

CSA Notice and Request for Comment
Proposed Amendments to
National Instrument 45-106 *Prospectus and Registration Exemptions*,
National Instrument 41-101 *General Prospectus Requirements*,
National Instrument 44-101 *Short Form Prospectus Distributions*,
and National Instrument 45-102 *Resale Restrictions* and Proposed
Repeal of National Instrument 45-101 *Rights Offerings*

November 27, 2014

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a 90-day comment period

- proposed amendments to:
 - National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**),
 - National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**),
 - National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**),
 - National Instrument 45-102 *Resale Restrictions* (**NI 45-102**), and
- the proposed repeal of National Instrument 45-101 *Rights Offerings* (**NI 45-101**) (collectively, the Proposed Amendments).

We are also publishing for comment proposed changes to:

- Companion Policy 45-106CP to NI 45-106 (**45-106CP**), and
- Companion Policy 41-101CP to NI 41-101 (**41-101CP**).

If adopted, the Proposed Amendments would create a streamlined prospectus exemption for rights offerings conducted by reporting issuers other than investment funds that are subject to National Instrument 81-102 *Investment Funds* (NI 81-102). The Proposed Amendments would also update or revise some of the requirements for rights offerings by way of prospectus and repeal the prospectus exemption for rights offerings by non-reporting issuers.

The text of the Proposed Amendments is contained in Annex A of this notice and is also available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca

nssc.novascotia.ca
www.osc.gov.on.ca
www.msc.gov.mb.ca

Substance and Purpose

Rights offerings can be one of the fairer ways for issuers to raise capital as they provide security holders with an opportunity to protect themselves from dilution. However, the CSA recognizes that reporting issuers very seldom use prospectus-exempt rights offerings because of the associated time and cost.

The Proposed Amendments are designed to make prospectus-exempt rights offerings more attractive to reporting issuers by creating a streamlined prospectus exemption (the **Proposed Exemption**). The Proposed Exemption updates requirements and removes the current regulatory review process prior to use of the rights offering circular. We have also proposed increased investor protection through the addition of civil liability for secondary market disclosure and the introduction of a user-friendly form of rights offering circular.

The Proposed Amendments would also update or revise some of the requirements for rights offerings by way of prospectus and repeal both NI 45-101 and the prospectus exemption in NI 45-106 for rights offerings by non-reporting issuers.

Background

Currently, an issuer wanting to conduct a prospectus-exempt rights offering in Canada would use the prospectus exemption in section 2.1 of NI 45-106 (the **Current Exemption**). Some of the key conditions of the Current Exemption are

- the offering must comply with the requirements of NI 45-101;
- the securities regulatory authority must not object to the offering - this results in a review of the rights offering circular by CSA staff;
- reporting issuers are restricted from issuing more than 25% of their securities under the exemption in any 12 month period.

Very few reporting issuers use the Current Exemption. During the past year, CSA staff conducted research, collected data and held informal consultations with market participants to identify issues and to consider changes to the Current Exemption that would facilitate prospectus-exempt rights offerings.

Through this work, the CSA found that the overall time period to conduct a prospectus-exempt rights offering, including the CSA review period, was much longer than the time period when using other prospectus exemptions. Specifically, CSA staff looked at 93 rights offerings by reporting issuers over the last seven years and found that the average length of time to complete an offering was 85 days and the average length of time between filing of the draft circular and notice of acceptance by the regulator was 40 days. CSA staff heard that the length of time to complete an offering results in lack of certainty of financing and increased costs.

Market participants also reported that the dilution limit was too low and greatly restricts the ability of issuers with small market capitalization to raise sufficient funds to make a rights offering worthwhile.

Summary of the Proposed Amendments

1. Proposed new exemption for reporting issuers

Availability

The Proposed Exemption would only be available for reporting issuers, other than investment funds that are subject to NI 81-102. Pursuant to section 9.1.1 of NI 81-102, which was effective September 22, 2014, investment funds that are subject to that Instrument are restricted from issuing warrants or rights.

Notice

We propose a new form of notice that issuers will have to file and send to security holders before using the Proposed Exemption (**Proposed Form 45-106F14** or the **Notice**). Proposed Form 45-106F14 will require basic disclosure about the offering. It will also inform security holders how to access the rights offering circular electronically. We anticipate that a Notice prepared in Form 45-106F14 will only be one to two pages long. We do not anticipate that the requirement to send the Notice will be burdensome as issuers would already have to send rights offering certificates.

Circular

Issuers will have to prepare and file a new form of rights offering circular (**Proposed Form 45-106F15** or the **Circular**). Issuers will not have to send the Circular to security holders. We propose to require that all disclosure under Proposed Form 45-106F15 be in a question and answer format. This format is intended to be easier for issuers to prepare and more straightforward for investors to understand. The disclosure required by Proposed Form 45-106F15 focuses on information about the rights offering, the use of funds available and the financial condition of the issuer. We do not propose to require information about the business in the Circular. Most investors that exercise rights will already be existing security holders familiar with the issuer's continuous disclosure or will otherwise be able to access it on SEDAR.

The issuer must also certify that the Circular contains no misrepresentations.

Review

Under the Current Exemption, an issuer cannot use a circular until CSA staff have issued a notice of acceptance. Under the Proposed Exemption, CSA staff will not review the Notice or Circular prior to use. However, for a period of two years from the adoption of the Proposed Exemption, CSA staff in certain jurisdictions intend to conduct reviews of Circulars (in most cases, on a post-distribution basis) to understand how issuers are using the Proposed Exemption and to ensure that issuers are complying with the conditions of the Proposed Exemption.

CSA staff also conduct continuous disclosure reviews of issuers on an ongoing basis. As noted in CSA Staff Notice 51-312 (Revised) *Harmonized Continuous Disclosure Review Program*, staff use various tools to target those issuers that are most likely to have deficiencies in their

disclosure.

Dilution limit

The Proposed Exemption will not be available where there would be an increase of more than 100% in the number of outstanding securities of the class to be issued upon exercise of rights, assuming the exercise of all rights issued under the Proposed Exemption by the issuer during the preceding 12 months. This provision represents a substantial increase from the 25% dilution limit under the Current Exemption and applies to all reporting issuers. If a reporting issuer wanted to conduct a rights offering where there would be greater dilution, it could still do so by using a prospectus.

Timing

Under the Proposed Exemption, issuers will be required to file and send the Notice prior to commencement of the exercise period and to file the Circular concurrently with the Notice.

We propose that the exercise period be a minimum of 21 days and a maximum of 90 days. These time periods are substantially consistent with the Current Exemption.

Offer to all security holders

One of the conditions of the Proposed Exemption is that the issuer must make the basic subscription privilege available on a *pro rata* basis to each security holder of the class of securities to be distributed on exercise of the rights. This requirement means that an issuer using the Proposed Exemption must offer the rights to all security holders of that class in the local jurisdiction, even if there is only a small number of security holders in that jurisdiction.

This is distinct from the Current Exemption where there is no clear requirement to offer rights to all security holders. We do not anticipate that this requirement will add time to the offering as there will no longer be a review by CSA staff in each jurisdiction prior to the offering.

Pricing

For reporting issuers that are listed on a marketplace, we propose that the subscription price for a security issuable on exercise of a right must be lower than the market price at the time of filing the Notice. The main purpose of a rights offering is to allow all security holders to participate on a *pro rata* basis. Requiring a discount from market price will allow more retail security holders to participate.

For reporting issuers that are not listed on a marketplace, we propose that the subscription price for a security issuable on exercise of a right must be lower than fair value at the time of filing the Notice. This provision would not apply if insiders of the issuer are restricted from increasing their proportionate interest in the offering through the offering or through a stand-by commitment. This exception recognizes that it may be difficult or expensive for an unlisted issuer to provide evidence of fair value.

In both situations, should the market price or fair value fall below the subscription price at any time following the filing of the Notice, insiders will still be able to participate in the offering.

Stand-by commitments

We propose to permit stand-by commitments subject to certain requirements, such as the issuer must confirm and disclose that the stand-by guarantor has the financial ability to carry through on the stand-by commitment.

Closing news release

A condition of the Proposed Exemption is that the issuer must file a closing news release. The closing news release must contain prescribed information about the rights offering, such as the aggregate gross proceeds and amounts of securities distributed under each of the basic subscription privilege, the additional subscription privilege and the stand-by commitment.

Resale restrictions

The Proposed Exemption would be subject to a seasoning period on resale meaning that, in most situations, there would be no hold period. These are the same resale restrictions that apply to securities issued under the Current Exemption.

Statutory liability

We propose that the statutory civil liability for secondary market disclosure provisions would apply to the acquisition of securities in a rights offering. To effect this change, the Proposed Exemption must be prescribed in each jurisdiction's local securities legislation as subject to the secondary market civil liability provisions. This also means prescribing, for those purposes, the exemption in section 2.42 of NI 45-106, if the original securities were issued under the Proposed Exemption. This proposal is intended to ensure that investors relying on a Circular have rights of action in respect of a misrepresentation in an issuer's continuous disclosure, including the Circular.

We are proposing statutory secondary market civil liability as it attaches to misrepresentations in an issuer's continuous disclosure record document. While contractual liability offers a direct remedy for an individual security holder, it may not be available in all circumstances and for all continuous disclosure. Additionally, there is a potential risk that an issuer would not provide the contractual rights to security holders, or that the contractual rights are not consistent from issuer to issuer and from offering to offering.

