beneficially owned by persons or companies in the local jurisdiction, will be less than two percent of the outstanding number of securities of the class after giving effect to the proposed distribution.

PART 13: Advertising and Marketing in Connection with Prospectus Offerings

Legend for communications during the waiting period

13.1(1) A notice, circular, advertisement, letter 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 notice, circular, advertisement, letter or other communication is in writing, set out the language in subsection (1) in boldface type that is at least as large as that used generally in the body of the text.

Legend for communications following receipt for the final prospectus

13.2(1) A notice, circular, advertisement, letter 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 notice, circular, advertisement, letter or other communication is in writing, set out the language in subsection (1) in boldface type that is at least as large as that used generally in the body of the text.

Advertising for investment funds during the waiting period

13.3 If the issuer is an investment fund, an advertisement used in connection with a prospectus offering during the waiting period may state only the following information:

(a) whether the security represents a share in a company or an interest in a non-corporate entity such as a trust unit or a partnership interest;

(b) the name of the issuer;

(c) the price of the security;

(d) the investment objective(s) of the investment fund;

(e) the name of the manager of the investment fund;

(f) the name of the portfolio adviser of the investment fund;

(g) the name and address of a person or company from whom a preliminary prospectus may be obtained and purchases of securities may be made; and

(h) how many securities will be made available.

Part 14: Custodianship of Portfolio Assets of an Investment Fund

General

14.1(1) This Part applies to an investment fund that prepares a prospectus in accordance with this Instrument, other than an investment fund subject to NI 81-102.

(2) Subject to sections 14.8 and 14.9, all portfolio assets of an investment fund must be held under the custodianship of one custodian that satisfies the requirements of section 14.2.

(3) No manager of an investment fund may act as a custodian or sub-custodian of the investment fund.

Who may act as custodian or sub-custodian

14.2(1) If portfolio assets are held in Canada by a custodian or sub-custodian, the custodian or sub-custodian must be one of the following:

(a) a bank listed in Schedule I, II or III of the *Bank Act* (Canada);

(b) a trust company that

(i) is incorporated and licenced or registered under the laws of Canada or a jurisdiction, and

(ii) has shareholders' equity, as reported in its most recent audited financial statement, of not less than $10,000,000;

(c) a company that is incorporated under the laws of Canada or a jurisdiction and is an affiliate of a bank or trust company referred to in paragraph (a) or (b), if

(i) the company has shareholders' equity, as reported in its most recent audited financial statements that have been made public, of not less than $10,000,000, or

(ii) the bank or trust company has assumed responsibility for all of the custodial obligations of the company for that investment fund.

(2) If portfolio assets are held outside of Canada by a sub-custodian, the sub-custodian must be one of the following:

(a) an entity referred to in subsection (1);

(b) an entity that

(i) is incorporated or organized under the law of a country, or a political subdivision of a country, other than Canada,

(ii) is regulated as a banking institution or trust company by the government, or an agency of the government of the country or political subdivision of the country under whose laws it is incorporated or organized, and

(iii) has shareholders' equity, as reported in its most recent audited financial statements of not less than the equivalent of $100,000,000;

(c) an affiliate of an entity referred to in paragraph (a) or (b) if

(i) the affiliate has shareholders' equity, as reported in its most recent audited financial statements that have been made public, of not less than the equivalent of $100,000,000, or

(ii) the entity referred to in paragraphs (a) or (b) has assumed responsibility for all of the custodial obligations of the affiliate for that investment fund.

Standard of care

14.3(1) The custodian and each sub-custodian of an investment fund, in carrying out their duties concerning the safekeeping of, and dealing with, the portfolio assets of the investment fund, must exercise

(a) the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances, or

(b) at least the same degree of care as they exercise with respect to their own property of a similar kind, if this is a higher degree of care than the degree of care referred to in paragraph (a).

(2) No investment fund may relieve the custodian or a sub-custodian of the investment fund from liability to the investment fund or to a securityholder of the investment fund for loss that arises out of the failure of the custodian or sub-custodian to exercise the standard of care imposed by subsection (1).

(3) An investment fund may indemnify a custodian or sub-custodian against legal fees, judgments and amounts paid in settlement, actually and reasonably incurred by that entity in connection with custodial or sub-custodial services provided by that entity to the investment fund, if those fees, judgments and amounts were not incurred as a result of a breach of the standard of care described in subsection (1).

(4) No investment fund may incur the cost of any portion of liability insurance that insures a custodian or sub-custodian for a liability, except to the extent that the custodian or sub-custodian may be indemnified for that liability under this section.

Appointment of sub-custodian

14.4(1) The custodian or a sub-custodian of an investment fund may appoint one or more sub-custodians to hold portfolio assets of the investment fund if,

(a) in the case where the appointment is by the custodian, the investment fund gives written consent to each appointment,

(b) in the case where the appointment is by a sub-custodian, the investment fund and the custodian of the investment fund give written consent to each appointment,

(c) the sub-custodian is an entity described in subsection 14.2(1) or (2), as applicable,

(d) the arrangements under which a sub-custodian is appointed are such that the investment fund may enforce rights directly, or require the custodian or a sub-custodian to enforce rights on behalf of the investment fund, to the portfolio assets held by the appointed sub-custodian, and

(e) the appointment is otherwise in compliance with this Instrument.

(2) Despite paragraphs (1)(a) and (b), a general consent to the appointment of persons or companies that are part of an international network of sub-custodians within the organization of the custodian appointed by the investment fund or the sub-custodian appointed by the custodian is sufficient if that general consent is part of an agreement governing the relationship between the investment fund and the appointed custodian or the custodian and the appointed sub-custodian.

(3) A custodian or sub-custodian must provide to the investment fund a list of each person or company that is appointed sub-custodian under a general consent referred to in subsection (2).

Content of agreements

14.5(1) All agreements between the investment fund and the custodian or the custodian and the sub-custodian of an investment fund must provide for

(a) the location of portfolio assets,

(b) the appointment of a sub-custodian, if any,

(c) the provision of lists of sub-custodians,

(d) the method of holding portfolio assets,

(e) the standard of care and responsibility for loss,

(f) review and compliance reports, and

(g) the safekeeping of portfolio assets on terms consistent with the agreement between the investment fund and the custodian, for an agreement between a custodian and a sub-custodian,.

(2) The provisions of an agreement referred to under subsection (1) must comply with the requirements of this Part.

(3) An agreement between an investment fund and a custodian or a custodian and a sub-custodian respecting the portfolio assets must not

(a) provide for the creation of any security interest on the portfolio assets except for a good faith claim for payment of the fees and expenses of the custodian or sub-custodian for acting in that capacity or to secure the obligations of the investment fund to repay borrowings by the investment fund from a custodian or sub-custodian for the purpose of settling portfolio transactions, or

(b) contain a provision that would require the payment of a fee to the custodian or sub-custodian for the transfer of the beneficial ownership of portfolio assets, other than for safekeeping and administrative services in connection with acting as custodian or sub-custodian.

Review and compliance reports

14.6(1) The custodian of an investment fund must, on a periodic basis and at least annually,

(a) review the agreements referred to in section 14.5 to determine if those agreements are in compliance with this Part,

(b) make reasonable enquiries to ensure that each sub-custodian is an entity referred to in subsection 14.2(1) or (2), as applicable, and

(c) make or cause to be made any changes that may be necessary to ensure that

(i) the agreements are in compliance with this Part, and

(ii) each sub-custodian is an entity referred to in subsection 14.2(1) or (2), as applicable.

(2) The custodian of an investment fund must, within 60 days after the end of each financial year of the investment fund, advise the investment fund in writing

(a) of the names and addresses of all sub-custodians of the investment fund,

(b) if the agreements are in compliance with this Part, and

(c) if, to the best of the knowledge and belief of the custodian, each sub-custodian is an entity that satisfies the requirements of subsection 14.2(1) or (2), as applicable.

(3) A copy of the report referred to in subsection (2) must be delivered by or on behalf of the investment fund to the securities regulatory authority within 30 days after the filing of the annual financial statements of the investment fund.

Holding of portfolio assets and payment of fees

14.7(1) Except as provided in subsections (2) and (3) and sections 14.8 and 14.9, portfolio assets not registered in the name of the investment fund must be registered in the name of the custodian or a sub-custodian of the investment fund or any of their respective nominees with an account number or other designation in the records of the custodian sufficient to show that the beneficial ownership of the portfolio assets is vested in the investment fund.

(2) The custodian or a sub-custodian of the investment fund or the applicable nominee must segregate portfolio assets issued in bearer form to show that the beneficial ownership of the property is vested in the investment fund.

(3) A custodian or sub-custodian of an investment fund may deposit portfolio assets with a depository or a clearing agency that operates a book-based system.

(4) The custodian or sub-custodian of an investment fund arranging for the deposit of portfolio assets with, and their delivery to, a depository, or clearing agency, that operates a book-based system must ensure that the records of any of the applicable participants in that book-based system or the custodian contain an account number or other designation sufficient to show that the beneficial ownership of the portfolio assets is vested in the investment fund.

(5) No investment fund may pay a fee to a custodian or sub-custodian for the transfer of beneficial ownership of portfolio assets other than for safekeeping and administrative services in connection with acting as custodian or sub-custodian.

Custodial provisions relating to derivatives and securities lending, repurchases and reverse repurchase agreements

14.8(1) For the purposes of subsection (4), "specified derivative" has the same meaning as in NI 81-102.

(2) An investment fund may deposit portfolio assets as margin for transactions in Canada involving clearing corporation options, options on futures or standardized futures with a dealer that is a member of an SRO that is a participating member of CIPF if the amount of margin deposited does not, when aggregated with the amount of margin already held by the dealer on behalf of the investment fund, exceed 10% of the net assets of the investment fund, taken at market value as at the time of deposit.

(3) An investment fund may deposit portfolio assets with a dealer as margin for transactions outside Canada involving clearing corporation options, options on futures or standardized futures if

(a) in the case of standardized futures and options on futures, the dealer is a member of a futures exchange or, in the case of clearing corporation options, is a member of a stock exchange, and, as a result in either case, is subject to a regulatory audit,

(b) the dealer has a net worth, determined from its most recent audited financial statements that have been made public, in excess of the equivalent of $50 million, and

(c) the amount of margin deposited does not, when aggregated with the amount of margin already held by the dealer on behalf of the investment fund, exceed 10%

of the net assets of the investment fund, taken at market value as at the time of deposit.

(4) An investment fund may deposit with its counterparty portfolio assets over which it has granted a security interest in connection with a particular specified derivatives transaction.

(5) The agreement by which portfolio assets are deposited in accordance with subsection (2), (3) or (4) must require the person or company holding the portfolio assets to ensure that its records show that the investment fund is the beneficial owner of the portfolio assets.

(6) An investment fund may deliver portfolio assets to a person or company in satisfaction of its obligations under a securities lending, repurchase or reverse purchase agreement if the collateral, cash proceeds or purchased securities that are delivered to the investment fund in connection with the transaction are held under the custodianship of the custodian or a sub-custodian of the investment fund in compliance with this Part.

Separate account for paying expenses

14.9 An investment fund may deposit cash in Canada with an entity referred to in paragraph (a) or (b) of subsection 14.2(1) to facilitate the payment of regular operating expenses of the investment fund.

PART 15: Documents Incorporated by Reference by Investment Funds

Application

15.1 This Part applies only to an investment fund in continuous distribution, other than scholarship plans.

Incorporation by reference

15.2(1) An investment fund must incorporate by reference into its long form prospectus, by means of a statement to that effect, the filed documents listed in section 37.1 of Form 41-101F2.

(2) If an investment fund does not incorporate by reference into its long form prospectus a document referred to in subsection (1), the document is deemed, for the purposes of securities legislation, to be incorporated by reference in the investment fund's long form prospectus as of the date of the long form prospectus.

(3) An investment fund must incorporate by reference in its long form prospectus, by means of a statement to that effect, the subsequently filed documents referred to in section 37.2 of Form 41-101F2.

(4) If an investment fund does not incorporate by reference into its long form prospectus a document referred to in subsection (3), the document is deemed, for the purposes of securities legislation, to be incorporated by reference in the investment fund's long form prospectus as of the date the investment fund filed the document.

PART 16: Distribution of Preliminary Prospectus and Distribution List

Distribution of preliminary prospectus and distribution list

16.1 Except in Ontario, any dealer distributing a security during the waiting period must

(a) send a copy of the preliminary prospectus to each prospective purchaser who indicates an interest in purchasing the security and requests a copy of such preliminary prospectus, and

(b) maintain a record of the names and addresses of all persons and companies to whom the preliminary prospectus has been forwarded.

[**Note:** In Ontario, sections 66 and 67 of the *Securities Act* (Ontario) impose similar requirements regarding the distribution of a preliminary prospectus and maintaining a distribution list.]

PART 17: Lapse Date

Pro forma prospectus

17.1(1) In this Part, **"pro forma prospectus"** means a long form prospectus that complies with the requirements described in subsection (2).

(2) A pro forma prospectus must be prepared in the form of a long form prospectus in accordance with Form 41-101F1 or Form 41-101F2, as applicable, and other securities legislation, except that a pro forma prospectus is not required to contain prospectus certificates or to comply with sections 4.2, 4.3 and 4.4 of this Instrument.

(3) This Part does not apply to a prospectus filed in accordance with NI 44-101, NI 44-102 or NI 44-103.

Refiling of prospectus

17.2(1) This section does not apply in Ontario.

(2) In this section, **"lapse date"** means, with reference to the distribution of a security that has been qualified under a prospectus, the date that is 12 months after the date of the most recent final prospectus relating to the security.

