

**National Instrument 41-101**  
**Prospectus Disclosure Requirements**

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**NOTICE OF RULES UNDER THE SECURITIES ACT  
NATIONAL INSTRUMENT 41-101 PROSPECTUS DISCLOSURE REQUIREMENTS  
AND RESCISSION OF NATIONAL POLICY STATEMENTS NOS. 12, 13, 32 AND 35**

**Notice of Rules**

The Commission has, under section 143 of the *Securities Act* (the "Act"), made National Instrument 41-101 Prospectus Disclosure Requirements (the "National Instrument") as a Rule under the Act.

The National Instrument is an initiative of the Canadian Securities Administrators (the "CSA"). The National Instrument has been, or is expected to be, adopted as a rule in each of British Columbia, Alberta, and Ontario, a Commission regulation in Saskatchewan, and a policy in all other jurisdictions represented by the CSA.

The National Instrument and the material required by the Act to be delivered to the Minister of Finance were delivered on October 13, 2000. If the Minister does not approve the National Instrument, reject the National Instrument or return it to the Commission for further consideration by December 12, 2000, or if the Minister approves the National Instrument, the National Instrument will come into force, pursuant to section 6.1 of the National Instrument, on December 31, 2000.

**Substance and Purpose of the National Instrument**

The purpose of the proposed National Instrument is to consolidate the prospectus disclosure requirements currently set forth in National Policy Statement No. 12 Disclosure of "Market Out" Clauses in Underwriting Agreements in Prospectuses ("NP 12"), National Policy Statement No. 13 Disclaimer Clause on Prospectus ("NP 13"), National Policy Statement No. 32 Prospectus Warning Re: Scope of Distribution ("NP 32") and National Policy Statement No. 35 Purchaser's Statutory Rights ("NP 35") as well as similar prospectus disclosure requirements in the securities legislation of certain provinces.

The National Instrument is substantially similar to NP 12, NP13, NP32 and NP 35, which it will replace although the prescribed disclosure has been simplified.

**Summary of Written Comments Received by the CSA**

The CSA published a draft of the National Instrument in May 1997 (the "May 1997 Draft").<sup>1</sup> For a detailed summary of the contents of the May 1997 Draft, reference should be made to the Notice published with that instrument.

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

The following is a summary of the comments received together with the CSA's responses and, where applicable, the changes adopted by the CSA. The CSA have also made two changes to the May 1997 Draft as a result of further consideration which are also summarized below. As the changes to the National Instrument are not material, the instrument is not subject to a further comment period.

**A. Discussion of Specific Comments Concerning the May 1997 Draft****Part 1 - Application and Interpretation - Section 1.2 Preliminary Prospectus***Comment*

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

*Response*

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

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<sup>1</sup> In Ontario, at (1997) 20 OSCB 2561.

**Part 2 - Front Page Disclosure - Section 2.1 Prospectus Warning and Disclaimer Clause***Comment*

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

*Response*

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

**Part 2 - Front Page Disclosure - Section 2.2 Preliminary Prospectus Disclosure***Comment*

The commenter recommended that an issuer be given more flexibility in naming those jurisdictions in which it has filed a prospectus. The commenter also suggested replacing the reference to a “distribution” with the “sale of such securities” and “distributed” with “sold”, in the interests of plain English disclosure.

*Response*

The CSA agree with the comments. Section 2.2 and the related instruction have been revised accordingly.

**Part 3 - Plan of Distribution Disclosure - Section 3.1 Plan of Distribution Disclosure***Comment*

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

*Response*

The CSA agree in principle with the suggestions. The CSA are not, however, proposing changes at this time but will consider the suggestions again in the course of developing a national long form prospectus instrument based on the Ontario Long Form Prospectus Rule. The requirements of this National Instrument are likely to be incorporated in that national long form prospectus instrument. For more information about the development of a national long form prospectus instrument, refer to the notice respecting the Ontario Long Form Prospectus Rule in the Ontario Securities Commission’s Bulletin. A copy of the notice and the Ontario Long Form Prospectus Rule can also be found on the Ontario Securities Commission’s web site at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

*Comment*

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

*Response*

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

**Part 4 - Purchasers’ Statutory Rights***Comment*

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

*Response*

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

**B. Discussion of changes made by the CSA as a result of further deliberation**

The CSA have also made two changes to the National Instrument as a result of further deliberation.