Technical disclosure

Under paragraph 4.2(1)(e) of National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, with certain exceptions, a reporting issuer must file a technical report if a rights offering circular filed by the issuer contains scientific or technical information that relates to a mineral project on a property material to the issuer. This requirement would still apply to Circulars filed under the Proposed Exemption. However, Proposed Form 45-106F15 contains no required technical or business disclosure. As a result, we do not anticipate that an issuer will trigger the technical report requirement unless it chooses to include technical disclosure in its Circular.

2. Proposed repeal of the prospectus exemption for rights offerings by non-reporting issuers

We propose to repeal the Current Exemption. This would mean there would no longer be a prospectus exemption for rights offerings by non-reporting issuers. The Current Exemption provides for limited disclosure of the issuer and its business in the rights offering circular and existing security holders do not have access to continuous disclosure about the issuer. As a result, we are concerned that there is insufficient disclosure for an investor to make an informed investment decision and to justify a prospectus exemption. We expect this will not have a significant impact as there is very little use of the Current Exemption by non-reporting issuers.

We also propose to repeal NI 45-101 and withdraw Companion Policy 45-101CP to NI 45-101.

3. Proposed amendments for rights offerings conducted by way of prospectus

We propose to move all of the requirements related to rights offerings distributed by way of prospectus to NI 41-101 and all applicable guidance to 41-101CP. As NI 41-101 is the primary instrument for prospectus requirements, it is more logical for requirements that apply to rights offerings distributed by way of prospectus to reside in that instrument.

The only proposed substantive change for rights offerings distributed by way of prospectus is the proposed pricing requirements which will be the same as under the Proposed Exemption. The reason for the change in pricing requirements is discussed above.

4. Proposed exemption for securities distributed as part of a stand-by commitment

In proposed section 2.1.2 of NI 45-106, we introduce a prospectus exemption for securities issued to a stand-by guarantor as part of a distribution under the Proposed Exemption (the **Stand-by Exemption**). Currently, there is no specific exemption for the distribution of securities under a stand-by commitment if the stand-by guarantor is not a current security holder. If the stand-by guarantor is a security holder as at the date of the Notice (other than a registered dealer), the issuer would be able to distribute securities to them under the Proposed Exemption with only a seasoning period on resale. We believe that a restricted period on resale is not appropriate where a stand-by guarantor is already a security holder of the issuer. A restricted period on resale could potentially place the stand-by guarantor at a disadvantage compared to other security holders who may take up the entire additional subscription privilege without any resale restrictions.

Under the Stand-by Exemption, the stand-by guarantor would have to acquire the securities as principal. Securities issued under the Stand-by Exemption would be subject to a restricted period on resale. We believe a restricted period on resale is appropriate as allowing a stand-by guarantor that is not a security holder of the issuer or is a registered dealer to receive free trading securities could result in the stand-by guarantor distributing a block of shares into the market, without liability for the issuer's disclosure (as in the case under a prospectus, where an underwriter and a promoter accept liability for the issuer's disclosure and each sign a certificate).

We are considering whether securities issued to a stand-by guarantor who *is* a current security

holder should also be subject to a restricted period on resale. If we were to impose a restricted period on resale, the stand-by guarantor could still acquire free-trading securities under the basic subscription privilege. The four-month hold would only apply to securities issued to the stand-by guarantor as part of the stand-by commitment. A four-month hold period might be appropriate because the existing security holder would already have free trading securities of the issuer and would receive a benefit by being able to potentially invest more at a lower price than the stand-by guarantor would otherwise be able to invest under other prospectus exemptions. In addition, we note that the stand-by guarantor is usually a strategic investor for whom a hold period should not be an impediment.

5. Proposed exemption for issuers with a minimal connection to Canada

In proposed section 2.1.3 of NI 45-106, we propose a prospectus exemption for issuers with minimal connection to Canada (the **Minimal Connection Exemption**). The prospectus requirement would not apply to rights offerings in specified situations where the number of securities and beneficial holders in Canada, and in the local jurisdiction, is minimal. The issuer must provide a notice to the regulator and send to security holders in Canada all of the materials sent to other security holders. The Minimal Connection Exemption is substantially the same as the current exemption in section 10.1 of NI 45-101.

Anticipated Costs and Benefits of the Proposed Amendments

Reporting issuers

We anticipate that the Proposed Exemption will benefit reporting issuers by reducing the time and associated costs of conducting a rights offering. Removing regulatory review of the Circular will significantly reduce the amount of time to conduct the offering. Reducing the time period may also increase the certainty of financing. The *pro rata* requirement and increased dilution limit provide issuers with a more equitable means of raising sufficient funds.

Issuers will incur some upfront administrative costs to comply with the new disclosure requirements, especially for the Proposed Form 45-106F15. However, we do not anticipate these costs will outweigh the benefits mentioned above and expect issuers will be more likely to choose rights offerings as a means of financing than previously.

Existing security holders

We anticipate that the use of rights offerings will benefit existing security holders to the extent that they will have an opportunity to retain their *pro rata* holdings of an issuer. However, this benefit must be contrasted against the monetary outlay in additional proceeds necessary to maintain their holdings regardless of the outcome of their investment.

Removal of the regulatory review may deprive existing security holders of the protections associated with such a review before the offering. We believe the reduced investor protection afforded by a review to be the main cost to existing security holders. However, we believe the addition of civil liability for secondary market disclosure and the enhanced disclosure required

by Proposed Form 45-106F15 will mitigate these concerns. Proposed Form 45-106F15 requires disclosure in the Circular to be in a user-friendly, question and answer format that we anticipate will better inform investors about the offering and the associated risk.

In addition, for a period of two years from the adoption of the Proposed Exemption, CSA staff in certain jurisdictions intend to conduct post-distribution reviews of Circulars to understand how issuers are using the Proposed Exemption and to ensure that issuers are complying with the conditions of the Proposed Exemption. CSA staff also conduct continuous disclosure reviews of issuers on an ongoing basis. Staff use various tools to target those issuers that are most likely to have deficiencies in their disclosure.

Local Matters

Annex B to this notice is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Annex B to this notice outlines the proposed amendments to local securities legislation. Each jurisdiction that is proposing local amendments will publish an Annex B outlining the proposed local amendments for that jurisdiction.

Request for Comments

We welcome your comments on the Proposed Amendments, and the proposed changes to the related companion policies. In addition to any general comments you may have, we also invite comments on the following specific questions:

Questions relating to the Proposed Exemption

1. We propose that the exercise period for a rights offering under the Proposed Exemption must be a minimum of 21 days and a maximum of 90 days. These time periods are substantially consistent with those under the Current Exemption. Some market participants have told us that an exercise period of 21 days is too long. Others thought a longer exercise period is beneficial. Reasons cited for a longer exercise period are that at least 21 days may be necessary to reach beneficial security holders and foreign security holders and that institutional investors often need a longer period to receive approvals.
 - (a) Do you agree that the exercise period should be a minimum of 21 days and a maximum of 90 days?
 - (b) If not, what are the most appropriate minimum and maximum exercise periods? Why?
2. We propose that the Notice must be filed and sent before the exercise period begins and that the Circular must be filed concurrently with the Notice. Do you foresee any

challenges with this timing requirement?

3. Some market participants have suggested we consider requiring the issuer to only file and not send the Notice and the Circular. While we do not think that the issuer should have to send the Circular itself, it is our view that the issuer should send the Notice to ensure that each security holder is aware of the offering. We also understand that the issuer would have to send rights certificates to security holders in any event.

- (a) Do you foresee any challenges with requiring the issuer to send a paper copy of the Notice?

- (b) Do you foresee any challenges with the Circular only being available electronically?

4. The required disclosure in the proposed Circular focuses on information about the offering, the use of funds available and the financial condition of the issuer. We do not propose to require information about the business in the Circular.

- (a) Have we included the right information for issuers to address in their disclosure?

- (b) Is there any other information that would be important to investors making an investment decision in the rights offering?

5. Under the Proposed Exemption, we would require the issuer to include certain information in their closing news release including the amount of securities distributed under each of the basic subscription privilege and the additional subscription privilege to insiders as a group and to all other persons as a group. Other required disclosure includes the aggregate gross proceeds of the distribution, the amount of securities distributed under any stand-by commitment, the amount of securities issued and outstanding as at the closing date and the amount of any fee or commission paid in connection with the distribution. This information will give investors a more complete understanding of who acquired securities under the rights offering.

Do you think that this disclosure will be unduly burdensome? If so, what disclosure would be more appropriate?

6. The Current Exemption permits the trading of rights and we propose to allow for the trading of rights under the Proposed Exemption. We have received mixed feedback from market participants on the costs and benefits of allowing rights to trade freely.

On the one hand, the trading of rights adds complexity to a rights offering and could potentially add a few days to the timeline for an average rights offering. The trading of rights also allows the issuance of free-trading securities to new investors. On the other hand, the trading of rights may benefit issuers as it often puts the rights into the hands of holders who are more likely to exercise the rights. It allows for monetization, which means that security holders who are unable to exercise rights could receive compensation for the rights. It also benefits foreign security holders as the issuer's transfer agent will

typically attempt to sell the rights of ineligible security holders on the market.

