

Notice of Proposed Changes to Proposed National Instrument 44-101
Short Form Prospectus Distributions

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**NOTICE OF PROPOSED CHANGES TO PROPOSED NATIONAL
INSTRUMENT 44-101, PROPOSED FORM 44-101F1,
PROPOSED FORM 44-101F2 AND PROPOSED COMPANION
POLICY 44-101CP SHORT FORM PROSPECTUS DISTRIBUTIONS AND RULE 44-801
AND
RESCISSION OF NATIONAL POLICY STATEMENT NO. 47
PROMPT OFFERING QUALIFICATION SYSTEM**

A. Substance and Purpose of Proposed National Instrument, Forms, Companion Policy and Implementing Rule

1. Introduction

On February 20, 1998, the Canadian Securities Administrators (the "CSA") published the following four instruments (collectively, the "1998 proposed Instruments") for comment:

- proposed National Instrument 44-101 Prompt Offering Qualification System (the "1998 proposed National Instrument")
- proposed Form 44-101F1 AIF (the "1998 proposed Form 44-101F1")
- proposed Form 44-101F2 Short Form Prospectus (the "1998 proposed Form 44-101F2") (the two forms, collectively, the "1998 Proposed Forms")
- proposed Companion Policy 44-101CP (the "1998 proposed Policy").

The 1998 proposed Instruments were published at (1998), 21 OSCB 1138. The accompanying notice (the "1998 Notice") summarized these proposed instruments, generally requested comments and specifically requested comment on three issues, ie. the definition of "asset-backed security", financial statement disclosure in a short form prospectus for business acquisitions and AIF disclosure for issuers with oil and gas operations or other natural resource operations.

The CSA received comments on the 1998 proposed Instruments from three commentators. The list of commentators is contained in Appendix A of this Notice and a summary of their comments, together with the CSA's responses to those comments, are contained in Appendix B of this Notice. The CSA considered the comments received on the 1998 proposed Instruments and the comments received by the Ontario Securities Commission (the "Commission") on the proposed Rule 41-501 General Prospectus Requirements, which was published for comment on May 2, 1997 at (1997), 20 OSCB (Supp). The CSA also considered the changes proposed by the Commission to the proposed Rule 41-501, which is being republished for comment concurrently with the proposed Instruments. Furthermore, the CSA considered the impending adoption of National Policy 43-201 Mutual Reliance Review System for Prospectuses and AIFs ("MRRS"). As a result of these considerations and further deliberations of the CSA, the Commission has revised the 1998 proposed Instruments and is republishing them for comment. A table of concordance that shows how each provision of National Policy Statement No. 47 - Prompt Offering Qualification System ("NP47") has been dealt with in the republished instruments will be published in the next Bulletin.

The republished versions of these instruments are referred to in this Notice collectively as the "proposed Instruments" and separately as the "proposed National Instrument", the "proposed Form 44-101F1", the "proposed Form 44-101F2" (the two forms, collectively, the "proposed Forms") and the "proposed Policy".

This Notice summarizes changes of a substantive nature that have been made to the 1998 proposed Instruments. Other changes of relevance to readers are in most cases identified in the footnotes to the proposed Instruments.

2. Substance and Purpose

The substance and purpose of the proposed Instruments are to reformulate NP47. The proposed National Instrument and the proposed Forms are designed to continue to allow issuers to access Canadian capital markets rapidly and with a minimum of regulatory impediments, while maintaining current levels of investor protection and public disclosure. The proposed Policy provides guidance as to the exercise of regulatory discretion under the proposed National Instrument and the manner in which provisions in the proposed National Instrument are intended to be interpreted or applied by the Canadian securities regulatory authorities.

For additional information concerning the background to the proposed Instruments, reference should be made to the 1998 Notice and Appendix B of this Notice.

B. Summary of Changes to the Proposed National Instrument

Changes of a substantive nature that have been made to the proposed National Instrument are summarized here.

1. *Financial Statement Disclosure for Significant Acquisitions*

(a) *Overview*

In the 1998 Notice, the CSA invited comment on the appropriate test for requiring financial disclosure in connection with business acquisitions. Specifically, the CSA invited comment on whether the "six-month test" proposed in the 1998 proposed Instruments or an alternative test would be preferable. The CSA explained in the 1998 Notice that they had specifically considered SEC Release No. 33-7355; 34-37802; International Series Release No. 1021 dated October 10, 1996, which amended the existing provisions set forth in Rule 3-05(b) of Regulation S-X under the United States Securities Act of 1933 regarding inclusion of financial statements of acquired businesses (the "SEC Release").

Under the SEC Release, the extent of financial statement disclosure of an acquired business is determined not on the basis of whether the proceeds of the issue are to be applied to the acquisition, but instead on the basis of the significance of the acquisition to the business of the issuer determined by reference to a "sliding scale". The CSA chose not to adopt the "sliding scale" approach in the 1998 proposed National Instrument. This was consistent with the approach taken by the Commission in the proposed Rule 41-501. Several commentators on the proposed Rule 41-501 strongly recommended the approach used in the SEC Release as, in their view, it provides greater certainty and consistency. The CSA considered these comments in the context of the proposed National Instrument and, accordingly, revised the proposed Instruments such that they substantially reflect, in principle, the SEC's approach.

The requirements for financial statement inclusion in a short form prospectus concerning a business acquired by an issuer have been moved from Item 11 of the 1998 proposed Form 44-101F2 to the proposed National Instrument. For issuers that have made a significant acquisition or are proposing to make a significant probable acquisition, Part 4 of the proposed National Instrument specifies which financial statements of each business acquired or to be acquired that the issuer is required to include in a short form prospectus. Part 4 applies to (i) acquisitions completed during an issuer's three most recently completed financial years; (ii) acquisitions completed during an issuer's current financial year; and (iii) probable acquisitions.

(b) *Definitions used in the "Significant Acquisition" Test*

As a consequence of the new provisions in Part 4, definitions of "acquisition of related businesses", "probable acquisition of a business" and "probable acquisition of related businesses" and two interpretation sections have been added to the proposed National Instrument to provide greater certainty and consistency as to the circumstances in which the specified financial statements are required.

Subsection 1.2(1) of the proposed National Instrument provides that an acquisition of a business, an acquisition of related businesses, a probable acquisition of a business or a probable acquisition of related businesses is a significant acquisition if it satisfies **any one** of the following conditions:

- ! The total consolidated assets of the business or the related businesses exceed 20 percent of the consolidated assets of the issuer as at the date of the most recent balance sheet of the issuer included in the short form prospectus, but before giving effect to the acquisition. (asset test)
- ! The issuer's proportionate share of the consolidated revenue of the business or the related businesses for the later of
 - (i) the most recently completed financial year of the business or the related businesses that ended more than 90 days before the date of the short form prospectus, and
 - (ii) the 12 months ended on the last day of the most recently completed interim period of the business or the related businesses that ended more than 60 days before the date of the short form prospectus,
 exceeds 20 percent of the total consolidated revenue of the issuer for the later of the most recently completed financial year or the 12 months ended on the last day of the most recently completed interim period of the issuer for which statements are included in the short form prospectus, but before giving effect to the acquisition. (revenue test)
- ! The issuer's proportionate share of the consolidated income from continuing operations of the business or the related businesses for the later of
 - (i) the most recently completed financial year of the business or related businesses that ended more than 90 days before the date of the short form prospectus, and
 - (ii) the 12 months ended on the last day of the most recently completed interim period of the business or related businesses that ended more than 60 days before the date of the short form prospectus,
 exceeds 20 percent of the income from continuing operations of the issuer on a consolidated basis for the later of the most recently completed financial year or the 12 months ended on the last day of the most recently completed interim period of the issuer for which statements are included in the short form prospectus, but before giving effect to the acquisition. (income test)

A "probable acquisition of a business" is defined in the proposed National Instrument as a proposed acquisition of a business that has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high. A "probable acquisition of related businesses" is defined as the proposed acquisitions of two or more businesses that have progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high and

- (a) the businesses are under common control or management; or
- (b) each acquisition is conditional upon
 - (i) the completion of each other acquisition, or
 - (ii) the happening of one or more common events.

As a guide to interpretation, section 1.3 of the proposed National Instrument clarifies that the term "probable acquisition" encompasses both of these definitions. Section 1.3 also clarifies that the term "significant probable acquisition" refers to a probable acquisition of a business and a probable acquisition of related businesses that is a significant acquisition under section 1.2.

(c) *Sliding Scale Approach*

The time period to be covered by the financial statements in a short form prospectus for the acquired business varies depending on how significant the acquisition is to the issuer. The proposed National Instrument includes a sliding scale approach similar to that of SEC Rule 3-05, where three years of financial statements must be included for the most significant acquisitions and only one year must be included for the least significant acquisitions.

SEC Rule 3-05 recognizes that the importance of an acquisition is affected not just by the materiality of the acquisition but also the passage of time, and for this reason, Rule 3-05 permits the application of different percentages in the calculation to determine the number of fiscal years for which the historical financial statements of the acquired business are required to be presented. The SEC approach is as follows. (Note Rule 3-05 uses the term "significant subsidiary", as it is intended for other rule applications, but for purposes of the proposed National Instrument the CSA are using the term "significant acquisition").

The following table identifies the audited historical financial statements to be included under the SEC approach depending on whether any of the conditions for a "significant acquisition" are satisfied based on the following thresholds:

<u>Threshold</u>	<u>Include historical statements for</u>
20 percent but less than 40 percent	1 year audited and any interim periods
40 percent but less than 50 percent	2 years audited and any interim periods
50 percent or more	3 years audited and any interim periods

The more material the acquisition, the more historical financial results that must be provided. The approach in the proposed National Instrument is essentially the same in this regard.

(d) *Acquisitions of "Major Significance"*

The SEC approach would require full inclusion of historical financial statements for three years if the acquisition was of "major significance". An example would be if a company acquired a business of major significance within the previous two years and is now filing a short form prospectus. In this case, an additional year of historical financial statements of that acquired business would be required. The CSA are of the view that the benefit of providing the additional disclosure would only rarely offset the costs to the issuer. Section 4.6 of the proposed National Instrument provides that separate financial statements of an acquired business need not be included in a short form prospectus if the results of the business for the complete financial year have been reflected in the audited consolidated financial statements of the issuer, unless the acquisition of the business is so significant that the conditions specified in subsection 1.2(1) would be satisfied if the 20 percent threshold was changed to 100 percent. This compares with the 80 percent threshold used by the SEC.

(e) *Aggregate Effect of Individually Insignificant Acquisitions*

SEC Rule 3-05 states that if none of the conditions (significant acquisition test conditions) exceeds 20 percent, then financial statements for the acquired business are not required. However, if the aggregate effect of the individually insignificant businesses acquired since the date of the most recent audited balance sheet filed for the registrant exceeds 50 percent, financial statements covering at least the substantial majority of the businesses acquired must be provided. SEC staff informally indicated that "substantial" means "at least 50%". Similarly, subsection 4.7(1) of the proposed National Instrument requires this disclosure if any of the conditions in the definition of significant acquisition would be satisfied using a 50 percent threshold.

(f) *Differences Between Proposed National Instrument and SEC Approach*

As noted above the CSA have attempted to parallel the SEC approach to business acquisition disclosure in principle. The main aspects of the SEC's approach have been incorporated into the proposed National Instrument and the proposed Policy, while certain other aspects have not, for a variety of reasons discussed below. Comment would be welcome on the extent to which the CSA have achieved the benefits of the SEC's approach in terms of greater certainty and consistency without the costs of undue complexity. The CSA's rationale for not adopting certain aspects of the SEC's regime is as follows:

(i) Different Continuous Disclosure Regime for Business Acquisitions

On a continuous disclosure basis, the SEC requires business acquisition disclosure similar to that prescribed in the proposed National Instrument and proposed Policy. As a result of this, the SEC provides relief from filing, in a registration statement (i.e. short form prospectus), business acquisition disclosure relating to acquisitions that have been consummated less than 75 days prior to filing the registration statement and to probable acquisitions if, these recent and probable acquisitions are below a 50 percent threshold, on the basis that the financial statement disclosure would be provided on a continuous disclosure basis within 75 days of the consummation of the business acquisition. The CSA discussed this approach but were not comfortable, in the absence of a similar continuous disclosure regime in Canada for business acquisitions, with omitting the requirement to file these financial statements.

The SEC rules require a registrant filing a short form prospectus to perform the significant acquisition tests on acquisitions only in its most recently completed year and its current year, while the proposed National Instrument requires issuers to perform the tests on acquisitions in any of its three most recently completed years, in addition to its current year, though relief is provided in a number of scenarios. Again, the reason for this difference is to address the fact that a parallel continuous disclosure regime for business acquisitions does not exist.

In the event that a continuous disclosure regime for business acquisitions is adopted by the CSA, these areas will be reconsidered.

(ii) Simplicity and Relevance

In the CSA's view, the SEC's approach in some areas is overly complex and may result from time to time in the inclusion of information that is not significant at the time the short form prospectus is filed. The CSA have attempted to simplify to some extent the SEC's regime by requiring that the significance test be performed based on the most recent financial statements included in the short form prospectus, rather than on the most recent financial statements prior to the acquisition. This is to ensure that the acquisitions that meet the significance tests continue to be material for purposes of the current short form prospectus.

In addition, the CSA have adopted a "revenue" test as one of the significance tests, instead of the SEC's "investment in and advances to" test. In the CSA's experience the revenue test is preferable. The CSA have also increased the "major significance" test, which triggers issuer level disclosure, ie. three years of historical financial statements, from 80 percent to 100 percent.

(iii) Foreign GAAP and GAAS

The CSA have not provided an exemption from the requirement to reconcile foreign GAAP to Canadian GAAP where the acquisition is below the 30 percent level, nor have the CSA permitted the earliest of the three required years of financial statements not to be reconciled.

(iv) Small Business Issuers

The CSA have not included the SEC exemption that if revenues are below \$25 million the earliest of three years is not required to be included in the short form prospectus on the basis that the CSA are currently considering whether it would be appropriate to provide some relief from the financial disclosure requirements for issuers whose revenue, assets, shareholders' equity and market capitalization were under \$5 million as at the end of the issuer's most recently completed financial year ("Junior Issuers"). In particular, the CSA are contemplating permitting a Junior Issuer to include in a prospectus audited financial statements for only its most recent year end and unaudited financial statements for the two previous years in lieu of three years of audited financial statements required by the proposed National Instrument. The same approach would be applied to significant acquisitions that Junior Issuers undertake provided that after the acquisition the size tests continue to be met by the issuer. The CSA specifically request comments on this proposal.

(v) Pro forma Financial Statements, Comfort and Consent Letters

There are a number of areas where the SEC's requirements and the U.S. practice in general is different than the requirements and practice in Canada. These include areas such as *pro forma* financial statements and the adjustments that are permitted and the practice of securities regulators requiring comfort and consent letters to be filed. Though comments on these areas were received by the Commission in response to the proposed Rule 41-501 General Prospectus Requirements, the CSA are not proposing changes at this time. However, CSA staff is representing the CSA as an observer on a CICA Task Force, "Prospectuses", that is considering these issues, among other matters. The CSA will consider with its CSA colleagues the recommendations of the Task Force in making any future changes to the instruments.

2. Mutual Reliance Review System (MRRS)

The 1998 proposed National Instrument had been drafted based on the expedited review system. The proposed Instruments reflect the anticipated adoption of MRRS, a national policy that describes the CSA's approach to interjurisdictional co-ordination for the filing and review of short form prospectuses, including mutual fund and shelf prospectuses, amendments to short form prospectuses, annual information forms and related materials. Consequently, the definitions of "designated jurisdiction", "expedited review system" and "National Instrument 44-101 Receipt System" have been deleted from the proposed National Instrument and definitions of "MRRS" and "MRRS decision document" have been added. References throughout the proposed Instruments have been changed accordingly to reflect MRRS.

3. Qualification Criteria to File a Short Form Prospectus

(a) Change in Terminology

The proposed National Instrument has omitted references to the "prompt offering qualification system", the "POP system" and "POP eligibility". The proposed National Instrument reflects a plainer manner of expression and, instead, refers to an issuer's ability or "qualification" to file a prospectus in the form of a short form prospectus. In light of this change in terminology, the name of the National Instrument has been changed to "Short Form Prospectus Distributions".

(b) Omission of "Not in Default" Criterion

Sections 2.2 through 2.8 of the proposed National Instrument contain the criteria that an issuer must satisfy in order to be qualified to file a prospectus in the form of a short form prospectus. The CSA have omitted from each of these sections the criterion that the issuer and the credit supporter, if applicable, not be in default of any requirement in securities legislation. Instead, the CSA have added a prohibition in section 7.5 of the proposed National Instrument on an issuer filing a short form prospectus if it is in default of any obligation to file or deliver a document to the regulator.

(c) Expansion of "Alternative Credit Support"

The 1998 proposed National Instrument defined "alternative credit support" in a manner that assumed that the securityholder would necessarily be entitled to receive payment directly from the credit supporter in the event of a payment default by the issuer of the securities. The definition also assumed that, if alternative credit support was provided, the issuer of the securities was relying on the alternative credit support in order to be qualified to file a prospectus in the form of a short form prospectus.

The CSA have modified the definition of "alternative credit support" in the proposed National Instrument to specifically contemplate that the credit supporter may be obligated to provide the issuer of the securities with funds sufficient to enable the issuer to make the stipulated payments to securityholders, rather than to make payments directly to securityholders, if the issuer fails to make the stipulated payments. The CSA have also revised the definition so that it applies in circumstances where the alternative credit support is not essential to the issuer's qualification to file a prospectus in the form of a short form prospectus.

(d) Expansion of Criteria for Approved Rating Non-Convertible Securities

Section 2.4 of the 1998 proposed National Instrument provided alternative qualification criteria for issuers of approved rating non-convertible debt securities. Given that the distinction between debt and non-debt securities can be difficult to draw in the case of hybrid securities, the CSA have expanded this section to include any approved rating non-convertible securities, not only debt securities, as the critical elements are the approved rating and the non-convertibility of the securities.

4. Renewal AIFs

A renewal AIF, under the proposed National Instrument, will not be "accepted for filing". A renewal AIF becomes a "current AIF" upon filing.

The requirement that the regulator decide within 10 days of filing whether to review a renewal AIF has been omitted to permit the regulator greater flexibility in determining whether to review an issuer's renewal AIF.

5. Non-Fixed Price Distributions

Consistent with the change noted above in paragraph 3(d) discussing the qualification criteria for approved rating securities, section 9.1 of the proposed National Instrument permits any securities, if rated, to be distributed at non-fixed prices, rather than specifying which particular types of securities are permitted.

6. Financial Statement Matters

In an effort to consolidate, to the extent practicable, the requirements governing the content of a short form prospectus, many of the provisions dealing with accounting matters, such as foreign GAAP, previously found in other instruments have been added to Part 5 of the proposed National Instrument. In addition, the CSA are proposing a new requirement that a letter from the auditor be filed with the CSA that discusses the auditor's expertise to reconcile foreign GAAP to Canadian GAAP and to make the determination that

the foreign GAAS used is substantially equivalent to Canadian GAAS. The CSA believe that this information is relevant to an assessment of whether the financial statements are adequate for investors reading the short form prospectus.

7. Supporting Documents

(a) Consolidated List

As with financial statement matters, an effort has been made to consolidate, to the extent practicable, the requirements to file supporting documents with a short form prospectus in sections 7.1 and 7.2 of the proposed National Instrument.

(b) Filing vs. Delivery

Sections 7.1 and 7.2 reflect differences in securities legislation between jurisdictions in the treatment of documents filed under a rule and their availability for public review. Material that is required to be filed under a rule is generally publicly available in all jurisdictions. Regulatory discretion to keep filed documents confidential is limited in Ontario and Nova Scotia to material required to be filed under a statute, not a rule. As a result, sections 7.1 and 7.2 of the proposed National Instrument provide that certain supporting documents are to be delivered in those two jurisdictions, rather than filed, in order for those documents not to be publicly available.

(c) Material Contracts

All jurisdictions, other than Ontario and Nova Scotia, require copies of all material contracts to which the issuer is a party to be filed with a preliminary short form prospectus and a short form prospectus, unless the contracts have been previously filed. In Nova Scotia, these contracts are to be delivered to the regulator. In Ontario, only those contracts that create or materially affect the rights and obligations of the holders of the securities being distributed are required to be delivered.

(d) Technical Reports for Issuers with Mining Operations

For issuers with mining operations, technical reports are only required to be filed with a preliminary short form prospectus under section 7.1 of the proposed National Instrument, if required by proposed National Instrument 43-101 Standards of Disclosure for Mineral Exploration and Development and Mining Properties.

(e) Technical Reports for Issuers with Oil and Gas Operations

Section 7.1 of the proposed National Instrument does not require engineering reports to be filed with a preliminary short form prospectus by an issuer with oil and gas operations, even if referred to in the preliminary short form prospectus. This reflects the current practice of the CSA with respect to POP issuers. Reference is made in section 7.1 to the successor instrument to National Policy No. 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators, which is currently being reformulated. That successor instrument may contain a requirement to file these reports, generally or in particular circumstances.

(f) Other Reports

All reports and valuations referred to in a short form prospectus for which a consent is required to be filed under section 7.3 of the proposed National Instrument, with the exception of mining reports and oil and gas reports which are dealt with separately, are required to be filed in all jurisdictions, except Ontario and Nova Scotia where they are required to be delivered to the regulator. As mentioned above, documents delivered in these two jurisdictions are not publicly available.

(g) Consent to Collection of Personal Information

Subparagraph 7.1(1)(b)1 requires an issuer that files a preliminary short form prospectus to deliver a statement containing personal information for directors, senior officers and promoters, for whom the issuer has not previously delivered the information. This reflects CSA practice. Subparagraph 7.1(1)(b)2 requires a consent to the collection of personal information under the *Freedom of Information and Protection of Privacy Legislation* in the form set out in Appendix A to the proposed National Instrument. This form of consent is currently under further consideration by the CSA in order to conform to local legislation in various jurisdictions.

(h) Submission to Jurisdiction and Appointment of Agent for Service of Process

In section 7.2 of the proposed National Instrument, the CSA have added subparagraph (1)(a)5 to require a submission to jurisdiction and appointment of agent for service of process of the issuer in the form set out in Appendix B, if an issuer is incorporated or organized in a foreign jurisdiction and does not have an office in Canada. Similarly, the CSA have added subparagraph (1)(a)6 to require a submission to jurisdiction and appointment of agent for service of process of the selling securityholder, promoter or guarantor, as applicable, in the form set out in Appendix C, if a selling securityholder, promoter or credit supporter of an issuer is incorporated or organized under a foreign jurisdiction and does not have an office in Canada.

8. Definitions of "Approved Rating" and "Approved Rating Organization"

In the proposed National Instrument, the CSA have revised the definitions of "approved rating" and "approved rating organization" to expand the approved rating organizations recognized to include, in addition to those previously recognized in the 1998 proposed National Instrument, Duff & Phelps Credit Rating Co., Fitch IBCA, Inc. and Thomson BankWatch, Inc. Staff at the Commission received and reviewed submissions from the new approved rating organizations. All three of these organizations are recognized by the SEC as "nationally recognized statistical rating organizations".

The format of the "approved rating" definition has been revised to refer to only the minimum rating categories required, as opposed to listing all of the acceptable categories. This approach is consistent with the approach in the proposed National Instrument 81-102 Mutual Funds.

C. Summary of Changes to Proposed Form 44-101F1

Changes of a substantive nature that have been made to proposed Form 44-101F1 are summarized here.

1. Test for Omitting Subsidiaries (Item 2.2 of Proposed Form 44-101F1)

The CSA have modified the instruction that accompanied the requirement for disclosure of intercorporate relationships in the 1998 proposed Form 44-101F1 that permitted a particular subsidiary to be omitted based on an asset test. The CSA propose to reinstate the test found in NP47. In the proposed National Instrument, the revised instruction (i) maintains the test that the total assets of the subsidiary not constitute more than 10 percent of the consolidated assets of the issuer; (ii) adds a second test, namely that the sales and operating revenues of the subsidiary not exceed 10 percent of the consolidated sales and operating revenues of the issuer; and (iii) adds a third test, namely that subsidiaries that may be omitted under the first two tests not fail either of the first two tests, if the subsidiaries were aggregated and the references in the first two tests to 10 percent were changed to 20 percent.

2. Acquisitions and Dispositions

As discussed above, the CSA have modified the financial statement disclosure required in a short form prospectus for business acquisitions. The CSA have made corresponding changes to the disclosure required in an AIF for business acquisitions and have, accordingly, revised Item 3.2 of proposed Form 44-101F1 to require disclosure of any significant acquisition completed during the most recently completed financial year for which financial statement disclosure would be required under Part 4 of the proposed National Instrument to be included if the AIF were a short form prospectus. Disclosure is also required concerning any material disposition completed in the issuer's most recently completed financial year.

3. AIF Disclosure for Issuers with Natural Resource Operations (other than Oil and Gas)

The 1998 proposed Form 44-101F1 required disclosure specifically applicable to issuers with natural resource operations other than oil and gas operations. The CSA have revised Item 4.3 of proposed Form 44-101F1 to require disclosure that conforms to the provisions of the proposed National Instrument 43-101 Standards of Disclosure for Mineral Exploration and Development and Mining Properties, which will replace National Policy 2-A Guide for Engineers, Geologists and Prospectors Submitting Reports on Mining Properties to Canadian Securities Administrators.

4. AIF Disclosure for Issuers with Oil and Gas Operations

With respect to issuers with oil and gas operations, the CSA have made some simplifications to the disclosure requirements in Item 4.4 of proposed Form 44-101F1. For example, the requirements that called for disclosure expressed on a barrel of oil equivalent basis have been omitted due to CSA concerns that information expressed on this basis may be misleading to readers. The disclosure of interests in properties on which there are no proved reserves has been modified to apply only to interests in material properties. Disclosure, to the extent material, is required of estimated reserve volumes and discounted cash flow from such reserves that conforms to the definitions and disclosure requirements of National Policy Statement No. 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators, or any successor instrument.

The CSA have added to the proposed Form 44-101F1 a requirement for a description of the issuer's current and contemplated exploration or development activities, to the extent they are material. Although this provision did not appear in the 1998 proposed Form 44-101F1, it is consistent with the requirement in other instruments and the CSA consider it to be useful disclosure for investors.

5. Disclosure of Penalties or Sanctions - Directors, Officers and Significant Shareholders

The CSA have omitted from section 8.3 of the proposed Form 44-101F1 the 10 year time limit on disclosing penalties and sanctions. Instead, the CSA have added the qualification that the penalty or sanction be likely to be considered important to a reasonable investor in making an investment decision. In addition to directors and officers of the issuer, the disclosure is also required for a shareholder holding a sufficient number of securities of the issuer to affect materially the control of the issuer.

D. Summary of Changes to Proposed Form 44-101F2

Changes of a substantive nature that have been made to proposed Form 44-101F2 are summarized here.

1. *Earnings Coverage Ratios*

The CSA have expanded the instructions to Item 7 of proposed Form 44-101F2 regarding earnings coverage ratios. In addition to providing detailed instructions on the methods of calculating the earnings coverage ratios, the modified instructions provide guidance with respect to the appropriate period for the calculation and language to be included in disclosure of earnings coverage ratios for debt securities and preferred share issues. In certain circumstances, earnings coverage ratios for an issuer's credit supporter may be required to be disclosed and if this disclosure is included, earnings coverage of the issuer, if not material, may be omitted. The CSA have also added an instruction that if the earnings coverage is less than one-to-one, this fact must be disclosed in bold-face on the cover page of the short form prospectus.

2. *Business Acquisitions*

As discussed above, the CSA have decided to move towards the SEC approach to financial statement disclosure of business acquisitions and have moved the requirements for financial statement disclosure in a short form prospectus for business acquisitions from Item 11 of the 1998 proposed Form 44-101F2 to the proposed National Instrument. Item 11 of proposed Form 44-101F2 requires disclosure of any significant acquisition for which financial statement disclosure is required under Part 4 of the proposed National Instrument.

3. *Credit Supporters*

(a) *Disclosure*

The CSA have expanded Item 13.2 of proposed Form 44-101F2 to require disclosure concerning credit supporters that have provided a guarantee or alternative credit support for substantially all of the payments to be made under the securities to be distributed, in addition to those that have provided support for all of the payments. Item 13.2 has been revised to require the disclosure to be expressed as statements made by the credit supporter, rather than the issuer. Consequently, such a credit supporter is required under section 7.2 of the proposed National Instrument to file a consent to the inclusion of these statements.

(b) *Liability of Credit Supporters*

The CSA are aware of concerns of credit supporters regarding the degree to which credit supporters are liable for the contents of a short form prospectus by reason of signing a prospectus certificate. While the terms of the certificate may purport to limit the statements in the prospectus for which the credit supporter assumes liability, concern has arisen as to the scope of statutory liability imposed by Canadian securities legislation on any person or company signing a prospectus, irrespective of the terms of the certificate. In response to these concerns, the CSA have limited the certificate requirement to only those credit supporters that are affiliates of the issuer. Credit supporters that are not affiliates of the issuer are not required by Item 20.3 of Form 44-101F2 to sign a short form prospectus. By virtue of a credit supporter being required to consent to the disclosure contained in the short form prospectus concerning its business and affairs, a credit supporter is liable under securities legislation for a misrepresentation in a short form prospectus, but only with respect to its own statements.

4. *Promoters*

The CSA have added Item 16 to proposed Form 44-101F2 to require disclosure concerning a person or company that is, or has been, within the two years immediately preceding the date of the preliminary short form prospectus, a promoter of the issuer or of a subsidiary of the issuer. The two year period was chosen by the CSA as the appropriate time frame for disclosure because, under Canadian securities legislation in some jurisdictions, the regulator may require a person or company that has been a promoter within the two preceding years to sign the certificate.

The disclosure requirement regarding penalties and sanctions for promoters has been revised to mirror the disclosure required for directors, officers and significant shareholders in section 8.3 of the proposed Form 44-101F1.

5. *Certificates for Non-corporate Issuers*

The CSA have expanded the certificate requirement in Item 20.1(a) of proposed Form 44-101F2 to include, in cases where no CEO or CFO has been appointed, certificates of persons acting on behalf of an issuer in a capacity similar to a CEO and to a CFO.

E. Summary of Changes to Proposed Companion Policy

1. *Mutual Reliance Review System (MRRS)*

The proposed Policy has been modified to reflect the anticipated adoption of MRRS in that the proposed Policy does not describe any procedures for the co-ordinated review of AIFs and short form prospectuses. While optional, the MRRS represents the only

means by which an issuer can enjoy the benefits of co-ordinated review by the Canadian securities regulatory authorities in the various jurisdictions in which the issuer has filed a short form prospectus or AIF. Under the MRRS, a designated Canadian securities regulatory authority or regulator as defined in National Instrument 14-101 Definitions, as applicable, acts as the principal regulator for all materials relating to a filer.

The proposed Policy emphasizes that, if the issuer files in multiple jurisdictions but does not elect to use the MRRS, no co-ordinated review is available and the issuer must deal independently with each jurisdiction. Furthermore, if an issuer files in one jurisdiction only, the proposed Policy clarifies that no timeframe applies to the review of the AIF or the short form prospectus.

Part 5 of the 1998 proposed Policy, which described the procedure to obtain, on a co-ordinated basis, an exemption in multiple jurisdictions from a provision of National Instrument 44-101, has also been deleted as these procedures are set out in the MRRS.

2. *Principal Obligor*

The CSA have added a clarification in subsection 1.8(3) of the proposed Policy to explain that the term "principal obligor" applies to a person or company that is obligated by the terms of an asset, e.g. a receivable, to make payments. It does not include a person or company acting as "servicer", nor does it apply to a seller of the financial assets.