(3) An issuer must not continue the distribution of a security to which the prospectus requirement applies after the lapse date unless the issuer files a new prospectus that complies with securities legislation and a receipt for that new prospectus is issued by the regulator.

(4) Despite subsection (3), a distribution may be continued for a further 12 months after a lapse date if,

(a) the issuer delivers a pro forma prospectus not less than 30 days before the lapse date of the previous prospectus;

(b) the issuer files a new final prospectus not later than 10 days after the lapse date of the previous prospectus; and

(c) a receipt for the new final prospectus is issued by the regulator within 20 days after the lapse date of the previous prospectus.

(5) The continued distribution of securities after the lapse date does not contravene subsection (3) unless and until any of the conditions of subsection (4) are not complied with.

(6) Subject to any extension granted under subsection (7), if a condition in subsection (4) is not complied with, a purchaser may cancel a purchase made in a distribution after the lapse date in reliance on subsection (4) within 90 days after the purchaser first became aware of the failure to comply with the condition.

(7) The regulator may, on an application of a reporting issuer, extend, subject to such terms and conditions as it may impose, the times provided by subsection (4) where in its opinion it would not be prejudicial to the public interest to do so.

[**Note:** In Ontario, section 62 of the *Securities Act* (Ontario) imposes similar requirements and procedures regarding refiling of prospectuses.]

PART 18: Statement of Rights

Statement of rights

18.1 Except in Ontario, a prospectus must contain a statement of the rights given to a purchaser under securities legislation in case of a failure to deliver the prospectus or in case of a misrepresentation in a prospectus.

[**Note:** In Ontario, section 60 of the *Securities Act* (Ontario) imposes a similar requirement for the inclusion of a statement of rights in a prospectus.]

PART 19: Exemption

Exemption

19.1(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) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of NI 14-101 opposite the name of the local jurisdiction.

Application for exemption

19.2 An application made to the securities regulatory authority or regulator for an exemption from the provisions of this Instrument must 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.

Evidence of exemption

19.3(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 from subsection 2.2(2), may be evidenced by the issuance of a receipt for a final prospectus or an amendment to a final prospectus.

(2) The issuance of a receipt for a final prospectus or an amendment to a final 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 section 19.2 on or before the date of the filing of the preliminary prospectus, or

(ii) the letter or memorandum referred to in section 19.2 after the date of the filing of the preliminary prospectus and received a written acknowledgement from the regulator that the exemption may be evidenced in the manner set out in subsection (1), and

(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 20: Transition, Effective Date, and Repeal

Transition

20.1(1) A final prospectus may, at the issuer's option, be prepared in accordance with securities legislation in effect

(a) at the date of the issuance of a receipt for the preliminary prospectus or the date of filing the pro forma prospectus, as applicable, or

(b) at the date of issuance of a receipt for the final prospectus.

(2) Despite this Instrument, securities legislation in effect at the date of the issuance of a receipt for a preliminary prospectus or the filing of a pro forma prospectus, as applicable, applies to a distribution if the issuer prepared the final prospectus in accordance with paragraph (1)(a).

Effective date

20.2 This Instrument comes into force on March 17, 2008.

Repeal

20.3 National Instrument 41-101 *Prospectus Disclosure Requirements*, which came into force on December 31, 2000, is repealed.

APPENDIX A TO NATIONAL INSTRUMENT 41-101
GENERAL PROSPECTUS REQUIREMENTS

PERSONAL INFORMATION FORM AND AUTHORIZATION OF INDIRECT COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION

In connection with an issuer's (the "Issuer") filing of a prospectus, the attached Schedule 1 contains information (the "Information") concerning every individual for whom the Issuer is required to provide the Information under Part 9 of this Instrument or Part 4 of NI 44-101. The Issuer is required by provincial and territorial securities legislation to deliver the Information to the regulators listed in Schedule 3.

The Issuer confirms that each individual who has completed a Schedule 1:

(a) has been notified by the Issuer

(i) of the Issuer's delivery to the regulator of the Information in Schedule 1 pertaining to that individual,

(ii) that the Information is being collected indirectly by the regulator under the authority granted to it by provincial and territorial securities legislation or provincial legislation relating to documents held by public bodies and the protection of personal information,

(iii) that the Information collected from each director and executive officer of the investment fund manager may be used in connection with the prospectus filing of the Issuer and the prospectus filing of any other issuer managed by the investment fund manager,

(iv) that the Information is being collected and used for the purpose of enabling the regulator to administer and enforce provincial and territorial securities legislation, including those obligations that require or permit the regulator to refuse to issue a receipt for a prospectus if it appears to the regulator that the past conduct of management, an investment fund manager or promoter of the Issuer affords reasonable grounds for belief that the business of the Issuer will not be conducted with integrity and in the best interests of its securityholders, and

(v) of the contact, business address and business telephone number of the regulator in the local jurisdiction as set out in the attached Schedule 3, who can answer questions about the regulator's indirect collection of the Information;

(b) has read and understands the Personal Information Collection Policy attached hereto as Schedule 2; and

(c) has, by signing the certificate and consent in Schedule 1, authorized the indirect collection, use and disclosure of the Information by the regulator as described in Schedule 2.

Date: _____

_____
Name of Issuer

Per:_____

_____
Name

_____
Official Capacity

(Please print the name of the person signing on behalf of the issuer)

APPENDIX A TO NATIONAL INSTRUMENT 41-101
GENERAL PROSPECTUS REQUIREMENTS

PERSONAL INFORMATION FORM
AND AUTHORIZATION OF INDIRECT COLLECTION,
USE AND DISCLOSURE OF PERSONAL INFORMATION

Schedule 1

Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information

This Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information (the "Form") is to be completed by every individual who, in connection with an issuer filing a prospectus (the "Issuer"), is required to do so under Part 9 of National Instrument 41-101 *General Prospectus Requirements* or Part 4 of National Instrument 44-101 *Short Form Prospectus Distributions*. Where an individual has submitted a personal information form (an "Exchange Form") to the Toronto Stock Exchange or the TSX Venture Exchange and the information has not changed, the Exchange Form may be delivered in lieu of this Form; provided that the certificate and consent of this Form is completed and attached to the Exchange Form.

The securities regulatory authorities do not make any of the information provided in this Form public.

General Instructions:

All Questions — **All questions must have a response.** The response of "N/A" or "Not Applicable" for any questions, except Questions 1(B), 2B(iii) and 5 will not be accepted.

Questions 6 to 9 — Please check (√) in the appropriate space provided. If your answer to any of questions 6 to 9 is "YES", you must, in an attachment, provide complete details, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. **Any attachment must be initialled by the person completing this Form.** Responses must consider all time periods.

Delivery — **The issuer should deliver completed Forms electronically via the System for Electronic Document Analysis and Retrieval (SEDAR) under the document type "Personal Information Form and Authorization". Access to this document type is not available to the public.**

CAUTION

An individual who makes a false statement commits an offence under securities legislation. Steps may be taken to verify the answers you have given in this Form, including verification of information relating to any previous criminal record.

DEFINITIONS

"Offence" An offence includes:

(a) a summary conviction or indictable offence under the *Criminal Code* (Canada);

(b) a quasi-criminal offence (for example under the *Income Tax Act* (Canada), the *Immigration Act* (Canada) or the tax, immigration, drugs, firearms, money laundering or securities legislation of any jurisdiction);

(c) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory therein; or

(d) an offence under the criminal legislation of any foreign jurisdiction;

NOTE: If you have received a pardon under the *Criminal Records Act* (Canada) and it has not been revoked, you must disclose the pardoned offence in this Form. In such circumstances:

(a) the appropriate written response would be "Yes, pardon granted on (date)"; and

(b) you must provide complete details in an attachment to this Form.

"Proceedings" means:

(a) a civil or criminal proceeding or inquiry before a court;

(b) a proceeding before an arbitrator or umpire or a person or group of persons authorized by law to make an inquiry and take evidence under oath in the matter;

(c) a proceeding before a tribunal in the exercise of a statutory power of decision making where the tribunal is required by law to hold or afford the parties to the proceeding an opportunity for a hearing before making a decision; or

(d) a proceeding before a self-regulatory organization authorized by law to regulate the operations and the standards of practice and business conduct of its members and their representatives, in which the self-regulatory organization is required under its by-laws or rules to hold or afford the parties the opportunity for a hearing before making a decision,

but does not apply to a proceeding in which one or more persons are required to make an investigation and to make a report, with or without recommendations, if the report is for the information or advice of the person to whom it is made and does not in any way bind or limit that person in any decision the person may have the power to make;

"securities regulatory authority" (or "SRA") means a body created by statute in any jurisdiction or in any foreign jurisdiction to administer securities law, regulation and policy (e.g. securities commission), but does not include an exchange or other self regulatory or professional organization;

"self regulatory or professional organization" means:

(a) a stock, commodities, futures or options exchange;

(b) an association of investment, securities, mutual fund, commodities, or future dealers;

(c) an association of investment counsel or portfolio managers;

(d) an association of other professionals (e.g. legal, accounting, engineering); and

(e) any other group, institution or self-regulatory entity, recognized by a securities regulatory authority, that is responsible for the enforcement of rules, disciplines or codes under any applicable legislation, or considered a self regulatory or professional organization in another country.

1. A. IDENTIFICATION OF INDIVIDUAL COMPLETING FORM

LAST NAME(S)	**FIRST NAME(S)**	**MIDDLE NAME(S) (If none, please state)**

NAME(S) MOST COMMONLY KNOWN BY:

NAME OF ISSUER

PRESENT or PROPOSED POSITION(S) WITH THE ISSUER – check (√) all positions below that are applicable.	**(√)**	**IF DIRECTOR / OFFICER DISCLOSE THE DATE ELECTED / APPOINTED**			**IF OFFICER – PROVIDE TITLE IF OTHER – PROVIDE DETAILS**
		Month	**Day**	**Year**	
Director					
Officer					
Other					

B.

Other than the name given in Question 1A above, provide any legal names, assumed names or nicknames under which you have carried on business or have otherwise been known, including information regarding any name change(s) resulting from marriage, divorce, court order or any other process. Use an attachment if necessary.	**FROM**		**TO**	
	MM	**YY**	**MM**	**YY**

C.

GENDER		DATE OF BIRTH			PLACE OF BIRTH		
		Month	Day	Year	City	Province/State	Country
Male							
Female							

D.

MARITAL STATUS	FULL NAME OF SPOUSE – include common-law	OCCUPATION OF SPOUSE

E.

TELEPHONE AND FACSIMILE NUMBERS AND E-MAIL ADDRESS			
RESIDENTIAL	( )	FACSIMILE	( )
BUSINESS	( )	E-MAIL	

F.

RESIDENTIAL HISTORY – Provide all residential addresses for the past 10 YEARS starting with your current principal residential address. If you are unable to correctly identify the complete residential address for a period, which is beyond five years from the date of completion of this Form, the municipality and province or state and country must be identified. The regulator reserves the right to require the full address.

STREET ADDRESS, CITY, PROVINCE/STATE, COUNTRY & POSTAL/ZIP CODE	FROM				TO			
	MM		YY		MM		YY	

2. CITIZENSHIP

A.

CANADIAN CITIZENSHIP		YES	NO
(i)	Are you a Canadian Citizen?		
(ii)	Are you a person lawfully in Canada as an immigrant but are not yet a Canadian citizen?		
(iii)	If "Yes" to Question 2A(ii), the number of years of continuous residence in Canada:		

B.

OTHER CITIZENSHIP		YES	NO
(i)	Do you hold citizenship in any country other than Canada?		
(ii)	If "Yes" to Question 2B(i), the name of the country(s):		
(iii)	Please provide U.S. Social Security number, where you have such a number		

3. EMPLOYMENT HISTORY

Provide your employment history for the **10 YEARS** immediately prior to the date of this Form starting with your current employment. Use an attachment if necessary.

EMPLOYER NAME	EMPLOYER ADDRESS	POSITION HELD	FROM		TO	
			MM	YY	MM	YY

4. POSITIONS WITH OTHER ISSUERS

		YES	NO
A.	While you were a director, officer or insider of an issuer, did any exchange or self-regulatory organization ever refuse approval for listing or quotation of that issuer (including a listing resulting from a qualifying transaction, reverse takeover, backdoor listing or change of business)? If yes, attach full particulars.		
B.	Has your employment in a sales, investment or advisory capacity with any firm or company engaged in the sale of real estate, insurance or mutual funds ever been terminated for cause?		
C.	Has a firm or company registered under the securities laws of any jurisdiction or of any foreign jurisdiction as a securities dealer, broker, investment advisor or underwriter, suspended or terminated your employment for cause?		
D.	Are you or have you during the last 10 years ever been a director, officer, promoter, insider or control person for any reporting issuer?		