(a) Should we continue to allow rights to be traded? If so, why?

(b) What are the benefits of not allowing rights to be traded?

(c) Should issuers have the option of not listing rights for trading?

7. When we looked at historic use of rights offerings by reporting issuers, we found that the time between the filing of the draft circular and the notice of acceptance was quite lengthy (an average of 40 days). As a result, we considered options to reduce the review period. One of the options was to conduct a more focused initial review in three days rather than 10 days prior to the regulators' acceptance of the offering. The review would focus on sufficiency of proceeds, stand-by commitments, use of proceeds, insiders, and other issues that raise significant investor protection or public interest concerns. We decided not to proceed with this option but instead to remove regulatory review prior to use. This is similar to other prospectus exemptions and it would significantly improve issuers' time to market. Certain jurisdictions are also proposing reviewing rights offerings on a post-distribution basis for a period of two years to assess the use of and compliance with the Proposed Exemption.

(a) Do you agree with our proposal to remove pre-offering review?

(b) Do the benefits of providing issuers with faster access to capital outweigh the costs of eliminating our review?

(c) Post-distribution review would focus on sufficiency of proceeds, stand-by commitments, use of proceeds, insiders and other issues that raise significant investor protection concerns. Are there other areas that we should focus on?

8. Currently, an investor in a rights offering has no statutory recourse if there is a misrepresentation in an issuer's rights offering circular or continuous disclosure record. We propose that civil liability for secondary market disclosure provisions would apply to the acquisition of securities in a rights offering under the Proposed Exemption.

(a) Is this the appropriate standard of liability to protect investors given that there will be no review by CSA staff of an issuer's rights offering circular?

(b) Would requiring a contractual right of action for a misrepresentation in the circular be preferable? If so, what impact would this standard of liability have on the length and complexity of an issuer's offering circular, given that in order for the contractual liability to cover additional continuous disclosure record documents, the issuer may have to incorporate by reference those documents into the issuer's circular.

9. Given the potential size of rights offerings, there may be circumstances where it is desirable to mitigate the effect of the offering on control of an issuer. In this regard, CSA

staff question whether security holders would benefit from separating the timing of the basic subscription and additional subscription privilege such that an issuer would announce the results of the basic subscription before commencing the additional subscription privilege period. An issuer's announcement of the results of the basic subscription may help security holders make more informed decisions about their participation under the additional subscription privilege.

- (a) Would security holders benefit from knowing the results of the basic subscription before making an investment decision through the additional subscription privilege?
- (b) Would security holders make a different investment decision through the additional subscription if the results of the basic subscription were announced? If so,
 - Should the additional subscription privilege be inside or outside of 21 days?
 - Should the split timing for basic subscriptions and additional subscriptions always be required or only required in circumstances where there may be an impact on control?
- (c) What are the costs and benefits of having a two-tranche system for security holders?

Questions relating to the repeal of the Current Exemption for use by non-reporting issuers

10. We propose repealing the Current Exemption for use by non-reporting issuers. There is very little use of the Current Exemption by non-reporting issuers. We also have concerns that existing security holders of non-reporting issuers do not have access to continuous disclosure about the issuer and the rights offering circular contains very limited disclosure about the issuer and its business. Accordingly, there may not be sufficient disclosure upon which an investor can make an informed investment decision.

- (a) If we repeal the rights offering prospectus exemption for non-reporting issuers,
 - Would this create an obstacle to capital formation for non-reporting issuers?
 - Do you foresee any other problems?
 - Would repealing the Current Exemption cause problems for foreign issuers that do not meet the Minimal Connection Exemption? If so, should we consider changes to the Minimal Connection Exemption? Please explain what changes would be appropriate and the basis for those changes.
- (b) Do you think we should consider changes to the Current Exemption instead of repealing it? If so, what changes should we consider?
 - If you think we should change the disclosure requirements, please explain what disclosure would be more appropriate.

- Should non-reporting issuers be required to provide audited financial statements to their security holders with the rights offering circular if they use the exemption?
- (c) If the Current Exemption is repealed, non-reporting issuers could continue to offer securities to existing security holders under other prospectus exemptions such as the offering memorandum exemption, the accredited investor exemption, and the family, friends and business associates exemption. Are there other circumstances in which non-reporting issuers need to rely on the Current Exemption? If so, please describe.

Questions relating to the Stand-by Exemption

11. We propose that the securities distributed under the Stand-by Exemption to a stand-by guarantor who is not a current security holder or who is a registered dealer will be subject to a four-month hold period. We understand that stand-by guarantors are often either insiders of the issuer or registered dealers.
- (a) Should stand-by guarantors be subject to different resale restrictions depending on whether or not they are security holders of the issuer on the date of the notice?
- (b) What challenges would there be for issuers trying to find a stand-by guarantor that is not already a security holder?
12. We are considering whether securities distributed under the Stand-by Exemption to a stand-by guarantor that *is* an existing security holder should also be subject to a four-month hold.
- (a) If the stand-by guarantor is an existing security holder, should we require a four month hold? Why or why not?
- (b) We understand that in many cases, a stand-by guarantor receives a fee for providing a stand-by commitment. Should a stand-by guarantor that receives a fee and is a current security holder be subject to a restricted period on resale when other security holders are not subject to the restricted period?
- (c) What challenges do you foresee if we require a four-month hold?

Question relating to the Minimal Connection Exemption

13. We are considering whether we should require the filing of materials with the regulator through SEDAR as part of the Minimal Connection Exemption. Most issuers using the Minimal Connection Exemption would be foreign issuers. We understand that some, but not all, of these issuers use local counsel to file the materials. Do you anticipate challenges if we require that materials for the Minimal Connection Exemption be filed on SEDAR?

Please submit your comments in writing on or before February 25, 2015. If you are sending your comments by email, please also send an electronic file containing the submissions (in Microsoft Word format).

Address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority (Saskatchewan)
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Deliver your comments **only** to the addressees below. Your comments will be distributed to the other participating CSA members.

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We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. In addition, all comments received will be posted on the website of the *Autorité des marchés financiers* at www.lautorite.qc.ca and the website of the Ontario Securities Commission at

www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Thank you in advance for your comments.

Contents of Annexes

The following annexes form part of this CSA Notice:

Annex A:	A1: Proposed instruments amending or repealing <ul style="list-style-type: none">• NI 45-106• NI 45-101• NI 41-101• NI 44-101• NI 45-102 A2: Proposed changes to <ul style="list-style-type: none">• 45-106CP• 41-101CP
Annex B:	Local matters

Questions

Please refer your questions to any of the following:

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Annex A1

Proposed Amendments to National Instrument 45-106 *Prospectus and Registration Exemptions*

1. *National Instrument 45-106 Prospectus and Registration Exemptions is amended by this Instrument.*
2. *Section 2.1 is repealed.*
3. *The Instrument is amended by adding the following after section 2.1:*

Rights offering – reporting issuer

Refer to Appendix E of National Instrument 45-102 *Resale of Securities*. First trades are subject to a seasoning period on resale.

2.1.1 (1) In this section:

“additional subscription privilege” means a privilege, granted to a holder of a right, to subscribe for a security not subscribed for by any holder under a basic subscription privilege;

“basic subscription privilege” means the privilege to subscribe for the number of securities set out in a rights certificate held by a holder of the rights certificate;

“circular” means a completed Form 45-106F15 *Rights Offering Circular for Reporting Issuers*;

“closing date” means the date of completion of the distribution of the securities issued on exercise of rights issued under this section;

“managing dealer” means a dealer that has entered into an agreement with an issuer under which the dealer has agreed to organize and participate in the solicitation of the exercise of rights issued by the issuer;

“marketplace” has the same meaning as in section 1.1 of National Instrument 21-101 *Marketplace Operation*;

“market price” means, for securities of a class for which there is a published market,

- (a) except as provided in paragraph (b)

- (i) if the published market provides a closing price, the simple average of the closing price of securities of that class on the published market for each of the trading days on which there was a closing price falling not more than 20 trading days immediately before the day as of which the market price is being determined, or
 - (ii) if the published market does not provide a closing price, but provides only the highest and lowest prices of securities of the class traded, the average of the simple averages of the highest and lowest prices of securities of the class on the published market for each of the trading days on which there were highest and lowest prices falling not more than 20 trading days immediately before the day as of which the market price is being determined, or
- (b) if trading of securities of the class in the published market has occurred on fewer than 10 of the immediately preceding 20 trading days, the average of the following amounts established for each of the 20 trading days immediately before the day as of which the market price is being determined:
- (i) the average of the closing bid and closing ask prices for each day on which there was no trading;
 - (ii) if the published market
 - (A) provides a closing price of securities of the class for each day that there has been trading, the closing price, or
 - (B) provides only the highest and lowest prices, the average of the highest and lowest prices of securities of that class for each day that there has been trading;

“notice” means a completed Form 45-106F14 *Rights Offering Notice for Reporting Issuers*;

“published market” means, for a class of securities, a marketplace on which the securities are traded, if the prices at which they have been traded on that marketplace are regularly

- (a) disseminated electronically, or
- (b) published in a newspaper or business or financial publication of general and regular paid circulation;

“soliciting dealer” means a person or company whose interest in a rights offering is limited to soliciting the exercise of rights by holders of those rights;

“stand-by commitment” means an agreement between an issuer and the stand-by guarantor who agrees to acquire the securities of the issuer not subscribed for under the basic subscription privilege or the additional subscription privilege;

“stand-by guarantor” means a person or company who provides a stand-by commitment.