3. *Style of Prospectus*

Section 8.2 of the proposed Policy has been added to describe what style, in the view of the Canadian securities regulatory authorities, constitutes "full, true and plain" disclosure for the purposes of securities legislation.

4. *Business Acquisitions and Dispositions*

Part 4 of the proposed Policy provides guidance as to the application of the requirements in the proposed National Instrument regarding financial statement disclosure of significant acquisitions, in particular the interpretation of "business", "probable" and "significant acquisition". Section 4.5 of the proposed Policy discusses issues relating to relief from the requirements for financial disclosure of business acquisitions and considerations relevant to requests for exemptions.

5. *Underlying Securities*

The CSA have added section 8.7 to the proposed Policy to remind issuers that if securities being distributed are convertible into or exchangeable for other securities, a description of the material attributes of the underlying securities may be necessary to meet the requirement of securities legislation that a short form prospectus contain full, true and plain disclosure of all material facts relating to the securities.

F. *Summary of Changes to Proposed Implementing Rule*

Proposed Rule 44-801 is the local rule implementing the proposed National Instrument and Forms in Ontario. The proposed Implementing Rule has been modified to reduce the number of provisions of proposed Rule 41-501 that apply to a short form prospectus distribution. This change reflects the effort noted above to consolidate, to the extent practicable, in the proposed National Instrument the requirements governing a short form prospectus distribution.

G. *Comments*

Interested parties are invited to make written submissions with respect to the proposed National Instrument, proposed Forms and proposed Policy. Submissions received by September 24, 1999 will be considered.

Submissions should be made in duplicate to:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

c/o Daniel P. Iggers, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario M5H 3S8

Submissions should also be addressed to the Commission des valeurs mobilières du Québec as follows:

Claude St-Pierre, Secretary
Commission des valeurs mobilières du Québec
800 Victoria Square
Stock Exchange Tower
P.O. Box 246, 17th Floor
Montréal, Québec H4Z 1G3

A diskette containing the submissions (in DOS or Windows format, preferably WordPerfect) should also be submitted. As the Act requires that a summary of written comments received during the comment period be published, confidentiality of submissions cannot be maintained.

Questions may be referred to any of:

Brenda Benham
Director, Policy and Legislation
British Columbia Securities Commission
(604) 899-6635
bbenham@bcsc.bc.ca

Agnes Lau
Deputy Director, Capital Markets
Alberta Securities Commission
(780) 422-2191
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Joanne Peters
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Ontario Securities Commission
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Pierre Martin
Senior Legal Counsel
Commission des valeurs mobilières du Québec
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pierre.martin@cvmq.com

Proposed National Instrument, Forms and Companion Policy

The text of the proposed National Instrument, proposed Forms and proposed Policy follows, together with footnotes that are not part of the proposed National Instrument, proposed Forms and proposed Policy but have been included to provide background and explanation.

DATED: July 23, 1999.

**APPENDIX A
TO NOTICE OF PROPOSED CHANGES
TO PROPOSED NATIONAL INSTRUMENT 44-101,
PROPOSED FORMS AND PROPOSED POLICY
LIST OF COMMENTATORS**

1. Coopers & Lybrand by letter dated March 30, 1998.
2. Tory Tory DesLauriers & Binnington by letter dated May 22, 1998.
3. CIBC Wood Gundy by letter dated September 28, 1998.

APPENDIX B
SUMMARY OF COMMENTS RECEIVED ON
1998 PROPOSED NATIONAL INSTRUMENT 44-101,
1998 PROPOSED FORMS AND 1998 PROPOSED POLICY
AND
RESPONSE OF THE CANADIAN SECURITIES ADMINISTRATORS

The CSA received three submissions on the 1998 proposed Instruments.

The CSA considered the comments received and thanks all commentators for providing their comments.

The following is a summary of the comments received, together with the CSA's responses, organized by topic. Unless otherwise provided, references to section numbers in this Appendix are to section numbers in the 1998 proposed Instruments.

A. Comments on Distributions of Asset-backed Securities

1. Absence of Asset Concentration Test

Comment: Two commentators agreed with the absence of an asset concentration test in the definition of "asset-backed security".

2. Definition of "Asset-backed Securities"

Comment: One commentator noted that in the definition of "asset-backed security" in the 1998 proposed National Instrument, the reference to "a discrete pool" of receivables or other financial assets should be interpreted to include one or more discrete pools. Therefore, the commentator recommended that the definition be revised to refer expressly to "one or more discrete pools". The commentator also recommended that references throughout the proposed National Instrument and the proposed Forms that refer to "the underlying pool" be changed to accommodate the singular or the plural. This would mean changing all references to "the underlying pool" to "the underlying pool or pools".

Response: The reference to "a discrete pool" of financial assets allows for the possibility of more than one group of assets comprising a pool. For example, a pool of credit card receivables and a pool of mortgage receivables can together still be a pool. While the definition of "asset-backed security" in the proposed National Instrument has not been revised, a clarification on this point has been added in subsection 1.8(2) of the proposed Policy.

3. Definition of "Principal Obligor"

Comment: One commentator was of the view that the definition of "principal obligor" in the 1998 proposed National Instrument was somewhat ambiguous in that it referred to a person or a company that is "obligated to make payments, or has guaranteed payments, on financial assets" in that this may include not only the person that is contractually obligated to make payment under the terms of, for example, the receivable, but also the company acting as "servicer" by collecting payment from the obligor and remitting the payment to the special purpose entity ("SPE") issuer. The commentator proposed that this be clarified in either the definition or in the Companion Policy to exclude the servicer in its capacity as servicer.

Response: A clarification has been added to subsection 1.8(3) of the proposed Policy.

4. Disclosure of Principal Obligor in AIF

Comment (a): One commentator was of the view that limiting the category of principal obligors to obligors that represent one-third or more of the aggregate principal amount owing on all financial assets underlying the asset-backed security is too restrictive. The commentator recommended that the 10 largest obligors be defined to be "principal obligors", which would require disclosure of their identity in Item 4(2)(g) of the 1998 proposed Form 44-101F1.

Response: The CSA are of the view that requiring the 10 largest obligors to be disclosed in all cases irrespective of the percentage they represent of the aggregate amount owing on the total pool of financial assets is unnecessary. As the statutory requirement to disclose all material facts always applies, additional disclosure concerning an obligor may be necessary in particular circumstances.

Comment (b): The commentator noted that the 1998 proposed Form 44-101F1 required not only disclosure of the identity of principal obligors, but also disclosure as to whether the principal obligors have filed an AIF, Form 10-K or Form 20-F. The commentator suggested that if the definition of "principal obligor" was expanded to include the top 10 obligors by amount owing, it would be

inappropriate to require disclosure of whether these obligors have filed an annual information form because it would place an undue emphasis on the obligors' creditworthiness. The commentator recommended that disclosure of the existence of a principal obligor's annual information form only be required in cases where the principal obligor represents one-third or more of the aggregate amount owing on all of the financial assets underlying the asset-backed security.

Response: Disclosure is only required of principal obligors, namely those whose obligations represent one-third or more of the aggregate amount owing on all of the financial assets.

5. Disclosure of Seller in AIF

Comment (a): One commentator noted that Item 3(2) of the 1998 proposed Form 44-101F1 AIF mandated the disclosure of any material acquisitions and further noted that at the outset of a multi-seller program, any of the initial securitizations will involve a material acquisition. The commentator suggested that this circumstance should be specifically excluded from the disclosure obligation so that a seller's anonymity in a multi-seller program is protected.

Response: The CSA disagree with this comment. Material acquisitions of financial assets by the SPE issuer should be disclosed even at the outset of a multi-seller program. Disclosure of the identity of the parties is only required if the transaction was not at arm's length. If the transaction was arm's length, the nature of the assets must be disclosed, the date of acquisition, the consideration paid and material ongoing obligations in connection with the acquisition. In the view of the CSA, this disclosure is not unduly onerous.

Comment (b): Item 4(2)(b) of the 1998 proposed Form 44-101F1 required information on the "composition" of the underlying pool of financial assets. The commentator recommended that it be clarified that the "composition" can be expressed without disclosing the identity of each seller.

Response: In the view of the CSA, a description of the "composition" of the underlying pool of financial assets does not necessarily require disclosure concerning the seller of the asset.

Comment (c): Item 4(2)(g) of the 1998 proposed Form 44-101F1 required disclosure of principal obligors. The commentator noted that in a mature multi-seller program with a high degree of diversity, there would be no principal obligors.

Response: The CSA agree.

6. Disclosure of Seller in Short Form Prospectus

Comment (a): One commentator pointed out that securitization offers corporate banking customers an alternative to traditional borrowing by allowing them to access capital markets through a SPE. The commentator expressed concern that since these customers enjoy the benefit of a banker's duty of confidentiality when borrowing from a bank, public disclosure of their identity in a short form prospectus would discourage use of the POP system and the shelf system for distributions of asset-backed securities. The commentator was of the view that a short form prospectus offering of asset-backed securities should be permitted without disclosure of the identity of the individual sellers in the context of a multi-seller conduit. The commentator noted that the market can decide whether to accept or reject this level of disclosure.

Response: Item 8.3(d)(i) of proposed Form 44-101F2 requires disclosure of the identity of a seller only if the seller transferred a material portion of the financial assets comprising the pool. While the CSA recognize that private placements and other private financings offer borrowers the benefit of anonymity, the CSA are of the view that this disclosure is material to investors purchasing securities under a prospectus. If corporate borrowers wish to enjoy the benefits of the broadest of capital market financings, they must also comply with the standards for disclosure appropriate for prospectus offerings, including the responsibility to provide full, true and plain disclosure to the investing public.

Comment (b): The commentator noted that Item 8(3)(d)(i) of the 1998 proposed Form 44-101F2 required disclosure of a seller of a material portion of the financial assets comprising the underlying pool of financial assets and that in subsection 7.5(2) of the 1998 proposed Policy, the CSA indicated that it considers 33 1/3 percent of the dollar value of the financial assets comprising the pool to be a material portion. Because this threshold coincides with the threshold used in the definition of "principal obligor", the commentator was unsure whether the CSA views sellers of a material portion of financial assets comprising the underlying pool to be "principal obligors".

Response: Sellers are not obligors. Sellers of financial assets are the companies that assign to the SPE the right to receive payments on the financial assets; they are not the companies contractually obliged to make payments on the financial assets. A clarification has been added on this point in subsection 1.8(3) of the proposed Policy.

Comment (c): Item 7.5(1)3 of the 1998 proposed Policy explained that disclosure in a short form prospectus concerning the seller of the underlying financial assets will only be relevant to investors if the seller has an ongoing relationship with the financial assets comprising the pool. The commentator recommended that this commentary be revised to add that the existence of an ongoing relationship with the seller is relevant to investors only when the program is a single-seller program, not a multi-seller program.

Response: The CSA disagree with this comment. The fact that the seller has an on-going relationship can be relevant to investors in the context of a multi-seller program.

7. Disclosure of Servicer in Short Form Prospectus

Comment: One commentator was opposed to mandatory disclosure of a seller of financial assets. Since a seller can act as servicer, the requirement in Item 8(3)(d)(iii) of the 1998 proposed Form 44-101F2 that the identity of the servicer be disclosed under certain circumstances may catch a seller. The commentator recommended that, if the seller acts as servicer, the requirement to disclose the identity of the servicer should not apply.

Response: The identity of a servicer of a material portion of the financial assets comprising the pool is required in Item 8.3(d)(iii) of proposed Form 44-101F2 only in circumstances where (i) finding a replacement servicer at a comparable cost is not reasonably likely, (ii) a replacement servicer is likely to achieve materially worse results than the current servicer, (iii) the current servicer is likely to default on its obligations, or (iv) the disclosure is otherwise material. If any of those circumstances exist, the CSA believe that disclosure of the identity of the servicer is relevant to investors irrespective of whether the servicer happens to be the seller.

8. Disclosure of Income

Comment: Item 4(2)(b)(ii) of the 1998 proposed Form 44-101F1 required disclosure of income and losses from the asset pool on at least a quarterly basis. One commentator was of the view that since securitizations in Canada are typically structured so that the SPE trust has little or no net income for tax purposes, disclosure of the trust's income statements will not be useful. In the view of the commentator, it would be more useful to require cash flow statements.

Response: The issuer will typically have little income and an income statement of the issuer may not be very helpful. However, Item 4.2(b)(ii) of proposed Form 44-101F1 requires disclosure of "income and losses from the pool" (underline added); not income and losses of the issuer. The income generated by the pool is different than the income generated by the issuer.

9. Disclosure of Directors and Officers

Comment: Items 8 and 9 of the 1998 proposed Form 44-101F1 required disclosure concerning the directors and officers of the issuer. One commentator was of the view that in the context of a SPE issuer of asset-backed securities, this disclosure is not relevant and should not be required.

Response: The CSA refer to the definition of "director" in securities legislation which includes a person acting in a capacity similar to that of a director of a company and to the definition of "officer" which includes a person acting in a capacity similar to that of an officer of a company. Even in the context of an SPE issuer, the CSA are of the view that disclosure respecting these persons is useful for readers.

10. Pool Performance

Comment: In some transactions, the securitized assets are randomly selected from a larger pool of the same assets and historical financial information is recorded only based on the larger pool. One commentator recommended that the historical performance of the pool of securitized assets required in Item 4(2)(b) of the 1998 proposed Form 44-101F1 and Item 8(3)(b) of the 1998 proposed Form 44-101F2 be revised to accommodate disclosure regarding the larger pool instead of the actual pool of securitized assets.

Response: The CSA have addressed this comment by adding Instruction (2) to Item 8.3(b) in proposed Form 44-101F2.

11. Move Disclosure Items from Short Form Prospectus to AIF

Comment: One commentator proposed moving several matters in Item 8(3) of the 1998 proposed Form 44-101F2 to Form 44-101F1 because they will not typically change from short form prospectus to short form prospectus. The commentator referred specifically to:

- ! Item 8(3)(d)(i), that required disclosure of a company that originates or sells a material portion of the financial assets comprising the pool.
- ! Item 8(3)(d)(ii), that required disclosure of a person or company that acts as trustee, custodian, bailee, agent, or other similar intermediary.

- ! Item 8(3)(d)(iii), that required disclosure of the administrator or servicer in certain circumstances.
- ! Item 8(3)(e), that required disclosure of the terms of material relationships between the persons listed in Item 8(3)(d) and the issuer.
- ! Item 8(3)(f), that required disclosure of provisions relating to the termination of services of any person referred to in paragraph (d).

Response: While this information may not typically change from short form prospectus to short form prospectus, the CSA are of the view that this information should nonetheless be contained directly in a short form prospectus, not incorporated by reference.

12. **Signing of Certificate**

Comment: One commentator sought clarification as to who can sign the short form prospectus certificate on behalf of the issuer where the issuer is a trust with no officers or directors. The commentator proposed that the National Instrument provide that the administrator or manager be entitled to sign the short form prospectus certificate on behalf of the trust.

Response: The CSA have added subsection 10.1(1) to the proposed Policy as guidance in these circumstances.

13. **Commentary on POP Eligibility for Issuers of Asset-backed Securities**

Comment (a): One commentator proposed changing a reference in paragraph 2.6(2)1 of the 1998 proposed Policy from "a pool of discrete liquidating assets" to "one or more pools of discrete liquidating assets".

Response: As discussed above, this comment has been addressed by a change to subsection 1.8(2) of the proposed Policy.

Comment (b): The commentator proposed changing a reference in the same paragraph from a "specified" period of time to a "specified or determinable" period of time.

Response: The CSA agree.

14. **Commentary on Promoters**

Comment: One commentator noted that in subsection 2.6(3) of the 1998 proposed Policy, it seems to be concluded that, in the case of a single-seller program, the seller will be the promoter. The commentator was of the view that this conclusion will discourage the sellers from using a single-seller program. The commentator recommended that the proposed Policy indicate that where a person (such as an investment dealer) takes the initiative to organize a SPE issuer and signs the certificate as a promoter, the seller is not necessarily also a promoter only because it participates in the initiative.

Response: The commentary in the proposed Policy is intended as general guidance as to the application of the definition of "promoter" in securities legislation. As the definition is a factual test that must be applied in each case, the commentary in the proposed Policy is not intended to be determinative of the issue.

15. **Material Relationships with an Issuer**

Comment: Item 8(3)(e) of the 1998 proposed Form 44-102F2 required disclosure of any material relationships between (i) persons or companies referred to in Item 8(3)(d) and any of their respective affiliates, and (ii) the issuer and any of its affiliates. Despite the limitation on the disclosure obligation to only "material" relationships, one commentator found this disclosure obligation unduly broad, in that it included affiliates of the issuer. Since the issuer is typically a trust, the issuer's affiliates may include the beneficiaries of the trust and affiliates of those beneficiaries as well as the issuer trustee. The commentator believed that "this information is unlikely to be material and may accordingly be misleading". Consequently, the commentator recommended that disclosure be required only of material relationships between (i) the persons (and their affiliates) listed under paragraph (d), and (ii) the issuer, only if the issuer is a promoter, or the promoter and their respective affiliates.

Response: This comment was considered in three parts:

- (i) Disclosure of non-material information may be misleading: As disclosure is only required if the relationship is material to investors, the required disclosure is not, in the view of the CSA, misleading.
- (ii) Disclosure of material relationships between the persons listed in paragraph (d) and the issuer's affiliates should not be required: The CSA agree with this comment. SPE issuers are typically trusts. The concept of "affiliate" is by definition tied to corporate issuers and consequently is awkward to apply to a trust. Consequently, the reference to an issuer's affiliates has been omitted from Item 8.3(f)(ii) of proposed Form 44-101F2.

- (iii) Disclosure of material relationships between the persons listed in paragraph (d) and any promoter and its affiliates should be required: The CSA believes that this issue is of broader significance for distributions generally, not just for distributions of asset-backed securities. The CSA have responded to this comment by adding Item 16 to proposed Form 44-101F2, which requires disclosure of promoters and any indirect benefits they receive from the issuer. Furthermore, the statutory requirement to disclose all material facts applies in any event.

16. Short Form Prospectus Certificates

Comment: One commentator was of the view that the requirement to have an officers' certificate and a directors' certificate is inappropriate for a SPE issuer that is a trust because the trust will not have a CEO, CFO or a board of directors. The issuer trustee is typically a trust company which does have officers and directors. The commentator noted, however, that the role of issuer trustee is typically a passive role and many trust companies may increasingly be reluctant to sign short form prospectus certificates. The commentator was of the view that having directors and officers of the issuer trustee sign the short form prospectus certificate accomplishes no policy objective. The commentator recommended that the issuer trustee be required to sign an officers' certificate and directors' certificate only if the issuer trustee is also a promoter.

Response: The CSA are of the view that a directors' certificate and an officers' certificate do have merit in this context and refer to Comment #9 above. The CSA have also expanded the certificate requirement in Item 20.1 of proposed Form 44-101F2 to include, in cases where no CEO or CFO has been appointed, certificates of persons acting on behalf of an issuer in a capacity similar to a CEO and to a CFO.

17. Companion Policy Commentary on Promoter

Comment: While agreeing with the analysis in Item 2.6(3) of the 1998 proposed Policy concerning the interpretation of "promoter" in asset-backed security transactions, the commentator recommended one clarification in the discussion of the circumstances in which administrative agents will be regarded as promoters. The 1998 proposed Policy stated that an entity initially agreeing to provide ongoing collection, administrative or similar services to the issuer will be a promoter of the issuer if it took the initiative in founding, organizing or substantially reorganizing the business of the issuer.

The commentator found this statement to be unduly broad as it can include an administrative agent that is not a seller. For example: an affiliate of the underwriter acting as administrative agent carrying out monthly cash transfers for the issuer. In this capacity, the underwriter's affiliate does not collect the actual portfolio assets. The commentator regarded this distinction as significant and recommended that the proposed Policy clarify that the ongoing collection, administrative or similar services referred to be services "with respect to the portfolio assets". The object of the clarification would be to limit the scope of application to only a seller acting as administrative agent for the issuer and to exclude a third party acting as administrative agent.

Response: The CSA disagree with this analysis because it appears to ignore the qualification in the Policy that the administrative agent, in order to be a promoter, must also have taken the initiative in some way in setting up the transaction. While unlikely to arise, if an affiliate of an underwriter takes such initiative and then acts as administrative agent, the affiliate would be a promoter.

B. Accounting Matters

1. Financial Statement Disclosure of Business Acquisitions

Comment (a): One commentator opposed the requirement to include financial statements of an acquired business based on a broad materiality assessment. He recommended the SEC approach as a better alternative. In particular, the commentator was opposed to the proposed six month cutoff according to which the financial information concerning an acquired business must be provided unless the financial results of the acquired business have been included in the audited financial statements of the issuer for at least six months. The commentator recommended the SEC approach where the amount of information required to be included varies depending on the significance of the acquisition. The commentator further expressed concern that problems can arise where the acquisition is intended to be completed or has recently been completed and the relevant information is not available. The commentator expressed support for the approach taken by the SEC in late 1996 to allow information to be filed after the completion of the offering.

Response: As discussed above in the Notice, the CSA have revised the disclosure requirements concerning business acquisitions to reflect, in principle, the SEC approach. See "Financial Statement Disclosure for Significant Acquisitions" above.

Comment (b): In addition to requiring the *pro forma* balance sheet to be as at the most recently completed financial year end, the commentator recommended that it be as of the date of the most recent balance sheet included in the short form prospectus.

Response: The requirements for financial statement disclosure in a short form prospectus for business acquisitions appear in Part 4 of the proposed National Instrument. Paragraph 6 of subsection 4.2(1) of the proposed National Instrument requires an issuer that

has made a significant acquisition or is proposing to make a significant probable acquisition, to include in its short form prospectus a *pro forma* balance sheet of the issuer as at the date of the issuer's most recent balance sheet included in the short form prospectus that gives effect, as if they had taken place as at the date of the *pro forma* balance sheet, to (i) significant acquisitions not reflected in the issuer's most recent annual or interim balance sheet included in the short form prospectus, and (ii) significant probable acquisitions.

Comment (c): The commentator recommended inclusion of *pro forma* income statements for any subsequent interim periods for which the issuer has issued financial statements.

Response: Paragraph 7 of subsection 4.2(1) of the proposed National Instrument requires a *pro forma* income statement that gives effect to significant acquisitions completed during the most recently completed financial year of the issuer or during the issuer's current financial year and significant probable acquisitions, as if they had taken place at the beginning of (i) the most recent financial year of the issuer for which audited financial statements are included in the short form prospectus, and (ii) the most recent interim period for which financial statements are included in the short form prospectus.

Comment (d): The commentator recommended that proposed Form 44-101F2 not require a *pro forma* statement of changes in financial position, which would be consistent with current practice and SAC Notice No. 9.

Response: The CSA agree. Part 4 of the proposed National Instrument has been revised accordingly.

2. Selected Financial Information in Foreign GAAP

Comment (a): The commentator disagreed with Item 5(4) of the 1998 proposed Form 44-101F1 that permitted the selected financial information to be presented on the basis of foreign GAAP even where a the financial statements have been, or are required to have been, reconciled to Canadian GAAP.

Response: The CSA believe that a cross-reference in these circumstances to the reconciliation is sufficient.

Comment (b): The commentator also suggested that if there are material GAAP differences there should be a discussion in the MD&A geared to the Canadian GAAP figures.

Response: The CSA are of the view that a cross-reference in the MD&A to the notes to the financial statements containing the reconciliation is sufficient and have not required a discussion of differences in Item 6.2 of proposed Form 44-101F1.

3. MD&A (Schedule 1 to Form 44-101F1)

Comment (a): The commentator recommended an analysis of the changes in financial position going back three years, not just two.

Response: The CSA are of the view that an analysis of the most recently completed financial year, comparing it to the preceding year, is sufficient in an AIF.

Comment (b): The commentator agreed with the required disclosure in Item 1(4) of Schedule 1 to the 1998 proposed Form 44-101F1 MD&A relating to changes to accounting policies. The commentator also agreed with the requirements in paragraphs 1(5)(e) and (f) regarding financial instruments.

Response: The CSA agree.

4. No Discretion to Accept Unaudited Statements (Item 11(6) of Form 44-101F2)

Comment: The commentator recommended that the CSA discuss and address in the proposed Policy, the possibility of accepting qualified auditors reports or unaudited financial statements.

Response: The Chief Accountants Committee of the CSA is considering these issues further.

5. Comfort Letters (ss. 4.2(5) and 4.2(11) of the 1998 proposed National Instrument)

Comment: The commentator recommended that the CSA provide guidance on the auditor's comfort letter requirements.

Response: Paragraph 7.2(1)(a)3 of the proposed National Instrument requires comfort letters to be prepared in accordance with the relevant standards in the Handbook.

C. Other**1. Approved Rating Organization**

Comment: The commentator recommends expanding the list of approved rating organizations to include Fitch and DCR.

Response: Duff & Phelps Credit Rating Co., Fitch IBCA, Inc. and Thomson BankWatch, Inc. have been added as approved rating organizations for the purposes of the proposed National Instrument.

2. AIF Disclosure for Issuers with Oil and Gas Operations

Comment: The commentator recommended requiring discounted value of reserves disclosure, including detailed pricing assumptions and sensitivities.

Response: The CSA have revised the requirements in Item 4.4 of proposed Form 44-101F1 to require disclosure, to the extent material, of estimated reserve volumes and discounted cash flow from such reserves, stated separately by country and by categories and types that conform to the classifications, definitions and disclosure requirements of National Policy Statement No. 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators, or any successor instrument.

National Instrument 44-101
Short Form Prospectus Distributions

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

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NATIONAL INSTRUMENT 44-101¹
SHORT FORM PROSPECTUS DISTRIBUTIONS

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions²

In this Instrument

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

- (a) the businesses were under common control or management before the acquisitions were completed; or
- (b) each acquisition was conditional upon
 - (i) the completion of each other acquisition, or
 - (ii) the happening of one or more common events;³

"AIF" means an annual information form

- (a) in the form of Form 44-101F1 AIF,
- (b) in the form referred to in subsection 3.4(1), or
- (c) in the form of Appendix A to National Policy Statement No. 47, if the annual information form was filed before this Instrument came into force;

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

- (a) obliges the person or company providing the support to provide the issuer with funds sufficient to enable the issuer to make the stipulated payments, or
- (b) entitles the holder of the securities to receive payment from the person or company providing the support, if the issuer fails to make a stipulated payment;⁴

¹ The proposed Instrument is an initiative of the Canadian Securities Administrators (the "CSA") and is expected to be adopted as a rule in British Columbia, Alberta, Ontario, Manitoba and Nova Scotia, as a Commission Regulation in Saskatchewan and as a Policy in all other jurisdictions represented by the CSA, other than Quebec. The Commission des valeurs mobilières du Québec (the "CVMQ") agrees with the purpose and intent of the proposed Instrument, but will not be adopting it at this time as its securities legislation provides for accessibility to a simplified prospectus procedure. The CVMQ will be conducting a review of its securities legislation to determine if changes are advisable as a result of implementation of the proposed Instrument. This proposed Instrument is derived from National Policy Statement No. 47 ("NP47") and, in part, National Policy Statement No. 1 ("NP1") of the Canadian securities regulatory authorities and related Blanket Orders or Rulings adopted by them. The proposed National Instrument was first published for comment on February 20, 1998 at (1998), 21 OSCB 1138 (the "1998 proposed National Instrument".) Unless otherwise specified, changes noted in these footnotes refer to changes made to the 1998 proposed National Instrument, not NP47.

² A national definition instrument has been adopted as National Instrument 14-101 Definitions. It contains definitions of certain terms used in more than one national instrument. National Instrument 14-101 also provides that a term used in a national instrument and defined in the statute relating to securities of the applicable jurisdiction, the definition of which is not restricted to a specific portion of the statute, will have the meaning in that jurisdiction given to it in that statute, unless the context otherwise requires. National Instrument 14-101 also provides that a provision or a reference within a provision in a national instrument that specifically refers by name to a jurisdiction, other than the local jurisdiction, shall not have any effect in the local jurisdiction, unless otherwise stated in the provision.

³ This definition is new and has been added because the term is used in Part 4.

⁴ This definition has been modified in two regards. First, it has been expanded to apply to all forms of alternative credit support, not merely credit support that is relied upon in order for the issuer to be qualified to file a prospectus in the form of a short form prospectus. The definition in the 1998 proposed National Instrument was restricted to the circumstance where the credit support was the basis of the issuer's qualification. This change was made so that Item 13.2 of Form 44-101F2 Short Form Prospectus would require disclosure regarding the credit supporter irrespective of the basis of the issuer's qualification. Second, this definition has been expanded to expressly contemplate a credit support arrangement that the issuer with funds, rather than entitling the securityholder to receive payment directly from the credit supporter.

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

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

"approved rating organization" means each of CBRS Inc., Dominion Bond Rating Service Limited, Duff & Phelps Credit Rating Co., Fitch IBCA, Inc., Moody's Investors Service, Inc., Standard & Poor's Corporation, Thomson BankWatch, Inc., and any of their successors;⁵

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

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

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

"auditor's report" means

- (a) a Canadian auditor's report,⁶ or
- (b) in the case of an issuer incorporated or organized in a foreign jurisdiction
 - (i) a Canadian auditor's report, or

⁵ This definition has been expanded to include Duff & Phelps Credit Rating Co., Fitch IBCA, Inc. and Thomson BankWatch, Inc.

⁶ The term "Canadian auditor's report" is defined in National Instrument 14-101 Definitions. The definition is "an auditor's report prepared in accordance with Canadian GAAS". The term "Canadian GAAS" is also defined in National Instrument 14-101 Definitions. The definition is "generally accepted auditing standards determined with reference to the Handbook". The term "Handbook" is defined in National Instrument 14-101 Definitions to mean "the Handbook of the Canadian Institute of Chartered Accountants, as amended from time to time".

- (ii) a foreign auditor's report;⁷

"cash equivalent" means an evidence of indebtedness that has a remaining term to maturity of 365 days or less and that is issued, or fully and unconditionally guaranteed as to principal and interest, by

- (a) the government of Canada or the government of a jurisdiction,
- (b) the government of the United States of America, the government of one of the states of the United States of America, the government of another sovereign state or a permitted supranational agency, if, in each case, the evidence of indebtedness has an approved rating, or
- (c) a Canadian financial institution⁸, or other entity that is regulated as a banking institution, loan corporation, trust company, or insurance company or credit union by the government, or an agency of the government, of the country under whose laws the entity is incorporated or organized or a political subdivision of that country, if, in either case, the Canadian financial institution or other entity has outstanding short term debt securities that have received an approved rating from any approved rating organization;

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

"connected issuer" has the meaning ascribed to that term in Multilateral Instrument 33-105 Underwriting Conflicts;

"convertible" means, if used to describe securities, that the rights and attributes attached to the securities include the right or option to purchase, convert into or exchange for or otherwise acquire equity securities of an issuer, or any other security that itself includes the right or option to purchase, convert into or exchange for or otherwise acquire equity securities of an issuer;⁹

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

"current AIF" means

- (a) for an issuer other than an issuer subsisting under the laws of a foreign jurisdiction that has filed an AIF in the form of a current annual report on Form 20-F under subsection 3.4(1)
- (i) during the period of 140 days following the issuer's most recently completed financial year,
- (A) if the issuer has filed an initial AIF for its most recently completed financial year that has been accepted for filing under this Instrument, the initial AIF,
- (B) if the issuer has filed a renewal AIF under this Instrument for its most recently completed financial year, the renewal AIF,
- (C) if the issuer has not filed an AIF for its most recently completed financial year and has filed an initial AIF for the financial year preceding its most recently completed financial year that has been accepted for filing under this Instrument, the initial AIF, or
- (D) if the issuer has not filed an AIF for its most recently completed financial year and has filed a renewal AIF under this Instrument for the financial year preceding its most recently completed financial year, the renewal AIF,

⁷ This definition is new and has been added because the term is used in Part 5. The definition of "capital resources" in the 1998 proposed National Instrument has been moved to Schedule 1 to Form 44-101F1 MD&A.