New section 2.3 prescribes disclosure describing the ability of investors to collect from foreign issuers, selling securityholders, credit supporters and/or promoters judgements obtained in Canadian courts based on the civil liability provisions of securities legislation.

New section 4.2 prescribes disclosure describing purchasers' statutory rights in the case of non-fixed price offerings.

**National Instrument**

The text of the National Instrument follows.

**Regulations to be Revoked - Ontario**

In Ontario, the Commission has, by regulation, revoked sections 50 and 51 of the Regulations, which are duplicative of section 2.1 of the National Instrument. The revocations will come into force at the time that the National Instrument comes into force.

**Text of Rescission of National Policy Nos. 12, 13, 32, 35**

“National Policy No. 12 Disclosure of “Market Out” Clauses in Underwriting Agreements in Prospectuses, National Policy No. 13 Disclaimer Clause on Prospectus, National Policy No. 32 Prospectus Warning Re: Scope of Distribution, and National Policy No. 35 Purchaser’s Statutory Rights, are rescinded.”

DATED: October 13, 2000

**NATIONAL INSTRUMENT 41-101**

**PROSPECTUS DISCLOSURE REQUIREMENTS**

- PART 1 APPLICATION AND INTERPRETATION
  - 1.1 Application
  - 1.2 Interpretation of "Prospectus"
  - 1.3 Variations
  
- PART 2 FRONT PAGE DISCLOSURE
  - 2.1 Prospectus Warning and Disclaimer Clause
  - 2.2 Preliminary Prospectus Disclosure
  - 2.3 International Issuers
  
- PART 3 PLAN OF DISTRIBUTION DISCLOSURE
  - 3.1 Plan of Distribution Disclosure
  
- PART 4 STATUTORY RIGHTS OF WITHDRAWAL AND RESCISSION
  - 4.1 General
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- PART 5 EXEMPTION
  - 5.1 Exemption
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- PART 6 EFFECTIVE DATE
  - 6.1 Effective Date

## NATIONAL INSTRUMENT 41-101

## PROSPECTUS DISCLOSURE REQUIREMENTS

## PART 1 APPLICATION AND INTERPRETATION

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

## PART 2 FRONT PAGE DISCLOSURE

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

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

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

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

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

**2.3 International Issuers**

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

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

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

## PART 3 PLAN OF DISTRIBUTION DISCLOSURE

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

1. On the cover page of the prospectus:

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

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

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

#### PART 4 STATUTORY RIGHTS OF WITHDRAWAL AND RESCISSION

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

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

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

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

#### PART 5 EXEMPTION

##### 5.1 Exemption

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

##### 5.2 Evidence of Exemption

- (1) Without limiting the manner in which an exemption under this Part may be evidenced, the granting of an exemption under this Part may be evidenced by the issuance of a receipt for a prospectus or an amendment to a prospectus.
- (2) An exemption under this Part may be evidenced in the manner set out in subsection (1) only if
  - (a) the person or company that sought the exemption sent the regulator the letter or memorandum referred to in subsection 5.1(3) on or before the date of the filing of the preliminary prospectus;
  - (b) sent to the regulator the letter or memorandum referred to in subsection 5.1(3) after the date of the filing of the preliminary prospectus and received a written acknowledgement from the regulator that the exemption may be evidenced in the manner set out in subsection (1); and

- (c) the regulator has not sent notice to the contrary to the person or company that sought the exemption before, or concurrently with, the issuance of the receipt.

**PART 6 EFFECTIVE DATE**

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