E. **If "YES" to 4D above, provide the names of each reporting issuer. State the position(s) held and the period(s) during which you held the position(s). Use an attachment if necessary.**

NAME OF REPORTING ISSUER	POSITION(S) HELD	MARKET TRADED ON	FROM		TO	
			MM	YY	MM	YY

5. EDUCATIONAL HISTORY

A. **PROFESSIONAL DESIGNATION(S) – Provide any professional designation held and professional associations to which you belong. For example, Barrister & Solicitor, C.A., C.M.A., C.G.A., P.Eng., P.Geol., and CFA, etc. and indicate which organization and the date the designations were granted.**

PROFESSIONAL DESIGNATION And MEMBERSHIP NUMBER	GRANTOR OF DESIGNATION And JURISDICTION OR FOREIGN JURISDICTION	DATE GRANTED			ACTIVE?	
		MM	DD	YY	YES	NO

B. **Provide your post-secondary educational history starting with the most recent.**

SCHOOL	LOCATION	DEGREE OR DIPLOMA	DATE OBTAINED					
			MM		DD		YY	

6. OFFENCES – If you answer "YES" to any item in Question 6, you must provide complete details in an attachment.

		YES	NO
A.	Have you ever pleaded guilty to or been found guilty of an offence?		
B.	Are you the subject of any current charge, indictment or proceeding for an offence?		
C.	To the best of your knowledge, are you or have you **ever** been a director, officer, promoter, insider, or control person of an issuer, in any jurisdiction or in any foreign jurisdiction, at the time of events, where the issuer:		
	(i) has ever pleaded guilty to or been found guilty of an offence?		
	(ii) is the subject of any current charge, indictment or proceeding for an offence?		

7. **BANKRUPTCY** – If you answer "YES" to any item in Question 7, you must provide complete details in an attachment and attach a copy of any discharge, release or other applicable document.

		YES	NO
A.	Have you, in any jurisdiction or in any foreign jurisdiction, within the past **10 years** had a petition in bankruptcy issued against you, made a voluntary assignment in bankruptcy, made a proposal under any bankruptcy or insolvency legislation, been subject to any proceeding, arrangement or compromise with creditors, or had a receiver, receiver-manager or trustee appointed to manage your assets?		
B.	Are you now an undischarged bankrupt?		
C.	To the best of your knowledge, are you or have you **ever** been a director, officer, promoter, insider, or control person of an issuer, in any jurisdiction or in any foreign jurisdiction, at the time of events, or for a period of 12 months preceding the time of events, where the issuer:		
	(i) has made a petition in bankruptcy, a voluntary assignment in bankruptcy, a proposal under any bankruptcy or insolvency legislation, been subject to any proceeding, arrangement or compromise with creditors or had a receiver, receiver-manager or trustee appointed to manage the issuer's assets?		
	(ii) is now an undischarged bankrupt?		

8. **PROCEEDINGS** – If you answer "YES" to any item in Question 8, you must provide complete details in an attachment.

		YES	NO
A.	**CURRENT PROCEEDINGS BY SECURITIES REGULATORY AUTHORITY OR SELF REGULATORY OR PROFESSIONAL ORGANIZATION. Are you now, in any jurisdiction or in any foreign jurisdiction, the subject of:**		
	(i) a notice of hearing or similar notice issued by a SRA?		
	(ii) a proceeding or to your knowledge, under investigation, by an exchange or other self regulatory or professional organization?		
	(iii) settlement discussions or negotiations for settlement of any nature or kind whatsoever with a SRA or any self regulatory or professional organization?		

		YES	NO
B.	**PRIOR PROCEEDINGS BY SECURITIES REGULATORY AUTHORITY OR SELF REGULATORY OR PROFESSIONAL ORGANIZATION. Have you ever:**		
	(i) been reprimanded, suspended, fined, been the subject of an administrative penalty, or otherwise been the subject of any disciplinary proceedings of any kind whatsoever, in any jurisdiction or in any foreign jurisdiction, by a SRA or self regulatory or professional organization?		
	(ii) had a registration or licence for the trading of securities, exchange or commodity futures contracts, real estate, insurance or mutual fund products cancelled, refused, restricted or suspended?		
	(iii) been prohibited or disqualified under securities, corporate or any other legislation from acting as a director or officer of a reporting issuer?		
	(iv) had a cease trading or similar order issued against you or an order issued against you that denied you the right to use any statutory prospectus or registration exemption?		

(v)	had any other proceeding of any nature or kind taken against you?		

C.	**SETTLEMENT AGREEMENT(S)**		
	Have you ever entered into a settlement agreement with a SRA, self regulatory or professional organization, attorney general or comparable official or body, in any jurisdiction or in any foreign jurisdiction, in a matter that involved actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading in securities or exchange or commodity futures contracts, illegal distributions, failure to disclose material facts or changes or similar conduct, or any other settlement agreement with respect to any other violation of securities legislation in a jurisdiction or in a foreign jurisdiction or the rules of any self regulatory or professional organization?		

D.	**To the best of your knowledge, are you now or have you ever been a director, officer, promoter, insider, or control person of an issuer at the time of such event, in any jurisdiction or in any foreign jurisdiction, for which a securities regulatory authority or**		
(i)	refused, restricted, suspended or cancelled the registration or licensing of an issuer to trade securities, exchange or commodity futures contracts, or to sell or trade real estate, insurance or mutual fund products?		
(ii)	issued a cease trade or similar order or imposed an administrative penalty of any nature or kind whatsoever against the issuer, other than an order for failure to file financial statements that was revoked within 30 days of its issuance?		
(iii)	refused a receipt for a prospectus or other offering document, denied any application for listing or quotation or any other similar application, or issued an order that denied the issuer the right to use any statutory prospectus or registration exemptions?		
(iv)	issued a notice of hearing, notice as to a proceeding or similar notice against the issuer?		
(v)	taken any other proceeding of any nature or kind against the issuer, including a trading halt, suspension or delisting of the issuer (other than in the normal course for proper dissemination of information, pursuant to a reverse takeover, backdoor listing or similar transaction)?		
(vi)	entered into a settlement agreement with the issuer in a matter that involved actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading in securities or exchange or commodity futures contracts, illegal distributions, failure to disclose material facts or changes or similar conduct by the issuer, or involved in any other violation of securities legislation in a jurisdiction or in a foreign jurisdiction or a self regulatory or professional organization's rules?		

9. CIVIL PROCEEDINGS – If you answer "YES" to any item in Question 9, you must provide complete details in an attachment.

		YES	**NO**
A.	**JUDGMENT, GARNISHMENT AND INJUNCTIONS** **Has a court in any jurisdiction or in any foreign jurisdiction:**		
(i)	rendered a judgment, ordered garnishment or issued an injunction or similar ban (whether by consent or otherwise) against you in a claim based in whole or in part on fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		

(ii)	rendered a judgment, ordered garnishment or issued an injunction or similar ban (whether by consent or otherwise) against an issuer, for which you are currently or have ever been a director, officer, promoter, insider or control person, in a claim based in whole or in part on fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		

B.	**CURRENT CLAIMS**		
(i)	Are you now subject, in any jurisdiction or in any foreign jurisdiction, of a claim that is based in whole or in part on actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		
(ii)	To the best of your knowledge, are you currently or have you ever been a director, officer, promoter, insider or control person of an issuer now subject, in any jurisdiction or in any foreign jurisdiction, of a claim that is based in whole or in part on actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		

C.	**SETTLEMENT AGREEMENT**		
(i)	Have you ever entered into a settlement agreement, in any jurisdiction or in any foreign jurisdiction, in a civil action that involved actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		
(ii)	To the best of your knowledge, are you currently or have you ever been a director, officer, promoter, insider or control person of an issuer that has entered into a settlement agreement, in any jurisdiction or in any foreign jurisdiction, in a civil action that involved actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		

CERTIFICATE AND CONSENT

I, _____ hereby certify that:
(Please Print – Name of Individual)

(a) I have read and understood the questions, cautions, acknowledgement and consent in this Form, and the answers I have given to the questions in this Form and in any attachments to it are true and correct, except where stated to be to the best of my knowledge, in which case I believe the answers to be true;

(b) I have read and understand the Personal Information Collection Policy attached hereto as Schedule 2 (the "Personal Information Collection Policy");

(c) I consent to the collection, use and disclosure of the information in this Form and to the collection, use and disclosure of further personal information in accordance with the Personal Information Collection Policy; and

(d) I understand that I am providing this Form to a regulator listed in Schedule 3 attached hereto and I am under the jurisdiction of the regulator to which I submit this Form, and it is a breach of securities legislation to provide false or misleading information to the regulator.

_____
Date [within 30 days of the date of the preliminary prospectus]

_____
Signature of Person Completing this Form

APPENDIX A TO NATIONAL INSTRUMENT 41-101
GENERAL PROSPECTUS REQUIREMENTS

PERSONAL INFORMATION FORM
AND AUTHORIZATION OF INDIRECT COLLECTION,
USE AND DISCLOSURE OF PERSONAL INFORMATION

Schedule 2

Personal Information Collection Policy

The regulators listed in Schedule 3 Regulators collect the personal information in Schedule 1 *Personal Information Form* under the authority granted to them under provincial and territorial securities legislation. Under securities legislation, the regulators do not make any of the information provided in Schedule 1 public.

The regulators collect the personal information in Schedule 1 for the purpose of enabling the regulators to administer and enforce provincial and territorial securities legislation, including those provisions that require or permit the regulators to refuse to issue a receipt for a prospectus if it appears to the regulators that the past conduct of management or promoters of the Issuer affords reasonable grounds for belief that the business of the Issuer will not be conducted with integrity and in the best interests of its securityholders.

You understand that by signing the certificate and consent in Schedule 1, you are consenting to the Issuer submitting your personal information in Schedule 1 (the "Information") to the regulators and to the collection and use by the regulators of the Information, as well as any other information that may be necessary to administer and enforce provincial and territorial securities legislation. This may include the collection of information from law enforcement agencies, other government or non-governmental regulatory authorities, self-regulatory organizations, exchanges, and quotation and trade reporting systems in order to conduct background checks, verify the Information and perform investigations and conduct enforcement proceedings as required to ensure compliance with provincial and territorial securities legislation.

You understand that the Issuer is required to deliver the Information to the regulators because the Issuer has filed a prospectus under provincial and territorial securities legislation. You also understand that you have a right to be informed of the existence of personal information about you that is kept by regulators, that you have the right to request access to that information, and that you have the right to request that such information be corrected, subject to the applicable provisions of the freedom of information and protection of privacy legislation adopted by each province and territory.

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

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

Questions

If you have any questions about the collection, use, and disclosure of the information you provide to the regulators, you may contact the regulator in the jurisdiction in which the required information is filed, at the address or telephone number listed in Schedule 3.

APPENDIX A TO NATIONAL INSTRUMENT 41-101
GENERAL PROSPECTUS REQUIREMENTS

PERSONAL INFORMATION FORM
AND AUTHORIZATION OF INDIRECT COLLECTION,
USE AND DISCLOSURE OF PERSONAL INFORMATION

Schedule 3

Regulators

Local Jurisdiction	**Regulator**
Alberta	Securities Review Officer Alberta Securities Commission Suite 400 300 – 5th Avenue S.W Calgary, Alberta T2P 3C4 Telephone: (403) 297-6454 E-mail: inquiries@seccom.ab.ca www.albertasecurities.com
British Columbia	Review Officer British Columbia Securities Commission P.O. Box 10142 Pacific Centre 701 West Georgia Street Vancouver, British Columbia V7Y 1L2 Telephone: (604) 899-6854 Toll Free within British Columbia and Alberta: (800) 373-6393 E-mail: inquiries@bcsc.bc.ca www.bcsc.bc.ca
Manitoba	Director, Corporate Finance The Manitoba Securities Commission 500-400 St. Mary Avenue Winnipeg, Manitoba R3C 4K5 Telephone: (204) 945-2548 E-mail: securities@gov.mb.ca www.msc.gov.mb.ca

New Brunswick	Director Corporate Finance and Chief Financial Officer New Brunswick Securities Commission 85 Charlotte Street, Suite 300 Saint John, New Brunswick E2L 2J2 Telephone: (506) 658-3060 Fax: (506) 658-3059 E-mail: information@nbsc-cvmnb.ca
Newfoundland and Labrador	Director of Securities Department of Government Services and Lands P.O. Box 8700 West Block, 2nd Floor, Confederation Building St. John's, Newfoundland A1B 4J6 Telephone: (709) 729-4189 www.gov.nf.ca/gsl/cca/s
Northwest Territories	Securities Registries Department of Justice Government of the Northwest Territories P.O. Box 1320, Yellowknife, Northwest Territories X1A 2L9 Telephone: (867) 873- 7490 www.justice.gov.nt.ca/SecuritiesRegistry/SecuritiesRegistry.html
Nova Scotia	Deputy Director, Compliance and Enforcement Nova Scotia Securities Commission P.O. Box 458 Halifax, Nova Scotia B3J 2P8 Telephone: (902) 424-5354 www.gov.ns.ca/nssc
Nunavut	Government of Nunavut Legal Registries Division P.O. Box 1000 – Station 570 Iqaluit, Nunavut X0A 0H0 Telephone: (867) 975-6590
Ontario	Administrative Assistant to the Director of Corporate Finance Ontario Securities Commission 19th Floor, 20 Queen Street West Toronto, Ontario M5H 2S8 Telephone: (416) 597-0681 E-mail: Inquiries@osc.gov.on.ca www.osc.gov.on.ca

Prince Edward Island	Deputy Registrar, Securities Division Shaw Building 95 Rochford Street, P.O. Box 2000, 4th Floor Charlottetown, Prince Edward Island C1A 7N8 Telephone: (902) 368-4550 www.gov.pe.ca/securities
Québec	Autorité des marchés financiers Stock Exchange Tower P.O. Box 246, 22nd Floor 800 Victoria Square Montréal, Québec H4Z 1G3 Attention: Responsable de l'accès à l'information Telephone: (514) 395-0337 Toll Free in Québec: (877) 525-0337 www.lautorite.qc.ca
Saskatchewan	Director Saskatchewan Financial Services Commission Suite 601, 1919 Saskatchewan Drive Regina, Saskatchewan S4P 4H2 Telephone: (306) 787-5842 www.sfsc.gov.sk.ca
Yukon	Registrar of Securities Department of Justice Andrew A. Philipsen Law Centre 2130 – 2nd Avenue, 3rd Floor Whitehorse, Yukon Territory Y1A 5H6 Telephone: (867) 667-5005

APPENDIX B TO NATIONAL INSTRUMENT 41-101
GENERAL PROSPECTUS REQUIREMENTS

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

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

_____

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

_____

3. Address of principal place of business of Issuer:

_____

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

_____

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

_____

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

_____

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

_____

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

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

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

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

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

10. Until six years after it has ceased to be a reporting issuer in any Canadian province or territory, the Issuer shall file a new submission to jurisdiction and appointment of agent for service of process in this form at least 30 days before termination of this submission to jurisdiction and appointment of agent for service of process.