⁸ The term "Canadian financial institution" is defined in National Instrument 14-101 Definitions as "a bank, loan corporation, trust company, insurance company, treasury branch, credit union or caisse populaire that, in each case, is authorized to carry on business in Canada or a jurisdiction, or the Confédération des caisses populaires et d'économie Desjardins du Québec".

⁹ This definition has been expanded to describe any securities, not just debt securities and preferred shares, to parallel the change made to the definition of "non-convertible".

- (ii) at any time after 140 days following the issuer's most recently completed financial year,
 - (A) if the issuer has filed an initial AIF for its most recently completed financial year that has been accepted for filing under this Instrument, the initial AIF, or
 - (B) if the issuer has filed a renewal AIF under this Instrument for its most recently completed financial year, the renewal AIF, or
- (iii) an AIF of the issuer filed before this Instrument came into force that would constitute a "Current AIF" for the purposes of National Policy Statement No. 47 if that instrument was applicable, or
- (b) for an issuer subsisting under the laws of a foreign jurisdiction that has filed an AIF in the form of a current annual report on Form 20-F under subsection 3.4(1)
 - (i) during the period of 180 days following the issuer's most recently completed financial year
 - (A) if the issuer has filed an initial AIF for its most recently completed financial year that has been accepted for filing under this Instrument, the initial AIF,
 - (B) if the issuer has filed a renewal AIF under this Instrument for its most recently completed financial year, the renewal AIF,
 - (C) if the issuer has not filed an AIF for its most recently completed financial year and has filed an initial AIF for the financial year preceding its most recently completed financial year that has been accepted for filing under this Instrument, the initial AIF, or
 - (D) if the issuer has not filed an AIF for its most recently completed financial year and has filed a renewal AIF under this Instrument for the financial year preceding its most recently completed financial year, the renewal AIF,
 - (ii) at any time after 180 days following the issuer's most recently completed financial year,
 - (A) if the issuer has filed an initial AIF for its most recently completed financial year that has been accepted for filing under this instrument, the initial AIF, or
 - (B) if the issuer has filed a renewal AIF under this Instrument for its most recently completed financial year, the renewal AIF, or
 - (iii) an AIF of the issuer filed before this Instrument came into force that would constitute a "Current AIF" for the purposes of National Policy Statement No. 47 if that instrument was applicable;¹⁰

"equity security" means any security of an issuer that carries a residual right to participate in the earnings of the issuer and, upon the liquidation or winding up of the issuer, in its assets;¹¹

"foreign auditor's report" means a report of an auditor that is prepared in accordance with foreign GAAS;¹²

"foreign GAAP" means a body of generally accepted accounting principles, other than Canadian GAAP, that are as comprehensive as Canadian GAAP;¹³

¹⁰ The order of appearance of paragraphs (a) and (b) has been reversed so as to refer to Canadian issuers first. This definition has also been modified to reflect that a renewal AIF becomes a current AIF immediately upon filing. The CSA have discontinued the practice of accepting a renewal AIF on filing. The definition of "designated jurisdiction" has been omitted in anticipation of the adoption of the MRRS.

¹¹ The definition of "expedited review system" has been omitted in anticipation of the adoption of the MRRS. The definition of "failure date" has been omitted as it is no longer used in section 2.5.

¹² This definition is new and has been added because the term is used in Part 5.

¹³ This definition is new and has been added because the term is used in Part 5.

"foreign GAAS" means a body of generally accepted auditing standards, other than Canadian GAAS, that are substantially equivalent to Canadian GAAS;¹⁴

"income from continuing operations" means income or loss from operations excluding discontinued operations and extraordinary items and before income taxes;¹⁵

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

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

"interim period" means a completed three, six or nine month period in the financial year that commenced immediately following the end of the most recently completed financial year for which audited annual financial statements are included in a short form prospectus;¹⁶

"investee" means any entity that the Handbook¹⁷ recommends that an issuer account for by the equity method or the proportionate consolidation method;

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

"MRRS" has the meaning ascribed to that term in National Policy 43-201 Mutual Reliance Review System for Prospectuses and AIFs;¹⁸

"MRRS decision document" means a decision document issued under National Policy 43-201 for a preliminary short form prospectus, a short form prospectus, an amendment to a preliminary short form prospectus or a short form prospectus, an initial AIF or a renewal AIF;¹⁹

"non-convertible" means, if used to describe a security, a security that is not convertible;²⁰

"participant" means an issuer that is a party to a reorganization;

"permitted supranational agency" means the International Bank for Reconstruction and Development, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the Caribbean Development Bank, the European Bank for Reconstruction and Development, the African Development Bank and any person or company prescribed under paragraph (g) of the definition of "foreign property" in subsection 206(1) of the ITA;²¹

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

¹⁴ This definition is new and has been added because the term is used in Part 5.

¹⁵ This definition is new and has been added because the term is used in section 1.2.

¹⁶ This definition is new and has been added because the term is used in Part 4.

¹⁷ National Instrument 14-101 Definitions defines the term "Handbook" as "the Handbook of the Canadian Institute of Chartered Accountants, as amended from time to time".

¹⁸ This definition is new and has been added in anticipation of the adoption of the MRRS.

¹⁹ This definition is new and has been added in anticipation of the adoption of the MRRS. The definition of "National Instrument 44-101 Receipt System" has been omitted for the same reason.

²⁰ This definition has been expanded to refer to any security in light of changes made to section 2.4.

²¹ The term "ITA" is defined in National Instrument 14-101 Definitions as meaning "the *Income Tax Act* (Canada)". The definition of "POP system" has been omitted in light of the shift in terminology away from "eligible to participate in the POP system" throughout in this Instrument. Reference is instead made to an issuer being qualified to file a prospectus in the form of a short form prospectus.

- (a) the regulator in the local jurisdiction, if
 - (i) the AIF, preliminary short form prospectus, short form prospectus or amendment is filed only in the local jurisdiction, or
 - (ii) the AIF, preliminary short form prospectus, short form prospectus or amendment is filed in more than one jurisdiction and the issuer has not elected to use the MRRS, or
- (b) the person referred to in Appendix D of National Instrument 14-101 Definitions opposite the name of the jurisdiction that acts as principal regulator for the review of the document under National Policy 43-201, together with the regulator in each jurisdiction, if any, that has opted out of, without having opted back into, the MRRS, if
 - (i) the AIF, preliminary short form prospectus, short form prospectus or amendment is filed in more than one local jurisdiction, and
 - (ii) the issuer has elected to use the MRRS;²²

"principal obligor" means, for an asset-backed security, a person or company that is obligated to make payments, has guaranteed payments, or has provided alternative credit support for payments, on financial assets that represent a third or more of the aggregate amount owing on all of the financial assets underlying the asset-backed security;²³

"probable acquisition of a business" means a proposed acquisition of a business that has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high;²⁴

"probable acquisition of related businesses" means the proposed acquisitions of two or more businesses that have progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high and

- (a) the businesses are under common control or management; or
- (b) each acquisition is conditional upon
 - (i) the completion of each other acquisition, or
 - (ii) the happening of one or more common events;²⁵

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

"reorganization" means

- (a) a statutory amalgamation,
- (b) a statutory merger, or
- (c) a statutory arrangement;²⁶

²² This definition is new and is based on the definition of "regulator" that appeared in subsection 3.2(1) of the 1998 proposed National Instrument and has been modified in anticipation of the adoption of the MRRS.

²³ The reference to "alternative credit support" in this definition is new. The definition of "prospectus requirement" has been omitted because it now appears in National Instrument 14-101 Definitions.

²⁴ This definition is new and has been added because the term is used in Part 4.

²⁵ This definition is new and has been added because the term is used in Part 4.

²⁶ The reference to "or any other similar transaction" has been omitted due to vagueness.

"SEDAR" has the meaning ascribed to that term in National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR);²⁷

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

"successor issuer" means an issuer existing as a result of a reorganization, other than, in the case where the reorganization involved a divestiture of a portion of a participant's business, an issuer that succeeded to or otherwise acquired the portion of the business divested;²⁸ and

"underlying interest" means, for a specified derivative, the security, commodity, financial instrument, currency, interest rate, foreign exchange rate, economic indicator, index, basket, agreement, benchmark or any other reference, interest or variable, and, if applicable, the relationship between any of the foregoing, from, to or on which the market price, value or any payment obligation of the specified derivative is derived, referenced or based.

1.2 Significant Acquisitions²⁹

(1) For the purposes of this Instrument, an acquisition of a business, an acquisition of related businesses, a probable acquisition of a business or a probable acquisition of related businesses is a significant acquisition, if it satisfies any of the following conditions:

1. The total consolidated assets of the business or the related businesses exceed 20 percent of the consolidated assets of the issuer as at the date of the most recent balance sheet of the issuer included in the short form prospectus, before giving effect to the acquisition.
2. The issuer's proportionate share of the consolidated revenue of the business or the related businesses for the later of
 - (a) the most recently completed financial year of the business or the related businesses that ended more than 90 days before the date of the short form prospectus, and
 - (b) the 12 months ended on the last day of the most recently completed interim period of the business or related businesses that ended more than 60 days before the date of the short form prospectus,

exceeds 20 percent of the total consolidated revenue of the issuer for the later of the most recently completed financial year or the 12 months ended on the last day of the most recently completed interim period of the issuer for which statements are included in the short form prospectus, but before giving effect to the acquisition.

3. The issuer's proportionate share of the consolidated income from continuing operations of the business or the related businesses for the later of
 - (a) the most recently completed financial year of the business or the related businesses that ended more than 90 days before the date of the short form prospectus, and
 - (b) the 12 months ended on the last day of the most recently completed interim period of the business or related businesses that ended more than 60 days before the date of the short form prospectus,

exceeds 20 percent of the income from continuing operations of the issuer on a consolidated basis for the later of the most recently completed financial year or the 12 months ended on the last day of the most recently completed interim period of the issuer for which statements are included in the short form prospectus, before giving effect to the acquisition.

(2) In determining whether an acquisition of related businesses or a probable acquisition of related businesses is a significant acquisition, the related businesses shall be considered on a combined basis.

²⁷ This definition is new.

²⁸ This definition has been rephrased for greater clarity.

²⁹ This section is new and has been added in light of Part 4.

- (3) For purposes of paragraph 3 of subsection (1), if the income from continuing operations of the issuer on a consolidated basis for the most recent 12 months is lower by 20 percent or more than the average consolidated income from continuing operations of the issuer for the two previous financial years as shown in its financial statements, excluding any years in which the issuer incurred a loss, the average consolidated income for those two financial years shall be substituted in determining whether the condition set out in paragraph 3 of subsection (1) is satisfied.

1.3 Probable Acquisitions³⁰

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

1.4 References to Information Included in a Document - References in this Instrument to information included in a document refer to both information contained directly in the document and information incorporated by reference in the document.³¹

1.5 References to Information to be Included in a Document - Provisions of this Instrument that require an issuer to include information in a document require an issuer either to insert the information directly in the document or to incorporate the information in the document by reference.³²

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

2.1 Short Form Prospectus

- (1) An issuer shall not file a prospectus in the form of Form 44-101F2 Short Form Prospectus, unless the issuer is qualified under section 2.2, 2.3, 2.4, 2.5, 2.6, 2.7 or 2.8 to file a prospectus in the form of a short form prospectus.³³
- (2) An issuer that is qualified under section 2.2, 2.3, 2.4, 2.5, 2.6, 2.7 or 2.8 to file a prospectus in the form of a short form prospectus or that has been exempted from subsection (1) under section 12.1 may file
- (a) a preliminary prospectus, prepared and certified in the form of Form 44-101F2 Short Form Prospectus, pertaining to a type of securities for which the issuer is qualified under this Instrument or permitted under any exemption to file a short form prospectus; and
 - (b) a prospectus, prepared and certified in the form of Form 44-101F2 Short Form Prospectus, pertaining to a type of securities for which the issuer is qualified under this Instrument or permitted under any exemption to file a short form prospectus.³⁴
- (3) An issuer that filed and obtained a receipt for a preliminary short form prospectus for a distribution of securities under National Policy Statement No. 47

³⁰ This section is new and has been added for clarification in light of Part 4.

³¹ This section is new and has been added for clarification.

³² This section is new and has been added for clarification.

³³ This section is new and has been added in order to tie into section 12.1 more clearly.

³⁴ The criterion that the issuer and, if applicable, the credit supporter not be in default of any requirement in securities legislation has been omitted. Instead, a prohibition on filing a preliminary short form prospectus or short form prospectus if the issuer is in default of filing or delivery requirements under securities legislation has been added to section 7.5. This subsection has also been rephrased, consistent with the shift in terminology throughout this Instrument, to omit references to "eligible to participate in the POP system". These references have been replaced by the phrase "qualified to file a prospectus in the form of a short form prospectus".

- (a) is considered to have satisfied the requirement in securities legislation³⁵ to file and obtain a receipt for a preliminary prospectus for the distribution unless, in the case where securities legislation provides for lapsing of a preliminary prospectus, the issuer's preliminary short form prospectus has lapsed; and
 - (b) may file a prospectus, prepared and certified in the form of Form 44-101F2 Short Form Prospectus, for the distribution if in the case where securities legislation provides for lapsing of a preliminary prospectus, the issuer's preliminary short form prospectus has not lapsed.³⁶
- (4) If an issuer, before the coming into force of this Instrument, filed and obtained a receipt under National Policy Statement No. 47 for a short form prospectus pertaining to a distribution of securities, the prospectus requirement does not apply to the distribution only insofar as the prospectus requirement concerns the form and content of a preliminary prospectus and prospectus and only for one year from the date of the receipt issued for the short form prospectus pertaining to the distribution.³⁷
- (5) A short form prospectus shall, at the issuer's option, be prepared in accordance with securities legislation in effect at either the date of issuance of a receipt for the preliminary short form prospectus or the date of issuance of a receipt for the short form prospectus.³⁸

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

1. Either paragraph (a) or (b) is true:
 - (a) the issuer is a reporting issuer in the local jurisdiction and the issuer
 - (i) has been a reporting issuer in the local jurisdiction for the 12 calendar months preceding the date of the filing of its most recent AIF, or
 - (ii) is, and has been for the 12 calendar months preceding the date of the filing of its most recent AIF, a reporting issuer under Canadian securities legislation in at least one jurisdiction, other than the local jurisdiction, and has filed in the local jurisdiction all continuous disclosure documents that it was required to file during the 12 calendar months preceding the date of the filing of its most recent AIF under Canadian securities legislation of any jurisdiction in which it has been a reporting issuer; or
 - (b) all of the following are true:
 1. The issuer is not a reporting issuer in the local jurisdiction.
 2. The securities regulatory authority is unable to deem the issuer to be, or designate the issuer as, a reporting issuer.
 3. The issuer is, and has been for the 12 calendar months preceding the date of the filing of its most recent AIF, a reporting issuer under Canadian securities legislation in at least one jurisdiction, other than the local jurisdiction.
 4. The issuer has filed in the local jurisdiction all continuous disclosure documents that it was required to file during the 12 calendar months preceding the date of the filing of its most

³⁵ The definition of "securities legislation" in National Instrument 14-101 is "for the local jurisdiction, the statute and other instruments listed in Appendix B opposite the name of the local jurisdiction".

³⁶ The criterion that the issuer not be in default of any requirement in securities legislation has been omitted here, but note the prohibition in section 7.5.

³⁷ This is new and has been added for transitional purposes.

³⁸ This section is new and has been added in an effort to consolidate, to the extent practicable, all requirements applicable to a short form prospectus distribution in one instrument. The provision that appeared in subsection 2.1(3) of the 1998 proposed National Instrument regarding a National Instrument 44-101 Receipt evidencing a prospectus receipt has been omitted in anticipation of the adoption of the MRRS. The provision that appeared in subsection 2.1(4) of the 1998 proposed National Instrument regarding incorporation by reference of subsequently filed material change reports has been moved to the proposed Companion Policy.

recent AIF under Canadian securities legislation of any jurisdiction in which it has been a reporting issuer.

5. The issuer has provided an undertaking to the securities regulatory authority that it will file all continuous disclosure documents that it would be required to file under securities legislation if it were a reporting issuer from the time of the filing of its most recent AIF until the issuer becomes a reporting issuer.
2. The issuer has a current AIF.
3. The aggregate market value of the issuer's equity securities, listed and posted for trading on an exchange in Canada, is \$75,000,000 or more on a date within 60 days before the date of the filing of the issuer's preliminary short form prospectus.³⁹

2.3 Alternative Qualification Criteria for Substantial Issuers - An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of any of its securities in the local jurisdiction, if all of the following criteria are satisfied:

1. The issuer is
 - (a) a reporting issuer in the local jurisdiction; or
 - (b) a reporting issuer under Canadian securities legislation in at least one jurisdiction, other than the local jurisdiction, and satisfies the criterion in subparagraph 5 of paragraph 1(b) of section 2.2.⁴⁰
2. The issuer has a current AIF.
3. The aggregate market value of the issuer's equity securities, listed and posted for trading on an exchange in Canada, is \$300,000,000 or more on a date within 60 days before the date of the filing of the issuer's preliminary short form prospectus.⁴¹

2.4 Alternative Qualification Criteria for Issuers of Approved Rating Non-Convertible Securities⁴²

- (1) An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of non-convertible securities in the local jurisdiction, if all of the following criteria are satisfied:
 1. The issuer satisfies either of the 12 month reporting issuer history criteria in paragraph 1 of section 2.2.
 2. The issuer has a current AIF.
 3. The securities to be distributed
 - (a) have received an approved rating, on a provisional basis;

³⁹ The criterion that the issuer not be in default of any requirement in securities legislation has been omitted here, but note the prohibition in section 7.5. This section has also been re-ordered and simplified for greater clarity.

⁴⁰ The cross-references to the 12 month reporting issuer history and continuous disclosure record criteria in subparagraphs 3 and 4 of paragraph 1(b) of section 2.2 have been omitted.

⁴¹ This section has been simplified. The criterion that the issuer be incorporated, continued or organized under the laws of Canada or a jurisdiction has been omitted. The requirement that the issuer be a reporting issuer at the time of filing its AIF has also been omitted. The issuer is required to be a reporting issuer in the local jurisdiction only at the time that it wishes to file a preliminary short form prospectus. Furthermore, the criterion that the issuer not be in default of any requirement in securities legislation has been omitted here, but note the prohibition in section 7.5.

⁴² This has been re-phrased to apply to any approved rating non-convertible security, rather than specifically only to debt securities preferred shares and cash settled derivatives.

- (b) are not the subject of an announcement by an approved rating organization of which the issuer is or ought to be aware that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating;⁴³ and
 - (c) have not received a provisional or final rating lower than an approved rating from any approved rating organization.⁴⁴
- (2) Paragraph 3 of subsection 2.4(1) does not apply to an issuer filing a preliminary short form prospectus that is a base shelf prospectus under National Instrument 44-102 Shelf Distributions.

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

- (1) An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of non-convertible debt securities, non-convertible preferred shares or cash settled derivatives in the local jurisdiction, if all of the following criteria are satisfied:
1. A person or company
 - (a) fully and unconditionally guarantees the payments to be made by the issuer of securities as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities such that the holder of the securities is entitled to receive payment from the guarantor within 15 days of any failure by the issuer to make a payment as stipulated; or
 - (b) provides alternative credit support for the payments to be made by the issuer of securities as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities, that
 - (i) in the case
 - (A) where the securities are rated, results in the securities receiving the same credit rating as, or a higher credit rating than, the credit rating they would have received if payment had been fully and unconditionally guaranteed by the person or company providing the support, or
 - (B) where the securities are not rated, would result, if the securities were rated, in the securities receiving the same credit rating as, or a higher credit rating than, the credit rating they would have received if payment had been fully and unconditionally guaranteed by the credit supporter, and
 - (ii) entitles the holder of the securities to receive payment from the credit supporter, or enables the holder to receive payment from the issuer, within 15 days of any failure by the issuer to make a payment as stipulated.⁴⁵
 2. The credit supporter
 - (a) satisfies

⁴³ Subparagraph (b) has been added to cover the situation where the subject securities are under a negative implication "credit watch", which may result in the securities losing their approved rating status.

⁴⁴ In an effort to simplify the criteria in this subsection, the criterion that the issuer, at the time of the filing of its most recent AIF, have reasonable grounds for believing that, if it were to distribute one of such types of securities, the securities distributed would receive an approved rating and would not receive a lower rating has been omitted. The criterion that the issuer not be in default of any requirement in securities legislation has also been omitted here, but note the prohibition in section 7.5.

⁴⁵ The restriction that subparagraph (b) only be available to an issuer if the credit supporter is prohibited by law from providing a guarantee has been omitted. The description of the required credit support has been moved to this section from the definition of "alternative credit support" in the 1998 proposed National Instrument. The description has also been simplified by omitting specific discussion of the types of payments that need to be guaranteed. Furthermore, paragraph 1 has been revised to reflect that the alternative credit support may enable the securityholder to receive payment from the issuer rather than entitling the securityholder to receive payment from the credit supporter.

- (i) either 12 month reporting issuer history criterion in paragraph 1 of section 2.2, or
 - (ii) both
 - (A) the reporting issuer criterion in paragraph 1 of section 2.3, and
 - (B) the criterion that the credit supporter have equity securities, listed and posted for trading on an exchange in Canada, the aggregate market value of which is \$300,000,000 or more on a date within 60 days before the date of the filing of the issuer's preliminary short form prospectus; and
 - (b) has a current AIF.⁴⁶
3. Unless the aggregate market value of the credit supporter's equity securities listed and posted for trading on an exchange in Canada is \$75,000,000 or more on a date within 60 days before the date of the filing of the issuer's preliminary short form prospectus, then at the time the preliminary short form prospectus was filed
- (a) the credit supporter has outstanding non-convertible securities that
 - (i) have received an approved rating;
 - (ii) have not been the subject of an announcement by an approved rating organization of which the issuer is or ought to be aware that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating;⁴⁷ and
 - (iii) have not received a rating lower than an approved rating from any approved rating organization; and
 - (b) the securities to be issued by the issuer
 - (i) have received an approved rating, on a provisional basis,
 - (ii) have not been the subject of an announcement by an approved rating organization of which the issuer is or ought to be aware that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating,⁴⁸ and
 - (iii) have not received a provisional or final rating lower than an approved rating from any approved rating organization.⁴⁹
- (2) For the purpose of paragraph 1 of subsection (1), payments to be made by an issuer of securities as stipulated in the terms of the securities include any amounts to be paid as dividends in accordance with, and on the dividend payment dates stipulated in, the provisions of the securities, whether or not the dividends have been declared.⁵⁰
- (3) Subparagraph 3(b) of subsection 2.5(1) does not apply to an issuer filing a preliminary short form prospectus that is a base shelf prospectus under National Instrument 44-102 Shelf Distributions.

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

⁴⁶ The criterion that the credit supporter not be in default of any requirement in securities legislation has been omitted.

⁴⁷ Clause (ii) has been added to cover the situation where the subject securities are under a negative implication "credit watch", which may result in the securities losing their approved rating status.

⁴⁸ Clause (ii) has been added to cover the situation where the subject securities are under a negative implication "credit watch", which may result in the securities losing their approved rating status.

⁴⁹ The criterion that the issuer not be in default of any requirement in securities legislation has been omitted, but note the prohibition in section 7.5.

⁵⁰ In light of the changes to paragraph 1 of subsection (1), subsection (2) has been added to clarify the treatment of undeclared dividends.

- (1) An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of convertible debt securities or convertible preferred shares in the local jurisdiction, if all of the following criteria are satisfied:
1. The debt securities or the preferred shares are convertible into securities of a credit supporter that
 - (a) fully and unconditionally guarantees the payments to be made by the issuer of the securities as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities such that the holder of the securities is entitled to receive payment from the guarantor within 15 days of any failure by the issuer to make a payment as stipulated, or
 - (b) provides alternative credit support for the payments to be made by the issuer of the securities as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities, that
 - (i) in the case
 - (A) where the securities are rated, results in the securities receiving the same credit rating as, or a higher credit rating than, the credit rating they would have received if payment had been fully and unconditionally guaranteed by the credit supporter, or
 - (B) where the securities are not rated, would result, if the securities were rated, in the securities receiving the same credit rating as, or a higher credit rating than, the credit rating they would have received if payment had been fully and unconditionally guaranteed by the credit supporter, and
 - (ii) entitles the holder of the securities to receive payment from the credit supporter, or enable the holder to receive payment from the issuer, within 15 days of any failure by the issuer to make a payment as stipulated.⁵¹
 2. The credit supporter
 - (a) satisfies
 - (i) both
 - (A) either of the 12 month reporting issuer history criteria in paragraph 1 of section 2.2, and
 - (B) the criterion that the credit supporter have equity securities, listed and posted for trading on an exchange in Canada, the aggregate market value of which is \$75,000,000 or more on a date within 60 days before the date of the filing of the issuer's preliminary short form prospectus; or
 - (ii) both
 - (A) the reporting issuer criterion in paragraph 1 of section 2.3, and
 - (B) the criterion that the credit supporter have equity securities, listed and posted for trading on an exchange in Canada, the aggregate market value of which is \$300,000,000 or more on a date within 60 days before the date of the filing of the issuer's preliminary short form prospectus; and
 - (b) has a current AIF.⁵²
- (2) For the purpose of paragraph 1 of subsection (1), payments to be made by an issuer of securities as stipulated in the terms of the securities include any amounts to be paid as dividends in accordance with, and on the

⁵¹ The restriction that subparagraph (b) only be available to an issuer if the credit supporter is prohibited by law from providing a guarantee has been omitted. The description of the required credit support has also been modified in a manner consistent with the changes noted in the footnote to paragraph 1 of subsection 2.5(1).

⁵² The criterion that the issuer and the credit supporter not be in default of any requirement in securities legislation has been omitted.

dividend payment dates stipulated in, the provisions of the securities, whether or not the dividends have been declared.⁵³

2.7 Alternative Qualification Criteria for Issuers of Asset-Backed Securities

- (1) An issuer established in connection with a distribution of asset-backed securities is qualified to file a prospectus in the form of a short form prospectus for a distribution of asset-backed securities in the local jurisdiction if all of the following criteria are satisfied:
 1. The issuer has a current AIF.
 2. The asset-backed securities to be distributed
 - (a) have received an approved rating, on a provisional basis;
 - (b) have not been the subject of an announcement by an approved rating organization of which the issuer is or ought to be aware that the approved rating given by the organization may be downgraded to a rating category that would not be an approved rating;⁵⁴ and
 - (c) have not received a provisional or final rating lower than an approved rating from any approved rating organization.⁵⁵
- (2) Paragraph 2 of subsection 2.7(1) does not apply to an issuer filing a preliminary short form prospectus that is a base shelf prospectus under National Instrument 44-102 Shelf Distributions.

2.8 Alternative Qualification Criteria Following Reorganizations - A successor issuer is qualified to file a prospectus in the form of a short form prospectus for any of its securities in the local jurisdiction, if all of the following criteria are satisfied:

1. The successor issuer is deemed under section 2.10 to have or otherwise has a current AIF.⁵⁶
2. The successor issuer is a reporting issuer under Canadian securities legislation of any jurisdiction.
3. The aggregate market value of the successor issuer's equity securities, listed and posted for trading on an exchange in Canada, is \$75,000,000 or more on a date within 60 days before the date of the filing of the successor issuer's preliminary short form prospectus.
4. The aggregate market value of the equity securities of at least one of the participants, listed and posted for trading on an exchange in Canada, is \$75,000,000 or more on a date within 60 days before the date of the reorganization.
5. One of the participants satisfies the criterion in paragraph 4 and the 12 month reporting issuer history criterion in paragraph 1 of section 2.2.⁵⁷

2.9 Calculation of the Aggregate Market Value of an Issuer's Securities

⁵³ In light of the changes made to paragraph 1 of subsection (1), including the omission of specific discussion of the types of payments that need to be guaranteed, subsection (2) has been added to clarify the treatment of undeclared dividends.

⁵⁴ Subparagraph (b) has been added to cover the situation where the subject securities are under a negative implication "credit watch", which may result in the securities losing their approved rating status.

⁵⁵ The criterion that the issuer not be in default of any requirement in securities legislation has been omitted, but note the prohibition in section 7.5. In an effort to simplify the criteria in this subsection, the criterion that the issuer, at the time of filing its most recent AIF, have reasonable grounds for believing that the securities that it may distribute would receive an approved rating and no securities would receive a lower rating has also been omitted.

⁵⁶ The reference to section 2.10 has been added for greater clarity.

⁵⁷ The criterion that, at the time of the reorganization, none of the participants were in default of any requirement in securities legislation has been omitted.

- (1) For the purposes of this Part,
 - (a) the aggregate market value of the equity securities of an issuer on a date is the aggregate of the market value of each class of its equity securities on the date, calculated by multiplying
 - (i) the total number of equity securities of the class outstanding on the date, by
 - (ii) the closing price on the date of the equity securities of the class on the exchange in Canada on which that class of equity securities is principally traded; and
 - (b) instalment receipts may, at the option of the issuer, be deemed to be equity securities if
 - (i) the instalment receipts are listed and posted for trading on an exchange in Canada, and
 - (ii) the outstanding equity securities, the beneficial ownership of which is evidenced by the instalment receipts, are not listed and posted for trading on an exchange in Canada.⁵⁸
- (2) For the purposes of subsection (1), in calculating the total number of equity securities of a class outstanding, an issuer shall exclude those equity securities of the class that are beneficially owned, or over which control or direction is exercised, by persons or companies that, alone or together with their respective affiliates and associated parties, beneficially own or exercise control or direction over more than 10 percent of the outstanding equity securities of the issuer.⁵⁹
- (3) Despite subsection (2), if a portfolio manager of a pension fund, mutual fund or non-redeemable investment fund, alone or together with its affiliates and associated parties, exercises control or direction in the aggregate over more than 10 percent of the outstanding equity securities, and the fund beneficially owns or exercises control or direction over 10 percent or less of the issued and outstanding equity securities of the issuer, the securities that the fund beneficially owns or exercises control or direction over are not excluded unless the portfolio manager is an affiliate of the issuer.

2.10

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

- (a) the date the successor issuer files an AIF; and
- (b) either
 - (i) the date the AIF ceases to be a current AIF of the participant, if the participant continues to exist after the reorganization, or
 - (ii) the date that is 140 days following the end of the financial year to which the AIF relates, if the participant did not continue to exist after the reorganization.⁶⁰

⁵⁸ Paragraph (b) is new and reflects relief granted in some jurisdictions.

⁵⁹ Subsection (2) as it appeared in section 2.9 of the 1998 proposed National Instrument has been subdivided into two subsections for greater clarity.

⁶⁰ This has been moved from subsection 2.8(2) of the 1998 proposed National Instrument to a free-standing section because it is available to a successor issuer irrespective of the qualification criteria upon which it intends to rely. Subsection 2.8(4) has been moved to section 2.8 of the proposed Policy.

PART 3 AIF**3.1 Initial AIF**

- (1) An issuer filing an initial AIF shall file the AIF in Form 44-101F1 or the form referred to in subsection 3.4(1).⁶¹
- (2) If an issuer revises its initial AIF, the issuer shall promptly
 - (a) file in all jurisdictions in which the initial AIF was filed the revised initial AIF and a copy of the revised initial AIF, blacklined to show changes from the initial AIF; and
 - (b) send a copy of the revised initial AIF to each person and company that was sent a initial AIF.⁶²
- (3) An issuer shall file a French language version of its initial AIF and any supporting documents before sending the French language version of the AIF to an investor or prospective investor.⁶³
- (4) An issuer that has prepared a French language version of its initial AIF shall file the French language version of the initial AIF and any supporting documents in New Brunswick concurrently with or as soon as practicable after filing the English language version of those documents.