(2) For the purpose of the definition of “market price”, if there is more than one published market for a security, and if

- (a) only one of the published markets is in Canada, the market price is determined solely by reference to that market;
- (b) more than one of the published markets is in Canada, the market price is determined solely by reference to the published market in Canada on which the greatest volume of trading in the particular class of securities occurred during the 20 trading days immediately before the date as of which the market price is being determined; and
- (c) none of the published markets is in Canada, the market price is determined solely by reference to the published market on which the greatest volume of trading in the particular class of securities occurred during the 20 trading days immediately before the date as of which the market price is being determined.

(3) The prospectus requirement does not apply to a distribution by an issuer of a right granted by the issuer to purchase a security of its own issue to a security holder of the issuer if all of the following apply

- (a) the issuer is a reporting issuer in at least one jurisdiction of Canada;
- (b) if the issuer is a reporting issuer in the local jurisdiction, the issuer has filed all periodic and timely disclosure documents that it is required to have filed in that jurisdiction as required by each of the following:
 - (i) applicable securities legislation;
 - (ii) an order issued by the regulator or securities regulatory authority;
 - (iii) an undertaking to the regulator or securities regulatory authority;
- (c) before the commencement of the exercise period for the rights, the issuer files and sends the notice to all security holders of the class of securities to be issued on exercise of the rights;
- (d) concurrently with filing the notice, the issuer files the circular;
- (e) the issuer makes the basic subscription privilege available on a pro rata basis to each security holder of the class of securities to be distributed on the exercise of the rights;

(f) in Québec, the documents that are required to be filed under paragraphs (c) and (d) must be prepared in French or in French and English.

(4) The issuer must set the subscription price for a security to be issued on exercise of a right granted under subsection (3) lower than

(a) the market price of the security on the date of filing the notice, if there is a published market for the security, or

(b) the fair value of the security on the date of filing the notice, if there is no published market for the security.

(5) Paragraph (4)(b) does not apply if all insiders of the issuer are prohibited from increasing their proportionate interest in the issuer through the exercise of rights under the offering or through a stand-by commitment.

(6) An issuer must not grant an additional subscription privilege to a holder of a right unless all of the following apply

(a) the issuer grants the additional subscription privilege to all holders of rights,

(b) each holder of a right would be entitled to receive, on exercise of the additional subscription privilege, the number or amount of securities equal to the lesser of

(i) the number or amount of securities subscribed for by the holder under the additional subscription privilege, and

(ii) $x(y/z)$ where

x = the aggregate number or amount of securities available through unexercised rights,

y = the number of rights previously exercised by the holder under the rights offering, and

z = the aggregate number of rights previously exercised under the rights offering by holders of rights that have subscribed for securities under the additional subscription privilege;

(c) any unexercised rights are allocated on a pro rata basis to holders who subscribed for additional securities based on the additional subscription privilege up to the number of securities subscribed for by a particular holder, and

(d) the subscription price of the additional subscription privilege is the same as the subscription price for the basic subscription privilege.

(7) If there is a stand-by commitment,

- (a) the issuer must grant an additional subscription privilege to all holders of rights,
- (b) the issuer must include a statement in the circular that the issuer has confirmed that the stand-by guarantor has the financial ability to carry through on their stand-by commitment, and
- (c) the subscription price under the stand-by commitment must be the same as the subscription price under the basic subscription privilege.

(8) If an issuer has stated in the circular that no security will be issued on the exercise of a right unless a stand-by commitment is provided or unless proceeds no less than the stated minimum amount are received by the issuer, all of the following apply:

- (a) the issuer must appoint a depository to hold all money received on the exercise of the rights until either the stand-by commitment is provided or the stated minimum amount is received,
- (b) a depository under paragraph (a) must be
 - (i) a Canadian financial institution, or
 - (ii) a registrant in the jurisdiction in which the funds are proposed to be held who is acting as managing dealer for the rights offering, or, if there is no managing dealer, who is acting as a soliciting dealer,
- (c) the issuer and the depository must enter into an agreement, the terms of which require the depository to return the money in full to the holders of rights that have subscribed for securities under the distribution if either the stand-by commitment is not provided, or the stated minimum amount is not received by the depository during the exercise period for the rights.

(9) The agreement between the depository and the issuer under which the depository is appointed must provide that, if either the stand-by commitment is not provided or the stated minimum amount is not received by the depository during the exercise period for the rights, the money held by the depository will be returned in full to the holders of rights that have subscribed for securities under the distribution.

(10) A circular filed under this section must contain a certificate that states the following: “This rights offering circular does not contain a misrepresentation”.

(11) If the issuer is a company, a certificate under subsection (10) must be signed

(a) by the issuer's chief executive officer and chief financial officer or, if the issuer does not have a chief executive officer or chief financial officer, an individual acting in that capacity, and

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

(i) any 2 directors who are authorized to sign, other than the persons referred to in paragraph (a), or

(ii) all the directors of the issuer.

(12) If an issuer is not a company, a certificate under subsection (10) must be signed by the persons that, in relation to the issuer, are in a similar position or perform a similar function to the persons referred to in subsection (11).

(13) A certificate under subsection (10) must be true on

(a) the date the certificate is signed, and

(b) the closing date.

(14) An issuer must not file an amendment to a circular filed under paragraph (3)(d) unless

(a) the amendment amends and restates the circular,

(b) the issuer files the amended circular before the earlier of

(i) the listing date of the rights, if the issuer lists the rights for trading, and

(ii) the date the exercise period for the rights commences, and

(c) the issuer issues and files a news release explaining the reason for the amendment concurrently with the filing of the amended circular.

(15) The issuer must file a news release containing the information required by subsection (16) on the closing date or as soon as practicable following the closing date.

(16) The closing news release must include:

(a) the aggregate gross proceeds of the distribution;

(b) the amount of securities distributed under the basic subscription privilege to

(i) all persons who were insiders before the distribution or became insiders as a result of the distribution, as a group, and

(ii) all other persons, as a group;

- (c) the amount of securities distributed under the additional subscription privilege to
 - (i) all persons who were insiders before the distribution or became insiders as a result of the distribution, as a group, and
 - (ii) all other persons, as a group;
- (d) the amount of securities distributed under any stand-by commitment;
- (e) the amount of securities of the class issued and outstanding as at the closing date;
- (f) the amount of any fees or commissions paid in connection with the distribution.

(17) Subsection (3) does not apply to a distribution

- (a) if there would be an increase of more than 100 percent in the number, or, in the case of debt, the principal amount, of the outstanding securities of the class to be issued upon the exercise of rights, assuming the exercise of all rights issued under this exemption by the issuer during the 12 months immediately before the date of the circular;
- (b) if the exercise period for the rights is less than 21 days or more than 90 days after the day the notice is sent to security holders;
- (c) if the issuer has entered into an agreement to compensate a person or company for soliciting the exercise of rights issued under the rights offering that provides for the payment of a fee for soliciting the exercise of rights by holders of rights that were not security holders of the issuer immediately before the rights offering and that fee is higher than the fee payable for soliciting the exercise of rights by holders of rights that were security holders at that time;
- (d) to a stand-by guarantor, if one of the following applies:
 - (i) the stand-by guarantor did not hold a security of the issuer on the date the issuer files the notice;
 - (ii) the stand-by guarantor is a registered dealer.

Rights offering – stand-by commitment

Refer to Appendix D of National Instrument 45-102 *Resale of Securities*. First trades are subject to a restricted period on resale.

2.1.2 The prospectus requirement does not apply to the distribution of a security by an issuer to a stand-by guarantor as part of a distribution under section 2.1.1 if the stand-by guarantor acquires the security as principal.

Rights offering – issuer with a minimal connection to Canada

Refer to Appendix E of National Instrument 45-102 <i>Resale of Securities</i> . First trades are subject to a seasoning period on resale.

2.1.3 The prospectus requirement does not apply to a distribution by an issuer of a right granted by the issuer to purchase a security of its own issue to a security holder of the issuer if

- (a) to the knowledge of the issuer after reasonable enquiry,
 - (i) the number of beneficial holders of the class for which the rights are issued that are resident in Canada does not constitute 10 percent or more of all holders of that class,
 - (ii) the number of securities of the issuer of the class for which the rights are issued that are beneficially held by securityholders resident in Canada does not constitute, in the aggregate, 10 percent or more of the outstanding securities of that class,
 - (iii) the number of beneficial holders of the class for which the rights are issued that are resident in the local jurisdiction does not constitute five percent or more of all holders of that class,
 - (iv) the number of securities of the issuer of the class for which the rights are issued that are beneficially held by securityholders resident in the local jurisdiction does not constitute, in the aggregate, five percent or more of the outstanding securities of that class;
- (b) all materials sent to any other security holders for the rights offering are concurrently delivered to the regulator or, in Québec, the securities regulatory authority and sent to each securityholder of the issuer resident in the local jurisdiction;
- (c) the issuer delivers to the regulator or, in Québec, the securities regulatory authority a written notice that it is relying on this exemption and a certificate of an officer or director of the issuer, or if the issuer is a limited partnership, an officer or director of the general partner of the issuer, or if the issuer is a trust, a trustee or officer or director of a trustee of the issuer, that to the knowledge of the person signing the certificate, after reasonable inquiry that
 - (i) the number of beneficial holders of the class for which the rights are issued that are resident in Canada does not constitute 10 percent or more of all holders of that class,

- (ii) the number of securities of the issuer of the class for which the rights are issued that are beneficially held by securityholders resident in Canada does not constitute, in the aggregate, 10 percent or more of the outstanding securities of that class,
- (iii) the number of beneficial holders of the class for which the rights are issued that are resident in the local jurisdiction does not constitute five percent or more of all holders of that class,
- (iv) the number of securities of the issuer of the class for which the rights are issued that are beneficially held by securityholders resident in the local jurisdiction does not constitute, in the aggregate, five percent or more of the outstanding securities of that class.