11. Until six years after it has ceased to be a reporting issuer in any Canadian province or territory, the Issuer shall file an amended submission to jurisdiction and appointment of agent for service of process at least 30 days before any change in the name or above address of the Agent.

12. This submission to jurisdiction and appointment of agent for service of process shall be governed by and construed in accordance with the laws of [insert province or territory of above address of Agent].

Dated: _____ _____

Signature of Issuer

_____

Print name and title of signing officer of Issuer

AGENT

The undersigned accepts the appointment as agent for service of process of [insert name of Issuer] under the terms and conditions of the appointment of agent for service of process stated above.

Dated: _____ _____
Signature of Agent

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

APPENDIX C TO NATIONAL INSTRUMENT 41-101
GENERAL PROSPECTUS REQUIREMENTS

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

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

   _____

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

   _____

3. Address of principal place of business of Issuer:

   _____

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

   _____

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

   _____

6. Name of person filing this form (the "Filing Person"):

   _____

7. Filing Person's relationship to Issuer:

   _____

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

   _____

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

   _____

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

    _____

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

    _____

12. The Filing Person designates and appoints the Agent at the address of the Agent stated above as its agent upon whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the "Proceeding") arising out of, relating to or concerning the

distribution of the Securities made or purported to be made under the Prospectus, and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring the Proceeding.

13. The Filing Person irrevocably and unconditionally submits to the non-exclusive jurisdiction of

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

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

    in any Proceeding arising out of or related to or concerning the distribution of the Securities made or purported to be made under the Prospectus.

14. Until six years after completion of the distribution of the Securities made under the Prospectus, the Filing Person shall file a new submission to jurisdiction and appointment of agent for service of process in this form at least 30 days before termination of this submission to jurisdiction and appointment of agent for service of process.

15. Until six years after completion of the distribution of the Securities under the Prospectus, the Filing Person shall file an amended submission to jurisdiction and appointment of agent for service of process at least 30 days before a change in the name or above address of the Agent.

16. This submission to jurisdiction and appointment of agent for service of process shall be governed by and construed in accordance with the laws of [insert province or territory of above address of Agent].

Dated: _____ _____

Signature of Filing Person

_____

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

AGENT

The undersigned accepts the appointment as agent for service of process of [insert name of Issuer] under the terms and conditions of the appointment of agent for service of process stated above.

Dated: _____ _____
Signature of Agent

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

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COMPANION POLICY
TO NATIONAL INSTRUMENT 41-101
GENERAL PROSPECTUS REQUIREMENTS

TABLE OF CONTENTS

COMPANION POLICY
TO NATIONAL INSTRUMENT 41-101
GENERAL PROSPECTUS REQUIREMENTS

PART 1: Introduction, Interrelationship with Securities Legislation, and Definitions

Introduction and purpose

1.1 This Policy describes how the provincial and territorial securities regulatory authorities (or "we") intend to interpret or apply the provisions of the Instrument. Some terms used in this Policy are defined or interpreted in the Instrument, NI 14-101, or a definition instrument in force in the jurisdiction.

Interrelationship with other securities legislation

This Policy

1.2(1) The Instrument applies to any prospectus filed under securities legislation and any distribution of securities subject to the prospectus requirement, other than a prospectus filed under NI 81-101 or a distribution of securities under such a prospectus, or unless otherwise stated. Parts of this Policy may not apply to all issuers.

Local securities legislation

(2) The Instrument, while being the primary instrument regulating prospectus distributions, is not exhaustive. Issuers should refer to the implementing law of the jurisdictions and other securities legislation of the local jurisdiction for additional requirements that may apply to the issuer's prospectus distribution.

Continuous disclosure (NI 51-102 and NI 81-106)

(3) NI 51-102, NI 81-106 and other securities legislation imposes ongoing disclosure and filing obligations on reporting issuers. The regulator may consider issues raised in the context of a continuous disclosure review when determining whether it is in the public interest to refuse to issue a receipt for a prospectus. Consequently, unresolved issues may delay or prevent the issuance of a receipt.

Reporting issuers are generally required to file periodic and timely disclosure documents under applicable securities legislation. Reporting issuers may also be required to file periodic and timely disclosure documents pursuant to an order issued by the securities regulatory authority or an undertaking to the securities regulatory authority. Failure to comply with any requirement to file periodic and timely disclosure documents could cause the regulator to refuse a receipt for the prospectus.

Short form prospectus distributions (NI 44-101)

(4) As set out in section 2.1 of NI 44-101, an issuer must not file a prospectus in the form of Form 44-101F1 unless the issuer is qualified under any of sections 2.2 through 2.6 of NI 44-101 to file a short form prospectus. An issuer that is qualified to file a short form prospectus must satisfy the requirements of NI 44-101, including the filing requirements of Part 4 of NI 44-101, as well as any applicable requirements of the Instrument. Therefore, issuers qualified to file a short form prospectus and selling securityholders of those issuers that wish to distribute securities under the short form system should refer to the Instrument, this Policy, and NI 44-101 and its companion policy.

Shelf distributions (NI 44-102)

(5) 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 short form prospectus and selling securityholders of those issuers that wish to distribute securities under the shelf system should refer to the Instrument, this Policy, NI 44-101 and its companion policy, and NI 44-102 and its companion policy.

PREP procedures (NI 44-103)

(6) NI 44-103 contains the post-receipt pricing (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 using the PREP procedures as provided for in NI 44-103 should refer to the Instrument, this Policy, and NI 44-103 and its companion policy. Issuers and selling securityholders that wish to distribute securities under a short form prospectus using the PREP procedures should also refer to NI 44-101 and its companion policy for any additional requirements.

Process for prospectus reviews in multiple jurisdictions (NP 11-202)

(7) 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.

Definitions

Asset-backed security

1.3(1) The definition of "asset-backed security" is the same definition used in NI 51-102.

The definition is designed to be flexible to accommodate future developments in asset-backed securities. For example, it does not include a list of "eligible" assets that can be securitized. Instead, the definition is broad, referring to "receivables or other financial assets" that by their terms convert into cash within a finite time period. These would include, among other things, notes, leases, instalment contracts and interest rate swaps, as well as other financial assets, such as loans, credit card receivables, accounts receivable and franchise or servicing arrangements. The reference to "and any rights or other assets..." in the definition is sufficiently broad to include "ancillary" or "incidental" assets, such as guarantees, letters of credit, financial insurance or other instruments provided as a credit enhancement for the securities of the issuer or which support the underlying assets in the pool, as well as cash arising upon collection of the underlying assets that may be reinvested in short-term debt obligations.

The term, a "discrete pool" of assets, can refer to a single group of assets as a "pool" or to multiple groups of assets as a "pool". For example, a group or pool of credit card receivables and a pool of mortgage receivables can, together, constitute a "discrete pool" of assets. The reference to a "discrete pool" of assets is qualified by the phrase "fixed or revolving" to clarify that the definition covers "revolving" credit arrangements, such as credit card and short-term trade receivables, where balances owing revolve due to periodic payments and write-offs.

While typically a pool of securitized assets will consist of financial assets owed by more than one obligor, the definition does not currently include a limit on the percentage of the pool of securitized assets that can be represented by one or more financial assets owing by the same or related obligors (sometimes referred to as an "asset concentration test").

Business day

(2) Section 1.1 of the Instrument defines business day as any day other than a Saturday, Sunday or a statutory holiday. In some cases, a statutory holiday may only be a statutory holiday in one jurisdiction. The definition of business day should be applied in each local jurisdiction in which a prospectus is being filed. For example, subsection 2.3(2) of the Instrument states that an issuer must not file a prospectus more than three business days after the date of the prospectus. A prospectus is dated Day 1. Day 2 is a statutory holiday in Québec but not in Alberta. If the prospectus is filed in both Alberta and Québec, it must be filed no later than Day 4, despite the fact that Day 2 was not a business day in Québec. If the prospectus is filed only in Québec, it could be filed on Day 5.

PART 2: General Requirements

Experience of officers and directors

2.1 Securities legislation requires that a securities regulatory authority or regulator refuse to issue a receipt for a prospectus if it appears that the proceeds received from the sale of securities to be paid to the treasury of the issuer, together with other resources of the issuer, will be insufficient to accomplish the purposes stated in the prospectus. In addition to financial resources, resources include people. If a sufficient number of the directors and officers of the issuer do not have relevant knowledge and experience, the securities regulatory authority or regulator may conclude that the human and other resources are insufficient to accomplish these purposes. If the requisite knowledge and experience are not possessed by the directors and officers, a securities regulatory authority or regulator may be satisfied that the human and other resources are sufficient if it is shown that the issuer has contracted to obtain the knowledge and experience from others.

Role of underwriter

2.2 The due diligence investigation undertaken by an underwriter in relation to the business of the issuer often results in enhanced quality of disclosure in the prospectus. In addition, an underwriter typically provides valuable advice regarding the pricing and marketing of securities. For these reasons, we strongly encourage underwriter participation in prospectus offerings, particularly where the offering is an initial public offering.

Indirect distributions

2.3 Securities legislation prohibits a person from distributing a security unless a prospectus is filed and receipted or the distribution is exempt from the prospectus requirement. Securities legislation also prohibits a person from trading in a security where the trade would be a distribution of such security, unless a prospectus is filed and receipted or the distribution is exempt from the prospectus requirement. Securities legislation defines distribution as including a trade in a security that has not been previously issued, a trade out of a control block and any transaction or series of transactions involving a purchase and sale of or a repurchase and resale in the course of or incidental to a distribution. In Québec, the definition of "distribution" is broad enough to include these transactions.

Occasionally, a prospectus is filed to qualify securities for sale to one purchaser or to a small group of related purchasers where it appears that the purchaser does not have a *bona fide* intention to invest in the securities but rather is acquiring the securities with a view to immediately reselling them in the secondary market. This can be the case where the purchaser is a lender to the issuer or where the securities are issued as consideration for the acquisition of assets.

Where the offering and subsequent resale are in substance a single distribution, in order to comply with securities legislation, the distribution to the public purchasers should be

made by way of prospectus in order that the subsequent purchasers have the benefit of prospectus disclosure and all the rights and remedies provided to prospectus purchasers under securities legislation.

Considerations relevant to determining whether a distribution under a prospectus is only one transaction in a series of transactions in the course of or incidental to the ultimate distribution include:

- the number of persons or companies who are likely to purchase securities in each transaction;
- whether the purchasers' traditional business is that of financing as opposed to investing;
- whether a purchaser is likely to acquire more of a specified class of securities of the issuer than it is legally entitled to, or practically wishes to, hold (e.g., more than 10% of a class of equity securities where the purchaser wishes to avoid becoming an insider or 20% of a class of equity securities where the purchaser wishes to avoid becoming a control person);
- the type of security distributed (e.g., loan repayment rights) and whether or not the security is convertible into publicly traded securities of the issuer;
- whether the purchase price of the securities is set at a substantial discount to their market price; and
- whether the purchaser is committed to hold the securities it acquires for any specified time period.

Over-allocation

2.4 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.

Distribution of securities under a prospectus to an underwriter

2.5 Section 11.2 of the Instrument restricts the distribution of securities under a prospectus to a person acting as an underwriter. Issuers should determine the 10% limit in that section as if all convertible or exchangeable securities offered under the prospectus were exercised for the underlying securities.

Certificates

Public interest

2.6(1) Securities legislation provides the regulator with discretion to refuse a receipt for a prospectus where it is not in the public interest to issue the receipt. Securities legislation imposes statutory liability in connection with prospectus disclosure to provide investors with a remedy if a prospectus does not contain full, true and plain disclosure of all material facts relating to the securities being distributed and to protect the integrity of the Canadian public markets. Where an offering is structured in a manner that circumvents the objects and purposes of securities legislation and results in a person or company accessing the Canadian public markets, who is not clearly accountable for the information in the prospectus, the regulator may have significant public interest concerns. Such public interest concerns will be addressed on a case by case basis as part of the analysis of whether a receipt should be issued for a final prospectus. There may be circumstances in which it will be appropriate for the regulator to request a person or company, that is not otherwise required to do so, to certify a prospectus as a means of resolving such public interest concerns. For example, where it appears that a person or company is organizing its business and affairs to avoid a requirement to sign a prospectus certificate or to avoid prospectus liability, a regulator may conclude that there is sufficient public interest concerns that the regulator should require that person or company to certify a prospectus.

Discretion of the regulator to request certificates

(2) Subsection 5.15(1) of the Instrument provides the regulator in each jurisdiction except Ontario with the discretion to require additional certificates. The exercise of this

discretion will generally be informed by pubic interest concerns, including those discussed in subsection (1) above.