3.2 Renewal AIF Filing Procedures⁶⁴

- (1) An issuer filing a renewal AIF shall file the AIF in Form 44-101F1 or the form referred to in subsection 3.4(1).⁶⁵
- (2) An issuer filing a renewal AIF for a financial year in which the issuer made an acquisition of shares or assets, or was a party to a reorganization, that in either case was material to the issuer, shall state in a covering letter accompanying the renewal AIF that the acquisition or reorganization has occurred.⁶⁶
- (3) The POP regulator may decide to review a renewal AIF at any time, in which case the POP regulator shall
 - (a) notify the issuer that the POP regulator will be reviewing the renewal AIF;
 - (b) review the renewal AIF before a receipt is issued for a short form prospectus incorporating by reference the renewal AIF; and
 - (c) send the issuer upon completion of the review a notice that the review of the renewal AIF has been completed.⁶⁷

⁶¹ Subsections (1) and (2) of the 1998 proposed National Instrument have been collapsed due to revisions made to the definition of "initial AIF". The condition that the issuer not be in default of any requirement of securities legislation has been omitted, but note the prohibition in section 7.5. The subsections that appeared here in the 1998 proposed National Instrument requiring issuers to select a principal jurisdiction and to include a covering letter have been omitted in anticipation of the adoption of the MRRS.

⁶² This has been extended to revisions for any reason, not just regulatory review, and reference to sending out revised copies has been added to conform to subsection 3.2(6) regarding renewal AIFs.

⁶³ Subsection (4) of the 1998 proposed National Instrument requiring the regulator to accept an initial AIF for filing as soon as practicable has been omitted, reflecting a change in the CSA's practice.

⁶⁴ This section has been modified in anticipation of the adoption of the MRRS. The definition of "regulator" that appeared in subsection (1) of the 1998 proposed National Instrument has been moved to section 1.1 and the term now used is "POP regulator".

⁶⁵ This subsection has been simplified due to revisions made to the definition of "renewal AIF". The requirement that the issuer not be in default of any requirement in securities legislation has been omitted.

⁶⁶ Subsection 3.2(4) of the 1998 proposed National Instrument requiring issuers to file a cover letter has been omitted in anticipation of the adoption of the MRRS. Similarly, subsection 3.2(5) of the 1998 proposed National Instrument referring to the regulator "accepting a renewal AIF for filing" has also been omitted, reflecting a change in the CSA's practice.

⁶⁷ Subsection 3.2(6) of the 1998 proposed National Instrument requiring the regulator to decide within 10 days of filing whether to review the renewal AIF has been omitted. This reflects a change in the CSA's practice.

- (4) Upon receipt of a notice from the POP regulator that its renewal AIF is being reviewed, an issuer shall promptly file the renewal AIF again, with the statement required by Item 1.2 of Form 44-101F1 added, in all jurisdictions in which the renewal AIF was filed.⁶⁸
- (5) If an issuer revises its renewal AIF, the issuer shall promptly
- (a) file in all jurisdictions in which the renewal AIF was filed the revised renewal AIF and a copy of the revised renewal AIF, blacklined to show changes from the renewal AIF; and
 - (b) send a copy of the revised renewal AIF to each person and company that was sent a renewal AIF.
- (6) An issuer shall file a French language version of its renewal AIF and any supporting documents before sending the French language version of the AIF to an investor or prospective investor.
- (7) An issuer that has prepared a French language version of its renewal AIF shall file the French language version of the renewal AIF and any supporting documents in New Brunswick concurrently with or as soon as practicable after filing the English language version of those documents.⁶⁹

3.3 Supporting Documents

- (1) In addition to any other requirement of securities legislation, an issuer that files an initial AIF and a renewal AIF shall
- (a) file copies of all material incorporated by reference in the initial AIF or renewal AIF and not previously filed;⁷⁰ and
 - (b) deliver to the regulator the following:
 1. **Personal Information** - For each director and senior officer of the issuer for whom the issuer has not previously delivered to the regulator the following information, a statement containing that individual's
 - (a) full name;
 - (b) place and date of birth;
 - (c) full residential address; and
 - (d) employer's name and address, if other than the issuer.⁷¹
 2. **Consent to Collection of Information** - A consent in the form set out in Appendix A to the collection of personal information.⁷²
- (2) An issuer that files an AIF in the form of an annual report on Form 10-K, or on Form 20-F, under the 1934 Act shall file an undertaking with the regulator to the effect that the issuer will provide to any person or company, upon request to the secretary of the issuer, the documents listed in Item 9.1(1) of Form 44-101F1.⁷³

⁶⁸ This subsection is new and has been added in light of SEDAR.

⁶⁹ Subsection 3.2(9) of the 1998 proposed National Instrument that required an issuer to include on the cover page of any renewal AIF that is sent to anyone a statement that the AIF is being renewed has been omitted as it is redundant in light of subsection 3.2(4).

⁷⁰ The requirement to file with an AIF a certificate regarding eligibility has been omitted. It is no longer relevant in light of the changes made in Part 2 to simplify the qualification criteria.

⁷¹ This is new.

⁷² This is new.

⁷³ The term "1934 Act" means the Securities Exchange Act of 1934 of the United States of America.

- 3.4 Alternative Form of AIF** - An issuer that has securities registered under section 12 of the 1934 Act or has a reporting obligation under subsection 15(d) of the 1934 Act may file an AIF in the form of a current annual report on Form 10-K, or on Form 20-F, under the 1934 Act.⁷⁴

PART 4 DISCLOSURE IN A SHORT FORM PROSPECTUS OF FINANCIAL STATEMENTS FOR ACQUISITIONS⁷⁵

4.1 Scope - This Part applies only to

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

⁷⁴ Subsection 3.4(2) that appeared in the 1998 proposed National Instrument has been omitted as unnecessary.

⁷⁵ This Part is new and replaces the financial statement disclosure requirements pertaining to acquisitions set out in Item 11 of the 1998 proposed Form 44-101F2. This Part reflects an approach more consistent with the "sliding scale" approach to disclosure required by the SEC in similar circumstances. In the Notice accompanying the 1998 proposed National Instrument, the CSA noted that they had considered SEC Release No. 33-7355, 34-37802; International Series Release No. 1021 dated October 10, 1996, which amended the existing provisions set forth in Rule 3-05(b) of Regulation S-X under the United States Securities Act of 1933 regarding inclusion of financial statements of acquired businesses (the "SEC Release"). The CSA noted that they chose in 1998 not to adopt the "sliding scale" approach used in the SEC Release to determine the extent of financial statement disclosure in a prospectus as the current disclosure requirements appeared to work well in practice. The same considerations arose when proposed Ontario Rule 41-501 General Prospectus Requirements was published for comment on May 2, 1997 in 20 OSCB (Supp) 3. The accompanying notice requested comment on the approach taken in the SEC Release. Several commentators responded to proposed Rule 41-501 and generally strongly recommended the approach used in the SEC Release. Accordingly, the provisions of Part 4 of this Instrument reflect an approach similar, in principle, to the SEC's approach.

4.2 Financial Statement Disclosure for Significant Acquisitions

- (1) If an issuer has made a significant acquisition or is proposing to make a significant probable acquisition, the issuer shall include in its short form prospectus the following financial statements of each business acquired or to be acquired:
1. Income statements for at least the periods specified in section 4.3.
 2. Cash flow statements for the periods for which income statements are included under paragraph 1.
 3. A balance sheet as at the date on which each of the periods specified in section 4.3 ended, other than the earliest of the three periods specified in paragraph 3 of section 4.3.
 4. An income statement and a cash flow statement for
 - (a) the most recently completed interim period that ended more than 60 days before the date of the short form prospectus; and
 - (b) the comparable period in the preceding financial year.
 5. A balance sheet as at the date on which the interim period referred to in paragraph 4 ended.
 6. A *pro forma* balance sheet of the issuer as at the date of the issuer's most recent balance sheet included in the short form prospectus that
 - (a) gives effect, as if they had taken place as at the date of the *pro forma* balance sheet, to
 - (i) significant acquisitions that have been completed, but are not reflected in the issuer's most recent audited or interim balance sheet included in the short form prospectus, and
 - (ii) significant probable acquisitions;
 - (b) separately identifies each significant probable acquisition; and
 - (c) discloses, in the notes, the effect on the *pro forma* balance sheet if a significant probable acquisition is not completed.
 7. A *pro forma* income statement that
 - (a) gives effect to
 - (i) significant acquisitions completed during the most recently completed financial year of the issuer or during the issuer's current financial year, and
 - (ii) significant probable acquisitions;
 - (b) gives effect to the acquisitions referred to in subparagraph (a) as if they had taken place at the beginning of
 - (i) the most recent financial year of the issuer for which audited financial statements are included in the short form prospectus, and
 - (ii) the most recent interim period of the issuer for which financial statements are included in the short form prospectus;
 - (c) separately identifies each significant probable acquisition; and
 - (d) discloses, in the notes, the effect on the *pro forma* income statement if a significant probable acquisition is not completed.
 8. *Pro forma* earnings per share based on the *pro forma* financial statements referred to in paragraphs 6 and 7.

- (2) If an issuer is required under subsection (1) to include financial statements in a short form prospectus for more than one business because the significant acquisition involves an acquisition of related businesses or a probable acquisition of related businesses, the financial statements required under subsection (1) shall be presented separately for each business, except for the periods during which the businesses have been under common control or management, in which case the issuer may present the financial statements of the businesses on a combined basis.
- (3) If an issuer is required under subsection (1) to include *pro forma* financial statements in a short form prospectus, the issuer shall include in the short form prospectus a description of the underlying assumptions on which the *pro forma* financial statements are prepared, cross-referenced to each related *pro forma* adjustment.

4.3 Reporting Periods - The periods for which the financial statements are required under paragraphs 1, 2 and 3 of subsection 4.2(1) shall be determined by reference to the conditions set out in subsection 1.2(1) as follows:

1. If none of the conditions are satisfied if the 20 percent threshold is changed to 40 percent, financial statements shall be included for the most recent financial year of the business ended more than 90 days before the date of the short form prospectus or such shorter period, ended more than 90 days before the date of the short form prospectus, as the business has been in existence.
2. If any of the conditions are satisfied if the 20 percent threshold is changed to 40 percent, but none of the conditions are satisfied if the 20 percent threshold is changed to 50 percent, financial statements shall be included for each of the two most recent financial years of the business ended more than 90 days before the date of the short form prospectus or such shorter period, ended more than 90 days before the date of the short form prospectus, as the business has been in existence.
3. If any of the conditions are satisfied if the 20 percent threshold is changed to 50 percent, financial statements shall be included for each of the three most recent financial years of the business ended more than 90 days before the date of the short form prospectus or such shorter period, ended more than 90 days before the date of the short form prospectus, as the business has been in existence.

4.4 Additional Financial Statements Approved, Filed or Released

- (1) An issuer shall include in its short form prospectus annual and interim financial statements of a business for a financial period more recent than the periods for which financial statements are required under subsection 4.2(1) if, before the short form prospectus is filed
 - (a) the board of directors having responsibility for the business at the end of the financial period has approved the statements for the more recent period;
 - (b) the statements for the more recent period have been filed with the securities regulatory authority; or
 - (c) the financial statements for the more recent period or selected information from those statements, have been released to the public.
- (2) If annual financial statements are required under subsection (1) for a financial year ended less than 90 days before the date of the short form prospectus, an issuer may omit the financial statements for the most recently completed interim period from the short form prospectus.

4.5 Significant Acquisitions After Financial Year End - Purchase Method Accounting

- (1) An issuer shall include in the subsequent event note in its financial statements included in a short form prospectus the information referred to in subsection (2), if
 - (a) the issuer
 - (i) has made a significant acquisition since its most recent financial year end, or
 - (ii) is proposing to make a significant probable acquisition; and
 - (b) the purchase method is, or will be, used to account for the acquisition.
- (2) The information required under subsection (1) is

- (a) if
 - (i) determined by the date of the note, details of the purchase equation, namely the allocation of the purchase price to the underlying assets being acquired, the underlying liabilities being assumed and any resulting goodwill, or
 - (ii) not determined by the date of the note, the issuer's reasonable estimate of the allocation; and
- (b) the terms and status of the acquisition, including any material conditions to the completion of the acquisition that have not yet been satisfied.

4.6 Exceptions to Disclosure Requirements for Significant Acquisitions

- (1) Despite subsection 4.2(1), an issuer may omit from a short form prospectus separate financial statements of a business, if
 - (a) the results of the business for a complete financial year have been reflected in the audited consolidated financial statements of the issuer; and
 - (b) in the case where the acquisition of the business would satisfy any of the conditions specified in subsection 1.2(1) if the 20 percent threshold in the conditions were changed to 100 percent, separate financial statements of the business are included in the short form prospectus for as many periods before the acquisition as may be necessary so that, when these periods are added to the periods for which the financial statements in the short form prospectus of the issuer for periods following the acquisition reflect the results of the business, financial statements reflecting the results of the business, either separately or on a consolidated basis, are included for a total of three years or such lesser period as the business has been in existence.
- (2) Despite subsection 4.2(1), an issuer may omit from a short form prospectus financial statements of a business if
 - (a) the acquisition of the business is, or will be, an investment accounted for using the equity method, as that term is defined in the Handbook;
 - (b) disclosure is included in the short form prospectus for the periods for which financial statements are required under section 4.3 that
 - (i) summarizes information as to the assets, liabilities and results of operations of the business, and
 - (ii) describes the issuer's proportionate interest in the business and any contingent issuance of securities by the business that might significantly affect the issuer's share of earnings; and
 - (c) the short form prospectus
 - (i) identifies the audited financial statements from which the disclosure provided under paragraph (b) has been derived, and
 - (ii) describes the nature of the audit opinion.
- (3) Despite subsection 4.2(1), an issuer may omit from a short form prospectus financial statements of a business for a complete financial year if
 - (a) audited financial statements for a period of at least nine months in the financial year are included in the prospectus;
 - (b) the business is not seasonal; and
 - (c) this exception is relied upon to omit only one year of the financial statements required under subsection 4.2(1).
- (4) Despite subsection 4.2(1), an issuer may omit from a short form prospectus the balance sheets of a business referred to in paragraphs 3 and 5 of subsection 4.2(1), if the issuer's most recent audited balance sheet included in the short form prospectus is for a date after the date the significant acquisition was completed.

4.7 Financial Statement Disclosure for Multiple Acquisitions that are not a Significant Acquisition of Related Businesses

- (1) An issuer shall include in a short form prospectus separate financial statements of each business required under subsection (2) for the periods referred to in subsection (3), if
 - (a) the issuer
 - (i) has acquired two or more businesses since the beginning of its most recently completed financial year,
 - (ii) is proposing to make two or more probable acquisitions of a business, or
 - (iii) has acquired one or more businesses since the beginning of its most recently completed financial year and is proposing to make one or more probable acquisitions of a business;
 - (b) the acquisitions referred to in paragraph (a) do not involve an acquisition of related businesses;
 - (c) none of the acquisitions referred to in paragraph (a) individually constitutes a significant acquisition; and
 - (d) any of the conditions specified in subsection 1.2(1) would be satisfied if
 - (i) the 20 percent threshold in the conditions were changed to 50 percent, and
 - (ii) the total consolidated assets, consolidated revenue and consolidated income from continuing operations of the businesses were each considered on a combined basis.
- (2) An issuer shall include financial statements under subsection (1) for those businesses referred to in paragraph (1)(a) that, on a combined basis, represent a majority of the total consolidated assets, consolidated revenue or consolidated income from continuing operations of all of the businesses referred to paragraph (1)(a), using the basis, or one of the bases, upon which the condition in paragraph (1)(d) is satisfied.
- (3) An issuer shall include financial statements of a business under subsection (1) for
 - (a) the most recently completed financial year of the business ended more than 90 days before the date of the prospectus or such shorter period, ended more than 90 days before the date of the short form prospectus, as the business has been in existence; and
 - (b) the most recently completed interim period of the business ended more than 60 days before the date of the short form prospectus.

PART 5 OTHER FINANCIAL STATEMENT MATTERS**5.1 Generally Accepted Accounting Principles⁷⁶**

- (1) The financial statements of a person or company incorporated or organized in a jurisdiction that are included in a preliminary short form prospectus or a short form prospectus shall be prepared in accordance with Canadian GAAP.⁷⁷
- (2) The financial statements of a person or company incorporated or organized in a foreign jurisdiction that are included in a preliminary short form prospectus or a short form prospectus shall be prepared in accordance with
 - (a) Canadian GAAP; or

⁷⁶ The section is new and has been added in an effort to consolidate, to the extent practicable, all requirements applicable to a short form prospectus distribution in one instrument. This section parallels proposed Ontario Rule 41-501 General Prospectus Requirements which is being published for comment in Ontario concurrently with this Instrument.

⁷⁷ The term "Canadian GAAP" is defined in National Instrument 14-101 Definitions. The definition is "generally accepted accounting principles determined with reference to the Handbook". The term "Handbook" is defined in the same instrument as "the Handbook of the Canadian Institute of Chartered Accountants, as amended from time to time".

- (b) foreign GAAP, if the notes to the financial statements
 - (i) explain and quantify the effect of material differences between Canadian GAAP and foreign GAAP that relate to measurements, and
 - (ii) provide disclosure consistent with Canadian GAAP requirements to the extent not already reflected in the financial statements.⁷⁸

5.2 Auditor's Report⁷⁹

- (1) Financial statements included in a short form prospectus, other than the following, shall be accompanied by an auditor's report:
 - 1. The comparative interim financial statements of the issuer required to be incorporated by reference under Item 12.1 or 12.2 of Form 44-101F2.
 - 2. The comparative annual financial statements of the issuer for the most recently completed financial year if
 - (a) the financial statements are required to be incorporated by reference in a short form prospectus solely by reason of paragraph 4(b) or 4(c) of Item 12.1 of Form 44-101F2;
 - (b) the auditor of the issuer has not issued an auditor's report on the financial statements; and
 - (c) comparative financial statements, together with the accompanying auditor's report, for the year preceding the most recently completed financial year are included in the short form prospectus.
 - 3. The comparative interim financial statements of a credit supporter required to be incorporated by reference under Item 13.2 of Form 44-101F2.
 - 4. The interim financial statements of a business required to be included in a short form prospectus under paragraphs 4 and 5 of subsection 4.2(1) and section 4.7.
 - 5. The financial statements of a business required to be included in a short form prospectus under section 4.4, if the auditor has not issued an auditor's report on the financial statements.
 - 6. The *pro forma* financial statements if the *pro forma* financial statements are accompanied by a compilation report signed by the auditor and prepared in accordance with the Handbook.
- (2) If the financial statements included in a short form prospectus are accompanied by a foreign auditor's report, the auditor's report shall be accompanied by a statement by the auditor confirming that the auditing standards applied are substantially equivalent to Canadian GAAS and disclosing any material differences in the form and content of the foreign auditor's report as compared to a Canadian auditor's report.

5.3 Audit Committee Review of Financial Statements Included in Prospectus - An issuer shall not file a preliminary short form prospectus or a short form prospectus unless each financial statement of a person or company included in

⁷⁸ Subsection 4.1(5) of the 1998 proposed National Instrument has been omitted as unnecessary in light of section 1.5 and subsection 5.1(2). Subsection 4.1(5) had provided that an issuer satisfies the requirement in securities legislation to reconcile financial statements included in a preliminary short form prospectus or short form prospectus to Canadian GAAP if it includes the required audited reconciliation, in the case of annual financial statements, and the required unaudited reconciliation, in the case of interim financial statements, in its preliminary short form prospectus and short form prospectus, through incorporation by reference of notes to the financial statements that contain the required reconciliation.

⁷⁹ The section is new and has been added in an effort to consolidate, to the extent practicable, all requirements applicable to a short form prospectus distribution in one instrument. This section parallels proposed Ontario Rule 41-501 General Prospectus Requirements which is being published for comment in Ontario concurrently with this Instrument.

the preliminary short form prospectus or a short form prospectus has been reviewed by the audit committee of the board of directors of the person or company, if the person or company has or is required to have an audit committee.⁸⁰

- 5.4 Third Quarter Financial Statements** - In the case where an issuer files a short form prospectus before its directors have approved the comparative audited annual financial statements for its most recently completed financial year and before the time period for filing the statements under securities legislation has expired, the requirement in securities legislation to include in a prospectus its financial statements for the most recently completed financial year does not apply if the issuer includes in its short form prospectus the interim financial statements for the third quarter of the last completed financial year.

PART 6 DEEMED INCORPORATION BY REFERENCE

- 6.1 Deemed Incorporation by Reference of Filed Documents** - If an issuer does not incorporate by reference in its short form prospectus a document required to be incorporated by reference under Item 12.1 of Form 44-101F2, the document is deemed for purposes of securities legislation to be incorporated by reference in the issuer's short form prospectus as of the date of the short form prospectus.⁸¹
- 6.2 Deemed Incorporation by Reference of Subsequently Filed Documents** - If an issuer does not incorporate by reference in its short form prospectus a document required to be incorporated by reference under Item 12.2 of Form 44-101F2, the document is deemed for purposes of securities legislation to be incorporated by reference in the issuer's short form prospectus as of the date the issuer filed the document.⁸²

PART 7 FILING REQUIREMENTS FOR A SHORT FORM PROSPECTUS⁸³

7.1 Required Documents for Filing a Preliminary Short Form Prospectus

- (1) General** - In addition to any other requirement of securities legislation, an issuer that files a preliminary short form prospectus shall
- (a) file the following:
- 1. Signed Copy** - A signed copy of the preliminary short form prospectus.
 - 2. Qualification Certificate** - A certificate executed on behalf of the issuer by one of its senior officers certifying that all of the criteria on which the issuer is relying in order to be qualified to file a prospectus in the form of a short form prospectus have been satisfied.
 - 3. Material Incorporated by Reference** - Copies of all material incorporated by reference in the preliminary short form prospectus and not previously filed.
 - 4. Earnings Coverage Explanation** - An explanation of the manner by which the earnings coverage ratios were calculated, if the preliminary short form prospectus is filed for a distribution of debt securities having a term to maturity in excess of one year or for a distribution of preferred shares.

⁸⁰ The section is new and has been added in an effort to consolidate, to the extent practicable, all requirements applicable to a short form prospectus distribution in one instrument. This section parallels proposed Ontario Rule 41-501 General Prospectus Requirements which is being published for comment in Ontario concurrently with this Instrument.

⁸¹ This section is new and has been added for consistency with National Instrument 44-102 on the treatment of documents incorporated by reference.

⁸² This section is new and has been added for consistency with National Instrument 44-102 on the treatment of documents incorporated by reference.

⁸³ Subsection 4.1(3) of the 1998 proposed National Instrument has been omitted in anticipation of the adoption of the MRRS. In an effort to consolidate, to the extent practicable, into one list what documents need to be filed or delivered with a preliminary short form prospectus, a short form prospectus and an amendment, this Part has been expanded to include requirements from other instruments for the filing of supporting documents and reorganized for greater clarity.

5. **Auditor's Comfort Letter regarding Audited Statements** - A signed letter to the regulator from the auditor of the issuer or of the business, as applicable, prepared in accordance with the form suggested for this circumstance by the Handbook, if a financial statement of an issuer or a business included in a preliminary short form prospectus is accompanied by an unsigned auditor's report.⁸⁴
 6. **Material Contracts** - Subject to subsections (2) and (3), copies of all material contracts to which the issuer is a party that have not previously been filed.⁸⁵
 7. **Mining Reports** - The technical reports and certificates required to be filed with a preliminary short form prospectus under National Instrument 43-101 Standards of Disclosure for Mineral Exploration and Development and Mining Properties and not previously filed, if the issuer has mineral exploration, development or mining properties.⁸⁶
 8. **Oil and Gas Reports** - Any technical report and certificate required to be filed with a preliminary short form prospectus under the successor instrument to National Policy No. 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators and not previously filed, if the issuer has oil and gas operations.
 9. **Reports and Valuations** - Subject to subsection (4), a copy of each report or valuation referred to in the preliminary short form prospectus for which a consent is required to be filed under section 7.3 and that has not previously been filed, other than a technical report on a property of an issuer that has mineral exploration, development or mining properties or an issuer that has oil and gas operations not otherwise required to be filed under paragraph 7 or 8,⁸⁷ and
 - (b) deliver to the regulator the following:
 1. **Personal Information** - For each director and senior officer of an issuer, each promoter of the issuer or, if the promoter is not an individual, each director and executive officer of the promoter, for whom the issuer has not previously delivered the following information, a statement containing that individual's
 - (a) full name;
 - (b) place and date of birth;
 - (c) full residential address; and
 - (d) employer's name and address, if other than the issuer.⁸⁸
 2. **Consent to Collection of Information** - A consent in the form set out in Appendix A to the collection of personal information.⁸⁹
- (2) **Ontario Exception regarding Material Contracts** - Despite paragraph 6 of subsection (1), in Ontario, an issuer that files a preliminary short form prospectus is not required to file copies of any material contracts to which the

⁸⁴ This is new and has been added in light of Part 4 and the increased likelihood, at least in the case of business acquisitions, that audited financial statements may be included directly in a short form prospectus, rather than incorporated by reference.

⁸⁵ Subparagraph 6 represents an acceleration in the time of filing of material contracts in some jurisdictions. Note the exceptions for Ontario and Nova Scotia detailed in subsections (2) and (3).

⁸⁶ This is new.

⁸⁷ This is new.

⁸⁸ This is new.

⁸⁹ This is new.

issuer is a party, other than copies of material contracts that create or materially affect the rights or obligations of the holders of the securities being distributed.⁹⁰

- (3) **Nova Scotia Exception regarding Material Contracts** - Despite paragraph 6 of subsection (1), in Nova Scotia, an issuer that files a preliminary short form prospectus is not required to file, but is required to deliver to the regulator, copies of all material contracts to which the issuer is a party that have not previously been delivered.⁹¹
- (4) **Ontario and Nova Scotia Exception regarding Reports and Valuations** - Despite paragraph 9 of subsection (1), in Ontario and Nova Scotia, an issuer that files a preliminary short form prospectus is not required to file, but is required to deliver to the regulator, a copy of each report or valuation referred to in subparagraph 9 of paragraph (1)(a).⁹²

7.2 Required Documents for Filing a Short Form Prospectus

- (1) **General** - In addition to any other requirements of securities legislation, an issuer that files a short form prospectus shall
- (a) file the following:
1. **Signed Copy** - A signed copy of the short form prospectus.
 2. **Material Incorporated by Reference** - Copies of all material incorporated by reference in the short form prospectus and not previously filed.
 3. **Auditor's Comfort Letter regarding Unaudited Financial Statements** - A comfort letter to the regulator from the auditor of the issuer or the business, as applicable, prepared in accordance with the relevant standards in the Handbook, if an unaudited financial statement of an issuer or a business is included in a short form prospectus.
 4. **Comfort Letter regarding Foreign Auditor's Report** - A letter to the regulator from the auditor that discusses the auditor's expertise to reconcile foreign GAAP to Canadian GAAP and to make the determination that foreign GAAS is substantially equivalent to Canadian GAAS, if a financial statement included in a short form prospectus has been prepared in accordance with foreign GAAP or includes a foreign auditor's report.⁹³
 5. **Issuer's Submission to Jurisdiction** - A submission to jurisdiction and appointment of agent for service of process of the issuer in the form set out in Appendix B, if an issuer is incorporated or organized in a foreign jurisdiction and does not have an office in Canada.⁹⁴
 6. **Other Submission to Jurisdiction** - A submission to jurisdiction and appointment of agent for service of process of the selling securityholder, promoter or guarantor, as applicable, in the form set out in Appendix C, if a selling securityholder, promoter or credit supporter of an issuer is incorporated or organized under a foreign jurisdiction and does not have an office in Canada.⁹⁵
 7. **Expert's Consent** - The consents required to be filed under section 7.3.
 8. **Credit Supporter's Consent** - The written consent of the credit supporter to the inclusion of the statements in the short form prospectus shall be filed no later than the time the short form prospectus is filed, if statements of a credit supporter are required by Item 13.2 of Form 44-101F2

⁹⁰ This is new.

⁹¹ This is new.

⁹² This is new.

⁹³ This is new.

⁹⁴ This is new.

⁹⁵ This is new.

to be included in a short form prospectus and a certificate of the credit supporter is not required by Item 20.3 of Form 44-101F2 to be included in the short form prospectus.⁹⁶

9. **Underwriting Agreement** - Subject to subsection (2), a signed copy of the underwriting agreement for the distribution, unless previously filed.
10. **Other Material Contracts** - Subject to subsections (3) and (4), copies of all material contracts to which the issuer has been a party that have not previously been filed.
11. **Reports and Valuations** - Subject to subsection (5), a copy of each report or valuation referred to in the short form prospectus, for which a consent is required to be filed under section 7.3 that has not previously been filed, other than a technical report on a property of an issuer that has mineral exploration, development or mining properties or an issuer that has oil and gas operations; and

- (b) deliver to the regulator a copy of the short form prospectus, blacklined to show changes from the preliminary short form prospectus.

- (2) **Ontario and Nova Scotia Exception regarding Underwriting Agreement** - Despite paragraph 9 of subsection (1), in Ontario and Nova Scotia, an issuer that files a short form prospectus is not required to file, but is required to deliver to the regulator, a signed copy of the underwriting agreement for the distribution.
- (3) **Ontario Exception regarding Other Material Contracts** - Despite paragraph 10 of subsection (1), in Ontario, an issuer that files a short form prospectus is not required to file copies of any material contracts to which the issuer is a party, other than copies of material contracts that create or materially affect the rights and obligations of the holders of the securities being distributed.⁹⁷
- (4) **Nova Scotia Exception regarding Other Material Contracts** - Despite paragraph 10 of subsection (1), in Nova Scotia, an issuer that files a short form prospectus is not required to file, but is required to deliver to the regulator, copies of all material contracts to which the issuer is a party that have not previously been delivered.⁹⁸
- (5) **Ontario and Nova Scotia Exception regarding Reports and Valuations** - Despite paragraph 11 of subsection (1), in Ontario and Nova Scotia, an issuer that files a short form prospectus is not required to file, but is required to deliver to the regulator, a copy of each report or valuation referred to in subparagraph 11 of paragraph (1)(a).

7.3 Consents of Experts

- (1) If any solicitor, auditor, accountant, engineer or appraiser, or any other person or company whose profession gives authority to a statement made by that person or company, is named in a short form prospectus or an amendment to a short form prospectus, either directly or in a document incorporated by reference
 - (a) as having prepared or certified any part of the short form prospectus or the amendment, or
 - (b) as having prepared or certified a report or valuation referred to in the short form prospectus or the amendment, either directly or in a document incorporated by reference,

the issuer shall file no later than the time the short form prospectus or the amendment is filed, the written consent of the person or company to being named and to that use of the report or valuation.

- (2) If securities legislation prescribes the form of consent required to be filed under subsection (1), the consent shall be in the prescribed form.
- (3) Subsection (1) does not apply to an approved rating organization that issues a rating or provisional rating that is used in or in connection with a preliminary short form prospectus or short form prospectus.

⁹⁶ This is new.

⁹⁷ This is new.

⁹⁸ This is new.