Rights offering – Listing representation exemption

2.1.4 (1) In this section:

“listing representation” means a representation that a security will be listed or quoted, or that application has been or will be made to list or quote the security, either on an exchange, or on a quotation and trade reporting system, in a foreign jurisdiction;

“listing representation prohibition” means the prohibition in the securities legislation set out in Appendix C.

(2) The listing representation prohibition does not apply to a listing representation made in a rights offering circular for a distribution of rights conducted under section 2.1.3 if the listing representation is not a misrepresentation.

Rights offering – Civil liability for secondary market disclosure

2.1.5 (1) In this section:

“secondary market liability provisions” means the provisions in the securities legislation set out in Appendix D.

(2) The secondary market liability provisions apply to

- (a) the acquisition of an issuer’s security pursuant to the exemption from the prospectus requirement set out in section 2.1.1, and
- (b) the acquisition of an issuer’s security pursuant to the exemption from the prospectus requirement set out in section 2.42 if the security previously issued by the issuer was acquired pursuant to the exemption that is set out in section 2.1.1..

4. *The Instrument is amended by adding the following appendices:*

Appendix C

Listing representation prohibitions

Alberta:	Subsection 92(3) of the <i>Securities Act</i> (Alberta)
Manitoba:	Subsection 69(3) of the <i>Securities Act</i> (Manitoba)
New Brunswick:	Subsection 58(3) of the <i>Securities Act</i> (New Brunswick)
Newfoundland and Labrador:	Subsection 39(3) of the <i>Securities Act</i> (Newfoundland and Labrador)
Northwest Territories:	Subsection 147(1) <i>Securities Act</i> (Northwest Territories)
Nova Scotia:	Subsection 44(3) of the <i>Securities Act</i> (Nova Scotia)
Nunavut:	Subsection 147(1) of the <i>Securities Act</i> (Nunavut)
Ontario:	Subsection 38(3) of the <i>Securities Act</i> (Ontario)
Prince Edward Island:	Subsection 147(1) of the <i>Securities Act</i> (Prince Edward Island)
Québec:	Subsection 199(4) of the <i>Securities Act</i> (Quebec)
Saskatchewan:	Subsection 44(3) of the <i>Securities Act</i> (Saskatchewan)
Yukon:	Subsection 147(1) of the <i>Securities Act</i> (Yukon)

Appendix D

Secondary market liability provisions

Alberta:	Part 17.01 of the <i>Securities Act</i> (Alberta)
British Columbia:	Part 16.1 of the <i>Securities Act</i> (British Columbia)
Manitoba:	Part XVIII of the <i>Securities Act</i> (Manitoba)
New Brunswick:	Part 11.1 of the <i>Securities Act</i> (New Brunswick)
Newfoundland and Labrador:	Part XXII.1 of the <i>Securities Act</i> (<i>Newfoundland and Labrador</i>)
Northwest Territories:	Part 14 of the <i>Securities Act</i> (Northwest Territories)
Nova Scotia:	Sections 146A to 146N of the <i>Securities Act</i> (Nova Scotia)
Nunavut:	Part 14 of the <i>Securities Act</i> (Nunavut)
Ontario:	Part XXIII.1 of the <i>Securities Act</i> (Ontario)
Prince Edward Island:	Part 14 of the <i>Securities Act</i> (Prince Edward Island)
Québec:	Division II of Chapter II of Title VIII of the <i>Securities Act</i> (Québec)
Saskatchewan:	Part XVIII.1 of the <i>Securities Act</i> (Saskatchewan)
Yukon:	Part 14 of the <i>Securities Act</i> (Yukon).

5. *The Instrument is amended by adding the following forms:*

Form 45-106F14
Rights Offering Notice for Reporting Issuers

This is the form of notice you must use for a distribution of rights under section 2.1.1 of National Instrument 45-106 *Prospectus and Registration Exemptions*.

PART 1 GENERAL INSTRUCTIONS

Deliver this notice to each security holder eligible to receive rights under the rights offering. Using plain language, prepare the notice using a question-and-answer format.

Guidance

We do not expect the notice to be greater than two pages in length.

PART 2 THE NOTICE

1. Basic information

State the following with the bracketed information completed:

“[Name of issuer]
Notice to security holders – [Date]”

If you have less than 12 months of working capital and are aware of material uncertainties that may cast significant doubt upon your ability to continue as a going concern, include the following language in bold type immediately below the date of the notice:

“We currently have sufficient working capital to last [insert the number of months of working capital as at the date of the circular] months. We require [insert the percentage of the rights offering required to be taken up]% of the offering to last 12 months.”

2. Who can participate in the rights offering?

State the record date and identify which class of securities is subject to the offering.

3. Who is eligible to receive rights?

Provide information about the jurisdictions in which the issuer is offering rights. Explain how a security holder in an ineligible jurisdiction can acquire the rights and securities issuable upon exercise of rights.

4. How many rights are we offering?

State the total number of rights offered.

5. How many rights will you receive?

State the number of rights each eligible security holder will receive for every security held as of the record date.

6. What does one right entitle you to receive?

Provide the number of rights required to acquire a security upon exercise of the rights. Also state the subscription price.

7. If you are an eligible security holder, how will you receive your rights?

Include a rights certificate with the rights offering notice if the notice is being delivered to a registered security holder, and direct the security holder's attention to this certificate. If you are delivering this notice to an ineligible security holder, provide instructions on how the ineligible security holder can receive their rights certificate.

8. When and how can you exercise your rights?

State when the exercise period ends for eligible security holders who have their rights certificate. Also, provide instructions on how to exercise rights to security holders whose securities are held in a brokerage account.

9. What are the next steps?

Direct the security holder to the SEDAR address to find your rights offering circular. State that the security holder should read the circular, along with the issuer's continuous disclosure record, to make an informed decision.

10. Signature

Sign the notice. State the name and title of the person signing this notice.

Form 45-106F15
Rights Offering Circular for Reporting Issuers

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PART 1 INSTRUCTIONS

1. Overview of the rights offering circular

This is the form of circular you must use for a distribution of rights under section 2.1.1. of National Instrument 45-106 *Prospectus and Registration Exemptions*. The objective of the circular is to provide information about the rights offering and details on how an existing security holder can exercise rights.

Prepare the rights offering circular using a question-and-answer format.

Guidance

We do not expect the circular to be greater than 10 pages.

2. Incorporating information by reference

You must not incorporate information into the circular by reference.

3. Plain language

Use plain, easy to understand language in preparing the circular. Avoid technical terms but, if they are necessary, explain them in a clear and concise manner.

4. Format

Except as otherwise stated, use the questions presented in this form as headings in the circular. To make the circular easier to understand, present information in tables and, where possible, state amounts in figures.

5. Omitting information

Unless this form indicates otherwise, you are not required to respond to an item in this form if it does not apply.

6. Date of information

Unless this form indicates otherwise, present the information in this form as at the date of the circular.

7. Forward-looking information

If you disclose forward-looking information in the circular, you must comply with Part 4A.3 of NI 51-102.

PART 2 SUMMARY OF OFFERING

8. Required statement

State in italics at the top of the cover page the following:

“This rights offering circular is prepared by management. No securities regulatory authority or regulator has assessed the merits of these securities or reviewed this circular. Any representation to the contrary is an offence.

This is the circular we referred to in the [insert date of rights offering notice] rights offering notice, which you should have received by mail. Your rights certificates and relevant forms were enclosed with the notice. This circular should be read in conjunction with the notice and our continuous disclosure prior to making an investment decision.”

9. Basic disclosure about the distribution

Immediately below the statement required above, state the following with the bracketed information completed:

“Rights offering circular

[Date]

[Name of Issuer]”

If you have less than 12 months of working capital and are aware of material uncertainties that may cast significant doubt upon your ability to continue as a going concern, include the following language in bold immediately below the name of the issuer:

“We currently have sufficient working capital to last [insert the number of months of working capital as at the date of the circular] months. We require [insert the percentage of the rights offering required to be taken up]% of the offering to last 12 months.”

10. Purpose of circular

State the following in bold:

“Why are you reading this circular?”

Explain the purpose of the circular. State that the circular provides details about the rights offering and refer to the notice that you sent to security holders.

11. Securities offered

State the following in bold:

“What is being offered?”