Signatories

(3) Part 5 of the Instrument contains requirements regarding who must sign prospectus certificates. Certificates signed on behalf of the identified signatories by an agent or attorney will generally not be acceptable. For example, an income trust issuer with an active board of trustees would be required to arrange for the signature of two trustees on behalf of the board, rather than the signature of an attorney or agent.

Trustee certificates

(4) Subsection 5.5(4) of the Instrument provides an exception to the trust certificate requirement where the trustees of the issuer do not perform functions similar to those of corporate directors. In this type of situation, a prospectus certificate is instead required from two individuals who do perform those functions for the issuer on behalf of all such individuals. In a situation where a regulated trust company is a trustee but does not perform functions similar to those of corporate directors, the regulated trust company and its officers and directors will not be required to sign a prospectus certificate if two other individuals who perform those functions do provide a certificate.

Chief executive officer and chief financial officer

(5) The Instrument and other securities legislation require that prospectus certificates of certain persons or companies are to be signed by the chief executive officer and chief financial officer of such persons or companies. The terms chief executive officer and chief financial officer should be read to include the individuals who have the responsibilities normally associated with these positions or act in a similar capacity. This determination should be made irrespective of an individual's corporate title or whether that individual is employed directly or acts pursuant to an agreement or understanding.

Selling securityholder certificates

(6) Subsection 5.13(1) of the Instrument provides the regulator in each jurisdiction except Ontario with the discretion to require selling securityholders to sign a prospectus certificate. Under securities legislation, selling securityholders are liable for misrepresentations in a prospectus whether or not they sign a prospectus certificate. There are circumstances, however, where the regulator may determine that it is in the public interest to require the selling securityholder to affirmatively certify the prospectus. Generally, the regulator would only exercise this discretion where the securities being distributed by the selling securityholder represent a substantial portion of the securities being distributed under the prospectus.

Promoters of issuers of asset-backed securities

2.7 Securities legislation in some jurisdictions in Canada define "promoter" and require, in certain circumstances, a promoter of an issuer to assume statutory liability for prospectus disclosure. Asset-backed securities are commonly issued by a "special purpose" entity, established for the sole purpose of facilitating one or more asset-backed offerings. The securities regulatory authorities are of the opinion that special purpose issuers of asset-backed securities will have a promoter because someone will typically have taken the initiative in founding, organizing or substantially reorganizing the business of the issuer. We interpret the business of such issuers to include the business of issuing asset-backed securities and entering into the supporting contractual arrangements.

For example, in the context of a securitization program under which assets of one or more related entities are financed by issuing asset-backed securities (sometimes called a "single seller program"), we will usually consider an entity transferring or originating a significant portion of such assets, an entity initially agreeing to provide on-going collection, administrative or similar services to the issuer, and the entity for whose primary economic benefit the asset-backed program is established, to be a promoter of the issuer if it took the initiative in founding, organizing or substantially reorganizing the business of the issuer. Persons or companies contracting with the issuer to provide credit enhancements, liquidity facilities or hedging arrangements or to be a replacement servicer of assets, and investors who acquire subordinated investments issued by the issuer, will not typically be promoters of the issuer solely by virtue of such involvement.

In the context of a securitization program established to finance assets acquired from numerous unrelated entities (sometimes called a "multi-seller program"), we will usually consider the person or company (frequently a bank or an investment bank) establishing and administering the program in consideration for the payment of an on-going fee, for example, to be a promoter of the issuer if it took the initiative in founding, organizing or substantially reorganizing the business of the issuer. Individual sellers of the assets into a multi-seller program are not ordinarily considered to be promoters of the issuer, despite the economic benefits accruing to such persons or companies from utilizing the program. As with single-seller programs, other persons or companies contracting with the issuer to provide services or other benefits to the issuer of the asset-backed securities will not typically be promoters of the issuer solely by virtue of such involvement.

Where an entity is determined to be a promoter of an issuer at the time of the issuer's initial public offering, the entity continues to be a promoter of the issuer, in the case of subsequent offerings by the issuer, if the entity's relationship to the issuer and involvement in the offerings remains substantially the same. Accordingly, where an entity establishes a special purpose issuer to act as a dedicated securitization vehicle, and the prospectus filed in connection with a subsequent offering continues to include disclosure relating to the entity's securitization program, we will expect the entity to certify the prospectus as a promoter.

While we have included this discussion of promoters as guidance to issuers of asset-backed securities, the question of whether a particular person or company is a "promoter" of an issuer is ultimately a question of fact to be determined in light of the particular circumstances.

Special warrants

Distributions to resale market

2.8(1) In certain special warrant transactions, the dealer involved in the private placement may itself have purchased special warrants from the issuer on an exempt basis, despite not disclosing any commitment to do so.

Securities legislation generally requires that a dealer not acting as agent of the purchaser who receives an order or subscription for a security offered in a distribution to which a prospectus requirement applies to deliver to the purchaser the latest prospectus. Where a dealer acquires special warrants, with a view to exercising them and reselling the underlying securities, such a resale would be a distribution that must be made by way of a prospectus or pursuant to an exemption from the prospectus requirements.

It is a requirement, therefore, that any dealer who has acquired special warrants with a view to their distribution or the distribution of the underlying securities deliver a prospectus during the period of distribution to its purchasers (where the sale to such purchasers is made otherwise than pursuant to a prospectus exemption) in order that such purchasers have the benefit of all rights and remedies provided to prospectus purchasers under securities legislation. In Québec, prospectus purchasers are notably conferred with a contractual right of rescission under s.1443 of the *Québec Civil Code*.

In connection with its prospectus review procedure, the regulator may request information from the issuer of all beneficial purchasers of special warrants. The regulator will generally keep this information confidential.

Underwriters' certificate and due diligence

(2) While the special warrant transaction is, in form, two separate distributions, the first an exempt private placement distribution and the second a conversion of the warrants under a prospectus, such a transaction is, in substance, a single distribution under a prospectus of the underlying securities to the warrant investors.

The registrants involved in placing the special warrants are, therefore, also involved in the prospectus distribution and such registrants in a contractual relationship with the issuer must include their certificate in the prospectus under subsection 5.9(1) of the Instrument or other securities legislation. We note that the resulting incentive to such registrants to participate in the due diligence investigation of the issuer is also beneficial to the secondary market.

The obligation to deliver an underwriter's certificate as described in this Policy does not extend the scope of distributions any registrant is authorized to make under applicable securities legislation.

Contractual right of rescission

(3) Under section 2.4 of the Instrument, an issuer must not file a prospectus or an amendment to a prospectus to qualify the distribution of securities issued on the exercise of special warrants or other securities acquired on a prospectus-exempt basis, unless the issuer has provided holders of the special warrants or other securities with a contractual right of rescission. We would not generally consider the disclosure of the contractual right of rescission in the prospectus as satisfying this condition unless there is a prior contract between the issuer and the holder of the special warrant or other security under which the issuer granted this right to the holder.

Offerings of convertible or exchangeable securities

2.9 Investor protection concerns may arise where the distribution of a convertible or exchangeable security is qualified under a prospectus and the subsequent exercise of the convertible or exchangeable security is made on a prospectus-exempt basis. Examples of such offerings include issuing instalment receipts, subscription receipts and stand-alone warrants or long-term warrants. Reference to stand-alone warrants or long-term warrants is intended to refer to warrants and other forms of exchangeable or convertible securities that are offered under a prospectus as a separate and independent form of investment. This would not apply to an offering of warrants where the warrants may reasonably be regarded as incidental to the offering as a whole.

The investor protection concern arises because the conversion or exchange feature of the security may operate to limit the remedies available to an investor for incomplete or inaccurate disclosure in a prospectus. For example, an investor may pay part of the purchase price at the time of the purchase of the convertible security and part of the purchase price at the time of the conversion. To the extent that an investor makes a further "investment decision" at the time of conversion, the investor should continue to enjoy the benefits of statutory rights or comparable contractual rights in relation to this further investment. In such circumstances, issuers should ensure that:

(a) the distribution of both the convertible or exchangeable securities and the underlying securities will be qualified by the prospectus; or

(b) the statutory rights that an investor would have if he or she purchased the underlying security offered under a prospectus are otherwise provided to the investor by way of a contractual right of action.

Lapse date

2.10 An amendment to a prospectus, even if it amends and restates the prospectus, does not change the lapse date under section 17.2 of the Instrument or other securities legislation.

PART 3: Filing and Receipting Requirements

Extension of 90-day period for issuance of final receipt

3.1 The effect of subsection 2.3(1) of the Instrument is to ensure that issues are not being marketed by means of preliminary prospectuses containing outdated information.

Confidential material change reports

3.2 An issuer cannot meet the standard of "full, true and plain" disclosure, while a material change report has been filed but remains undisclosed publicly. Accordingly, an issuer who has filed a confidential material change report may not file a prospectus until the material change that is the subject of the report is generally disclosed or the decision to implement the change has been rejected and the issuer so notified the regulator of each jurisdiction where the confidential material change report was filed, and an issuer may not file a confidential material change report during a distribution and continue with the distribution. If circumstances arise that cause an issuer to file a confidential material change report during the distribution period of securities under a prospectus, the issuer should cease all activities related to the distribution until

(a) the material change is generally disclosed and an amendment to the prospectus is filed, if required, or

(b) the decision to implement the material change has been rejected and the issuer has so notified the regulator of each jurisdiction where the confidential material change report was filed.

Supporting documents

3.3 Material that is filed in a jurisdiction will be made available for public inspection in that jurisdiction, subject to the provisions of securities legislation in the local jurisdiction regarding confidentiality of filed material. Material that is delivered to a regulator, but not filed, is not generally required under securities legislation to be made available for public inspection.

Consents of lawyers

3.4 The names of lawyers or law firms frequently appear in prospectuses in two ways. First, the underwriters, the issuer and selling securityholders may name the lawyers upon whose advice they are relying. Second, the opinions of counsel that the securities may be

eligible for investment under certain statutes may be expressed or opinions on the tax consequences of the investment may be given.

In the first case, we are of the view that the lawyer is not, in the words of subsection 10.1(1) of the Instrument, named as having prepared or certified a part of the prospectus and is not named as having prepared or certified a report, valuation, statement or opinion referred to in the prospectus. Accordingly, this subsection does not require the written consent of the lawyer. In the second case, because the opinions or similar reports are prepared for the purpose of inclusion in the prospectus, we are of the view that this subsection applies and requires the consent.

Documents affecting the rights of securityholders

3.5(1) Subclause 9.1(a)(ii)(A) of the Instrument requires issuers to file copies of their articles of incorporation, amalgamation, continuation or any other constating or establishing documents, unless the document is a statutory or regulatory instrument. This carve out for a statutory or regulatory instrument is very narrow. For example, the carve out would apply to Schedule I or Schedule II banks under the *Bank Act*, whose charter is the *Bank Act*. It would not apply when only the form of the constating document is prescribed under statute or regulation, such as articles under the *Canada Business Corporations Act*.

(2) Subclause 9.1(a)(ii)(E) of the Instrument requires issuers to file copies of contracts that can reasonably be regarded as materially affecting the rights of their securityholders generally. A warrant indenture is one example of this type of contract. We would expect that contracts entered into in the ordinary course of business would not usually affect the rights of securityholders generally, and so would not be required to be filed under this subclause.

Material contracts

Definition

3.6(1) Under section 1.1 of the Instrument, a material contract is defined as a contract that an issuer or any of its subsidiaries is a party to, that is material to the issuer. A material contract generally includes a schedule, side letter or exhibit referred to in the material contract and any amendment to the material contract. The redaction and omission provisions in subsections 9.3(3) and (4) of the Instrument apply to these schedules, side letters, exhibits or amendments.

Filing requirements

(2) Subject to the exceptions in paragraphs 9.3(2)(a) through (f) of the Instrument, subsection 9.3(2) of the Instrument provides an exemption from the filing requirement for a material contract entered into in the ordinary course of business. Whether an issuer entered into a material contract in the ordinary course of business is a question of fact that the issuer should consider in the context of its business and industry.

Paragraphs 9.3(2)(a) through (f) of the Instrument describe specific types of material contracts that are not eligible for the ordinary course of business exemption. Accordingly, if subsection 9.3(1) of the Instrument requires an issuer to file a material contract of a type described in these paragraphs, the issuer must file that material contract even if the issuer entered into it in the ordinary course of business.

Contract of employment

(3) Paragraph 9.3(2)(a) of the Instrument provides that a material contract with certain individuals is not eligible for the ordinary course of business exemption, unless it is a "contract of employment". One way for issuers to determine whether a contract is a contract of employment is to consider whether the contract contains payment or other provisions that are required disclosure under Form 51-102F6 as if the individual were a named executive officer or director of the issuer.

External management and external administration agreements

(4) Under paragraph 9.3(2)(e) of the Instrument, external management and external administration agreements are not eligible for the ordinary course of business exemption. External management and external administration agreements include agreements between the issuer and a third party, the issuer's parent entity, or an affiliate of the issuer, under which the latter provides management or other administrative services to the issuer.

Material contracts on which the issuer's business is substantially dependent

(5) Paragraph 9.3(2)(f) of the Instrument provides that a material contract on which the "issuer's business is substantially dependent" is not eligible for the ordinary course of business exemption. Generally, a contract on which the issuer's business is substantially dependent is a contract so significant that the issuer's business depends on the continuance of the contract. Some examples of this type of contract include

(a) a financing or credit agreement providing a majority of the issuer's capital requirements for which alternative financing is not readily available at comparable terms,

(b) a contract calling for the acquisition or sale of substantially all of the issuer's property, plant and equipment, long-lived assets, or total assets, and

(c) an option, joint venture, purchase or other agreement relating to a mining or oil and gas property that represents a majority of the issuer's business.