7.4 Filing of French Version

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

7.5 Prohibition on Filing - An issuer shall not file a preliminary short form prospectus or a short form prospectus if the issuer is in default in filing or delivering to the regulator a document required to be filed or delivered under securities legislation.⁹⁹

7.6 Material Contracts - An issuer shall make available all material contracts referred to in a short form prospectus for inspection at a reasonable time and place during the distribution of the securities under the short form prospectus.¹⁰⁰

PART 8 FILING REQUIREMENTS FOR AN AMENDMENT TO A SHORT FORM PROSPECTUS

8.1 Form of Amendment - An amendment to a preliminary short form prospectus or a short form prospectus may consist of either an amendment that does not fully restate the text of the preliminary short form prospectus or short form prospectus, or an amended and restated preliminary short form prospectus or short form prospectus.¹⁰¹

8.2 Required Documents for Filing an Amendment - An issuer that files an amendment to a preliminary short form prospectus or short form prospectus shall

- (a) file a signed copy of the amendment;
- (b) deliver to the regulator a copy of the preliminary short form prospectus or short form prospectus blacklined to show the changes made by the amendment, if the amendment is also a restatement of the preliminary short form prospectus or short form prospectus; and
- (c) file or deliver to the regulator, unless previously filed or delivered, any supporting documents that would be required under this Instrument or other provisions of securities legislation to be filed or delivered to the regulator with a preliminary short form prospectus or a short form prospectus, as the case may be.

8.3 Consents - If an amendment to a preliminary prospectus or short form prospectus materially affects, or relates to, the subject matter to which a consent filed under section 7.2 or 7.3 or an auditors' comfort letter filed under section 7.1 or 7.2 refers, the issuer shall file with the amendment a new consent or auditors' comfort letter, as applicable.

8.4 Forwarding Amendments - An amendment to a preliminary short form prospectus shall be forwarded to each recipient of the preliminary short form prospectus according to the record of recipients to be maintained under securities legislation.¹⁰²

PART 9 NON-FIXED PRICE OFFERINGS AND REDUCTION OF OFFERING PRICE UNDER SHORT FORM PROSPECTUS**9.1 Non-Fixed Price Offerings and Reduction of Offering Price under Short Form Prospectus**

⁹⁹ This is new and has been added in light of the deletion of the "not in default" criteria throughout Part 2.

¹⁰⁰ The provision that appeared in subsection 4.2(8) in the 1998 proposed National Instrument requiring an issuer to deliver to the regulator, upon request, a copy of any material contract referred to in a short form prospectus has been omitted and moved to the proposed Companion Policy.

¹⁰¹ This is new to the proposed National Instrument and reflects current practice.

¹⁰² This is new to the proposed National Instrument and reflects securities legislation.

- (1) Every security distributed under a short form prospectus shall be distributed at a fixed price.
- (2) Despite subsection (1), securities for which the issuer is qualified under Part 2 to file a prospectus in the form of a short form prospectus may be distributed for cash at non-fixed prices under a short form prospectus if, at the time of the filing of the preliminary short form prospectus, the securities have received a rating, on a provisional or final basis, from at least one approved rating organization.
- (3) Despite subsection (1), if securities are distributed for cash under a short form prospectus, the price of the securities may be decreased from the initial offering price disclosed in the short form prospectus and, after such a decrease, changed from time to time to an amount not greater than the initial offering price, without filing an amendment to the short form prospectus to reflect the change, if
 - (a) the securities are distributed through one or more underwriters that have agreed to purchase all of the securities at a specified price;
 - (b) the proceeds to be received by the issuer or selling securityholders or by the issuer and selling securityholders are disclosed in the short form prospectus as being fixed; and
 - (c) the underwriters have made a reasonable effort to sell all of the securities distributed under the short form prospectus at the initial offering price disclosed in the short form prospectus.
- (4) Despite subsections (2) and (3), the price at which the rights under a rights offering may be exercised shall be fixed.

PART 10 CIRCULARS

10.1 Use of Short Form Prospectus Disclosure in Securities Exchange Take-Over Bid Circular and Securities Exchange Issuer Bid Circular¹⁰³

- (1) An issuer that makes a take-over bid or an issuer bid that includes consideration consisting, in whole or in part, of the issuer's securities satisfies the requirement in securities legislation to include, in a securities exchange take-over bid circular or a securities exchange issuer bid circular, the information prescribed by the form of prospectus appropriate for the issuer by including, in the securities exchange take-over bid circular or the securities exchange issuer bid circular, the information required by this Instrument to be included in a short form prospectus, if the issuer's securities offered as consideration are of a type for which the issuer is qualified under section 2.2, 2.3, 2.4 or 2.8 to file a prospectus in the form of a short form prospectus.
- (2) In determining, for the purpose of subsection (1), whether an issuer is qualified to file a prospectus in the form of a short form prospectus under section 2.2, 2.3, 2.4 or 2.8, references in those sections to the time of the filing of a preliminary short form prospectus shall be read as references to the time of the filing of the securities exchange take-over bid circular or securities exchange issuer bid circular.
- (3) Item 11 of Form 44-101F2 applies with necessary changes to a securities exchange take-over bid referred to in subsection (1), if the securities exchange take-over bid would result in the offeror making a significant acquisition.¹⁰⁴

10.2 Use of Short Form Prospectus Disclosure in Information Circular¹⁰⁵

- (1) An issuer that sends an information circular to securityholders disclosing information on a proposed reorganization that involves the issuer distributing its securities satisfies the requirement in securities legislation to include in an information circular the information prescribed by the form of prospectus appropriate for the issuer by including in the information circular, the information required by this Instrument to be included in a short form prospectus, if the issuer's securities to be distributed in connection with the reorganization are of a

¹⁰³ This section has been revised for greater clarity.

¹⁰⁴ "Material" has been changed to "significant" in this subsection for consistency with the financial statement disclosure requirements in Part 4.

¹⁰⁵ This section has been revised for greater clarity.

type for which the issuer is qualified under section 2.2, 2.3, 2.4 or 2.8 to file a prospectus in the form of a short form prospectus.

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

10.3 Information Circular Disclosure regarding Availability of Information - An issuer that has a current AIF and sends its information circular, as required by securities legislation, to securityholders shall

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

PART 11 SOLICITATIONS OF EXPRESSIONS OF INTEREST

11.1 Solicitations of Expressions of Interest - The prospectus requirement does not apply to solicitations of expressions of interest before the filing of a preliminary short form prospectus for securities to be qualified for distribution under a short form prospectus in accordance with this Instrument, if

- (a) the issuer has entered into an enforceable agreement with an underwriter who has, or underwriters who have, agreed to purchase the securities;
- (b) the agreement referred to in paragraph (a) has fixed the terms of the distribution and requires that the issuer file a preliminary short form prospectus for the securities and obtain a receipt for the preliminary short form prospectus from
- (i) the regulator in at least one jurisdiction, dated not more than two business days after the date that the agreement is entered into, and
 - (ii) the Canadian securities regulatory authorities in any other jurisdictions in which the distribution is to be made, dated not more than three business days after the date that the agreement is entered into;
- (c) the issuer has issued and filed a news release announcing the agreement immediately upon entering into the agreement;
- (d) upon issuance of a receipt for the preliminary short form prospectus, a copy of the preliminary short form prospectus is sent to each person or company who has expressed an interest in acquiring the securities; and
- (e) except as provided in paragraph (a), no agreement of purchase and sale for the securities is entered into until the short form prospectus has been filed and a receipt obtained.

PART 12 EXEMPTION

12.1 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.

12.2 Evidence of Exemption¹⁰⁶

- (1) Except in respect of an application for an exemption from Part 2, in whole or in part, subject to subsection (2) and without limiting the manner in which an exemption under this Part may be evidenced, the granting of an exemption under this Part may be evidenced by
 - (a) the issuance of a receipt for a short form prospectus or an amendment to a short form prospectus; or
 - (b) the issuance of a MRRS decision document for a short form prospectus or an amendment to a short form prospectus, if the MRRS decision document is evidence of the issuance of a final receipt for the short form prospectus or the amendment to the short form prospectus in the local jurisdiction.
- (2) An exemption under this Part may be evidenced in the manner set out in subsection (1) only if
 - (a) the person or company that sought the exemption
 - (i) sent to the regulator the letter or memorandum referred to in subsection 12.1(3) on or before the date of the filing of the preliminary short form prospectus, or
 - (ii) sent to the regulator the letter or memorandum referred to in subsection 12.1(3) after the date of the filing of the preliminary short form prospectus and received a written acknowledgement from the regulator that the exemption may be evidenced in the manner set out in subsection (1); and
 - (b) the regulator has not sent notice to the contrary to the person or company that sought the exemption before, or concurrently with, the issuance of the receipt.

12.3 Exemption under Prior Policy - An issuer that, immediately before the time this Instrument came into force, was eligible to participate in the prompt offering qualification system contemplated by National Policy Statement No. 47 under an exemption, ruling, order, decision or other action of the securities regulatory authority or regulator, other than a blanket ruling or order,¹⁰⁷ is qualified to file a prospectus in the form of a short form prospectus, in reliance on the exemption, ruling, order, decision or other action and subject to the same conditions, if any, as are in the action, until the earliest of

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

¹⁰⁶ This section has been modified in anticipation of the adoption of the MRRS.

¹⁰⁷ The term "blanket rulings and orders" is defined in National Instrument 14-101 Definitions as meaning "rulings and orders issued under Canadian securities legislation in certain jurisdictions that are applicable to a class of persons, trades, intended trades, securities, exchange contracts or transactions".

Appendix A to National Instrument 44-101
Consent to Collection of Personal Information

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NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS
APPENDIX A
CONSENT TO COLLECTION OF PERSONAL INFORMATION

Notification

The legal authority for the indirect collection is the provision in securities legislation that allows the regulator to refuse to issue a receipt for a prospectus if it appears to the regulator that the past conduct of management or promoters of the issuer affords reasonable grounds for belief that the business of the issuer will not be conducted with integrity and in the best interests of its securityholders.

The principal purpose for which the personal information is intended to be used is the fulfilment of the regulator's obligations under the provision of securities legislation described above.

Indirect Collection of Personal Information - The issuer confirms that the individuals listed in the attached schedule have been notified of the issuer's filing of information with respect to their residence address, date and place of birth and citizenship required for the purposes of the provision of securities legislation described above. The individuals have also been notified of the legal authority for the collection, the principal purpose for which the information is intended to be used and the title, business address and business telephone number of the public official who can answer questions concerning the collection.

Consent

The issuer of securities hereunder is authorized to consent on behalf of each director, officer and promoter referred to in the attached schedule and hereby consents to the regulator collecting such personal information about such individuals as may be necessary for the regulator to discharge his/her obligations under the provision of securities legislation described above.

The Public Official Who Can Answer Questions About the Collection at the Securities Commission is:

[To be completed, as appropriate]

[ISSUER]

Per: _____
Authorized Signature Date

Name

Official Capacity

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

Schedule to Appendix A

[Name of Issuer]

Name and Position with
or Relationship to Issuer

Residential Address

Date and Place
of Birth

Citizenship

Appendix B to National Instrument 44-101
Issuer's Submission to Jurisdiction

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**NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS
APPENDIX B
ISSUER FORM OF SUBMISSION TO
JURISDICTION AND APPOINTMENT OF
AGENT FOR SERVICE OF PROCESS**

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

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

3. Address of principal place of business of Issuer:

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

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

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

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

8. The Issuer designates and appoints the Agent at the address of the Agent stated above as its agent upon whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the "Proceeding") arising out of, relating to or concerning the distribution of the Securities made or purported to be made under the Short Form Prospectus or the obligations of the Issuer as a reporting issuer, and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring such Proceeding.
9. The Issuer irrevocably and unconditionally submits to the non-exclusive jurisdiction of
 - (a) the judicial, quasi-judicial and administrative tribunals of each of the provinces [and territories] of Canada in which the securities are distributed under the Short Form Prospectus; and
 - (b) any administrative proceeding in any such province [or territory],
 in any Proceeding arising out of or related to or concerning the distribution of the Securities made or purported to be made under the Short Form Prospectus or the obligations of the issuer as a reporting issuer.
10. Until six years after it has ceased to be a reporting issuer in any Canadian province or territory, the Issuer shall file a new submission to jurisdiction and appointment of agent for service of process in this form at least 30 days before termination of this submission to jurisdiction and appointment of agent for service of process.
11. Until six years after it has ceased to be a reporting issuer in any Canadian province or territory, the Issuer shall file an amended submission to jurisdiction and appointment of agent for service of process at least 30 days before any change in the name or above address of the Agent.
12. This submission to jurisdiction and appointment of agent for service of process shall be governed by and construed in accordance with the laws of [insert province or territory of above address of Agent].

Dated: _____
Signature of Issuer

Print name and title of signing

officer of Issuer

AGENT

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

Dated: _____
Signature of Agent

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

Appendix C to National Instrument 44-101
Non-Issuer's Submission to Jurisdiction

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NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS
APPENDIX C
NON-ISSUER FORM OF SUBMISSION TO
JURISDICTION AND APPOINTMENT OF
AGENT FOR SERVICE OF PROCESS

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

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

3. Address of principal place of business of Issuer:

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

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

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

7. Filing Person's relationship to Issuer:

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

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

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

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

12. The Filing Person designates and appoints the Agent at the address of the Agent stated above as its agent upon whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the "Proceeding") arising out of, relating to or concerning the distribution of the Securities made or purported to be made under the Short Form Prospectus, and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring the Proceeding.
13. The Filing Person irrevocably and unconditionally submits to the non-exclusive jurisdiction of
 - (a) the judicial, quasi-judicial and administrative tribunals of each of the provinces [and territories] of Canada in which the securities are distributed under the Short Form Prospectus; and
 - (b) any administrative proceeding in any such province [or territory],in any Proceeding arising out of or related to or concerning the distribution of the Securities made or purported to be made under the Short Form Prospectus.
14. Until six years after completion of the distribution of the Securities made under the Short Form Prospectus, the Filing Person shall file a new submission to jurisdiction and appointment of agent for service of process in this form at least 30 days before termination of this submission to jurisdiction and appointment of agent for service of process.

- 15. Until six years after completion of the distribution of the Securities under the Short Form Prospectus, the Filing Person shall file an amended submission to jurisdiction and appointment of agent for service of process at least 30 days before a change in the name or above address of the Agent.
- 16. This submission to jurisdiction and appointment of agent for service of process shall be governed by and construed in accordance with the laws of [insert province or territory of above address of Agent].

Dated: _____
Signature of Filing Person

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

AGENT

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

Dated: _____
Signature of Agent

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

Form 44-101F1
AIF

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NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS
FORM 44-101F1 AIF
- and -
SCHEDULE 1 TO FORM 44-101F1 MD&A
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**NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS
FORM 44-101F1
AIF**

INSTRUCTIONS

- (1) *An AIF is intended to provide background information that is essential to a proper understanding of the nature of an issuer and its operations and prospects.*
- (2) *Focus the AIF disclosure on the issuer and external factors affecting the issuer specifically; do not focus, unless specifically required, on external factors that affect issuers generally.*
- (3) *Do not omit any of the disclosure prescribed by this Form. In determining the degree of detail required, apply a standard of materiality. Materiality is a matter of judgment in particular circumstances, and should generally be determined in relation to an item's significance to investors, analysts and other users of the information. An item of information, or an aggregate of items, is considered material if it is probable that its omission or misstatement would influence or change an investment decision with respect to the issuer's securities. In determining whether information is material, take into account both quantitative and qualitative factors. This concept of materiality is consistent with the financial reporting notion of materiality contained in the Handbook.*
- (4) *A requirement in this Form to discuss or disclose forward-looking information does not call for a forecast or projection as defined in the Handbook. An issuer that chooses to provide a forecast or projection is required to comply with National Instrument 52-101 Future-Oriented Financial Information.*
- (5) *An issuer that is a special purpose vehicle and intends to issue or has issued asset-backed securities may have to modify the disclosure items in this Form to reflect the special purpose nature of its business.*
- (6) *Any information required in an AIF may be incorporated by reference in the AIF. Clearly identify in an AIF any document incorporated by reference. If an excerpt of a document is incorporated by reference, clearly identify the excerpt in the AIF by caption and paragraph of the document. Any material incorporated by reference in an AIF is required under subsection 3.3(1) of National Instrument 44-101 to be filed with the AIF unless it has been previously filed.*
- (7) *Date an AIF no earlier than the date of the auditor's report on the issuer's financial statements for the financial year covered by the AIF.*
- (8) *Unless otherwise specified in this Form, present the information in an AIF as at a date not earlier than the end of the issuer's most recently completed financial year, except for*
 - (a) *an AIF filed by a successor issuer following a reorganization, in which case present the information as at a date not earlier than the latest financial year end of any of the participants in the reorganization that were reporting issuers at the time of the reorganization; and*
 - (b) *an AIF filed by an issuer of asset-backed securities that has not completed its first financial year, in which case present the information as at a date within 30 days before the date that the initial AIF is filed.*
- (9) *If a material change affecting the issuer occurs after the date as at which the disclosure in the AIF is required, and before filing, include this information in the AIF.*
- (10) *Terms used and not defined in this Form that are defined or interpreted in National Instrument 44-101 shall bear that definition or interpretation.*
- (11) *All references to the issuer in Items 3 through 6 of this Form are to be read as applying to the issuer and its subsidiaries and investees, if the disclosure concerning an issuer's subsidiaries and investees is material.¹⁰⁸*

¹⁰⁸ This qualification is new. Unless otherwise specified, all changes noted in these footnotes refer to changes made to the 1998 proposed Form 44-101F1.

CONTENTS OF AIF**Item 1: Cover Page**

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

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

"This annual information form is currently under review by the Canadian securities regulatory authorities of one or more jurisdictions. Information contained herein is subject to change."¹⁰⁹

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

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

Item 2: Corporate Structure**2.1 Name and Incorporation**

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

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

- (a) the percentage of the votes attaching to all voting securities of the subsidiary represented by voting securities beneficially owned, or over which control or direction is exercised, by the issuer;
- (b) the percentage of each class of non-voting securities beneficially owned, or over which control or direction is exercised, by the issuer; and
- (c) the place of incorporation or continuance.¹¹⁰

INSTRUCTION *A particular subsidiary may be omitted if*

- (a) *the total assets of the subsidiary do not constitute more than 10 percent of the consolidated assets of the issuer at the most recent financial year end;*
- (b) *the sales and operating revenues of the subsidiary do not exceed 10 percent of the consolidated sales and operating revenues of the issuer at the most recent financial year end; and*
- (c) *the conditions in paragraphs (a) and (b) would be satisfied if*
 - (i) *the subsidiaries that may be omitted under paragraphs (a) and (b) were considered in the aggregate, and*
 - (ii) *the reference to 10 percent in those paragraphs were changed to 20 percent.¹¹¹*

¹⁰⁹ This legend has been revised to reflect that renewal AIFs are no longer accepted for filing.

¹¹⁰ Reference to "organization" has been omitted because a subsidiary is a corporation.

¹¹¹ This has been changed to reflect the test from NP47.

Item 3: General Development of the Business

3.1 Three Year History - Describe the general development of the business of the issuer over the three most recently completed financial years. Include only major events or conditions that have influenced the general development of the business of the issuer. If the business consists of the production or distribution of more than one product or the rendering of more than one kind of service, describe the principal products or services. Also discuss changes in the business of the issuer that are expected to occur during the current financial year of the issuer.

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

3.2 Acquisitions and Dispositions¹¹²

- (1) Disclose
 - (a) any significant acquisition completed during the most recently completed financial year for which financial statement disclosure would be required under Part 4 of National Instrument 44-101 if the AIF were a short form prospectus; and
 - (b) any material disposition completed in the issuer's most recently completed financial year.
- (2) Under paragraph (1) include particulars of
 - (a) the nature of the assets acquired or disposed of;
 - (b) the date of each acquisition or disposition;
 - (c) the consideration, both monetary and non-monetary, paid to or by the issuer;
 - (d) any material obligations that must be complied with to keep any acquisition or disposition agreement in good standing;
 - (e) the effect of the acquisition or disposition on the operating results and financial position of the issuer;
 - (f) any valuation opinion obtained within the last 12 months required by Canadian securities legislation or Canadian securities directions or a requirement of a Canadian stock exchange or other Canadian market to support the value of the consideration received or paid by the issuer or any of its subsidiaries for the assets, including the name of the author, the date of the opinion, the assets to which the opinion relates and the value attributed to the assets; and
 - (g) whether the transaction is at arm's length and, if not, the identity of the other parties and the relationship of the other parties to the issuer.

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

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

Item 4: Narrative Description of the Business**4.1 General**

- (1) Describe the business of the issuer with reference to the reportable operating segments as defined in the Handbook and the issuer's business in general. Include the following for each reportable operating segment of the issuer:
 1. For principal products or services,
 - (a) the methods of their distribution and their principal markets;

¹¹² This has been revised to reflect Part 4 of the National Instrument. It is also more consistent with proposed Ontario Form 41-501F1 Information Required in a Prospectus which is being published for comment in Ontario concurrently with this Form. These footnotes make references to proposed Ontario Form 41-501F1 where the information may be of interest to readers in all CSA jurisdictions.

- (b) as dollar amounts or as percentages, for each of the two most recently completed financial years, the revenues for each category of principal products or services that accounted for 15 percent or more of total consolidated revenues for the applicable financial year derived from
 - (i) sales to customers, other than investees, outside the consolidated entity, and
 - (ii) sales or transfers to investees.¹¹³
- 2. The competitive conditions in the principal markets and geographic areas in which the issuer operates, including, if reasonably possible, an assessment of the issuer's competitive position.
- 3. If there has been a public announcement of the introduction of a new product, the status of the product.
- 4. The sources, pricing and availability of raw materials, component parts or finished products.
- 5. The importance, duration and effect on the segment of identifiable intangible properties such as brand names, circulation lists, copyrights, franchises, licences, patents, software, subscription lists and trademarks.
- 6. The extent to which the business of the segment is cyclical or seasonal.¹¹⁴
- 7. A description of any aspect of the issuer's business that may be affected in the current financial year by renegotiation or termination of contracts or sub-contracts and the likely effect.
- 8. The financial and operational effects of environmental protection requirements on the capital expenditures, earnings and competitive position of the issuer in the current financial year and the expected effect on future years.
- 9. The number of employees, as at the most recent financial year end or as an average over the year, whichever is more relevant.
- 10. Any risks associated with foreign operations of the issuer and any dependence of the segment upon the foreign operations.
- (2) Disclose the nature and results of any bankruptcy, receivership or similar proceedings against the issuer or any of its subsidiaries, or any voluntary bankruptcy, receivership or similar proceedings by the issuer or any of its subsidiaries, within the three most recently completed financial years.¹¹⁵
- (3) Disclose the nature and results of any material reorganization of the issuer or any of its subsidiaries within the three most recently completed financial years.¹¹⁶

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

- (a) a description of any events, covenants, standards or preconditions that are dependant or based on the economic performance of the underlying pool of financial assets and that may impact on the timing or amount of payments or distributions to be made under the asset-backed securities;
- (b) for the two most recently completed financial years of the issuer or a lesser period commencing on the first date on which the issuer had asset-backed securities outstanding, information on the underlying pool of financial assets relating to
 - (i) the composition of the pool as of the end of each financial year or partial period,
 - (ii) income and losses from the pool, on at least a quarterly basis,
 - (iii) the payment, prepayment and collection experience of the pool on a quarterly basis, and
 - (iv) any significant variances experienced in the matters referred to in clauses (i), (ii) and (iii);

¹¹³ This has been revised to clarify that investees are excluded under clause (i).

¹¹⁴ The reference to "cyclical" is new.

¹¹⁵ This appears as a separate paragraph as this disclosure is not required on a segment basis.

¹¹⁶ This is new.

- INSTRUCTIONS
- (1) *Present the information required by paragraph (b) in a manner that will enable a reader to easily determine if, and the extent to which, the events, covenants, standards and preconditions referred to in paragraph (a) have occurred, are being satisfied or may be satisfied.*
 - (2) *If the information required by paragraph (b) is not compiled specifically on the underlying pool of financial assets, but is compiled on a larger pool of the same assets from which the securitized assets are randomly selected such that the performance of the larger pool is representative of the performance of the pool of securitized assets, then an issuer may comply with paragraph (b) by providing the information required based on the larger pool and disclosing that it has done so.¹¹⁷*
 - (c) if any of the information disclosed under paragraph (b) has been audited, the existence and results of the audit;
 - (d) the investment parameters applicable to investments of any cash flow surpluses;
 - (e) the amount of payments made in respect of principal and interest or capital and yield on asset-backed securities of the issuer outstanding during the most recently completed financial year or a lesser period commencing on the first date on which the issuer had asset-backed securities outstanding;
 - (f) the occurrence of any events that have led or with the passage of time could lead to the accelerated payment of principal or capital of asset-backed securities; and
 - (g) the identity of any principal obligors for the outstanding asset-backed securities of the issuer at the end of the most recent financial year or interim period, the percentage of the underlying pool of financial assets represented by obligations of each principal obligor and whether the principal obligor has filed an AIF in any jurisdiction or a Form 10-K or Form 20-F in the United States.¹¹⁸

4.3 Issuers With Natural Resource Operations (other than Oil and Gas) - For issuers with natural resource operations, other than oil and gas operations, disclose the following information for each property material to the issuer:

1. Property Description and Location

- (a) The size and location of the property.
- (b) The nature and extent of the issuer's title to or interest in the property, including accompanying surface rights, the sufficiency of the rights for mining operations, obligations that must be met to retain the property and the expiry date of claims, licences and other property tenure rights.
- (c) The terms of any royalties, overrides, back-in rights, payments or other agreements and encumbrances to which the property is subject.
- (d) All environmental liabilities to which the property is subject.

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

- (a) The means of access to the property.
- (b) The proximity of the property to a population centre and the nature of transport.
- (c) To the extent relevant to the mining project, the climate and length of the operating season.
- (d) The availability of power and water, mining personnel and potential tailings and disposal areas.
- (e) The topography, elevation and vegetation.

3. History

- (a) The prior ownership of the property and ownership changes and the type, amount, quantity and results of the exploration work undertaken by previous owners, and any previous production on the property, to the extent known.
- (b) If a property was acquired within the three most recently completed financial years of the issuer or during its current financial year from, or is intended to be acquired by the issuer from, an insider or promoter of the issuer or an associate or affiliate of an insider or promoter, the name

¹¹⁷ This instruction is new.

¹¹⁸ The qualification that this disclosure is required only for issuers with asset-backed securities outstanding "that were distributed under a prospectus" is new.

- and address of the vendor, the relationship of the vendor to the issuer and the consideration paid or intended to be paid to the vendor.
- (c) To the extent known, the name of every person or company that has received or is expected to receive a greater than five percent interest in the consideration received or to be received by the vendor referred to in subparagraph (b).
4. **Geology** - The geology of the region and the property.
5. **Exploration Information** - The nature and extent of all exploration work and metallurgical or other testing conducted by, or on behalf of, the issuer on the property, including
- (a) the results of all surveys and investigations;
- (b) an interpretation of the exploration information; and
- (c) whether the surveys and investigations have been carried out by the issuer or a contractor.
6. **Mineralization** - The mineralization encountered on the property, detailing length, width, depth, continuity and the basis of measurement together with a description of the type, character and distribution of the mineralization.
7. **Sampling and Analysis** - The sampling and assaying including
- (a) mineral occurrences and the nature of mineralization found;
- (b) mineral distributions, rock types, structural controls, cut-off grades and other parameters used to establish sampling intervals;
- (c) the location, number, type, spacing and density of samples collected;
- (d) the area covered;
- (e) any drilling, sampling or recovery problems encountered that could materially impact the accuracy or reliability of the results;
- (f) the assay procedures used; and
- (g) quality control and check assay procedures.
8. **Security of Samples** - The measures taken to ensure the validity and security of samples taken.
9. **Resources and Reserves** - The resources and reserves, if any, including
- (a) the quantity and grade of each category of resource and reserve;
- (b) the key assumptions, parameters and methods used to estimate the resource and reserve; and
- (c) the extent to which the estimate of resources and reserves may be affected by metallurgical, environmental, permitting, infrastructure, mining, legal, title, political and other issues.
10. **Mining Operations** - For development properties and production properties, the mining method, metallurgical process, production forecast, market contracts for sale of products, mine life and expected payback period of capital.¹¹⁹

INSTRUCTIONS

- (1) *Issuers are reminded that disclosure regarding mineral exploration development or production activities on material properties is required to comply with National Instrument 43-101 Standards for Disclosure of Mineral Exploration and Development and Mining Properties including the use of the appropriate terminology to describe reserves and resources.*
- (2) *Disclosure is required for each property material to the issuer. Materiality is to be determined in the context of the issuer's overall business and financial condition, taking into account quantitative and qualitative factors. A property will not generally be considered material to an issuer if the book value of*

¹¹⁹ This item has been revised to reflect proposed National Instrument 43-101 Standards for Disclosure of Mineral Exploration and Development and Mining Properties, which was published for comment on July 3, 1998. That proposed instrument consolidates and expands significantly on the current disclosure and reporting requirements for issuers with exploration and development properties and mining operations and includes new requirements that affect AIFs.

the property as reflected in the issuer's most recently filed financial statements or the value of the consideration paid or to be paid (including exploration obligations) is less than 10 percent of the book value of the total of the issuer's mineral properties and related plant and equipment.

- (3) *The information required by these items shall be derived from or supported by information obtained from the report relating to the property prepared and filed with the regulator under National Instrument 43-101 Standards of Disclosure for Mineral Exploration and Development and Mining Properties.*
- (4) *In giving the information required by these items, include the nature of ownership interests, such as fee interests, leasehold interests, royalty interests and any other types and variations of ownership interests.¹²⁰*

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

1. **Drilling Activity** - The number of wells the issuer has drilled or has participated in drilling, the number of these wells that were completed as oil wells and gas wells that are capable of production, each stated separately, and the number of dry holes, expressed in each case as gross and net wells, during each of the two most recently completed financial years of the issuer.
2. **Location of Production** - The geographical areas of the issuer's production, the groups of oil and gas properties, the individual oil and gas properties and the plants, facilities and installations that, in each case, are owned or leased by the issuer and are material to the issuer's operations or exploratory activities.
3. **Location of Wells** - The location, stated separately for oil wells and gas wells, by jurisdiction, if in Canada, by state, if in the United States, and by country otherwise, of producing wells and wells capable of producing, in which the issuer has an interest and which are material, with the interest expressed in terms of gross and net wells.¹²¹
4. **Interest in Material Properties** - For interests in material properties to which no proved reserves have been attributed, the gross acreage in which the issuer has an interest and the net interest of the issuer, and the location of acreage by geographical area.¹²²
5. **Reserve Estimates** - To the extent material, estimated reserve volumes and discounted cash flow from such reserves, stated separately by country and by categories and types that conform to the classifications, definitions and disclosure requirements of National Policy Statement No. 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators or any successor instrument, on both a gross and net basis as at the most recent financial year end, including information on royalties.¹²³
6. **Source of Reserve Estimates** - The source of the reserve estimates and whether the reserve estimates have been prepared by the issuer or by independent engineers or other qualified independent persons and any other information relating to reserve estimates required to be disclosed in an AIF by any successor instrument to National Policy Statement No. 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators.¹²⁴
7. **Reconciliation of Reserves** - A reconciliation of the reserve volumes by categories and types that conform to the classifications, definitions and disclosure requirements of National Policy Statement No. 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators or any successor instrument, as at the financial year end immediately preceding the most recently completed financial year to the reserve volume information furnished under paragraph 5, with the effects of production, acquisitions, dispositions, discoveries and revision of estimates shown separately if material.¹²⁵
8. **History** - For each quarter of the most recently completed financial year of the issuer, with comparative data for the same periods in the preceding financial year,

¹²⁰ These instructions are new.

¹²¹ The reference to "non-unitized" wells has been omitted.

¹²² The materiality qualification is new, as is the reference "attributed".

¹²³ This paragraph has been modified to require the reserve estimates on a country basis using National Policy Statement No. 2-B classifications. The materiality qualification is new.

¹²⁴ This paragraph has been modified to refer to National Policy Statement No. 2-B.

¹²⁵ The reference to conforming to National Policy Statement No. 2-B is new.