Provide the number of rights you are offering to each security holder under the offering. If your outstanding share capital includes more than one class or type of security, ensure you identify which security holders are eligible to receive rights. Include the record date the issuer will use to determine which security holders are eligible to receive rights.

12. Right entitlement

State the following in bold:

“What does a right entitle you to receive?”

Explain what one right will entitle the security holder to receive.

13. Subscription price

State the following in bold:

“What is the subscription price?”

Provide the price a security holder must pay to exercise a right. If there is no published market for the securities, either explain how you determined the fair value of the securities or explain that no insider will be able to increase their proportionate interest through the rights offering.

Guidance

Refer to subsection 2.1.1(4) of NI 45-106 which provides that the subscription price must be lower than the market price if there is a published market for the securities. If there is no published market, either the subscription price must be lower than the fair value of the securities or insiders are not permitted to increase their proportionate interest in the issuer through the rights offering.

14. Expiry of offer

State the following in bold:

“When does the offer expire?”

Provide the date and time when the offer expires.

Guidance

Refer to paragraph 2.1.1(16)(c) of NI 45-106 which provides that the rights offering exemption is not available where the exercise period for the rights is less than 21 days or more than 90 days after the day the notice is sent to security holders.

15. Outstanding securities

State the following in bold:

“How many of our [insert class of securities issuable on exercise of rights] are currently outstanding?”

Provide the number of outstanding securities of the class of securities issuable on exercise of the rights, as at the date of the circular.

16. Securities issuable under the offering

State the following in bold:

“What are the minimum and maximum number of [insert type of security issuable on exercise of rights] that may be issued under the offering?”

Provide the minimum, if any, and maximum number of securities that may be issuable on exercise of the rights.

17. Listing of Securities

State the following in bold:

“Where will the rights and securities issuable upon exercise of rights be listed for trading?”

Identify the exchange(s) and quotation system(s), if any, on which the rights and underlying securities are traded or quoted. If no market exists, or is expected to exist, state the following in boldface type:

“There is no market through which these [rights and/or underlying securities] may be sold.”

PART 3 USE OF FUNDS AVAILABLE

18. Funds available

State the following in bold:

“What will our funds available be after the offering?”

Using the following table, disclose the funds available after the offering. If you plan to combine additional sources of funding with the offering proceeds to achieve your principal capital-raising purpose, provide details about each additional source of funding.

If there is no minimum offering or stand-by commitment, or if the minimum offering or stand-by commitment represents less than 75% of the offering, include threshold disclosure if only 15%, 50% or 75% of the entire offering is taken up.

Disclose the amount of working capital deficiency, if any, of the issuer as at the most recent month end. If the funds available will not eliminate the working capital deficiency, state how you intend to eliminate or manage the deficiency. If there has been a significant change in the working capital since the most recently audited annual financial statements, explain those changes.

Guidance

We would consider a significant change to include a change in the working capital that results in material uncertainty regarding the issuer’s going concern assumption, or a change in the working capital balance from positive to deficiency or vice versa.

		Assuming minimum offering or stand-by commitment only	Assuming 15% of offering	Assuming 50% of offering	Assuming 75% of offering	Assuming 100% of offering
A	Amount to be raised by this offering	\$	\$	\$	\$	\$
B	Selling commissions and fees	\$	\$	\$	\$	\$
C	Estimated offering costs (e.g., legal, accounting, audit)	\$	\$	\$	\$	\$
D	Available funds: $D = A - (B+C)$	\$	\$	\$	\$	\$
E.	Additional sources of funding required	\$	\$	\$	\$	\$
F.	Working capital deficiency	\$	\$	\$	\$	\$
G.	Total: $G = (D+E) - F$	\$	\$	\$	\$	\$

19. Use of funds available

State the following in bold:

“How will we use the funds available?”

Using the following table, provide a detailed breakdown of how you will use the funds. Describe in reasonable detail each of the principal purposes, with approximate amounts.

Description of intended use of funds available listed in order of priority.	Assuming minimum offering or stand-by commitment only	Assuming 15% of offering	Assuming 50% of offering	Assuming 75% of offering	Assuming 100% of offering
	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$
Total: Equal to G in the funds available table above	\$	\$	\$	\$	\$

If there is no minimum offering or stand-by commitment, or if the minimum offering or stand-by commitment represents less than 75% of the offering, include threshold disclosure if only 15%, 50% or 75% of the entire offering is taken up.

Instructions:

- If the issuer has significant short-term liquidity requirements, discuss, for each threshold amount (i.e., 15%, 50% and 75%), the impact, if any, of raising that amount on its liquidity, operations, capital resources and solvency. Short-term liquidity requirements include non-discretionary expenditures for general corporate purposes and overhead expenses, significant short-term capital or contractual commitments, and expenditures required to achieve stated business objectives.*

When discussing the impact of raising each threshold amount on your liquidity, operations, capital resources and solvency, include all of the following in the discussion:

- which expenditures will take priority at each threshold, and what effect this allocation has on your operations and business objectives and milestones;*
- the risks of defaulting on payments as they become due, and what effect the defaults would have on your operations;*
- an analysis of your ability to generate sufficient amounts of cash and cash equivalents from other sources, the circumstances that could affect those sources and management’s assumptions in conducting this analysis.*

State the minimum amount required to meet the short-term liquidity requirements. In the event that the funds available could be less than the amount required to meet the short-term requirements, describe how management plans to discharge its liabilities as they become due. Include the assumptions management used in its plans.

If the funds available could be insufficient to cover the issuer's short-term liquidity requirements and overhead expenses for the next 12 months, include management's assessment of the issuer's ability to continue as a going concern. If there are material uncertainties that cast significant doubt upon the issuer's ability to continue as a going concern, state this fact in boldface type.

- 2. If you will use more than 10% of funds available to reduce or retire indebtedness and the indebtedness was incurred within the two preceding years, describe the principal purposes for which the indebtedness was used. If the creditor is an insider, associate or affiliate of the issuer, identify the creditor and the nature of the relationship to the issuer and disclose the outstanding amount owed.*
- 3. If you will use more than 10% of funds available to acquire assets, describe the assets. If known, disclose the particulars of the purchase price being paid for or being allocated to the assets or categories of assets, including intangible assets. If the vendor of the asset is an insider, associate or affiliate of the issuer, identify the vendor and nature of the relationship to the issuer, and disclose the method used in determining the purchase price.*
- 4. If any of the funds available will be paid to an insider, associate or affiliate of the issuer, disclose in a note to the use of funds available table the name of the insider, associate or affiliate, the relationship to the issuer, and the amount.*
- 5. If you will use more than 10% of funds available for research and development of products or services,*
 - a. describe the timing and stage of research and development that management anticipates will be reached using the funds,*
 - b. describe the major components of the proposed programs you will use the funds available for, including an estimate of anticipated costs,*
 - c. state if you are conducting your own research and development, are subcontracting out the research and development or are using a combination of those methods, and*
 - d. describe the additional steps required to reach commercial production and an estimate of costs and timing.*
- 6. If you may re-allocate funds available, include the following statement:*

“We intend to spend the funds available as stated. We will reallocate funds only for sound business reasons.”

20. How long will funds available last?

State the following in bold:

“How long will the funds available last?”

Explain how long management anticipates funds available will last. If you do not have adequate funds to cover anticipated expenses for the next 12 months, state the sources of financing that the issuer has arranged but not yet used. Also, provide an analysis of your ability to generate sufficient amounts of cash and cash equivalents in the short term and the long term to maintain capacity, and to meet planned growth or to fund development activities. You should describe sources of funding and circumstances that could affect those sources that are reasonably likely to occur. If this results in material uncertainties that cast significant doubt upon the issuer’s ability to continue as a going concern, disclose this fact.

If you expect funds available to last for greater than 12 months, state this fact.

PART 4 INSIDER PARTICIPATION

21. Intention of insiders

State the following in bold:

“Will insiders be participating?”

Provide the answer. If yes, provide details of insiders’ intentions to exercise their rights.

22. Holders of at least 10% before and after the offering

State the following in bold:

“Who are the 10% holders before and after the offering?”

Provide this information in the following tabular form:

Name	Holdings before the offering	Holdings after the offering
[Name of security holder]	[State the number of securities held and the percentage of security holdings this represents]	[State the number of securities held and the percentage of security holdings this represents]

PART 5 DILUTION

23. Dilution

State the following in bold:

“If you do not exercise your rights, how much will your security holdings be diluted?”

Provide a percentage in the circular and state the assumptions used, as appropriate.

PART 6 STAND-BY COMMITMENT

24. Stand-by guarantor

State the following in bold:

“Who is the stand-by guarantor and what are the fees?”

Describe the stand-by commitment and the material terms of the basis on which the stand-by guarantor may terminate the obligation under the stand-by commitment.

25. Financial ability of the stand-by guarantor

State the following in bold:

“Have we confirmed that the stand-by guarantor has the financial ability to carry through on its stand-by commitment?”

If the offering has a stand-by commitment, state that you have confirmed that the stand-by guarantor(s) has the financial ability to carry through on its stand-by commitment.

PART 7 MANAGING DEALER, SOLICITING DEALER AND UNDERWRITING CONFLICTS

26. The managing dealer, soliciting dealer, and their fees

State the following in bold:

“Who is the [managing dealer/soliciting dealer] and what are their fees?”