Confidentiality provisions

(6) Under subsection 9.3(3) of the Instrument, an issuer may omit or redact a provision of a material contract that is required to be filed if an executive officer of the issuer

reasonably believes that disclosure of the omitted or redacted provision would violate a confidentiality provision. A provision of the type described in paragraphs 9.3(4)(a), (b) or (c) of the Instrument may not be omitted or redacted even if disclosure would violate a confidentiality provision, including a blanket confidentiality provision covering the entire material contract.

When negotiating material contracts with third parties, reporting issuers should consider their disclosure obligations under securities legislation. A regulator or securities regulatory authority may consider granting an exemption to permit a provision of the type listed in subsection 9.3(4) of the Instrument to be redacted if

(a) the disclosure of that provision would violate a confidentiality provision, and

(b) the material contract was negotiated before the effective date of the Instrument.

The regulator may consider the following factors, among others, in deciding whether to grant an exemption:

(c) whether an executive officer of the issuer reasonably believes that the disclosure of the provision would be prejudicial to the interests of the issuer;

(d) whether the issuer is unable to obtain a waiver of the confidentiality provision from the other party.

Disclosure seriously prejudicial to interests of issuer

(7) Under subsection 9.3(3) of the Instrument, an issuer may omit or redact certain provisions of a material contract that is required to be filed if an executive officer of the issuer reasonably believes that disclosure of the omitted or redacted provision would be seriously prejudicial to the interests of the issuer. One example of disclosure that may be seriously prejudicial to the interests of the issuer is disclosure of information in violation of applicable Canadian privacy legislation. However, in situations where securities legislation requires disclosure of the particular type of information, applicable privacy legislation generally provides an exemption for the disclosure. Generally, disclosure of information that an issuer or other party has already publicly disclosed is not seriously prejudicial to the interests of the issuer.

Terms necessary for understanding impact on business of issuer

(8) An issuer may not omit or redact a provision of a type described in paragraph 9.3(4)(a), (b), or (c) of the Instrument. Paragraph 9.3(4)(c) of the Instrument provides that an issuer may not omit or redact "terms necessary for understanding the impact of the material contract on the business of the issuer". Terms that may be necessary for understanding the impact of the material contract on the business of the issuer include the following:

(a) the duration and nature of a patent, trademark, license, franchise, concession, or similar agreement;

(b) disclosure about related party transactions;

(c) contingency, indemnification, anti-assignability, take-or-pay clauses, or change-of-control clauses.

Summary of omitted or redacted provisions

(9) Under subsection 9.3(5) of the Instrument, an issuer must include a description of the type of information that has been omitted or redacted in the copy of the material contract filed by the issuer. A brief one-sentence description immediately following the omitted or redacted information is generally sufficient.

Response letters and marked up copies

3.7 In response to a comment letter for a preliminary prospectus, an issuer should include draft wording for the changes it proposes to make to a prospectus to address staff's comments. When the comments of the various securities regulators have been resolved, an issuer should clearly mark a draft of the prospectus with all proposed changes from the preliminary prospectus and submit it as far as possible in advance of the filing of final material. These procedures may prevent delay in the issuing of a receipt for the prospectus, particularly if the number or extent of changes are substantial.

Undertaking in respect of credit supporter disclosure, including financial statements

3.8 Under subparagraph 9.2(a)(x) of the Instrument, 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 (as defined in NI 44-101), 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 34.3 of Form 41-101F1, 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 the exemption in section 34.4 of Form 41-101F1, 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 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 34.4 of Form 41-101F1 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 34.4(e)(ii) of Form 41-101F1.

Disclosure of investigations or proceedings

3.9 Securities legislation provides that, subject to certain conditions, the securities regulatory authorities or the regulator must issue a receipt for a prospectus unless it appears that it would not be in the public interest to do so. The securities regulatory authority or the regulator will consider whether there are ongoing or recently concluded investigations or proceedings relating to

- an issuer,
- a promoter,
- a principal securityholder, director or officer of the issuer, or
- an underwriter or other person or company involved in a proposed distribution

when it determines if it should refuse to issue a receipt for the prospectus. That decision will be made on a case-by-case basis and will depend upon the facts known at the time.

If the facts and circumstances do not warrant the denial of a receipt for a prospectus, securities legislation nonetheless imposes an obligation to provide full, true and plain disclosure of all material facts relating to the securities offered by the prospectus.

Disclosure of an ongoing or recently concluded investigation or proceeding relating to a person or company involved in a proposed distribution may be necessary to meet this standard. The circumstances in which disclosure will be required and the nature and extent of the disclosure will also be determined on a case-by-case basis. In making this determination, all relevant facts, including the allegations that gave rise to the investigation or proceeding, the status of the investigation or proceeding, the seriousness of the alleged breaches that are the subject of the investigation or proceeding and the degree of involvement in the proposed distribution by the person or company under investigation will be considered.

Amendments

3.10(1) Subsection 6.5(1) of the Instrument and other securities legislation provides that if a material adverse change occurs after a receipt for a preliminary prospectus is obtained, an amendment to the preliminary prospectus must be filed as soon as practicable, but in any event within 10 days after the change occurs. If a preliminary prospectus indicates the number or value of the securities to be distributed under the prospectus, an increase in the number or value is, absent unusual circumstances, unlikely to constitute a material adverse change requiring an amendment to the preliminary prospectus.

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

(3) Securities legislation provides that no person or company shall distribute securities, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued by the securities regulatory authority or regulator. If an issuer intends to add a new class of securities to the distribution under the prospectus after the preliminary prospectus has been filed and receipted, we interpret this requirement to mean an issuer must file an amended and restated preliminary prospectus.

Similarly, if an issuer wishes to add a new class of securities to a prospectus before the distribution under that prospectus is completed the issuer must file a preliminary prospectus for that class of securities and an amended and restated prospectus and obtain receipts for both the preliminary prospectus and the amended prospectus. Alternatively the issuer may file a separate preliminary prospectus and prospectus for the new class of securities. We interpret this requirement to also apply to mutual funds. If a mutual fund adds a new class or series of securities to a prospectus that is referable to a new separate portfolio of assets, a preliminary prospectus must be filed. However, if the new class or series of securities is referable to an existing portfolio of assets, the new class or series may be added by way of amendment.

(4) Any changes to the terms or conditions of the security being distributed, such as the deletion of a conversion feature, may constitute a material adverse change requiring an amendment to the preliminary prospectus.

(5) Under securities legislation, a regulator must not issue a receipt for a prospectus in certain circumstances, including if the regulator considers it prejudicial to the public interest to do so. The purpose of subsection 6.6(3) of the Instrument is to clarify that these receipt refusal grounds apply to an amendment to a final prospectus or a final short form prospectus in certain jurisdictions.

Reduced price distributions

3.11 Subsection 7.2(3) of the Instrument permits an issuer to reduce the offering price of the securities being distributed without filing an amendment to the prospectus if certain conditions are satisfied. Satisfying the conditions in this subsection means the underwriter's compensation should decrease 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. Section 20.8 of Form 41-101F1 requires disclosure of this fact.

Licences, registrations and approvals

3.12 For the purposes of section 10.2 of the Instrument, we would generally conclude that an issuer has all material licences, registrations and approvals necessary for the stated principal use of proceeds if the issuer could use a material portion of the proceeds of the distribution in the manner described in the prospectus without obtaining the licence, registration or approval.

Registration requirements

3.13 Issuers filing a prospectus and other market participants are reminded to ensure that members of underwriting syndicates are in compliance with registration requirements under securities legislation in each jurisdiction in which syndicate members are participating in the distribution of securities under the prospectus. Failure to comply with the registration requirements could cause the regulator to refuse to issue a receipt for the prospectus.

PART 4: General Content of Long Form Prospectus

Style of long form prospectus

4.1 Securities legislation requires that a long form prospectus contain "full, true and plain" disclosure. Issuers should apply plain language principles when they prepare a long 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 the Instrument.

Pricing disclosure

4.2(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 long form prospectus, section 1.7 of Form 41-101F1 requires the issuer to disclose that information in the preliminary long 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 long form prospectus. If the issuer discloses this information in the preliminary long 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 long form prospectus.

(2) No disclosure is required under section 1.7 of Form 41-101F1 if the offering price or size of the offering has not been disclosed as of the date of the preliminary long 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.

Principal purposes – generally

4.3(1) Subsection 6.3(1) of Form 41-101F1 requires disclosure of each of the principal purposes for which the issuer will use the net proceeds. If an issuer has negative operating cash flow in its most recently completed financial year for which financial statements have been included in the long form prospectus, the issuer should prominently disclose that fact in the use of proceeds section of the long form prospectus. The issuer should also disclose whether, and if so, to what extent, the issuer will use the proceeds of the distribution to fund any anticipated negative operating cash flow in future periods. An issuer should disclose negative operating cash flow as a risk factor under subsection 21.1(1) of Form 41-101F1.

(2) For the purposes of the disclosure required under section 6.3 of Form 41-101F1, the phrase "for general corporate purposes" is not generally sufficient.

MD&A

Additional information for venture issuers without significant revenue

4.4(1) Section 8.6 of Form 41-101F1 requires certain venture issuers and IPO venture issuers to disclose a breakdown of material costs whether capitalized, deferred or expensed. A component of cost is generally considered to be a material component if it exceeds the greater of

(a) 20% of the total amount of the class, and

(b) $25,000.

Disclosure of outstanding security data

(2) Section 8.4 of Form 41-101F1 requires disclosure of information relating to the outstanding securities of the issuer as of the latest practicable date. The "latest practicable date" should be as close as possible to the date of the long form prospectus. Disclosing the number of securities outstanding at the most recently completed financial period is generally not sufficient to meet this requirement.

Additional disclosure for issuers with significant equity investees

(3) Section 8.8 of Form 41-101F1 requires issuers with significant equity investees to provide in their long form prospectuses summarized information about the equity investee. Generally, we will consider that an equity investee is significant if the equity investee would meet the thresholds for the significance tests in Item 35 of Form 41-

101F1 using the financial statements of the equity investee and the issuer as at the issuer's financial year-end.

Distribution of asset-backed securities

4.5 Section 10.3 of Form 41-101F1 specifies additional disclosure that applies to distributions of asset-backed securities. Disclosure for a special purpose issuer of asset-backed securities will generally explain

- the nature, performance and servicing of the underlying pool of financial assets,
- the structure of the securities and dedicated cash flows, and
- any third party or internal support arrangements established to protect holders of the asset-backed securities from losses associated with non-performance of the financial assets or disruptions in payment.

The nature and extent of required disclosure may vary depending on the type and attributes of the underlying pool and the contractual arrangements through which holders of the asset-backed securities take their interest in such assets.

An issuer of asset-backed securities should consider the following factors when preparing its long 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) Disclosure about the business and affairs of the issuer should relate to the financial assets underlying the asset-backed securities.

(c) Disclosure about the originator or the seller of the underlying financial assets will often be relevant to investors in the asset-backed securities particularly where the originator or seller has an on-going involvement 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 10.3(10) of Form 41-101F1 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.

Distribution of derivatives and underlying securities

4.6(1) Section 10.4 of Form 41-101F1 specifies additional disclosure applicable to distributions of derivatives. This prescribed disclosure is formulated in general terms for issuers to customize appropriately in particular circumstances.

(2) If the securities being distributed are convertible into or exchangeable for other securities, or are a derivative of, or otherwise linked to, other securities, a description of the material attributes of the underlying securities will generally be necessary to meet the requirements of securities legislation that a long form prospectus contain full, true and plain disclosure of all material facts concerning the securities being distributed.

Restricted securities

4.7 Section 10.6 of Form 41-101F1 specifies additional disclosure for 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.

Credit supporter disclosure

4.8 A long form prospectus must include, under Item 33 of Form 41-101F1, 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. Disclosure about a credit supporter may be required even if the credit supporter has not provided full and unconditional credit support.

Exemptions for certain issues of guaranteed securities

4.9 Requiring disclosure about the issuer and any applicable credit supporters in a long form prospectus may result in unnecessary disclosure in some instances. Item 34 of Form 41-101F1 provides exemptions from the requirement to include both issuer and credit

supporter disclosure where such disclosure is not necessary to ensure that the long form prospectus includes full, true and plain disclosure of all material facts concerning the securities to be distributed.

These exemptions are based on the principle that, in these instances, investors will generally require issuer disclosure or credit supporter disclosure to make an informed investment decision. These exemptions 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.

Previously disclosed material forward-looking information

4.10 If an issuer, at the time it files a long form prospectus,

(a) has previously disclosed to the public material forward-looking information for a period that is not yet complete, and

(b) is aware of events and circumstances that are reasonably likely to cause actual results to differ materially from the material forward-looking information,

the issuer should discuss those events and circumstances, and the expected differences from the material forward-looking information, in the long form prospectus.

PART 5: Content of Long Form Prospectus (Financial Statements)

Exemptions from financial disclosure requirements

5.1 Request for exemptions from financial disclosure should be made in accordance with Part 19 of the Instrument, which requires the issuer to make submissions in writing along with the reasons for the request. Written submissions should be filed at the time the preliminary long form prospectus is filed, and include any proposed alternative disclosure. If the application involves a novel and substantive issue or raises a novel public policy concern, issuers should use the pre-filing procedures under NP 11-202. Issuers that are not filing their prospectuses under NP 11-202 should also follow the principles outlined and procedures set out in NP 11-202.