- (a) the average daily production, after deduction of royalties payable in kind, of
 - (i) conventional crude oil,
 - (ii) natural gas liquids, and
 - (iii) natural gas;¹²⁶
 - (b) the following on a per barrel basis for conventional crude oil and natural gas liquids and on a per thousand cubic feet basis for natural gas
 - (i) the average net product prices received,
 - (ii) royalties,¹²⁷
 - (iii) operating expenses, specifying the particular items included,¹²⁸ and
 - (iv) netback received;
 - (c) the average net product price received for the following, if the issuer's production of the following is material to the issuer's overall production,
 - (i) light and medium conventional crude oil,¹²⁹
 - (ii) heavy conventional crude oil, and
 - (iii) synthetic crude oil; and
 - (d) the dollar amounts expended on
 - (i) property acquisition,
 - (ii) exploration, including drilling, and
 - (iii) development, including facilities.¹³⁰
- 9. Future Commitments** - A description of the issuer's future material commitments to buy, sell, exchange or transport oil or gas, stating for each commitment separately
- (a) the aggregate price;
 - (b) the price per unit;
 - (c) the volume to be purchased, sold, exchanged or transported; and
 - (d) the term of the commitment.¹³¹
- 10. Exploration and Development** - A description of the issuer's current and contemplated exploration or development activities, to the extent they are material.

Item 5: Selected Consolidated Financial Information

- 5.1 Annual Information** - Provide the following financial data for the issuer in summary form for each of the three most recently completed financial years, accompanied by a discussion of the factors affecting the comparability of the

¹²⁶ The reference to "oil and gas in the aggregate, on a barrel of oil equivalent basis" that appeared in the 1998 proposed Form 44-101F1 has been omitted.

¹²⁷ The adjective "crown" has been omitted.

¹²⁸ The requirement to specify particular items is new.

¹²⁹ The reference to "medium" is new.

¹³⁰ The reference to "facilities" is new. Disclosure requirements expressed on a barrel of oil equivalent basis have been omitted from this item, including the finding and development costs for proved reserves.

¹³¹ This requirement has been expanded from "hedging programs" to require disclosure of future commitments more generally. Paragraph 10 "Reserve Life Index" and paragraph 11 "Sensitivity Analysis" in the 1998 proposed Form 44-101F1 have been omitted.

data, including discontinued operations, changes in accounting policies, significant acquisitions or material dispositions and major changes in the direction of the business:

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

5.2 Quarterly Information - For each of the eight most recently completed quarters ending at the end of the most recently completed financial year, provide the information required in paragraphs 1, 2 and 3 of Item 5.1, provided that, if the issuer is only required to file six month interim financial statements, the information may instead be provided for each of the four most recently completed six month periods ended at the end of the most recently completed financial year.

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

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

- (a) the issuer's primary financial statements have been prepared using foreign GAAP; and
- (b) if the issuer is required under securities legislation to have reconciled its financial statements to Canadian GAAP at the time of filing its financial statements or the issuer has otherwise done so at that time, a cross-reference to the notes to the financial statements containing the reconciliation is included.

Item 6: Management's Discussion and Analysis

6.1 Schedule 1 Disclosure

- (1) Provide the disclosure required by Schedule 1 to this Form.
- (2) If an issuer has securities registered under the 1934 Act, the issuer may satisfy the requirement in paragraph (1) by providing, directly or through incorporation by reference, the disclosure required by the item requirements applicable to it under the 1934 Act that are analogous to the requirement to provide the disclosure required by Schedule 1.

6.2 Foreign GAAP - If an issuer's primary financial statements have been prepared using foreign GAAP and the issuer is required under securities legislation to have reconciled its financial statements to Canadian GAAP at the time of filing its financial statements, or has otherwise done so at that time, then provide a cross-reference in the MD&A to the notes to the financial statements containing the reconciliation.

Item 7: Market for Securities

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

Item 8: Directors and Officers

8.1 Name, Address, Occupation and Security Holding

- (1) List the name and municipality of residence of each director and each officer of the issuer and indicate their respective positions and offices held with the issuer and their respective principal occupations within the five preceding years.
- (2) State the period or periods during which each director has served as a director and when the term of office of each director will expire.

- (3) State the number and percentage of securities of each class of voting securities of the issuer or any of its subsidiaries beneficially owned, directly or indirectly, or over which control or direction is exercised, by all directors and senior officers of the issuer as a group.

INSTRUCTION *Securities of subsidiaries that are beneficially owned, directly or indirectly, or over which control or direction is exercised by directors or senior officers through ownership or control or direction over securities of the issuer do not need to be included.*

- (4) Disclose the board committees of the issuer and identify the members of each committee.
- (5) If the principal occupation of a director or officer is that of an officer of a person or company other than the issuer, state the principal business of the person or company.¹³²

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

- (a) was the subject of a cease trade or similar order, or an order that denied the other issuer access to any exemptions under Canadian securities legislation, for a period of more than 30 consecutive days, state the fact and describe the basis on which the order was made and whether the order is still in effect; or
- (b) became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets, state the fact.¹³³

8.3 Penalties or Sanctions - If a director or officer of the issuer, or a shareholder holding a sufficient number of securities of the issuer to affect materially the control of the issuer, has

- (a) been subject to any penalties or sanctions imposed by a court or regulator, or
- (b) has entered into a settlement agreement with a regulator,

that would be likely to be considered important to a reasonable investor in making an investment decision, describe the penalties or sanctions imposed and the grounds on which they were imposed or the terms of the settlement agreement.¹³⁴

8.4 Personal Bankruptcies - If a director or officer of the issuer, or a shareholder holding a sufficient number of securities of the issuer to affect materially the control of the issuer has, within the 10 years before the date of the AIF, become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency, or was subject to or instituted any proceedings, arrangement or compromise with creditors, or had a receiver, receiver manager or trustee appointed to hold the assets of the director or officer, state the fact.¹³⁵

8.5 Conflicts of Interest - Disclose particulars of existing or potential material conflicts of interest between the issuer or a subsidiary of the issuer and a director or officer of the issuer or a subsidiary of the issuer as a result of the director's or officer's outside business interests.¹³⁶

Item 9: Additional Information

9.1 Additional Information

- (1) Include a statement to the effect that the issuer, upon request to the secretary of the issuer, will provide to any person or company
- (a) when the securities of the issuer are in the course of a distribution under a preliminary short form prospectus or a short form prospectus,

¹³² Paragraph (5) is new.

¹³³ This item has been expanded to include significant shareholders.

¹³⁴ This item has been expanded beyond publicly traded issuers and beyond securities regulatory offences. The qualification regarding importance to an investor is also new.

¹³⁵ This item has been expanded to include significant shareholders.

¹³⁶ This item has been expanded to include conflicts with a director or officer of a subsidiary.

- (i) one copy of the AIF of the issuer, together with one copy of any document, or the pertinent pages of any document, incorporated by reference in the AIF,
 - (ii) one copy of the comparative financial statements of the issuer for its most recently completed financial year for which financial statements have been filed together with the accompanying report of the auditor and one copy of the most recent interim financial statements of the issuer that have been filed, if any, for any period after the end of its most recently completed financial year,
 - (iii) one copy of the information circular of the issuer in respect of its most recent annual meeting of shareholders that involved the election of directors or one copy of any annual filing prepared instead of that information circular, as appropriate, and
 - (iv) one copy of any other documents that are incorporated by reference into the preliminary short form prospectus or the short form prospectus and are not required to be provided under clauses (i), (ii) or (iii); or
- (b) at any other time, one copy of any documents referred to in clauses (a)(i), (ii) and (iii), provided that the issuer may require the payment of a reasonable charge if the request is made by a person or company who is not a securityholder of the issuer.
- (2) Include a statement to the effect that additional information including directors' and officers' remuneration and indebtedness, principal holders of the issuer's securities, options to purchase securities and interests of insiders in material transactions, if applicable, is contained in the issuer's information circular for its most recent annual meeting of shareholders that involved the election of directors, and that additional financial information is provided in the issuer's comparative financial statements for its most recently completed financial year.

**NATIONAL INSTRUMENT 44-101
PROMPT OFFERING QUALIFICATION SYSTEM
SCHEDULE 1 TO FORM 44-101F1
MD&A**

INSTRUCTION

- (1) *MD&A is supplemental analysis and explanation that accompanies, but does not form part of, the financial statements. MD&A provides management with the opportunity to discuss an issuer's current financial results, position and future prospects. MD&A is intended to give a reader the ability to look at the issuer through the eyes of management by providing both a historical and prospective analysis of the business of the issuer. MD&A requires that management discuss the dynamics of the business and analyze the financial statements. Coupled with the financial statements, this information should enable readers to better assess the issuer's performance, position and future prospects.*
- (2) *Focus the MD&A on material information about the financial condition of the issuer, as well as its operations, with particular emphasis on liquidity, capital resources and known material trends, commitments, events, risks or uncertainties that are reasonably expected to have a material effect on the issuer's business, financial condition or results of operations.*
- (3) *In this Schedule, "capital resources" means indebtedness, share capital and any other financial arrangement, whether or not it is reflected on the balance sheet of an issuer, that can reasonably be considered to provide financial resources to the issuer.¹³⁷*
- (4) *Issuers are not required to disclose information described in this schedule if the information is not material.*
- (5) *If information required by this schedule is disclosed in a note to an issuer's financial statements, the issuer may comply with the disclosure requirement by providing a cross-reference to the note in which the information appears.*
- (6) *Focus the MD&A on the primary financial statements, even if the primary financial statements have been prepared using foreign GAAP.*
- (7) *The MD&A form is intentionally general and contains a minimum of specific instructions in order to allow, as well as encourage, issuers to discuss their businesses in the most appropriate manner and to tailor their comments to their individual circumstances. Issuers should avoid boilerplate.*

CONTENTS OF MD&A**Item 1: General**

- (1) Provide an analysis of the issuer's financial condition, changes in financial condition and results of operations in the most recently completed financial year, including a comparison against the previously completed financial year. Provide all information necessary to understand the analysis and comparison. Include
 - (a) an analysis and comparison over a period longer than two financial years if necessary to describe a trend;
 - (b) an analysis and comparison on the basis of each reportable operating segment or other part of the business, as well as on the issuer as a whole, if necessary to understand the analysis and comparison;

INSTRUCTION

In making the determination whether an analysis and comparison on the basis of a reportable operating segment or other part of the business is required, give consideration to whether any part of the business has a disproportionate effect on revenues, profitability or cash needs; whether there are any legal or other restrictions on the free flow of funds from one part of the issuer's business to another; and whether known trends, demands, commitments, events or uncertainties within a part of the business are reasonably likely to have a material effect on the business as a whole.

- (c) factors internal to the issuer as well as external economic and industry factors affecting the issuer;
- (d) an explanation of why changes have or have not occurred in the financial condition and results of operations of the issuer;

INSTRUCTION

In providing an explanation of causes affecting more than one , an overall analysis is sufficient.

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

¹³⁷

This definition is new in this Schedule. It previously appeared in section 1.1 of the 1998 proposed National Instrument.

INSTRUCTION *Issuers need only include information that is reasonably available to the issuer and that does not clearly appear in the issuer's financial statements. Numerical data included in, or readily calculable from, the financial statements need not be repeated in the analysis and comparison. For example, if it is clear from the comparative financial statements what the amount of increase or decrease in revenues or the respective percentage change would be from the prior year, it is not necessary to include this information in the discussion since it is readily calculable. Showing these increases and decreases immediately before the discussion is nonetheless often useful to readers.*

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

INSTRUCTION *The discussion should be designed to enhance a reader's understanding of the significance of recognized and unrecognized financial instruments on the issuer's financial position, results and cash flows. The information should also be designed to assist a reader in assessing the amounts, timing, and certainty of future cash flows associated with those instruments.*

- (b) an analysis of the risks associated with the issuer's financial instruments;
- (c) an analysis of management's policies for controlling the risks associated with the issuer's financial instruments, including an analysis of, if applicable, the issuer's policies for the hedging of risk exposures, the avoidance of undue concentrations of risk and any requirements for collateral to mitigate credit risks, and, if the issuer has no policies for controlling the risks associated with the issuer's financial instruments, a statement indicating that the issuer does not have any such policies;

INSTRUCTION *If the issuer is exposed to significant price, credit or liquidity risks, consideration should be given to providing a sensitivity analysis or tabular information that assists readers in assessing the degree of exposure. For example, an analysis of the effect of a hypothetical change in the prevailing level of interest or currency rates on the fair value of financial instruments and future earnings and cash flows may be useful in describing the issuer's exposure to price risk.*

- (d) a discussion of the relationships between financial instruments and the components of individual financial instruments that may affect the amount, timing or certainty of cash flows;

INSTRUCTION *For example, a discussion of the existence and terms of master netting agreements and the relationship between liability and equity components of convertible debt instruments would be appropriate.*

- (e) disclosure of significant accounting policies for financial instruments, including a description of how each class of financial instrument is reported in the financial statements, the policies for recognition and measurement of financial instruments, and the financial statement classification of gains and losses; and
 - (f) significant assumptions made in determining the fair value of financial instruments, the total amount of the change in fair value of financial instruments recognized in income for the period, and the total amount of deferred or unrecognized gains and losses on financial instruments.
- (6) If a decision to proceed with a transaction has been made by an issuer's board of directors, or by senior management with the expectation of concurrence from the board of directors, and the transaction involves an asset acquisition or disposition or an acquisition or disposition of a business, whether structured as an asset or share transaction, discuss the transaction and its anticipated effect as part of MD&A. Disclosure is not required if the issuer has made a confidential filing under the continuous disclosure provisions of securities legislation.

Item 2: Liquidity and Capital Resources

- (1) With respect to the issuer's liquidity,

- (a) discuss the ability of the issuer to generate adequate amounts of cash and cash equivalents, in the short term and the long term, when needed and to maintain capacity to provide for planned growth;
- (b) identify any known trends or expected fluctuations in the issuer's liquidity, taking into account known demands, commitments, events or uncertainties; if a deficiency is identified, indicate the course of action that has been taken or is proposed to be taken to remedy the deficiency;
- (c) describe those balance sheet conditions or income or cash flow items that the issuer believes may be indicators of its liquidity;
- (d) describe generally the requirements relating to working capital;

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

- (e) disclose the nature and extent of legal or practical restrictions on the ability of subsidiaries to transfer funds to the issuer and the effect that these restrictions have had or are expected to have on the ability of the issuer to meet its obligations; and
 - (f) if the issuer is in arrears in the payment of dividends, interest or principal payment on borrowings, disclose this fact and provide details; if the issuer is in default on any debt covenants or was in default during the most recently completed financial year, disclose information concerning the default and the method or anticipated method of curing the default; if the issuer is unable to make required redemptions or retractions or sinking fund payments, disclose this information and provide details, and if the issuer anticipates being, in the current financial year, in any of the circumstances described in this paragraph, disclose this information and provide details.
- (2) With respect to the issuer's capital resources,
- (a) describe and quantify commitments for capital expenditures as of the end of the most recently completed financial year, indicate the general purpose of these commitments and the anticipated source of funds needed to fulfil these commitments, and quantify expenditures that are necessary but not yet committed to meet plans discussed under MD&A or elsewhere in the AIF;
 - (b) describe any known trends, favourable or unfavourable, in the issuer's capital resources, indicating any expected changes in the mix and relative cost of these resources; and
 - (c) briefly discuss sources of financing that have been arranged but not yet utilized.

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

Item 3: Results of Operations

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

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

- (3) Provide a discussion of the extent to which any changes in net sales or revenues are attributable to changes in selling prices, to changes in the volume or quantity of goods or services being sold, or to the introduction of new products or services.
- (4) Discuss briefly any effect of inflation and specific price changes on the issuer's net sales and revenues and on income or loss from continuing operations. For purposes of the discussion, no specific numerical financial data need be presented.

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Form 44-101F2
Short Form Prospectus

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**NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS
FORM 44-101F2
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**NATIONAL INSTRUMENT 44-101
PROMPT OFFERING QUALIFICATION SYSTEM
FORM 44-101F2
SHORT FORM PROSPECTUS**

INSTRUCTIONS

- (1) *The objective of the short form prospectus is to provide information concerning the issuer that an investor needs in order to make an informed investment decision. This Form sets out specific disclosure requirements that are in addition to the general requirement under securities legislation to provide full, true and plain disclosure of all material facts relating to the securities to be distributed. Certain rules of specific application impose prospectus disclosure obligations in addition to those described in this Form.*
- (2) *Terms used and not defined in this Form that are defined or interpreted in National Instrument 44-101 Prompt Offering Qualification System shall bear that definition or interpretation.*
- (3) *Unless an item specifically requires disclosure only in the preliminary short form prospectus, the disclosure requirements set out in this Form apply to both the preliminary short form prospectus and the short form prospectus. Details concerning the price and other matters dependent upon or relating to price, such as the number of securities being distributed, may be left out of the preliminary short form prospectus, along with specifics concerning the plan of distribution, to the extent that these matters have not been decided.*
- (4) *Any information required in a short form prospectus may be incorporated by reference in the short form prospectus, other than confidential material change reports. Clearly identify in a short form prospectus any document incorporated by reference. If an excerpt of a document is incorporated by reference, clearly identify the excerpt in the short form prospectus by caption and paragraph of the document. Any material incorporated by reference in a short form prospectus is required under sections 7.1 and 7.2 of National Instrument 44-101 to be filed with the short form prospectus unless it has been previously filed.*
- (5) *The disclosure must be understandable to readers and presented in any easy to read format. The presentation information should comply with the plain language principles listed in section 8.2 of Companion Policy 44-101CP Short Form Prospectus Distributions. The use of jargon should be avoided and all technical terms should be defined.*
- (6) *No reference need be made to inapplicable items and, unless otherwise required in this Form, negative answers to items may be omitted.*
- (7) *Where the term "issuer" is used, it may be necessary, in order to meet the requirement for full, true and plain disclosure of all material facts, to also include disclosure with respect to the issuer's subsidiaries and investees. If it is more likely than not that a person or company will become a subsidiary or investee, it may be necessary to also include disclosure with respect to the person or company.*
- (8) *An issuer that is a special purpose vehicle and intends to issue or has issued asset-backed securities may have to modify the disclosure items to reflect the special purpose nature of its business.*
- (9) *If disclosure is required as of a specific date and there has been a material change or change that is otherwise significant in the required information subsequent to that date, present the information as of the date of the change or a date subsequent to the change instead.*
- (10) *If the term "class" is used in any item to describe securities, the term includes a series of a class.*

Item 1: Cover Page Disclosure**1.1 Required Language** - State in *italics* at the top of the cover page the following:

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

1.2 Preliminary Short Form Prospectus Disclosure - Print in red ink on the left hand side of the cover page the following, with bracketed information completed:

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

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

[PRELIMINARY] SHORT FORM PROSPECTUS

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

(Date)

Name of Issuer

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

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INSTRUCTIONS

- (1) *The description of the number and type of securities being distributed shall include the restricted share terms, if any, prescribed by securities legislation.*
- (2) *If the offering price is in a currency other than the Canadian dollar or the U.S. dollar, comply with the exchange rate disclosure requirements of National Instrument 52-102 Use of Currencies.¹³⁹*

1.4 Distribution

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

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

- (2) If there is an over-allotment option, describe the terms of the option and the fact that the short form prospectus qualifies both the grant of the option and the issuance or transfer of securities that will be issued or transferred if the option is exercised.
- (3) If the distribution of the securities is to be on a best efforts basis, provide totals for both the minimum and maximum subscriptions, if applicable.
- (4) If debt securities are distributed at a premium or a discount, state in **bold type** the effective yield if held to maturity.
- (5) Disclose separately those securities that are underwritten, those under option and those to be sold on a best efforts basis, and, in the case of a best efforts distribution, the latest date that the distribution is to remain open.
- (6) In column (b) of the table, disclose only commissions paid or payable in cash by the issuer or selling securityholder and discounts granted. Set out in a note to the table
 - (a) commissions or other consideration paid or payable by persons or companies other than the issuer or selling securityholder;
 - (b) consideration other than discounts granted and cash paid or payable by the issuer or selling securityholder, including warrants and options; and
 - (c) any finder's fees or similar required payment.¹⁴⁰

¹³⁸ Paragraph (2) disclosing where the securities are listed has been omitted and moved to Item 1.7 "Market for Securities" to avoid duplication. Unless otherwise specified, changes noted in these footnotes refer to changes made to the 1998 proposed Form 44-101F2.

¹³⁹ Proposed National Instrument 52-102 is the reformulation of National Policy Statement No. 14.

¹⁴⁰ This paragraph previously appeared as an instruction. Paragraph (7) that appeared here in the 1998 proposed Form 44-101F2 has been moved from the cover page to Item 5.1.

- (7) If a security is being distributed for the account of a selling securityholder, state the name of the selling securityholder and a cross-reference to the applicable section in the short form prospectus where further information about the selling securityholder is provided. State the portion of expenses of the distribution to be borne by the selling securityholder and, if none of the expenses of the distribution are being borne by the selling securityholder, include a statement to that effect and discuss the reasons why this is the case.
- (8) If the underwriter has been granted a compensation option, state whether the short form prospectus qualifies the grant of all or part of the compensation option and provide a cross-reference to the applicable section in the short form prospectus where further information about the compensation option is provided.

INSTRUCTIONS

- (1) *Estimate amounts, if necessary. For non-fixed price distributions that are being made on a best efforts basis, disclosure of the information called for by the table may be set forth as a percentage or a range of percentages and need not be set forth in tabular form.*
- (2) *If debt securities are being distributed, express the information as a percentage.¹⁴¹*

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

- (a) the discount allowed or commission payable to the underwriter;
- (b) any other compensation payable to the underwriter and, if applicable, that the underwriter's compensation will be increased or decreased by the amount by which the aggregate price paid for the securities by the purchasers exceeds or is less than the gross proceeds paid by the underwriter to the issuer or selling securityholder;
- (c) that the securities to be distributed under the short form prospectus will be distributed, as applicable, at
- (i) prices determined by reference to the prevailing price of a specified security in a specified market,
 - (ii) market prices prevailing at the time of sale, or
 - (iii) prices to be negotiated with purchasers;
- (d) that prices may vary as between purchasers and during the period of distribution;
- (e) if the price of the securities is to be determined by reference to the prevailing price of a specified security in a specified market, the price of the specified security in the specified market at the latest practicable date;
- (f) if the price of the securities will be the market price prevailing at the time of sale, the market price at the latest practicable date; and
- (g) the net proceeds or, if the distribution is to be made on a best efforts basis, the minimum amount of net proceeds, if any, to be received by the issuer or selling securityholder.

1.6 **Reduced Price Distributions** - If an issuer, underwriter or selling securityholder wishes to be able to decrease the price at which securities are distributed for cash from the initial offering price disclosed in the short form prospectus, include in **bold type** a cross-reference to the section in the short form prospectus where disclosure concerning the possible price decrease is provided.

1.7 **Market for Securities**

- (1) Identify the exchange(s) and quotation system(s), if any, on which securities of the issuer of the same class as the securities being distributed are traded or quoted and the market price of those securities as of the latest practicable date.¹⁴²
- (2) Disclose any intention to stabilize the market and provide a cross-reference to the section in the short form prospectus where further information about market stabilization is provided.
- (3) If no market for the securities being distributed under the short form prospectus exists or is to exist after the distribution, state the following in **bold type**:

"There is no market through which these securities may be sold and purchasers may not be able to resell securities purchased under the short form prospectus."

1.8 **Underwriter(s)**

¹⁴¹ This instruction is new.

¹⁴² The reference to quotation systems is new.

- (1) State the name of each underwriter.
- (2) If applicable, comply with the requirements of Multilateral Instrument 33-105 Underwriting Conflicts for cover page prospectus disclosure.
- (3) If an underwriter has agreed to purchase all of the securities being distributed at a specified price and the underwriter's obligations are subject to conditions, state the following, with the bracketed information completed:

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

- (4) If an underwriter has agreed to purchase a specified number or principal amount of the securities at a specified price, state that the securities are to be taken up by the underwriter, if at all, on or before a date not later than 42 days after the date of the receipt for the short form prospectus.
- (5) If there is no underwriter involved in the distribution, provide a statement in **bold type** to the effect that no underwriter has been involved in the preparation of the short form prospectus or performed any review of the contents of the short form prospectus.

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

"The [issuer, selling 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 [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 [list jurisdictions] it may not be possible for investors to collect from the issuer, selling securityholder, credit supporter or promoter, judgments obtained in Canadian courts predicated on the civil liability provisions of securities legislation."

Item 2: Name of Issuer

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

Item 3: Summary Description of Business

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

Item 4: Consolidated Capitalization

- 4.1 Consolidated Capitalization** - Describe any material change in, and the effect of the material change on, the share and loan capital of the issuer, on a consolidated basis, since the date of the comparative financial statements for the issuer's most recently completed financial year filed with the securities regulatory authority.

Item 5: Use of Proceeds

- 5.1 Proceeds** - State the estimated net proceeds to be received by the issuer or selling securityholder or, in the case of a non-fixed price distribution or a distribution to be made on a best efforts basis, the minimum amount, if any, of net proceeds to be received by the issuer or selling securityholder from the sale of the securities distributed. If the short form prospectus is used for a special warrant or similar transaction, state the amount that has been received by the issuer of the special warrants or similar securities on the sale of the special warrants or similar securities.¹⁴³

- 5.2 Principal Purposes** - Describe in reasonable detail and, if appropriate using tabular form, each of the principal purposes, with approximate amounts, for which the net proceeds will be used by the issuer.¹⁴⁴

Item 6: Plan of Distribution

- 6.1 Disclosure of Market Out** - If securities are distributed by an underwriter that has agreed to purchase all of the securities at a specified price and the underwriter's obligations are subject to conditions, include a statement in substantially the following terms, with bracketed information completed and with modifications necessary to reflect the terms of the distribution:

¹⁴³ The second sentence was required as cover page disclosure in 1998 proposed Form 44-101F2.

¹⁴⁴ The reference to "reasonable detail" is new.

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

- 6.2 Best Efforts Offering** - Outline briefly the plan of distribution of any securities being distributed other than on the basis described in Item 6.1.
- 6.3 Determination of Price** - Disclose the method by which the distribution price has been or will be determined and, if estimates have been provided, explain the process for determining the estimates.
- 6.4 Over-Allotments** - If the issuer, a selling securityholder or an underwriter knows or has reason to believe that there is an intention to over-allot or that the price of any security may be stabilized to facilitate the distribution of the securities, disclose this intention.
- 6.5 Minimum Distribution** - If a minimum amount of funds is required by the issuer and the securities are to be distributed on a best efforts basis, state the minimum amount required to be raised and the maximum that could be raised, and indicate that the distribution will not continue for a period of more than 90 days after the date of the receipt for the short form prospectus if subscriptions representing the minimum amount of funds are not obtained within that period unless each of the persons and companies who subscribed within that period has consented to the continuation.
- 6.6 Reduced Price Distributions** - If an issuer, underwriter or selling securityholder wishes to be able to decrease the price at which securities are distributed for cash from the initial public offering price disclosed in the short form prospectus and thereafter change, from time to time, the price at which securities are distributed under the short form prospectus in accordance with the procedures permitted by National Instrument 44-101, disclose that, after the underwriter has made a reasonable effort to sell all of the securities at the initial public offering price disclosed in the short form prospectus, the offering price may be decreased, and further changed from time to time, to an amount not greater than the initial offering price disclosed in the short form prospectus and that the compensation realized by the underwriter will be decreased by the amount that the aggregate price paid by purchasers for the securities is less than the gross proceeds paid by the underwriter to the issuer or selling securityholder.
- 6.7 Listing Application** - If application has been made to list or quote the securities being distributed, include a statement, in substantially the following form, with bracketed information completed:

"The issuer has applied to [list/quote] the securities distributed under this short form prospectus on [name of exchange or other market]. [Listing/Quotation] will be subject to the issuer fulfilling all the listing requirements of [name of exchange or other market]."¹⁴⁵

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

"[name of exchange or other market] has conditionally approved the [listing/quotation] of these securities. [Listing/Quotation] is subject to the [name of the issuer] fulfilling all of the requirements of the [name of exchange or market] on or before [date], [including distribution of these securities to a minimum number of public securityholders]."¹⁴⁶

Item 7: Earnings Coverage Ratios

7.1 Earnings Coverage Ratios

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

¹⁴⁵ The requirement that appeared in the 1998 proposed Form 44-101F2 that the issuer have securities of the same class as the securities being distributed or any other class currently listed or quoted has been omitted. The reference to "other market" is new.

¹⁴⁶ The references to "other market" and "quotation" are new.

of the most recently completed period for which audited annual financial statements of the issuer have been, or are required to have been, filed with any Canadian securities regulatory authority.

- (2) The ratios referred to in paragraph (1) shall be adjusted to reflect
 - (a) the issuance of the securities that are to be distributed under the short form prospectus, based on the price at which these securities are expected to be distributed;
 - (b) in the case of a distribution of preferred shares,
 - (i) all preferred shares issued since the date of the annual or interim financial statements, and
 - (ii) all preferred shares repurchased, redeemed, or otherwise retired since the date of the annual or interim financial statements and all preferred shares to be repurchased, redeemed, or otherwise retired from the proceeds to be realized from the sale of securities under the short form prospectus;
 - (c) the issuance of all long-term financial liabilities, as defined in the Handbook;
 - (d) the repayment, redemption or other retirement of all long-term financial liabilities, as defined in the Handbook, since the date of the annual or interim financial statements and all long-term financial liabilities to be repaid or redeemed from the proceeds to be realized from the sale of securities distributed under the short form prospectus; and
 - (e) the servicing costs that were incurred, or are expected to be incurred, in relation to the adjustments.