Identify the managing dealer, if any, and the soliciting dealers, if any, and describe the commissions or fees payable to them.

27. Managing dealer/soliciting dealer conflicts

State the following in bold:

“Does the [managing dealer/soliciting dealer] have a conflict of interest?”

If disclosure is required by National Instrument 33-105 *Underwriting Conflicts*, include that disclosure.

PART 8 HOW TO EXERCISE THE RIGHTS

28. Security holders who are registered holders

State the following in bold:

“How does a security holder that is a registered holder participate in the offering?”

Explain how a registered holder can participate in the rights offering.

29. Security holders who are not registered holders

State the following in bold:

“How does a security holder that is not a registered holder participate in the offering?”

Explain how a security holder who is not a registered holder can participate in the rights offering.

30. Eligibility to participate

State the following in bold:

“Who is eligible to participate in the offering?”

Explain which security holders are eligible to participate in the offering. Disclose the jurisdictions in which you are making the rights offering.

31. Non-eligible security holder

State the following in bold:

“What if a security holder is not eligible to participate in the offering?”

Explain how a security holder who does not reside in an eligible jurisdiction can participate in the offering.

32. Transfer of rights

State the following in bold:

“How does a right holder sell or transfer rights?”

Explain how a holder of rights can sell or transfer rights. If the rights will be listed on an exchange, provide further details related to the trading of the rights on the exchange.

33. Additional subscription privilege

State the following in bold:

“What is the additional subscription privilege and how can you exercise this privilege?”

Describe the additional subscription privilege and explain how a holder of rights who has exercised the basic subscription privilege can exercise the additional subscription privilege.

34. Trading of underlying securities

State the following in bold:

“When can you trade securities issuable upon exercise of your rights?”

Say when a security holder can trade the securities issuable upon exercise of the rights.

35. Fractional rights

State the following in bold:

“Will we issue fractional rights?”

Respond yes or no and explain (if necessary).

PART 9 APPOINTMENT OF DEPOSITORY

36. Depository

State the following in bold:

“Who is the depository?”

If the rights offering is subject to a minimum offering amount, or if there is a stand-by commitment, state the name of the depository you appointed to hold all money received on exercise of the rights until the minimum offering amount or stand-by commitment is received or until the money is returned.

37. Release of funds from depository

State the following in bold:

“What happens if we do not raise the [minimum offering amount] or if we do not receive funds from the stand-by guarantor?”

If the offering is subject to a minimum offering amount, or if there is a stand-by commitment, state that you have entered into an agreement with the depository where the depository will return the money held by it to holders of rights that have already subscribed for securities under the offering, if you do not raise the minimum offering amount or receive funds from the stand-by guarantor.

PART 10 FOREIGN ISSUERS

38. Foreign issuers

State the following in bold:

“How can you enforce a judgment against us?”

If the issuer is incorporated, continued, or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada, state the following:

“The [issuer] is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides out of Canada. It may not be possible for investors to enforce judgments obtained in Canada against any person or company that is incorporated, continued, or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada.”

PART 11 STATEMENT AS TO RESALE RESTRICTIONS

39. Resale restrictions

State the following in bold:

“Are there restrictions on the resale of securities?”

If the issuer is offering rights in one or more jurisdictions where there are restrictions on the resale of securities, include a statement disclosing when those rights and underlying securities will become freely tradable and that until then, such securities may not be resold except pursuant to a prospectus or prospectus exemption, which may only be available in limited circumstances.

PART 12 ADDITIONAL INFORMATION

40. Additional information

State the following in bold:

“Where can you find more information about us?”

Provide the SEDAR website address and state that a security holder can access the issuer’s continuous disclosure from that site. If applicable, provide the issuer’s website address.

PART 13 CERTIFICATE

41. Date and certificate

Provide the following statement at the end of the circular:

“Dated: [insert the date the circular is signed]

This rights offering circular does not contain a misrepresentation.”

42. Signing of certificate

Sign the certificate in accordance with subsection 2.1.1(10) of NI 45-106..

6. This Instrument comes into force on xx.

Annex A1

Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*

1. *National Instrument 41-101 General Prospectus Requirements is amended by this Instrument.*
2. *The following Part is added after section 8.3:*

PART 8A: Rights offerings

Application

8.1A(1) This part applies to an issuer that files a preliminary or final prospectus to distribute rights.

(2) In this Part,

“additional subscription privilege” means a privilege, granted to a holder of a right, to subscribe for a security not subscribed for by any holder under a basic subscription privilege;

“basic subscription privilege” means the privilege to subscribe for the number of securities set out in a rights certificate held by a holder of the rights certificate;

“managing dealer” means a dealer that has entered into an agreement with an issuer under which the dealer has agreed to organize and participate in the solicitation of the exercise of rights issued by the issuer;

“marketplace” has the same meaning as in section 1.1 of National Instrument 21-101 *Marketplace Operation*;

“market price” means for securities of a class for which there is a published market

(a) except as provided in paragraph (b)

(i) if the published market provides a closing price, the simple average of the closing price of securities of that class on the published market for each of the trading days on which there was a closing price falling not more than 20 trading days immediately before the day as of which the market price is being determined, or

- (ii) if the published market does not provide a closing price, but provides only the highest and lowest prices of securities of the class traded, the average of the simple averages of the highest and lowest prices of securities of the class on the published market for each of the trading days on which there were highest and lowest prices falling not more than 20 trading days immediately before the day as of which the market price is being determined, or
- (b) if trading of securities of the class in the published market has occurred on fewer than 10 of the immediately preceding 20 trading days, the average of the following amounts established for each of the 20 trading days immediately before the day as of which the market price is being determined:
 - (i) the average of the closing bid and closing ask prices for each day on which there was no trading;
 - (ii) if the published market
 - (A) provides a closing price of securities of the class for each day that there has been trading, the closing price, or
 - (B) provides only the highest and lowest prices, the average of the highest and lowest prices of securities of that class for each day that there has been trading;

“published market” means, for a class of securities, a marketplace on which the securities are traded, if the prices at which they have been traded on that marketplace are regularly

- (a) disseminated electronically, or
- (b) published in a newspaper or business or financial publication of general and regular paid circulation;

“soliciting dealer” means a person or company whose interest in a rights offering is limited to soliciting the exercise of rights by holders of those rights;

“stand-by commitment” means an agreement by a person or company to acquire securities of an issuer not issued under the basic subscription privilege or the additional subscription privilege available under a rights offering.

- (3) For the purpose of the definition of “market price”, if there is more than one published market for a security, and if

- (a) only one of the published markets is in Canada, the market price is determined solely by reference to that market;
- (b) more than one of the published markets is in Canada, the market price is determined solely by reference to the published market in Canada on which the greatest volume of trading in the particular class of securities occurred during the 20 trading days immediately before the date as of which the market price is being determined; and
- (c) none of the published markets are in Canada, the market price is determined solely by reference to the published market on which the greatest volume of trading in the particular class of securities occurred during the 20 trading days immediately before the date on which the market price is being determined.

Filing of prospectus for a rights offering

8.2A (1) An issuer must not file a prospectus for a rights offering unless

- (a) in addition to qualifying the distribution of the rights, the prospectus qualifies the distribution of the securities issuable on exercise of the rights,
 - (b) if there is a managing dealer, the managing dealer complies with section 5.9 as if the dealer were an underwriter,
 - (c) the exercise period for the rights is at least 21 days after the date on which the prospectus is sent to security holders, and
 - (d) the issuer sets the subscription price for a security issuable on exercise of the right distributed by the prospectus lower than
 - (i) the market price, as of the date of the final prospectus, if there is a published market for the security, or
 - (ii) fair value, as of the date of the final prospectus, if there is no published market for the security.
- (2) If subparagraph (1)(d)(ii) applies, the issuer must deliver to the regulator independent evidence of fair value.
- (3) Subparagraph 1(d)(ii) does not apply if all insiders of the issuer are prohibited from increasing their proportionate interest in the issuer through the exercise of rights under the offering or through a stand-by commitment.

Additional subscription privilege

8.3A An issuer must not grant an additional subscription privilege to a holder of a right unless

- (a) the issuer grants the additional subscription privilege to all holders of rights,
- (b) each holder of a right is entitled to receive, on exercise of the additional subscription privilege, the number or amount of securities that is equal to the lesser of
 - (i) the number or amount of securities subscribed for by the holder under the additional subscription privilege; and
 - (ii) $x(y/z)$ where
 - x = the aggregate number or amount of securities available through unexercised rights,
 - y = the number of rights previously exercised by the holder under the rights offering, and
 - z = the aggregate number of rights previously exercised under the rights offering by holders of rights that have subscribed for securities under the additional subscription privilege,
- (c) any unexercised rights are allocated on a pro rata basis to holders who subscribed for additional securities based on the additional subscription privilege up to the number of securities subscribed for by a particular holder, and
- (d) the subscription price of the additional subscription privilege is the same as the subscription price for the basic subscription privilege.

Stand-by commitments

8.4A If there is a stand-by commitment for a rights offering,

- (a) the issuer must grant an additional subscription privilege to all holders of rights,
- (b) the issuer must deliver to the regulator evidence that the person or company providing the stand-by commitment has the financial ability to carry out the stand-by commitment, and
- (c) the subscription price under the stand-by commitment must be the same as the subscription price under the basic subscription privilege.