General financial statement requirements

5.2 If an issuer has filed annual or interim financial statements for periods that are more recent than those that the issuer must otherwise include in a long form prospectus before it files the prospectus, sections 32.6 and 35.8 of Form 41-101F1 require the issuer to include those financial statements in the long form prospectus. Issuers should update the disclosure in the prospectus accordingly in order to satisfy the requirement that the long form prospectus contain full, true and plain disclosure of all material facts relating to the securities being distributed. However, if historical financial information derived from

more recent annual or interim financial statements is released to the public by the issuer before the financial statements are filed, the prospectus should include the information included in the news release or public communication. There is no specific requirement in the Instrument to otherwise update the prospectus, or pro forma financial statements to reflect the more recent information.

We think the 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 statements for the purpose of avoiding their inclusion in a long form prospectus. Once the directors have approved an issuer's financial statements, the issuer should file them as soon as possible.

Interpretation of issuer – primary business

5.3(1) An issuer is required to provide historical financial statements under Item 32 of Form 41-101F1 for a business or related businesses that a reasonable investor would regard as the primary business of the issuer. Examples of when a reasonable investor would regard the primary business of the issuer to be the acquired business or related businesses are when the acquisition(s) was

(a) a reverse takeover,

(b) a qualifying transaction for a Capital Pool Company, or

(c) an acquisition that is a significant acquisition at over the 100% level under subsection 35.1(4) of Form 41-101F1.

The issuer should consider the facts of each situation to determine whether a reasonable investor would regard the primary business of the issuer to be the acquired business or related businesses.

(2) The periods for which the issuer must provide financial statements under Item 32 of Form 41-101F1 for an acquired business or businesses that are regarded as the primary business of the issuer should be determined in reference to sections 32.2 and 32.3 of Form 41-101F1, and with the same exceptions, where applicable, set out in paragraphs 32.4(a) through (e) of Form 41-101F1. For example, for an issuer that is a reporting issuer in at least one jurisdiction immediately before filing a long form prospectus, the reference to three years in subparagraph 32.2(6)(a) of Form 41-101F1 should be read as two years under paragraphs 32.4(a), (b), (d) and (e) of Form 41-101F1.

Interpretation of issuer – predecessor entity

5.4(1) An issuer is required to provide historical financial statements under Item 32 of the Form 41-101F1 for any predecessor entity. This includes financial statements of acquired businesses that are unrelated and not otherwise individually significant, but together form the basis of the business of the issuer. In these circumstances, the issuer should consider

including pro forma financial statements in the prospectus giving effect to the recently completed or proposed acquisition of a predecessor entity.

(2) If an issuer determines the financial statements of certain acquired businesses referred to in subsection (1) are not relevant, the issuer should utilize the pre-filing procedures in NP 11-202 to determine whether it would require an exemption from the requirement to include these financial statements.

Sufficiency of financial history included in a long form prospectus

5.5(1) Item 32 of Form 41-101F1 prescribes the issuer financial statements that must be included in a long form prospectus. We recognize that an issuer, at the time of filing a long form prospectus, may have been in existence for less than one year. We expect that in many situations the limited historical financial statement information that is available for such an issuer may be adequately supplemented by other relevant information disclosed in the long form prospectus. However, if the issuer cannot provide financial statements for a period of at least 12 months and the long form prospectus does not otherwise contain information concerning the business conducted or to be conducted by the issuer that is sufficient to enable an investor to make an informed investment decision, a securities regulatory authority or regulator may consider this a key factor when deciding whether it should refuse to issue a receipt for the long form prospectus.

(2) A reference to a prospectus includes a preliminary prospectus. Consequently, the time references in sections 32.2, 32.3, 35.5 and 35.6 of Form 41-101F1 should be considered as at the date of the preliminary long form prospectus and again at the date of the final long form prospectus for both the issuer and any business acquired or to be acquired. Depending on the period of time between the dates of the preliminary and final long form prospectuses, an issuer may have to include more recent financial statements.

Applications for exemption from requirement to include financial statements of the issuer

5.6(1) We believe investors should receive in a long form prospectus for an IPO no less than three years of audited historical financial statements and that relief from the financial statements requirements should be granted only in unusual circumstances and generally not related solely to the cost or the time involved in preparing and auditing the financial statements.

(2) In view of our reluctance to grant exemptions from the requirement to include audited historical financial statements, issuers seeking relief should consult with staff on a pre-filing basis.

(3) Considerations relevant to granting an exemption from the requirement to include financial statements, generally for the years immediately preceding the issuer's most recently completed financial year, may include the following:

The issuer's historical accounting records have been destroyed and cannot be reconstructed.

(a) In this case, as a condition of granting the exemption, the issuer may be requested by a securities regulatory authority or regulator to

(i) represent in writing to the securities regulatory authority or regulator, no later than the time the preliminary long form prospectus is filed, that the issuer made every reasonable effort to obtain copies of, or reconstruct, the historical accounting records necessary to prepare and audit the financial statements, but such efforts were unsuccessful, and

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

The issuer has emerged from bankruptcy and current management is denied access to the historical accounting records necessary to audit the financial statements.

(b) In this case, as a condition of granting the exemption, the issuer may be requested by a securities regulatory authority or regulator to

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

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

The issuer has undergone a fundamental change in the nature of its business or operations affecting a majority of its operations and all, or substantially all, of the executive officers and directors of the company have changed.

(c) The evolution of a business or progression along a development cycle will not be considered to be a fundamental change in an issuer's business or operations. Relief from the requirement to include financial statements of the issuer required by the Instrument for the year in which the change occurred, or for the most recently completed financial year if the change in operations occurred during the issuer's current financial year, generally will not be granted.

(4) If, in unusual circumstances, relief from Part 4 of the Instrument is granted, additional financial information will likely be requested to allow a reader to gain a similar understanding of the entity's financial position and prospects as one would gain from the information required in Part 4 of the Instrument.

Examples of acceptable additional information include audited interim financial statements, audited divisional statements of income or cash flows, financial statements accompanied by an auditor's report containing a reservation of opinion, or audited statements of net operating income.

Additional information

5.7 An issuer may find it necessary, in order to meet the requirement for full, true and plain disclosure contained in securities legislation, to include certain additional information in its long form prospectus, such as separate financial statements of a subsidiary of the issuer in a long form prospectus, even if the financial statements of the subsidiary are included in the consolidated financial statements of the issuer. For example, separate financial statements of a subsidiary may be necessary to help explain the risk profile and nature of the operations of the subsidiary.

Audit and review of financial statements included or incorporated by reference into a long form prospectus

5.8(1) Part 4 of the Instrument requires that all financial statements included in a long form prospectus be audited, except financial statements specifically exempted in the Instrument. This requirement extends to financial statements of subsidiaries and other entities even if the financial statements are not required to be included in the long form prospectus but have been included at the discretion of the issuer.

(2) NI 52-107 requires that financial statements, other than acquisition statements, that are required to be audited by securities legislation, such as this Instrument, be accompanied by an auditor's report that does not contain a reservation if they were audited in accordance with Canadian GAAS, or contain an unqualified opinion if they were audited in accordance with U.S. GAAS. This requirement applies to all financial statements included in the long form prospectus under Item 32 of Form 41-101F1, including financial statements from entities acquired or to be acquired that are the primary business or the predecessor of the issuer. For greater clarity, subsection 6.2(6) of NI 52-107 only applies to financial statements included in the long form prospectus pursuant to Item 35 of Form 41-101F1. Relief may be granted to non-reporting issuers in appropriate circumstances to permit the auditor's report on financial statements to contain a reservation relating to opening inventory if there is a subsequent audited period of at least six months on which the auditor's report contains no reservation and the business is not seasonal. Issuers requesting this relief should be aware that NI 51-102 requires an issuer's comparative financial statements be accompanied by an unqualified auditors' report.

Financial statement disclosure for significant acquisitions

Applicable principles in NI 51-102

5.9(1) Generally, it is intended that the disclosure requirements set out in Item 35 of Form 41-101F1 for significant acquisitions follow the requirements in Part 8 of NI 51-102. The guidance in Part 8 of the companion policy to NI 51-102 ("51-102CP") apply to any disclosure of a significant business acquisition in a long form prospectus required by Item 35 of Form 41-101F1, except

(a) any headings in Part 8 of 51-102CP should be disregarded,

(b) subsections 8.1(1), 8.1(5), 8.7(8), and 8.10(2) of 51-102CP do not apply,

(c) other than in subsections 8.3(4) and 8.7(7) of 51-102CP, any references to a "reporting issuer" should be read as an "issuer",

(d) any references to the "Instrument" should be read as "NI 51-102",

(e) any references to a provision in NI 51-102 in 51-102CP should be read to include the following "as it applies to a long form prospectus pursuant to Item 35 of Form 41-101F1",

(f) any references to "business acquisition report" should be read as "long form prospectus",

(g) in subsection 8.1(2) of 51-102CP, the term "file a copy of the documents as its business acquisition report" should be read as "include that disclosure in its long form prospectus in lieu of the significant acquisition disclosure required under Item 35 of Form 41-101F1",

(h) in subsection 8.2(1) of 51-102CP,

(i) the term "The test" should be read as "For any completed acquisition, the test",

(ii) the sentence "For any proposed acquisition of a business or related businesses by an issuer that has progressed to a state where a reasonable person would believe that the likelihood of the issuer completing the acquisition is high, the test must be applied using the financial statements included in the long form prospectus." should be added after "the business.", and

(iii) the term "business acquisition or report will be required to be filed" should be read as "disclosure regarding the significant acquisition is required to be included in the issuer's long form prospectus",

(i) in subsection 8.3(1) of 51-102CP, the term "filing a business acquisition report" should be read as "the financial statements used for the optional tests",

(j) in section 8.5, and subsection 8.7(4), of 51-102CP, the term "filed" wherever it occurs, should be read as "included in the long form prospectus",

(k) in subsection 8.7(1) of 51-102CP, the term "as already filed" should be read as "included in the long form prospectus",

(l) in subsection 8.7(2) of 51-102CP, the term "filed under the Instrument" should be read as "included in the long form prospectus",

(m) in subsection 8.7(4) of 51-102CP, the term "presented" should be read as "for which financial statements are included in the prospectus",

(n) in subsection 8.7(6) of 51-102CP, the term "for which financial statements are included in the long form prospectus" should be added after "financial year",

(o) in paragraph 8.8(a) of 51-102CP, the term "prior to the deadline for filing the business acquisition report" should be read as "using the pre-filing procedures referred to in section 5.1 of this Policy",

(p) in subsection 8.9(1) of 51-102CP, the term "before the filing deadline for the business acquisition report and before the closing date of the transaction, if applicable. Reporting issuers are reminded that many securities regulatory authorities and regulators do not have the power to grant retroactive relief" should be read as "using the pre-filing procedures referred to in section 5.1 of this Policy", and

(q) in subparagraphs 8.9(4)(a)(i) and 8.9(4)(b)(i) of 51-102CP, the term "no later than the time the business acquisition report is required to be filed" wherever it occurs should be read as "using the pre-filing procedures referred to in section 5.1 of this Policy".

(r) in subparagraph 8.10(1) of 51-102CP, the term "but must be reviewed" should be added after "may be unaudited".

Completed significant acquisitions and the obligation to provide business acquisition report level disclosure for a non-reporting issuer

(2) For an issuer that is not a reporting issuer in any jurisdiction immediately before filing the long form prospectus (a "non-reporting issuer"), the long form prospectus disclosure requirements for a significant acquisition are generally intended to mirror those for reporting issuers subject to Part 8 of NI 51-102. To determine whether an acquisition is significant, non-reporting issuers would first look to the guidance under section 8.3 of NI

51-102. The initial test for significance would be calculated based on the financial statements of the issuer and acquired business or related businesses for the most recently completed financial year of each that ended before the date of acquisition.

To recognize the possible growth of a non-reporting issuer between the date of its most recently completed year end and the date of the acquisition and the corresponding potential decline in significance of the acquisition to the issuer, issuers should refer to the guidance in paragraph 35.1(4)(b) of Form 41-101F1 to perform the optional test. The applicable time period for this optional test for the issuer is the most recently completed interim period or financial year for which financial statements of the issuer are included in the prospectus and for the acquired business or related businesses is the most recently completed interim period or financial year ended before the date of the long form prospectus

The significance thresholds for IPO venture issuers are identical to the significance thresholds for venture issuers.

The timing of the disclosure requirements set out in subsection 35.3(1) of Form 41-101F1 are based on the principles under section 8.2 of NI 51-102. For reporting issuers, subsection 8.2(2) of NI 51-102 sets out the timing of disclosures for significant acquisitions where the acquisition occurs within 45 days after the year end of the acquired business. However, for IPO venture issuers, paragraph 35.3(1)(d) imposes a disclosure requirement for all significant acquisitions completed more than 90 days before the date of the long form prospectus, where the acquisition occurs within 45 days after the year end of the acquired business. This differs from the business acquisition report filing deadline for venture issuers under paragraph 8.2(2)(b) of NI 51-102 where the business acquisition report deadline for any significant acquisition where the acquisition occurs within 45 days after the year end of the acquired business is within 120 days after the date of the acquisition.

Probable acquisitions

(3) Our interpretation of the phrase "where a reasonable person would believe that the likelihood of the acquisition being completed is high" is consistent with the concept of a likely contingency in CICA Handbook section 3290 "Contingencies". 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;

(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.

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. Reporting 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.