INSTRUCTIONS

- (1) *Cash flow coverage may be disclosed but only as a supplement to earnings coverage and only if the method of calculation is fully disclosed. Earnings coverage is calculated by dividing an entity's earnings (the numerator) by its interest and dividend obligations (the denominator).*
- (2) *For the earnings coverage calculation*
 - (a) *the numerator should be calculated using consolidated net income before interest and income taxes;*
 - (b) *imputed interest income from the proceeds of a distribution should not be added to the numerator;*
 - (c) *an issuer may also present, as supplementary disclosure, a coverage calculation based on earnings before discontinued operations and extraordinary items;*
 - (d) *for distributions of debt securities, the appropriate denominator is interest expense determined in accordance with generally accepted accounting principles, after giving effect to the new debt issue and any retirement of obligations plus the amount of interest that has been capitalized during the period;*
 - (e) *for distributions of preferred shares,*
 - (i) *the appropriate denominator is dividends declared during the period, together with undeclared dividends on cumulative preferred shares, after giving effect to the new preferred share issue, plus the issuer's annual interest requirements, including the amount of interest that has been capitalized during the period, less any retirement obligations,*
 - (ii) *the coverage calculation should gross up dividends to a before-tax equivalent using the issuer's effective income tax rate (the rate that is reconciled to the basic income tax rate in the issuer's financial statement notes),*
 - (iii) *the combined interest and dividend method (the "combined method"), and not the prior deduction method, should be used to calculate earnings coverage; and*
 - (f) *for distributions of both debt securities and preferred shares, the appropriate denominator is the same as for a preferred share issue, except that the denominator should also reflect the effect of the debt being offered pursuant to the short form prospectus.*
- (3) *The prior deduction method referred to in Instruction 2(e)(ii) reflects the net coverage for preferred dividends after meeting interest obligations and results in a higher ratio than the combined method. As investors may falsely interpret the higher ratio as indicating less risk, without appreciating the fact that debtholders rank before preferred shareholders, the combined method should be used, although disclosure of a supplementary coverage ratio calculated using the prior deduction method is permitted.*

- (4) *The denominator represents a pro forma calculation of the aggregate of an issuer's interest obligations on all long-term debt and dividend obligations (including both dividends declared and undeclared dividends on cumulative preferred shares) with respect to all outstanding preferred shares, as adjusted to reflect*
- (a) *the issuance of all long-term debt and, in addition in the case of an issuance of preferred shares, all preferred shares issued, since the date of the annual or interim financial statements;*
 - (b) *the issuance of the securities that are to be distributed under the short form prospectus, based on a reasonable estimate of the price at which these securities will be distributed;*
 - (c) *the repayment or redemption of all long-term debt since the date of the annual or interim financial statements, all long-term debt to be repaid or redeemed from the proceeds to be realized from the sale of securities under the short form prospectus and, in addition, in the case of an issuance of preferred shares, all preferred shares repaid or redeemed since the date of the annual or interim financial statements and all preferred shares to be repaid or redeemed from the proceeds to be realized from the sale of securities under the short form prospectus; and*
 - (d) *the servicing costs that were incurred, or will be incurred, in relation to the above adjustments.*
- (5) *If paragraph 3 of Item 12.1 requires the inclusion of interim financial statements in the short form prospectus, earnings coverage must be calculated based on the updated financial statements. In addition, if meaningful in the circumstances, earnings coverage ratio must be calculated and disclosed based on a pro forma income statement that is included in a short form prospectus.*
- (6) *For debt securities, disclosure of earnings coverage shall include language similar to the following:*
- The Company's interest requirements, after giving effect to the issue of [the debt securities to be distributed under the short form prospectus], amounted to \$! for the 12 months ended !. The Company's earnings before interest and income tax for the 12 months then ended was \$! , which is ! times the Company's interest requirements for this period.*
- (7) *For preferred share issues, disclosure of earnings coverage shall include language similar to the following:*
- The Company's dividend requirements on all of its preferred shares, after giving effect to the issue of [the preferred shares to be distributed under the short form prospectus], and adjusted to a before-tax equivalent using an effective income tax rate of ! %, amounted to \$! for the 12 months ended !. The Company's interest requirements for the 12 months then ended amounted to \$! . The Company's earnings before interest and income tax for the 12 months ended ! was \$! , which is ! times the Company's aggregate dividend and interest requirements for this period.*
- (8) *If the issuer is a wholly-owned subsidiary of a credit supporter, has no operations or only minimal operations, that are independent of the credit supporter and is an entity that functions essentially as a special purpose vehicle, disclose the earnings coverage of the credit supporter. If this disclosure is included, the earnings coverage of the issuer may not be material and, if not material, may be omitted. If the issuer is a wholly-owned subsidiary of the credit supporter but has more than minimal operations that are independent of the credit supporter, or if the issuer is not a wholly-owned subsidiary of the credit supporter, the earnings coverage of both the credit supporter and the issuer shall be disclosed.*
- (9) *If the earnings coverage is less than one-to-one, disclose this fact in bold-face on the cover page of the short form prospectus. While the actual coverage ratio should not be disclosed in these circumstances, the dollar amount of the coverage deficiency (i.e., the dollar amount of earnings required to attain a ratio of one-to-one) should be disclosed in the body of the short form prospectus.*
- (10) *Other earnings coverage calculations may be included as supplementary disclosure to the required earnings coverage calculations outlined above as long as their derivation is disclosed and they are not given greater prominence than the required earnings coverage calculations.¹⁴⁷*

Item 8: Description of Securities Being Distributed

- 8.1 Shares** - If shares are being distributed, state the description or the designation of the class of the shares and describe all material attributes and characteristics, including
- (a) dividend rights;
 - (b) voting rights;

¹⁴⁷ These instructions are new. They also correspond to the instructions that appear in proposed Ontario Form 41-501F1 Information Required In A Prospectus which is being published for comment in Ontario concurrently with this Form. These footnotes make references to proposed Ontario Form 41-501F1 where the information may be of interest to readers in all CSA jurisdictions.

- (c) rights upon dissolution or winding up;
- (d) pre-emptive rights;
- (e) conversion or exchange rights;
- (f) redemption, retraction, purchase for cancellation or surrender provisions;
- (g) sinking or purchase fund provisions; and¹⁴⁸
- (h) provisions permitting or restricting the issuance of additional securities and any other material restrictions.

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

- (a) provisions for interest rate, maturity and premium, if any;
- (b) conversion or exchange rights;
- (c) redemption, retraction, purchase for cancellation or surrender provisions;
- (d) sinking or purchase fund provisions;
- (e) the nature and priority of any security for the debt securities, briefly identifying the principal properties subject to lien or charge;
- (f) provisions permitting or restricting the issuance of additional securities, the incurring of additional indebtedness and other material negative covenants including restrictions against payment of dividends and restrictions against giving security on the assets of the issuer or its subsidiaries and provisions as to the release or substitution of assets securing the debt securities;
- (g) the name of the trustee under any indenture relating to the debt securities and the nature of any material relationship between the trustee or any of its affiliates and the issuer or any of its affiliates; and
- (h) any financial arrangements between the issuer and any of its affiliates or among its affiliates that could affect the security for the indebtedness.

8.3 Asset-backed Securities - If asset-backed securities are being distributed, describe

- (a) the material attributes and characteristics of the asset-backed securities, including
 - (i) the rate of interest or stipulated yield and any premium,
 - (ii) the date for repayment of principal or return of capital and any circumstances in which payments of principal or capital may be made before such date, including any redemption or pre-payment obligations or privileges of the issuer and any events that may trigger early liquidation or amortization of the underlying pool of financial assets,
 - (iii) provisions for the accumulation of cash flows to provide for the repayment of principal or return of capital,
 - (iv) provisions permitting or restricting the issuance of additional securities and any other material negative covenants applicable to the issuer,
 - (v) the nature, order and priority of the entitlements of holders of asset-backed securities and any other entitled persons or companies to receive cash flows generated from the underlying pool of financial assets, and
 - (vi) any events, covenants, standards or preconditions that are dependant or based on the economic performance of the underlying pool of financial assets and that may impact on the timing or amount of payments or distributions to be made under the asset-backed securities;
- (b) information on the underlying pool of financial assets, for the period from the date as at which the following information was presented in the issuer's current AIF to a date not more than 90 days before the date of the issuance of a receipt for the preliminary short form prospectus, relating to
 - (i) the composition of the pool as of the end of the period,

¹⁴⁸ Paragraph (h) of the 1998 proposed Form 44-101F3 that referred to "liability to further calls or to assessment by the issuer or selling securityholder" has been omitted as such liability is typically not a "share condition" and is material disclosure that would be otherwise required.

- (ii) income and losses from the pool for the period, on at least a quarterly basis, and
- (iii) the payment, prepayment and collection experience of the pool for the period on at least a quarterly basis;¹⁴⁹

¹⁴⁹ The reference to "quarterly basis" is new.

INSTRUCTIONS

- (1) *Present the information required by paragraph (b) in a manner that will enable a reader to easily determine if, and the extent to which, the events, covenants, standards and preconditions referred to in clause (a)(vi) have occurred, are being satisfied or may be satisfied.*
- (2) *If the information required by paragraph (b) is not compiled specifically on the underlying pool of financial assets, but is compiled on a larger pool of the same assets from which the securitized assets are randomly selected such that the performance of the larger pool is representative of the performance of the pool of securitized assets, then an issuer may comply with paragraph (b) by providing the information required based on the larger pool and disclosing that it has done so.¹⁵⁰*
- (c) the type or types of the financial assets, the manner in which the financial assets originated or will originate and, if applicable, the mechanism and terms of the agreement governing the transfer of the financial assets comprising the underlying pool to or through the issuer, including the consideration paid for the financial assets;
- (d) any person or company who
- (i) originated, sold or deposited a material portion of the financial assets comprising the pool, or has agreed to do so,
 - (ii) acts, or has agreed to act, as a trustee, custodian, bailee or agent of the issuer or any holder of the asset-backed securities, or in a similar capacity,¹⁵¹
 - (iii) administers or services a material portion of the financial assets comprising the pool or provides administrative or managerial services to the issuer, or has agreed to do so, on a conditional basis or otherwise, if
 - (A) finding a replacement provider of the services at a cost comparable to the cost of the current provider is not reasonably likely,
 - (B) a replacement provider of the services is likely to achieve materially worse results than the current provider,
 - (C) the current provider of the services is likely to default in its service obligations because of its current financial condition, or
 - (D) the disclosure is otherwise material,¹⁵²
 - (iv) provides a guarantee, alternative credit support or other credit enhancement to support the obligations of the issuer under the asset-backed securities or the performance of some or all of the financial assets in the pool, or has agreed to do so, or
 - (v) lends to the issuer in order to facilitate the timely payment or repayment of amounts payable under the asset-backed securities, or has agreed to do so,¹⁵³
- (e) the general business activities and material responsibilities under the asset-backed securities of a person or company referred to in paragraph (d);
- (f) the terms of any material relationships between
- (i) any of the persons or companies referred to in paragraph (d) or any of their respective affiliates, and
 - (ii) the issuer;¹⁵⁴
- (g) any provisions relating to termination of services or responsibilities of any of the persons or companies referred to in paragraph (d) and the terms on which a replacement may be appointed; and

¹⁵⁰ This instruction has been added to clarify that the disclosure required by Item 8.3(b) may in certain circumstances be satisfied by disclosure regarding the larger pool from which the securitized assets are randomly selected.

¹⁵¹ The reference to "or has agreed to act" is new. The reference to a person or company acting "in a similar capacity" replaces "or other similar intermediary".

¹⁵² Subclause (D) is new.

¹⁵³ Paragraph (d) as it appeared in the 1998 proposed Form 44-101F2 has been subdivided into paragraphs (d) and (e) for greater clarity.

¹⁵⁴ The reference to the issuer's affiliates has been omitted.

- (h) any risk factors associated with the asset-backed securities, including disclosure of material risks associated with changes in interest rates or prepayment levels, and any circumstances where payments on the asset-backed securities could be impaired or disrupted as a result of any reasonably foreseeable event that may delay, divert or disrupt the cash flows dedicated to service the asset-backed securities.

INSTRUCTION *Issuers are required to summarize contractual arrangements in plain language and may not merely restate the text of the contracts referred to. The use of diagrams to illustrate the roles of, and the relationship among, the persons and companies referred to in paragraph (d) and the contractual arrangements underlying the asset-backed securities is encouraged.*

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

- (a) the calculation of the value or payment obligations under the derivatives;
- (b) the exercise of the derivatives;
- (c) the settlement of exercises of the derivatives;
- (d) the underlying interest of the derivatives;
- (e) the role of a calculation expert in connection with the derivatives;
- (f) the role of any credit supporter of the derivatives; and
- (g) the risk factors associated with the derivatives.

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

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

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

- (a) each security rating, including a provisional rating, received from an approved rating organization;
- (b) the name of each approved rating organization that has assigned a rating for the securities to be distributed;
- (c) a definition or description of the category in which each approved rating organization rated the securities to be distributed and the relative rank of each rating within the organization's overall classification system;
- (d) an explanation of what the rating addresses and what attributes, if any, of the securities to be distributed are not addressed by the rating;
- (e) any factors or considerations identified by the approved rating organization as giving rise to unusual risks associated with the securities to be distributed;
- (f) a statement that a security rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time by the rating organization; and
- (g) any announcement made by, or any proposed announcement known to the issuer to be made by, an approved rating organization that the organization is reviewing or intends to revise or withdraw a rating previously assigned and required to be disclosed under this paragraph.¹⁵⁵

Item 9: Selling Securityholder

9.1 Selling Securityholder - If any of the securities being distributed are to be distributed for the account of a securityholder, state the following:

1. The name of the securityholder.
2. The number or amount of securities owned by the securityholder of the class being distributed.
3. The number or amount of securities of the class being distributed for the account of the securityholder.

¹⁵⁵ The reference to "any proposed announcement" is new.

4. The number or amount of securities of the issuer of any class to be owned by the securityholder after the distribution, and the percentage that number or amount represents of the total outstanding.
5. Whether the securities referred to in paragraph 2, 3 or 4 are owned both of record and beneficially, of record only, or beneficially only.
6. The date or dates the securityholder acquired the securities.
7. If the securityholder in the 12 months preceding the date of the preliminary short form prospectus acquired any securities of the same class as the securities being distributed, the cost to the securityholder in the aggregate and on a per security basis.¹⁵⁶

Item 10: Resource Property

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

Item 11: Acquisitions and Dispositions¹⁵⁷

11.1 Acquisitions and Dispositions

- (1) Disclose
 - (a) any significant acquisition for which financial statement disclosure is required under Part 5 of National Instrument 44-101; and
 - (b) disclose any material disposition completed in the issuer's current financial year or proposed to be completed.
- (2) Include particulars of
 - (a) the nature of the assets acquired or disposed of or to be acquired or disposed of;
 - (b) the actual or proposed date of each acquisition or disposition;
 - (c) the consideration, both monetary and non-monetary, paid or to be paid to or by the issuer;
 - (d) any material obligations that must be complied with to keep any acquisition or disposition agreement in good standing;
 - (e) the impact of the acquisition or disposition on the operating results and financial position of the issuer;
 - (f) any valuation opinion obtained within the last 12 months required by Canadian securities legislation or Canadian securities directions of a Canadian securities regulatory authority or a requirement of a Canadian stock exchange to support the value of the consideration received or paid by the issuer or any of its subsidiaries for the assets, including the name of the author, the date of the opinion, the assets to which the opinion relates and the value attributed to the assets; and
 - (g) whether the transaction is at arm's-length and, if not, the identity of the other parties and the relationship of the other parties to the issuer.
- (3) Include the financial statements required by Part 4 of National Instrument 44-101.

Item 12: Documents Incorporated by Reference

12.1 Mandatory Incorporation by Reference - In addition to any documents that an issuer may choose to incorporate by reference, the documents set forth below shall, to the extent not otherwise modified or superseded by a statement contained in the short form prospectus or in any other subsequently filed document that also is or is deemed to be incorporated by reference in the short form prospectus, be specifically incorporated by reference in the short form prospectus by means of a statement in the short form prospectus to that effect:

1. The issuer's current AIF, if it has one.

¹⁵⁶ This item has been modified. The modified requirement parallels the disclosure contemplated by proposed Ontario Form 41-501F1.

¹⁵⁷ The financial statement disclosure requirements for significant acquisitions have been omitted from this item and appear in Part 4 of the proposed National Instrument. The disclosure required by this item also parallels Item 5.2 of proposed Ontario Form 41-501F1.

2. Material change reports, except confidential material change reports, filed after the commencement of the issuer's current financial year.
3. The comparative interim financial statements for the issuer's most recently completed financial period for which the issuer prepares interim financial statements that have been
 - (a) filed;
 - (b) approved by the board of directors of the issuer; or
 - (c) released to the public, in whole or in summary form.
4. The comparative financial statements, together with the accompanying report of the auditor, for the issuer's most recently completed financial year for which annual financial statements have been
 - (a) filed;
 - (b) approved by the board of directors of the issuer; or
 - (c) released to the public, in whole or in summary form.
5. Except as provided in Item 12.5, information circulars or, if the issuer is not required under securities legislation to prepare information circulars, annual filings, that, in each case, have been filed after the commencement of the issuer's current financial year.

INSTRUCTION *Any material incorporated by reference in a short form prospectus is required under sections 7.1 and 7.2 of National Instrument 44-101 to be filed with the short form prospectus unless it has been previously filed.*

12.2 Mandatory Incorporation by Reference of Future Documents - State that the following documents, if filed by the issuer after the date of the short form prospectus and before the termination of the distribution, are deemed to be incorporated by reference in the short form prospectus:

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

12.3 Exception for Guaranteed Securities - Despite Items 12.1 and 12.2, paragraphs 3 and 4 of Item 12.1 do not apply to an issuer to which paragraph 1 or 2 of Item 13.1 applies.¹⁵⁸

12.4 Required Language - State the following, with the first sentence in **bold type** and the bracketed information completed:

"Information has been incorporated by reference in this prospectus from documents filed with securities commissions or similar authorities in Canada. Copies of the documents incorporated herein by reference may be obtained on request without charge from the secretary of the issuer at [insert complete address and telephone number]. [Insert if the offering is made in Quebec - "For the purpose of the Province of Quebec, this simplified prospectus contains information to be completed by consulting the permanent information record. A copy of the permanent information record may be obtained from the secretary of the issuer at the above-mentioned address and telephone number"]."

12.5 Exception for Certain Filings

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

¹⁵⁸ This item previously appeared as an instruction in the 1998 proposed Form 44-101F2.

- (2) An issuer is not required to incorporate by reference in a short form prospectus disclosure in an information circular of an issuer's corporate governance practices, if that disclosure is in the information circular in order to comply with disclosure requirements of an exchange or other market on which the issuer's securities trade.

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

Item 13: Issues of Guaranteed Securities

13.1 Issuer Disclosure - If a credit supporter has provided a guarantee or alternative credit support to the issuer for all or substantially all of the payments to be made under the securities to be distributed, provide the following disclosure about the issuer:

1. If the issuer is a wholly owned subsidiary of the credit supporter, has no operations or only minimal operations that are independent of the credit supporter and is an entity that functions essentially as a special purpose division of the credit supporter, a statement that the financial results of the issuer are included in the consolidated financial results of the credit supporter.
2. If the issuer is a wholly owned subsidiary of the credit supporter but has more than minimal operations that are independent of the credit supporter, a summary of financial information relating to the issuer's operations in a note to the most recent audited annual financial statements of the credit supporter included in the short form prospectus.
3. If the issuer is not a wholly owned subsidiary of the credit supporter, a full narrative description of the business of the issuer, either
 - (a) directly, or
 - (b) by incorporating by reference
 - (i) if the issuer is a reporting issuer and has a current AIF or an annual information form that has been prepared in compliance with and filed under Canadian securities legislation of a jurisdiction and would be a current AIF if that AIF had been accepted for filing under National Instrument 44-101, the issuer's current AIF or annual information form and all other documents required to be incorporated by reference in a short form prospectus under Item 12, or
 - (ii) if the issuer is not a reporting issuer but has a class of securities registered under section 12(b) or 12(g) of the 1934 Act or is required to file reports under section 15(d) of the 1934 Act, the issuer's latest annual report on Form 10-K or Form 20-F filed with the SEC under the 1934 Act or any other document that would be required to be incorporated by reference in a Form S-3 or Form F-3 registration statement filed under the 1933 Act if the issuer were registering on Form S-3 or Form F-3 the securities distributed under the short form prospectus.¹⁵⁹

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

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

1. If the credit supporter is a reporting issuer and has a current AIF or an annual information form that has been prepared in compliance with and filed under Canadian securities legislation of a jurisdiction and would be a current AIF if that AIF had been accepted for filing under National Instrument 44-101, incorporating by reference into the short form prospectus all documents that would be required to be incorporated by reference under Item 12 if the credit supporter were the issuer of the securities.
2. If the credit supporter is not a reporting issuer but has a class of securities registered under section 12(b) or 12(g) of the 1934 Act or is required to file reports under section 15(d) of the 1934 Act, incorporating by reference into the short form prospectus all documents that would be required to be incorporated by reference in a Form S-3 or Form F-3 registration statement filed under the 1933 Act if the securities distributed under the short form prospectus were being registered on Form S-3 or Form F-3.
3. If neither paragraph 1 nor paragraph 2 applies to the credit supporter, providing directly in the short form prospectus the same disclosure that would be contained in the short form prospectus through the incorporation by reference of the documents referred to in Item 12.1 if the credit supporter were the issuer of the securities and those documents had been prepared by the credit supporter.¹⁶⁰

¹⁵⁹ This has been expanded to include credit support for all or "substantially all" of the payments to be made. "SEC" is defined in National Instrument 14-101 Definitions as "the Securities and Exchange Commission of the United States of America".

¹⁶⁰ This Item has been expanded to include credit supporters that guarantee "all or substantially all" of the payments. This Item has also been modified to require the disclosure to be made by the credit supporter.

4. Providing such other information about the credit supporter as is necessary to provide full, true and plain disclosure of all material facts concerning the securities to be distributed.¹⁶¹

INSTRUCTION *Documents incorporated by reference are required under sections 7.1 and 7.2 of National Instrument 44-101 to be filed with the short form prospectus unless they have been previously filed.*

Item 14: Relationship between Issuer or Selling Securityholder and Underwriter

14.1 Relationship between Issuer or Selling Securityholder and Underwriter - If the issuer or selling securityholder is a connected issuer of an underwriter of the distribution, or if the issuer or selling securityholder is also an underwriter, comply with the disclosure requirements of Multilateral Instrument 33-105 Underwriting Conflicts.

Item 15: Interest of Experts

15.1 Interest of Experts

- (1) Disclose all direct or indirect interests in the property of the issuer or of an associated party or affiliate of the issuer received or to be received by a person or company whose profession or business gives authority to a statement made by the person or company and who is named in a short form prospectus or a document specifically incorporated by reference in a short form prospectus as having prepared or certified a part of that document or a report or valuation described in a short form prospectus or in a document specifically incorporated by reference into a short form prospectus.
- (2) Disclose the beneficial ownership, direct or indirect, by a person or company referred to in paragraph (1) of any securities of the issuer or any associated party or affiliate of the issuer.
- (3) For the purposes of paragraph (2), if ownership is less than one percent, a general statement to that effect shall be sufficient.
- (4) If a person, or a director, officer or employee of a person or company referred to in paragraph (1) is or is expected to be elected, appointed or employed as a director, officer or employee of the issuer or of any associated party or affiliate of the issuer, disclose the fact or expectation.

Item 16: Promoters¹⁶²

16.1 Promoters

- (1) For a person or company that is or has been within the two years immediately preceding the date of the preliminary short form prospectus, a promoter of the issuer or of a subsidiary of the issuer state
 - (a) the person or company's name;
 - (b) the number and percentage of each class of voting securities of the issuer or any of its subsidiaries beneficially owned, directly or indirectly, or over which control is exercised by the person or company;
 - (c) the nature and amount of anything of value, including money, property, contracts, options or rights of any kind received or to be received by the promoter or a subsidiary of the promoter, directly or indirectly, from the issuer or from a subsidiary of the issuer, and the nature and amount of any assets, services or other consideration therefor received or to be received by the issuer or a subsidiary of the issuer; and
 - (d) for an asset acquired within the two years before the date of the preliminary short form prospectus or thereafter, or to be acquired, by the issuer or by a subsidiary of the issuer from a promoter or a subsidiary of a promoter
 - (i) the consideration paid or to be paid for the asset and the method by which the consideration has been or will be determined,
 - (ii) the person or company making the determination referred to in subparagraph (i) and the person or company's relationship with the issuer, the promoter, or an affiliate of the issuer or of the promoter, and
 - (iii) the date that the asset was acquired by the promoter and the cost of the asset to the promoter.
- (2) If the promoter has been a director, officer or promoter of any issuer during the 10 years ending on the date of the preliminary short form prospectus that

¹⁶¹ Paragraph 4 is new.

¹⁶² This item is new. This required disclosure parallels disclosure required by proposed Ontario Form 41-501F1.

- (a) was the subject of a cease trade or similar order, or an order that denied the other issuer access to any exemptions under Canadian securities legislation, for a period of more than 30 consecutive days, state the fact and describe the basis on which the order was made and whether the order is still in effect; or
 - (b) became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or been subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets, state the fact.
- (3) If the promoter has been subject to any penalties or sanctions imposed by a court or regulator, or has entered into a settlement agreement with a regulator, that would be likely to be considered important to a reasonable investor in making an investment decision, describe the penalties or sanctions imposed and the grounds on which they were imposed or the terms of the settlement agreement.
- (4) If the promoter has, within the 10 years before the date of the preliminary short form prospectus, become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency, or was subject to or instituted any proceedings, arrangement or compromise with creditors, or had a receiver, receiver manager or trustee appointed to hold the assets of the promoter, state the fact.

Item 17: Other Material Facts

- 17.1 Other Material Facts** - Give particulars of any material facts about the securities proposed to be distributed that are not disclosed under the preceding items or in the documents referred to in Item 12 of this Form incorporated by reference into the short form prospectus and are necessary in order for the short form prospectus to contain full, true and plain disclosure of all material facts relating to the securities to be distributed.

Item 18: Statutory Rights of Withdrawal and Rescission

- 18.1 General** - Include a statement in substantially the following form, with bracketed information completed:

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

- 18.2 Non-fixed Price Offerings** - In the case of a non-fixed price offering, replace, if applicable in the jurisdiction in which the short form prospectus is filed, the second sentence in the legend in Item 18.1 with a statement in substantially the following form:

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

Item 19: Reconciliation to Canadian GAAP

- 19.1 Reconciliation to Canadian GAAP** - If an issuer has not incorporated by reference an audited reconciliation to Canadian GAAP, in the case of annual financial statements, or an unaudited reconciliation, in the case of interim financial statements, in the short form prospectus, then the issuer shall provide the reconciliation to Canadian GAAP required by securities legislation.

Item 20: Certificates

- 20.1 Officers, Directors and Promoters** - Include a certificate in the following form signed by

- (a) the chief executive officer and the chief financial officer, or, if no such officers have been appointed, a person acting on behalf of the issuer in a capacity similar to a chief executive officer and a person acting on behalf of the issuer in a capacity similar to that of a chief financial officer,¹⁶³
- (b) on behalf of the board of directors of the issuer, any two directors of the issuer, other than the persons referred to in paragraph (a), duly authorized to sign; and

¹⁶³ The reference to persons acting in capacities similar to the chief executive officer and the chief financial officer is new.

- (c) any person or company who is a promoter of the issuer:

"This short form prospectus, together with the documents incorporated herein by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by the securities laws of [insert name of each jurisdiction in which qualified] [insert if offering made in Quebec - "For the purpose of the Province of Quebec, this simplified prospectus, as supplemented by the permanent information record, contains no misrepresentation that is likely to affect the value or the market price of the securities to be distributed."].

- 20.2 Underwriters** - If there is an underwriter, include a certificate in the following form signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus, are in a contractual relationship with the issuer or selling securityholders:

"To the best of our knowledge, information and belief, this short form prospectus, together with the documents incorporated herein by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by the securities laws of [insert name of each jurisdiction in which qualified] [insert if offering made in Quebec - "For the purpose of the Province of Quebec, to our knowledge, this simplified prospectus, as supplemented by the permanent information record, contains no misrepresentation that is likely to affect the value or the market price of the securities to be distributed."].

- 20.3 Credit Supporters** - If disclosure concerning a credit supporter is prescribed by Item 13.2 and the credit supporter is an affiliate of the issuer, include a certificate of the credit supporter in the form required in Item 20.1 signed by

- (a) the chief executive officer and the chief financial officer, or, if no such officers have been appointed, a person acting on behalf of the credit supporter in a capacity similar to a chief executive officer and a person acting on behalf of the credit supporter in a capacity similar to that of a chief financial officer; and
- (b) on behalf of the board of directors of the credit supporter, any two directors of the credit supporter, other than the persons referred to in paragraph (a), duly authorized to sign.¹⁶⁴

20.4 Amendments

- (1) Include in an amendment to a short form prospectus the certificates required under Items 20.1, 20.2 and, if applicable, Item 20.3 with the reference in each certificate to "this short form prospectus" omitted and replaced by "the short form prospectus dated [insert date] as amended by this amendment".¹⁶⁵
- (2) Include in an amended and restated short form prospectus the certificates required under Items 20.1, 20.2 and, if applicable, Item 20.3 with the reference in each certificate to "this short form prospectus" omitted and replaced by "this amended and restated short form prospectus".¹⁶⁶

¹⁶⁴ This item has been modified to require a certificate of a credit supporter only if the credit supporter is an affiliate of the issuer.

¹⁶⁵ This paragraph is new.

¹⁶⁶ This paragraph is new.

Companion Policy 44-101CP
Short Form Prospectus Distributions

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

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

PART 1 INTRODUCTION AND DEFINITIONS¹⁶⁷

1.1 Introduction and Purpose - National Instrument 44-101 replaces National Policy Statement No. 47 ("NP47") and sets out the substantive test for an issuer to qualify to file a prospectus in the form of a short form prospectus. National Instrument 44-101 applies in all jurisdictions of Canada, other than Quebec where existing regulation already reflects the substance of National Instrument 44-101. The purpose of National Instrument 44-101 is the same as NP47's: to shorten the time period in which, and streamline the procedures by which, qualified issuers and their selling securityholders can obtain access to the Canadian capital markets through a prospectus offering.

British Columbia, Alberta, Ontario, Manitoba and Nova Scotia have adopted National Instrument 44-101 by way of rule. Saskatchewan has adopted it by way of regulation.¹⁶⁸ All other jurisdictions, other than Quebec, have adopted National Instrument 44-101 by way of related blanket ruling or order. Each jurisdiction implements National Instrument 44-101 by one or more instruments forming part of the law of that jurisdiction (referred to as the "implementing law of the jurisdiction"). Depending on the jurisdiction, the implementing law of the jurisdiction can take the form of regulation, rule, ruling or order.

This Companion Policy to National Instrument 44-101 (also referred to as "this Policy") provides information relating to the manner in which the provisions of the National Instrument are intended to be interpreted or applied by the Canadian securities regulatory authorities, as well as the exercise of discretion under National Instrument 44-101. Terms used and not defined in the Companion Policy that are defined or interpreted in the National Instrument or a definition instrument in force in the jurisdiction should be read in accordance with the National Instrument or definition instrument, unless the context otherwise requires.

To the extent that any provision of this Policy is inconsistent or conflicts with the applicable provisions of National Instrument 44-101 in those jurisdictions that have adopted National Instrument 44-101 by way of related blanket ruling or order, the provisions of National Instrument 44-101 prevail over the provisions of this Policy.

1.2 Simplified Prospectus in Quebec - The Commission des valeurs mobilières du Québec (the "CVMQ") agrees with the purpose and intent of National Instrument 44-101 and this Policy, but has not adopted the National Instrument or this Policy, as its Act, Regulation and policy statements currently provide for accessibility to a simplified prospectus procedure by any issuer that has been a reporting issuer for 12 months and has filed a permanent information record. The CVMQ will be conducting a review of its legislation to determine if changes are advisable as a result of implementation of National Instrument 44-101 in order to achieve greater consistency between its legislation and National Instrument 44-101. This Policy also contains some references to Quebec securities legislation. Issuers are reminded to refer specifically to the Quebec legislation when considering a distribution of securities in the Province of Quebec and concurrently in other jurisdictions under National Instrument 44-101.¹⁶⁹

1.3 Interrelationship With Local Securities Legislation - National Instrument 44-101, while being the primary instrument regulating short form prospectus distributions, is not exhaustive. Issuers are reminded to refer to the implementing law of the jurisdiction and other securities legislation of the local jurisdiction for additional requirements that may be applicable to the issuer's short form prospectus distribution.¹⁷⁰

1.4 Interrelationship with MRRS - National Policy 43-201 Mutual Reliance Review System for Prospectuses and AIFs describes the practical application of the mutual reliance review system relating to the filing and review of prospectuses, including mutual fund and shelf prospectuses, amendments to prospectuses, annual information forms and related materials. While use of MRRS is optional, MRRS represents the only means by which an issuer can enjoy the benefits of co-ordinated review by the Canadian securities regulatory authorities in the various jurisdictions in which the issuer has filed a short form prospectus or an AIF. Under the MRRS, one Canadian securities regulatory authority or regulator as defined in National Instrument 14-101 Definitions, as applicable, acts as the principal regulator for all materials relating to a filer.¹⁷¹

¹⁶⁷ This Part explains the manner in which National Instrument 44-101 interrelates with the rules and orders of the various provinces implementing National Instrument 44-101, this Policy, the shelf system, the MRRS, selective review and local legislation.

¹⁶⁸ The reference to Manitoba in this sentence is new. Unless otherwise specified, changes noted in these footnotes refer to changes made to the 1998 proposed Policy.