Appointment of depository

8.5A(1) If an issuer has stated in the prospectus that no securities will be issued on the exercise of the rights unless a stand-by commitment is provided or unless proceeds at least equal to the stated minimum amount are received by the issuer, all of the following apply:

- (a) the issuer must appoint a depository to hold all money received on the exercise of rights until either the stand-by commitment is provided or the stated minimum amount is received;
- (b) a depository appointed under paragraph (a) must be
 - (i) a Canadian financial institution, or
 - (ii) a registrant in the jurisdiction in which the funds are proposed to be held who is acting as managing dealer for the rights offering, or, if there is no managing dealer for the rights offering, who is acting as a soliciting dealer;
- (c) the issuer and the depository must enter into an agreement the terms of which require the depository to return the money in full to the holders of rights that have subscribed for securities under the distribution if either the stand-by commitment is not provided, or the stated minimum is not received by the depository during the exercise period for the rights.

Amendment

8.6A An issuer must not file an amendment to a final prospectus for a rights offering to change the terms of the rights offering.

3. *Paragraph 9.2(b) is amended by*

a. in subparagraph (iii), replacing “.”with “;”;

b. adding the following after subparagraph (iii):

(iv) **Evidence of financial ability** – the evidence of financial ability required to be delivered under section 8.4A if it has not previously been delivered; and

(v) **Evidence of fair value** – the evidence of fair value required to be delivered under subsection 8.2A(2) if it has not previously been delivered..

4. This Instrument comes into force on xx.

Annex A1

Proposed Amendments to National Instrument 44-101 *Short Form Prospectus Distributions*

- 1. *National Instrument 44-101 Short Form Prospectus Distributions is amended by this Instrument.***
- 2. *Paragraph 4.2(b) is amended by***
 - a. in subparagraph (ii), replacing “, and” with “,”,***
 - b. in subparagraph (iii), replacing “.”with “,”, and***
 - c. adding the following after subparagraph (iii):***
 - (iv) the evidence of financial ability required to be delivered under section 8.4A of NI 41-101 if it has not previously been delivered, and**
 - (v) the evidence of fair value required to be delivered under subsection 8.2A(2) of NI 41-101 if it has not previously been delivered..**
- 3. This Instrument comes into force on xx.**

Annex A1

Proposed Amendments to National Instrument 45-102 *Resale of Securities*

- 1. *National Instrument 45-102 Resale of Securities is amended by this Instrument.***
- 2. *Appendix D is amended by adding the following after “Except in Manitoba, the following exemptions from the prospectus requirement in NI 45-106.”:***
 - Section 2.1.2 *[Rights offerings – stand-by commitments].*
- 3. *Appendix E is amended by***
 - a. replacing “section 2.1 [Rights offering]” with “section 2.1 [Repealed]”, and***
 - b. adding the following after “section 2.1 [Repealed]”:***
 - section 2.1.1 *[Rights offerings – reporting issuers]*
 - section 2.1.3 *[Rights offerings – issuers with a minimal connection to Canada].*
- 4. This Instrument comes into force on xx.**

Annex A1

**Proposed Amendments to
National Instrument 45-101 *Rights Offerings***

1. *National Instrument 45-101 Rights Offerings is repealed by this Instrument.*
2. This Instrument comes into force on xx.

Annex A2

Proposed Changes to Companion Policy 45-106CP Prospectus and Registration Exemptions

1. *Companion Policy 45-106CP Prospectus and Registration Exemptions is changed by this Instrument.*

2. *Part 3 is changed by adding the following sections:*

3.10 Rights offerings - reporting issuers

(1) Offer available to all security holders

One of the conditions of the rights offering exemption for reporting issuers in section 2.1.1 of the Instrument is that the issuer must make the basic subscription privilege available on a pro rata basis to every security holder of the class of securities to be distributed on exercise of the rights. This means that the issuer must send notice of the offering to each security holder of the class in the local jurisdiction, regardless of how many security holders reside in the local jurisdiction.

(2) Market price and fair value

Paragraph 2.1.1(4)(b) of the Instrument provides that if there is no published market for the securities, the subscription price must be lower than fair value. The exception to this is set out in subsection 2.1.1(5) which provides that paragraph 2.1.1(4)(b) does not apply if no insider is permitted to increase its proportionate interest in the issuer through the rights offering or a stand-by commitment. Under section 13 of Form 45-106F15, an issuer must explain in its rights offering circular how it determined the fair value of the securities. For these purposes, an issuer could consider a fairness opinion or a valuation.

For the purposes of subsection 2.1.1(4) of the Instrument, if the subscription price falls below the market price or fair value following filing of the notice, insiders will not be prohibited from participating in the offering.

(3) Stand-by commitments

To provide the confirmation in paragraph 2.1.1(7)(b) of the Instrument that the stand-by guarantor has the financial ability to carry out its obligations under the stand-by commitment, the issuer could consider the following:

- a statement of net worth attested to by the stand-by guarantor
- a bank letter of credit
- the most recent annual audited financial statements of the stand-by guarantor.

(4) Calculation of number of securities

In calculating the number of outstanding securities for purposes of paragraph 2.1.1(16)(b) of the Instrument, CSA staff generally take the view that

(a) if

$x =$ the number of securities of the class of the securities that may be or have been issued upon the exercise of rights under all rights offerings made by the issuer in reliance on the exemption during the previous 12 months,

$y =$ the maximum number of securities that may be issued upon exercise of rights under the proposed rights offering, and

$z =$ the number of securities of the class of securities that is issuable upon the exercise of rights under the proposed rights offering that are outstanding as of the date of the rights offering circular;

then $\frac{x + y}{z}$ must be equal to or less than 1, and

(b) if the convertible securities that may be acquired under the proposed rights offering may be converted before 12 months after the date of the proposed rights offering, the potential increase in outstanding securities, and specifically, “y” in paragraph (1), should be calculated as if the conversion of those convertible securities had occurred.

One of the conditions of the exemption is that the issuer must make the basic subscription privilege available on a *pro rata* basis to each security holder of the class of securities to be distributed on exercise of the rights. For clarity, this means that an issuer cannot use a rights offering to distribute a new class of securities.

In order to use the exemption in section 2.1.1 of the Instrument for the distribution of securities to a stand-by guarantor (in which case the securities would be subject to a seasoning period on resale), the stand-by guarantor must have been a security holder as at the date the issuer filed the notice. If the stand-by guarantor was not a security holder on that date, the issuer must use the exemption in section 2.1.2 of the Instrument to distribute securities to the stand-by guarantor. The securities would then be subject to a restricted period on resale.

If the stand-by guarantor is a registered dealer, the issuer must use the exemption in section 2.1.2 of the Instrument to distribute securities to the stand-by guarantor even if the guarantor was a security holder. This is to prevent potential backdoor underwriting concerns. We do not believe a registered dealer should be able to immediately resell to the public securities it acquired under a rights offering unless it provides a prospectus or uses another exemption from the prospectus requirement.

(5) Investment funds

As a reminder, pursuant to section 9.1.1 of National Instrument 81-102 *Investment Funds* (NI 81-102), investment funds that are subject to NI 81-102 are restricted from issuing warrants or rights.

3.11 Rights offerings – issuers with a minimal connection to Canada

It may be difficult for an issuer to determine beneficial ownership of its securities as a result of the book-based system of holding securities. We are of the view that, for the purpose of determining beneficial ownership to comply with the exemption in section 2.1.3 of the Instrument, procedures comparable to those found in National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*, or any successor instrument, are appropriate..

3. These changes become effective on xx.

Annex A2

Proposed Changes to Companion Policy 41-101CP *General Prospectus Requirements*

1. *Companion Policy 41-101CP General Prospectus Requirements is changed by this Instrument.*

2. *Part 2 is changed by adding the following section:*

Rights offerings

2.11(1) The regulator may refuse to issue a receipt for a prospectus filed for a rights offering under which rights are issued if the rights are exercisable into convertible securities that require an additional payment by the holder on conversion and the securities underlying the convertible securities are not qualified under the prospectus. This will ensure that the remedies for misrepresentation in the prospectus are available to the person or company who pays value.

(2) Subparagraph 8.2A(1)(d)(ii) of the Instrument provides that if there is no published market for the securities, the subscription price must be lower than fair value. The exception to this is set out in subsection 8.2A(3) which provides that subparagraph 8.2A(1)(d)(ii) does not apply if no insider is permitted to increase its proportionate interest in the issuer through the rights offering or a stand-by commitment. Under subsection 8.2A(2), the issuer must deliver to the regulator evidence of fair value. For this purpose, the regulator will consider such things as fairness opinions, valuations and letters from registered dealers as evidence of the fair value.

(3) Under paragraph 8.3A(b) of the Instrument, if there is a stand-by commitment for a rights offering, the issuer must deliver to the regulator evidence that the person or company providing the stand-by commitment has the financial ability to carry out the stand-by commitment. For this purpose, the regulator may consider any of the following:

- a statement of net worth attested to by the person or company making the commitment,
- a bank letter of credit,
- the most recent audited financial statements of the person or company making the commitment,
- other evidence that provides comfort to the regulator..

3. These changes become effective on xx.