Satisfactory alternative financial statements or other information

(4) Issuers must satisfy the disclosure requirements in section 35.5 or section 35.6 of Form 41-101F1 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 35.5(3) or subsection 35.6(3) of Form 41-101F1 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 long form prospectus or an interim period ended within 60 days before the date of the long form 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 long form prospectus; or

(b) an interim period ended within 60 days before the date of the long 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 long form prospectus, audited for the most recently completed financial period in accordance with section 4.2 of the Instrument, and reviewed for the comparative period in accordance with section 4.3 of the Instrument;

(d) comparative interim financial statements or other information for the acquisition or probable acquisition for any interim period ended subsequent to the latest annual financial statements included in the long form prospectus and more than 60 days before the date of the long 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 the Instrument; 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, we ask that this be highlighted in the cover letter to the long form 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, the issuer should use the pre-filing procedures in NP 11-202.

Acquired business has recently completed an acquisition

(5) 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 long form prospectus disclosure about the indirect acquisition, including historical financial statements, is necessary to satisfy the requirement that the long form 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 section 35.1(4) of Form 41-101F1 when the issuer applies each of those tests to its proportionate interest in the indirect acquisition of the business;

- 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.

Financial statements or other information

(6) Paragraphs 35.5(2)(b) and 35.6(2)(b) discuss financial statements or other information for the acquired 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.

Pro forma financial statements for acquisitions of a predecessor entity, a business or businesses acquired by the issuer, or other entity

5.10 The financial statements for acquisitions of a predecessor entity, a business or businesses acquired by the issuer, or other entity must be filed under Item 32 of Form 41-101F1, if the entities or businesses satisfy the conditions of paragraph 32.1(a), (b), or (c) of Form 41-101F1. Despite this requirement, acquisitions of a predecessor entity, a business or businesses acquired by the issuer, or other entity may also be subject to the requirements in Item 35 of Form 41-101F1. For example, the long form prospectus should include pro forma financial statements and a description of the entities or businesses.

PART 6: Advertising or Marketing Activities in Connection with Prospectus Offerings

Scope

6.1(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 market participants who engage in advertising or marketing activities must also consider the impact of the registration requirement in each jurisdiction where such advertising or marketing activities are undertaken. Unless an exemption to the registration requirement is available, such activities may be made only by a person or company who is registered in the appropriate category having regard to the securities that are the subject of the advertising or marketing activities.

(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.

The prospectus requirement

6.2(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.

Definition of "trade"

(4) 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.

Definition of distribution

(6) 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.

Prospectus exemptions

(8) 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.

(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.

Advertising or marketing activities

6.3(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.

Pre-marketing and solicitation of expressions of interest in the context of a bought deal

6.4(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 exception to the prospectus requirement has been provided in Part 7 of NI 44-101. The exception 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 an enforceable agreement between the issuer and an underwriter or underwriters who have agreed to purchase the securities and the issuance and filing of a press release announcing the agreement, must be satisfied prior to any solicitation of expressions of interest.

(4) 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.

(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 press release that announces the entering into of an enforceable agreement in respect of a bought deal 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 Dealers Association has adopted IDA by-law 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, or a combination.

Advertising or marketing activities during the waiting period

6.5(1) Securities legislation provides an exception 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 notices, circulars, advertisements, letters or other communications that

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

provided that any such notice, circular, advertisement, letter or other communication states the name and address of a person or company from whom a preliminary prospectus may be obtained,

(b) distribute the preliminary prospectus, and

(c) 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 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, 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.

Green sheets

6.6(1) Some dealers prepare summaries of the principal terms of an offering, sometimes referred to as green sheets. Typically green sheets include information beyond the limited information for which an exemption to the prospectus requirement is available during the waiting period. If so, we would consider the distribution of a green sheet to a potential investor to contravene the prospectus requirement.

(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.

(3) We may request copies of green sheets and other advertising or marketing materials 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.

Advertising or marketing activities following the issuance of a receipt for a final prospectus

6.7 Advertising or marketing activities that are not prohibited by the prospectus requirement during the waiting period may also be undertaken on the same basis after a receipt has been issued for the final prospectus relating to the distribution. In addition, the prospectus and any document filed with or referred to in the prospectus may be distributed.

Sanctions and enforcement

6.8 Any contravention of the prospectus requirement through the 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.

Media reports and coverage

6.9(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.

Disclosure practices

6.10 At a minimum, participants in all prospectus distributions should consider the following practices to avoid contravening securities legislation:

- Directors or officers of an issuer should not give interviews to the media immediately prior to or during the waiting period. Directors and officers should normally limit themselves to responding to unsolicited inquiries of a factual nature made by shareholders, securities analysts, financial analysts, the media and others who have a legitimate interest in such information.

- No director or officer of an issuer should make any statement during the period of distribution of securities (which includes the period from the commencement of the distribution as described in subsection 6.4(4) until the closing of the distribution) which constitutes a forecast, projection or prediction with respect to future financial performance, unless that statement relates to and is consistent with a forecast contained in the prospectus.

- Underwriters and legal counsel have the responsibility of ensuring that the issuer and all directors and officers of the issuer who may come in contact with the media are fully aware of the restrictions applicable during the period of distribution of securities. It is not sufficient to make those restrictions known only to the officers comprising the working group.

- Issuers, dealers and other market participants should develop, implement, maintain and enforce procedures to ensure that advertising or marketing activities that are contrary to securities legislation are not undertaken whether intentionally or through inadvertence.

Misleading or untrue statements

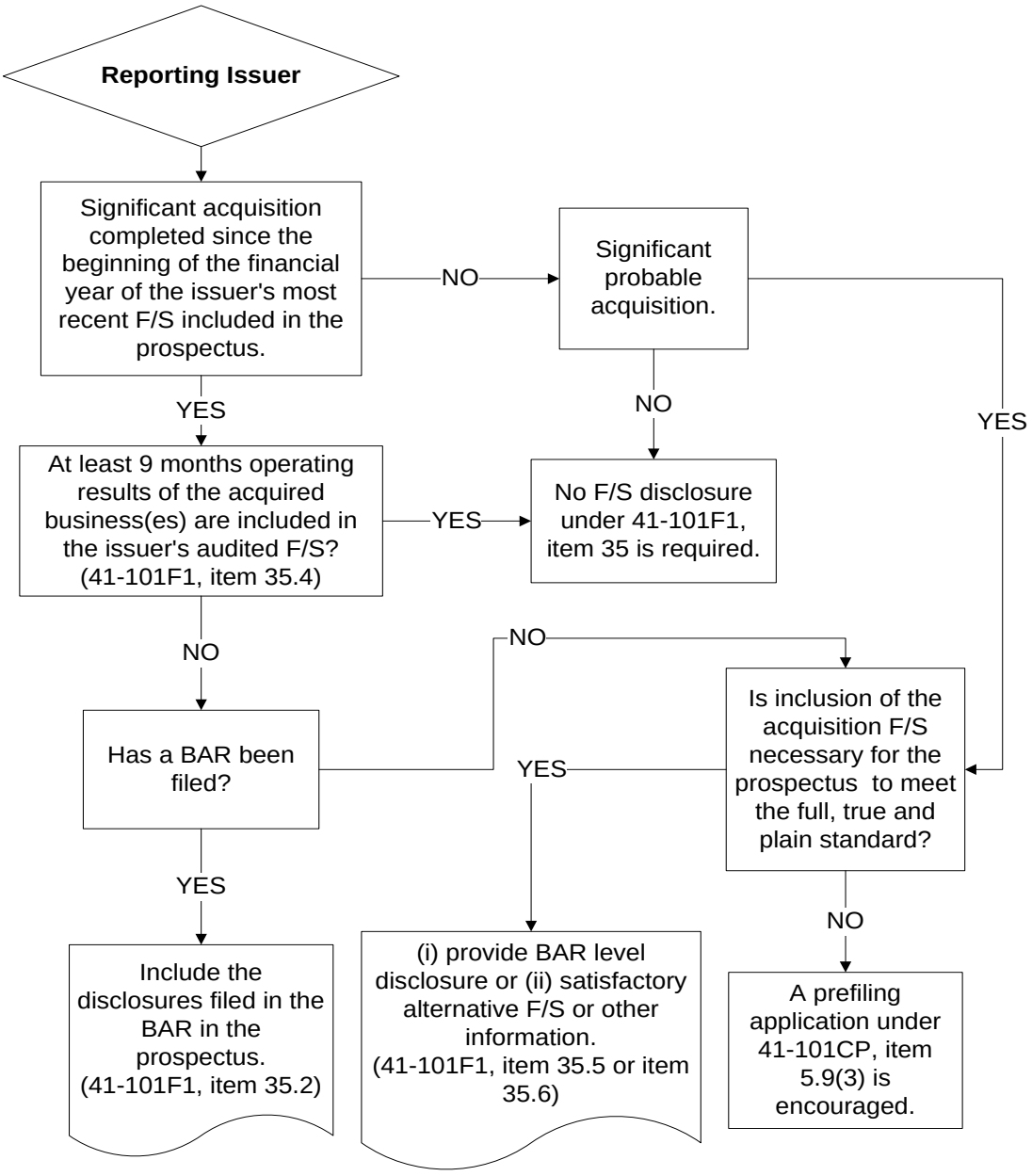
6.11 In addition to the prohibitions on advertising or marketing activities that result from the prospectus requirement, securities legislation in certain jurisdictions prohibits any person or company from making any misleading or untrue statements that would reasonably be expected to have a significant 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.

Appendix A

Financial Statement Disclosure Requirements for Significant Acquisitions

Chart 1 – Reporting Issuer

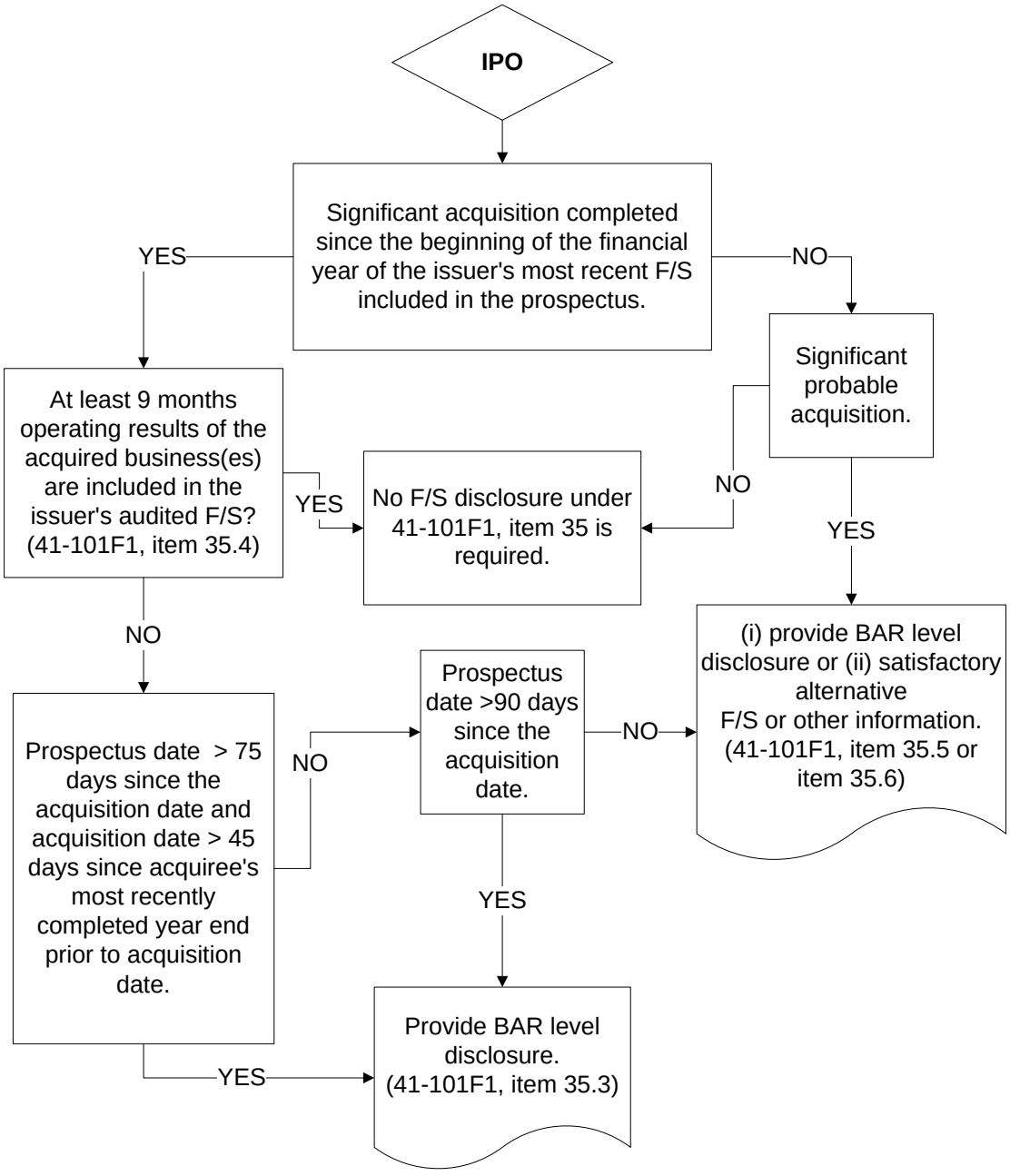
Financial Statement Disclosure Requirements for Significant Acquisitions.



Note: These decision charts provide general guidance and should be read in conjunction with Form 41-101F1.

Chart 2 – Non-Reporting Issuer

Financial Statement Disclosure Requirements for Significant Acquisitions.



Note: These decision charts provide general guidance and should be read in conjunction with Form 41-101F1.

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