¹⁶⁹ The reference to the CVMQ agreeing with the review procedures contained in this Policy has been omitted as the procedures referred to have also been omitted in anticipation of the adoption of the MRRS.

¹⁷⁰ Section 1.4 dealing with the interrelationship with NP1 has been omitted in anticipation of the adoption of the MRRS.

¹⁷¹ This section is new and has been added in anticipation of the adoption of the MRRS.

The provisions of this Policy relating to clearance of a short form prospectus apply only to filings in a single jurisdiction and filings for which the issuer has not elected to use MRRS.

- 1.5 Interrelationship with Selective Review** - The Canadian securities regulatory authorities in Ontario, British Columbia and Alberta have adopted a system of selective review relating to certain documents, including initial AIFs, renewal AIFs, short form prospectuses and amendments to short form prospectuses.¹⁷² Under the selective review system, these documents are subject to an initial screening to determine whether they will be reviewed and, if reviewed, whether they will be subject to a full review, an issue oriented review or an issuer review. Application of the selective review system, taken together with MRRS, may result in certain initial AIFs, renewal AIFs, short form prospectuses and amendments to short form prospectuses not being reviewed.
- 1.6 Interrelationship With Shelf Distributions (National Instrument 44-102)** - Issuers qualified under National Instrument 44-101 to file a prospectus in the form of a short form prospectus and their securityholders can distribute securities under a short form prospectus using the shelf distribution procedures under National Instrument 44-102 Shelf Distributions. The Companion Policy to National Instrument 44-102 Shelf Distributions explains that the distribution of securities under the shelf system is governed by the requirements and procedures of National Instrument 44-101 and securities legislation, except as supplemented or varied by National Instrument 44-102. Therefore, issuers qualified to file a prospectus in the form of a short form prospectus and selling securityholders of those issuers that wish to distribute securities under the shelf system should have regard to National Instrument 44-101 and this Policy first, and then refer to National Instrument 44-102 and the accompanying policy for any additional requirements.¹⁷³
- 1.7 Interrelationship With PREP Procedures (National Instrument 44-103)** - National Instrument 44-103 Post-Receipt Pricing contains the post receipt pricing procedures (the "PREP procedures"). All issuers and selling securityholders can use the PREP procedures of National Instrument 44-103 to distribute securities. Issuers and selling securityholders that wish to distribute securities under a prospectus in the form of a short form prospectus using the PREP procedures should have regard to National Instrument 44-101 and this Policy first, and then refer to National Instrument 44-103 and the accompanying policy for any additional requirements.
- 1.8 Definitions**

- (1) **Approved rating** - Cash settled derivatives are covenant-based instruments that may be rated on a similar basis to debt securities. In addition to the creditworthiness of the issuer, other factors such as the continued subsistence of the underlying interest or the volatility of the price, value or level of the underlying interest may be reflected in the rating analysis for cash settled derivatives. These additional factors may be described by a rating agency by way of a superscript or other notation to a rating. The inclusion of such notations for covenant-based instruments that otherwise fall within one of the categories of an approved rating does not detract from the rating being considered to be an approved rating for the purposes of National Instrument 44-101.

A rating agency may also restrict its rating to securities of an issuer that are denominated in local currency. This restriction may be denoted, for example, by the designation "LC". The inclusion of such a designation in a rating that would otherwise fall within one of the categories of an approved rating does not detract from the rating being considered to be an approved rating for the purposes of National Instrument 44-101.¹⁷⁴

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

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

The term, a "discrete pool" of assets, can refer to a single group of assets as a "pool" or to multiple groups of assets as a "pool". For example, a group or pool of credit card receivables and a pool of mortgage receivables

¹⁷² This paragraph has been modified to reflect that three provinces have adopted selective review.

¹⁷³ Section 1.6 that appeared in the 1998 proposed Policy has been subdivided into two sections reflecting that the PREP procedures are now being reformulated in National Instrument 44-103, not National Instrument 44-102.

¹⁷⁴ This paragraph is new and has been added to reflect the practice of Thomson BankWatch, Inc., which has now been included in the definition of "approved rating organization".

can, together, constitute a "discrete pool" of assets.¹⁷⁵ The reference to a "discrete pool" of assets is qualified by the phrase "fixed or revolving" to clarify that the definition covers "revolving" credit arrangements, such as credit card and short-term trade receivables, where balances owing revolve due to periodic payments and write-offs.

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

- (3) **Principal Obligor** - The term "principal obligor" is defined to mean, for an asset-backed security, a person or company that is obligated to make payments, has guaranteed payments, or has provided alternative credit support for payments, on financial assets that represent a third or more of the aggregate amount owing on all of the financial assets underlying the asset-backed security. This term applies to a person or company that is obligated by the terms of the asset, eg. a receivable, to make payments. It does not include a person or company acting as "servicer" that collects payments from an obligor and remits payments to the issuer. Nor does the term include a seller, ie. a person or company that has sold the financial assets comprising the pool to the issuer. Sellers of financial assets have assigned to the issuer the right to receive payments on the financial assets; they are not the ones contractually obligated to make payments on the financial assets.¹⁷⁶
- (4) **Regulator** - The regulator for each jurisdiction is listed in Appendix D to National Instrument 14-101 Definitions. In practice, that person has often delegated his or her powers to act under National Instrument 44-101 to another staff member of the same Canadian securities regulatory authority or, under the relevant statutory framework, another person is permitted to exercise those powers. Generally, the person exercising the powers of the regulator for the purposes of National Instrument 44-101 holds, as of the date of this Policy, the following position in each jurisdiction:

Jurisdiction	Position
Alberta	Director, Capital Markets
British Columbia	Director, Corporate Finance (except for applications for exemptions from Part 2 of National Instrument 44-101, for which the regulator is the Director, Exemptions and Orders)
Manitoba	Director, Corporate Finance
New Brunswick	Administrator of Securities
Newfoundland	Director of Securities
Northwest Territories	Deputy Registrar of Securities
Nova Scotia	Director of Securities
Nunavut	Registrar of Securities
Ontario	Manager, Corporate Finance
Prince Edward Island	Registrar of Securities
Quebec	Commission des valeurs mobilières du Québec ¹⁷⁷
Saskatchewan	Deputy Director, Corporate Finance (except for applications for exemptions from Part 2 of National Instrument 44-101, for which the regulator is the Saskatchewan Securities Commission)
Yukon Territory	Registrar of Securities

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

- (5) **Successor Issuer** - The definition of "successor issuer" requires that the issuer exist "as a result of a reorganization". In the case of an amalgamation, the amalgamated corporation is regarded by the Canadian securities regulatory authorities as existing "as a result of" the amalgamation. Also, if a corporation is incorporated for the sole purpose of facilitating a reorganization, the Canadian securities regulatory authorities regard the new corporation as "existing as a result of a reorganization" despite the fact that the corporation may have been incorporated before the reorganization. The definition of "successor issuer" also contains an exclusion applicable to divestitures. For example, an issuer may carry out a reorganization that results in the distribution to securityholders of a portion of its business or the transfer of a portion of its business to another issuer. In that case, the entity that carries on the portion of the business that was "spun-off" is not a successor issuer within the meaning of the definition.

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

¹⁷⁵ This sentence is new and has been added for clarification.

¹⁷⁶ This subsection has been added to clarify to whom the term "principal obligor" applies.

¹⁷⁷ Selected regulator's powers may be delegated in Quebec, and any delegation may be updated, under section 307 of the *Securities Act* (Quebec).

2.1 Basic Qualification Criteria¹⁷⁸

- (1) **Reporting Issuers in Local Jurisdiction that have been Reporting Issuers for 12 Months in a Jurisdiction other than the Local Jurisdiction (Clause 1(a)(ii) of section 2.2 of National Instrument 44-101)** - Clause 1(a)(ii) of section 2.2 of National Instrument 44-101 provides that a reporting issuer in the local jurisdiction that is, and has been for the 12 calendar months preceding the date of the filing of its most recent AIF, a reporting issuer under Canadian securities legislation in at least one jurisdiction, other than the local jurisdiction, satisfies the reporting issuer criterion for being qualified to file a prospectus in the form of a short form prospectus if it has filed in the local jurisdiction all continuous disclosure documents that it was required to file during the 12 calendar months preceding the date of the filing of its most recent AIF under the Canadian securities legislation of any jurisdiction in which it has been a reporting issuer. An issuer that has already filed with the Canadian securities regulatory authority of the local jurisdiction some or all of the continuous disclosure documents contemplated in this clause is not required to file those documents again.
- (2) **Issuers not Reporting Issuers in Local Jurisdiction that are and have been Reporting Issuers for 12 Months in a Jurisdiction other than the Local Jurisdiction (Subparagraph 1(b) of section 2.2 of National Instrument 44-101)** - Subparagraph 1(b) of section 2.2 of National Instrument 44-101 provides that an issuer that is not a reporting issuer in the local jurisdiction may be qualified to file a prospectus in the form of a short form prospectus if the issuer is, and has been for the 12 calendar months preceding the date of the filing of its most recent AIF, a reporting issuer under Canadian securities legislation in at least one jurisdiction, other than the local jurisdiction, and if (i) the securities regulatory authority is unable to deem the issuer to be, or designate the issuer as, a reporting issuer, (ii) the issuer has filed in the local jurisdiction all continuous disclosure documents that it was required to file during the 12 calendar months preceding the date of the filing of its most recent AIF under the Canadian securities legislation of any jurisdiction in which it has been a reporting issuer, and (iii) the issuer has provided an undertaking to the securities regulatory authority that it will file all continuous disclosure documents that it would be required to file under securities legislation if it were a reporting issuer from the time of the filing of its most recent AIF until the issuer becomes a reporting issuer. As of the coming into force date of this Policy, only the provinces of Alberta, British Columbia, Quebec, Nova Scotia and Saskatchewan have the statutory power to deem an issuer to be, or to designate an issuer as, a reporting issuer.

2.2 Alternative Eligibility Criteria: Issuers that have not been Reporting Issuers for 12 Months in any Jurisdiction (Sections 2.3, 2.5, 2.6, 2.7, and 2.8 of National Instrument 44-101) - Issuers that have not been reporting issuers for 12 months in any jurisdiction may nonetheless be qualified to file a prospectus in the form of a short form prospectus under the following alternative qualification criteria of National Instrument 44-101:

1. Section 2.3, which applies to issuers with a public float of \$300,000,000 or more.
2. Section 2.5, which applies to issuers of non-convertible debt securities, non-convertible preferred shares or cash settled derivatives, if another person or company that satisfies prescribed criteria fully and unconditionally guarantees or provides alternative credit support for the payments to be made by the issuer of the securities as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities.
3. Section 2.6, which applies to issuers of convertible debt securities or convertible preferred shares, if the securities are convertible into securities of a credit supporter that satisfies prescribed criteria and fully and unconditionally guarantees or provides alternative credit support for the payments to be made by the issuer of the securities as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities.
4. Section 2.7, which applies to issuers of asset-backed securities.
5. Section 2.8, which applies to successor issuers following reorganizations.

Under sections 2.5, 2.6 and 2.7 of National Instrument 44-101, an issuer is not required to be a reporting issuer in any jurisdiction in order to qualify to file a prospectus in the form of a short form prospectus. Under section 2.8 of National Instrument 44-101, a successor issuer must be a reporting issuer in at least one jurisdiction. However, it is not necessary for it to have been one for 12 months, as the successor issuer may rely on the reporting history of one of the participants in the reorganization. Paragraph 1 of section 2.3 requires the issuer to be a reporting issuer or, if the issuer is not a reporting issuer in the local jurisdiction, it must be a reporting issuer under Canadian securities legislation in a jurisdiction other than the local jurisdiction, and satisfy the criterion in subparagraph 5 of paragraph 1(b) of section 2.2 of National Instrument 44-101.¹⁷⁹

2.3 Calculation of the Aggregate Market Value of an Issuer's Equity Securities (Section 2.9 of National Instrument 44-101)¹⁸⁰

¹⁷⁸ This section has been revised to reflect changes made to the proposed National Instrument.

¹⁷⁹ This section has been revised to reflect changes made to the proposed National Instrument.

¹⁸⁰ This section has been revised to reflect changes made to the proposed National Instrument.

- (1) Section 2.9 of National Instrument 44-101 sets out how to determine whether an issuer satisfies the market value criteria contained in Part 2 of National Instrument 44-101. Subsection 2.9(2) requires certain securities to be excluded when calculating the total number of equity securities outstanding, and subsection 2.9(3) requires a subset of those excluded securities to be included nonetheless, despite subsection 2.9(2). The following examples are provided to assist issuers and their advisers in determining which securities are to be excluded in accordance with subsections 2.9(2) and (3):

Example (1):

A portfolio manager manages a pension fund. The pension fund holds 11% of the equity securities of the issuer.

Result: These equity securities must be excluded in calculating the market value of the issuer's equity securities.

Example (2):

A portfolio manager (not an affiliate of the issuer) manages three mutual funds each of which holds 3% of the equity securities of the issuer. An affiliate of the portfolio manager (not an affiliate of the issuer) manages two mutual funds each of which holds 3% of the equity securities of the issuer.

Result: The aggregated equity securities (15%) do not have to be excluded in calculating the market value of the issuer's equity securities.

Example (3):

The facts are the same as in Example (2) above, except that the portfolio manager is an affiliate of the issuer.

Result: The aggregated equity securities must be excluded in calculating the market value of the issuer's equity securities.

Example (4):

A portfolio manager (not an affiliate of the issuer) manages three non-redeemable investment funds (A, B and C). A holds 12% of the equity securities of the issuer. B and C each hold 6% of the equity securities of the issuer.

Result: The equity securities of the issuer held by A must be excluded in calculating the market value of the issuer's equity securities but the equity securities held by B and C (12% in the aggregate) need not be excluded in calculating the market value of the issuer's equity securities.

- (2) Instalment receipts that evidence the beneficial ownership of outstanding equity securities (subject to an encumbrance to secure the obligation of the instalment receipt holder to pay future instalments) and other similar receipts that evidence beneficial ownership of outstanding equity securities are not, themselves, equity securities. Consequently, the market value of such a receipt may not be included in the market value calculation of an issuer's outstanding equity securities (subject to the exception in paragraph 2.9(1)(b) of the National Instrument). The market value of the equity securities evidenced by the receipt, may however, be included, subject to subsections 2.9(2) and 2.9(3) of National Instrument 44-101.

The exclusions set out in subsection 2.9(2) of National Instrument 44-101 refer to equity securities of an issuer that are beneficially owned, or over which control or direction is exercised by persons or companies that, alone or together with their respective affiliates and associated parties, beneficially own or exercise control or direction over more than 10 percent of the outstanding equity securities of the issuer. Instalment receipt transactions typically involve a custodian holding a security interest in the securities the beneficial ownership of which is evidenced by instalment receipts. The Canadian securities regulatory authorities do not regard the custodian, by virtue of holding a security interest, as exercising "control or direction" over the securities for the purposes of subsection 2.9(2) of National Instrument 44-101 if the custodian is not entitled to exercise any voting rights attached to the securities or dispose of the securities without the beneficial owner's consent.

2.4

Alternative Qualification Criteria for Substantial Issuers (Section 2.3 of National Instrument 44-101) - Subparagraph 1(b) of section 2.3 of National Instrument 44-101 requires substantial issuers, that are not reporting issuers in the local jurisdiction, to be reporting issuers under Canadian securities legislation in a jurisdiction, other than the local jurisdiction, and to satisfy the criterion in subparagraph 5 of paragraph 1(b) of section 2.2. That criterion requires the issuer to have provided an undertaking to the securities regulatory authority that it will file all continuous disclosure documents that it would be required to file under securities legislation if it were a reporting issuer from the time of the filing of its most recent AIF until the issuer becomes a reporting issuer.¹⁸¹

¹⁸¹ This section has been revised to reflect changes made to the proposed National Instrument.

2.5 Alternative Qualification Criteria for Issuers of Guaranteed Debt Securities, Preferred Shares and Cash Settled Derivatives (Sections 2.5 and 2.6 of National Instrument 44-101) - Sections 2.5 and 2.6 of National Instrument 44-101 allow an issuer to qualify to file a prospectus in the form of a short form prospectus based on a full and unconditional guarantee or alternative credit support. The Canadian securities regulatory authorities are of the view that a person or company that provides the full and unconditional guarantee or alternative credit support is not, simply by providing that guarantee or alternative credit support, issuing a security.¹⁸²

2.6 Alternative Qualification Criteria for Asset-Backed Securities (Section 2.7 of National Instrument 44-101)¹⁸³

- (1) In order to be qualified to file a prospectus in the form of a short form prospectus under section 2.7 of National Instrument 44-101, an issuer must have been established in connection with a distribution of asset-backed securities. Ordinarily, asset-backed securities are issued by special purpose issuers established for the sole purpose of purchasing financial assets with the proceeds of one or more distributions of these securities. This ensures that the credit and performance attributes of the asset-backed securities are dependant on the underlying financial assets, rather than upon concerns relating to ancillary business activities and their attendant risks. Qualification to file a prospectus in the form of a short form prospectus under this section has been limited to special purpose issuers to avoid the possibility that an otherwise ineligible issuer would structure securities falling within the definition of "asset-backed security".
- (2) The qualification criteria for a distribution of asset-backed securities under a prospectus in the form of a short form prospectus are intended to provide sufficient flexibility to accommodate future developments. To qualify under section 2.7 of National Instrument 44-101, the securities to be distributed must satisfy the following two criteria:
 1. First, the payment obligations on the securities must be serviced primarily by the cash flows of a pool of discrete liquidating assets such as accounts receivable, instalment sales contracts, leases or other assets that by their terms convert into cash within a specified or determinable¹⁸⁴ period of time.
 2. Second, the securities must (i) receive an approved rating on a provisional basis, (ii) not have been the subject of an announcement regarding a downgrade to a rating that is not an approved rating, and (iii) not have received a provisional or final rating lower than an approved rating from any approved rating organization.

The qualification criteria do not distinguish between pass-through (i.e., equity) and pay-through (i.e., debt) asset-backed securities. Consequently, both pay-through and pass-through securities, as well as residual or subordinate interests, may be distributed under a prospectus in the form of a short form prospectus if all other applicable requirements are met.¹⁸⁵

2.7 Reorganizations (Section 2.8 of National Instrument 44-101)¹⁸⁶

- (1) Section 2.8 of National Instrument 44-101 provides alternative qualification criteria for a successor issuer to qualify to file a prospectus in the form of a short form prospectus even though it has not been a reporting issuer in any jurisdiction for 12 months. It may qualify if, among other things, it is a reporting issuer under Canadian securities legislation and, at the time of the reorganization, at least one of the participants in the reorganization satisfied the 12 month reporting issuer criterion in paragraph 1 of section 2.2 of National Instrument 44-101.¹⁸⁷
- (2) An issuer that was previously qualified to file a prospectus in the form of a short form prospectus under the basic qualification criteria set out in section 2.2 of National Instrument 44-101, including the \$75,000,000 market value requirement, and is the subject of a reorganization that results in that issuer becoming a wholly-owned subsidiary of another entity, will not be qualified to file a prospectus in the form of a short form prospectus under section 2.2. This is because it cannot satisfy the \$75,000,000 market value requirement. It may continue to be qualified to file a prospectus in the form of a short form prospectus under section 2.4 or section 2.5 of National Instrument 44-101 (approved rating or guaranteed securities) or section 2.7 of National Instrument 44-101 (asset-backed securities).
- (3) An entity that carries on the portion of the business that was "spun-off" is not a successor issuer within the meaning of the definition. The Canadian securities regulatory authorities have, from time to time, granted relief

¹⁸² This section has been revised to reflect changes made to the proposed National Instrument.

¹⁸³ This section has been revised to reflect changes made to the proposed National Instrument.

¹⁸⁴ The reference to "specified period" has been modified to refer to "specified or determinable period" in response to a comment.

¹⁸⁵ Subsection (3) that appeared here in the 1998 proposed Policy has been moved to section 10.2.

¹⁸⁶ This section has been revised to reflect changes made to the proposed National Instrument.

¹⁸⁷ The second paragraph that appeared here in the 1998 proposed Policy has been moved to section 2.8.

allowing the "spun-off" entity to file a prospectus in the form of a short form prospectus even though it may not otherwise satisfy certain of the qualification criteria. In those situations where the Canadian securities regulatory authorities have granted relief, there has been substantial audited segmented disclosure of the "spun-off" entity in the market place for at least one year before the reorganization. In addition, the Canadian securities regulatory authorities will generally look at whether the spun-off entity is described in the AIF and MD&A of the parent company. Applications for relief will be considered on a case by case basis.

- (4) Market participants are also reminded that if an issuer files a prospectus or other offering document following a material reorganization, take-over bid or acquisition of assets, the prospectus or offering document is required to contain, either directly or, if permitted, through incorporation by reference, appropriate disclosure concerning the reorganization, take-over bid or acquisition of assets and its effect on the issuer in order for the prospectus or other offering document to contain full, true and plain disclosure of all material facts.

2.8 Adoption by Successor Issuer of a Participant's AIF Following a Reorganization (Section 2.10 of National Instrument 44-101) - Section 2.10 of National Instrument 44-101 enables a successor issuer to adopt as its own AIF the AIF of a participant in the reorganization, if the AIF was a current AIF of the participant at the time of the reorganization. By adopting the AIF of a participant, the successor issuer is deemed under section 2.10 to have a current AIF for the purposes of securities legislation. It is not relevant whether the participant that filed the AIF continues to exist after the reorganization. If the participant continues to exist after the reorganization, the adoption by the successor issuer of the current AIF of the participant does not preclude the participant from having the AIF in order to, itself, qualify to file a prospectus in the form of a short form prospectus. Under section 2.10 of National Instrument 44-101, a successor issuer may choose to adopt the current AIF of more than one participant in the reorganization that gave rise to the successor issuer. This may be appropriate in circumstances where the successor issuer succeeded to the businesses of two participants where each participant had a current AIF. A successor issuer may always file its own AIF in order to have a current AIF. The first AIF filed by a successor issuer will be an initial AIF.¹⁸⁸

PART 3 AIF

3.1 Initial AIF Review Procedures (Section 3.1 of National Instrument 44-101)¹⁸⁹

- (1) An AIF filed by either an issuer that has not previously had an AIF accepted for filing in the local jurisdiction or an issuer that previously had a current AIF in the local jurisdiction and no longer has one is treated as an initial AIF for the purpose of review by the POP regulator.
- (2) An initial AIF and supporting documents will be reviewed by the Canadian securities regulatory authorities, including the CVMQ, in accordance with the procedures described in MRRS if the issuer has elected to use MRRS. Compliance by issuers with the MRRS procedures, although not mandatory, will generally result in the most expeditious treatment of initial AIFs on a national basis. If an issuer does not elect MRRS, the review of the initial AIF will not be co-ordinated among the various jurisdictions in which the issuer has filed the AIF, nor is the review subject to any particular timeframe.
- (3) An issuer filing in more than one jurisdiction should file the initial AIF, together with any supporting materials, as nearly as may be practicable, contemporaneously in each of the jurisdictions in which the issuer wishes to become qualified to file a prospectus in the form of a short form prospectus. Contemporaneous filing is automatic for issuers using SEDAR. An issuer should file the AIF in each jurisdiction identical in form and content, including the date, except that French language documents filed in Quebec need not be filed in the other jurisdictions, except as required by subsections 3.1(3) and (4) of National Instrument 44-101. The review of documents filed in Quebec in the French language, apart from substantive comments applying to both English and French language versions, will ordinarily be dealt with between Quebec and the issuer or the issuer's agent in Quebec directly.¹⁹⁰

3.2 Renewal AIF Filing and Review Procedures (Section 3.2 of National Instrument 44-101)¹⁹¹

¹⁸⁸ This discussion previously appeared in subsection 2.7(1) of the 1998 proposed Policy.

¹⁸⁹ Extensive changes have been made to this section in anticipation of the adoption of the MRRS. The only opportunity for issuers to benefit from co-ordinated review by multiple jurisdictions is to elect to use the MRRS.

¹⁹⁰ Subsections 3.1(4), (5), (6), (7), (8), (9), (11), (12) and (13) have been omitted as a consequence of the MRRS.

¹⁹¹ Changes have been made to this section in anticipation of the adoption of the MRRS. The only opportunity for issuers to benefit from co-ordinated review by multiple jurisdictions is to elect to use the MRRS.

- (1) An issuer that has a current AIF for its second most recently completed financial year and wishes to have a current AIF for its most recently completed financial year must file a renewal AIF in accordance with section 3.2 of National Instrument 44-101.¹⁹²
- (2) An issuer that does not have a current AIF in the local jurisdiction, yet has a current AIF in another jurisdiction, and wishes to file a short form prospectus in the local jurisdiction may file, as an initial AIF under section 3.1 of National Instrument 44-101 in the local jurisdiction, either (i) the new AIF that it is filing as a renewal AIF in the other jurisdiction, or (ii) the AIF that is a current AIF in the other jurisdiction. The issuer should notify all the other jurisdictions in which it already has a current AIF that it is filing an initial AIF in a new jurisdiction.
- (3) An issuer filing in more than one jurisdiction should file a renewal AIF, together with any supporting materials, as nearly as may be practicable, contemporaneously in each of the jurisdictions in which the issuer wishes to remain qualified to file a prospectus in the form of a short form prospectus. Contemporaneous filing is automatic for issuers using SEDAR. An issuer should file an AIF in each jurisdiction identical in form and content, including the date, except that French language documents filed in Quebec need not be filed in the other jurisdictions, except as otherwise provided in subsections 3.2(6) and (7) of National Instrument 44-101.¹⁹³
- (4) A renewal AIF, if selected for review, will be reviewed by the Canadian securities regulatory authorities in accordance with section 3.2 of National Instrument 44-101 and the procedures described in MRRS, if the issuer has elected to use MRRS.
- (5) This subsection applies to an issuer that files a renewal AIF in multiple jurisdictions and has not elected to use MRRS and to an issuer that files a renewal AIF in only one jurisdiction. If an issuer's renewal AIF has been selected for review and the issuer files a preliminary short form prospectus, both the issuer's preliminary short form prospectus and its renewal AIF will be reviewed at the same time. In these circumstances, comments arising in the course of the review of the renewal AIF will be taken into account during the review of the preliminary short form prospectus. The notice that the review of the renewal AIF has been completed will be issued before, or concurrently with, the issuance of the receipt for the short form prospectus. A receipt for the short form prospectus will not be issued until the review of the renewal AIF has been completed. No particular timeframe applies to this review.¹⁹⁴

3.3 Supporting Documents (Section 3.3 of National Instrument 44-101)

- (1) Any material incorporated by reference in an AIF is required under paragraph 3.3(1)(a) of National Instrument 44-101 to be filed with the AIF unless it has been previously filed. When an issuer using SEDAR files a previously unfiled document with its AIF, the issuer should ensure that the document is filed under the appropriate SEDAR filing type and document type specifically applicable to the document, rather than generic type "Documents Incorporated by Reference". For example, an issuer that has incorporated by reference an information circular in its AIF and has not previously filed the circular should file the circular under the "Management Proxy Materials" filing subtype and the "Management proxy/information circular" document type.¹⁹⁵
- (2) There is no regulatory requirement for auditor involvement with respect to the preparation of an AIF. No solicitor's, auditor's, accountant's, engineer's, appraiser's or other consent is required to be filed with an AIF. However, reporting issuers may choose to involve their auditors. The auditing profession's standards may require limited auditor involvement in certain circumstances. Section 7.3 of National Instrument 44-101 requires the filing of consents of experts with a short form prospectus. In order to be able to provide the necessary consent letter on a short form prospectus, an auditor will be obliged to comply with applicable requirements of the Handbook and of Canadian securities legislation of the jurisdictions in which the AIF is filed.

¹⁹² Subsection 3.2(2), which discussed materiality of acquisitions and reorganizations and likelihood of selection for review, has been omitted as a consequence of the MRRS.

¹⁹³ Subsection 3.2(3) has been modified to reflect the MRRS and subsections 3.2(6) and (7) have been omitted as a consequence of the MRRS.

¹⁹⁴ Subsections 3.2(10) and (11) have been omitted as a consequence of the MRRS.

¹⁹⁵ This subsection is new.

PART 4 DISCLOSURE IN A SHORT FORM PROSPECTUS OF FINANCIAL STATEMENTS FOR ACQUISITIONS¹⁹⁶

- 4.1 Financial Statement Disclosure of Significant Acquisitions** - Attached as Appendix A to this Policy is a chart describing the obligations for financial statement disclosure of significant acquisitions.
- 4.2 Acquisition of a Business** - Part 4 of National Instrument 44-101 requires an issuer that has made a significant acquisition or is proposing to make a significant probable acquisition to include in its short form prospectus certain financial statements of each business acquired or to be acquired. For this purpose, the term "business" should be evaluated in light of the facts and circumstances involved. The Canadian securities regulatory authorities consider that a separate entity, a subsidiary or a division will normally be a business and that in certain circumstances a lesser component of a person or company may also constitute a business, whether or not the subject of the acquisition previously had financial information. Continuity of business operations is considered in determining whether an acquisition constitutes the acquisition of a business. Other factors that will be considered include
- (a) whether the nature of the revenue producing activity or potential revenue producing activity will remain generally the same after the acquisition; and
 - (b) whether any of the physical facilities, employees, marketing, systems, sales forces, customers, operating rights, production techniques or trade names are acquired by the issuer instead of remaining with the vendor after the acquisition.
- 4.3 Probable Acquisitions** - The Canadian securities regulatory authorities will interpret and apply the definitions of "probable acquisition of a business" and "probable acquisition of related businesses" having regard to section 3290 of the Handbook "Contingencies". It is the CSA's view that the following factors may be relevant in determining whether an acquisition is probable
- (a) whether the acquisition has been publicly announced;
 - (b) whether the acquisition is the subject of an executed agreement; and
 - (c) the nature of conditions to the completion of the acquisition including any material third party consents required.
- 4.4 Significant Acquisitions** - Subsection 1.2(1) of National Instrument 44-101 sets out when an acquisition of a business is a "significant acquisition". One of the tests is whether the issuer's proportionate share of the consolidated income from continuing operations of the business exceeds 20 percent of the income from continuing operations of the issuer for the 12 months ended on the last day of the most recently completed financial year of the issuer or interim period of the issuer. The Canadian securities regulatory authorities are of the view that in applying this test, the income from continuing operations of the business should be determined using the generally accepted accounting principles applied by the issuer.
- 4.5 Exemptions from Part 4 of National Instrument 44-101**
- (1) The Canadian securities regulatory authorities are of the view that relief from the financial statement requirements of Part 4 of National Instrument 44-101 should be granted only in unusual circumstances not related to cost or the time involved in preparing and auditing the financial statements.
 - (2) If relief is granted from the requirements of Part 4 of National Instrument 44-101, conditions will likely be imposed, such as a requirement to include audited divisional or partial income statements or divisional statements of cash flow, financial statements accompanied by qualified audit reports or an audited statement of net operating income for a business.
 - (3) Relief may be granted in appropriate circumstances to permit the auditor's report on financial statements of a business acquisition to contain a reservation relating to opening inventory if there is a subsequent audited period of at least six months on which the auditor's report contains no reservation and the business is not seasonal.
 - (4) Considerations relevant to a request for exemption from the requirement to include interim financial statements for the comparable period in the immediately preceding financial year may include the fact that an acquired business was, before the filing of the short form prospectus, a private entity that did not prepare interim financial statements.
 - (5) Considerations relevant to a request for exemption from the requirement to include three years of financial statement disclosure may include the fact that the business has been bankrupt, has undergone a change in its management or has undergone a fundamental change in the nature of its business or operations affecting a majority of its operations within the last three years.

¹⁹⁶ This Part is new and has been added in light of Part 4 of the National Instrument.

PART 5 OTHER FINANCIAL STATEMENT MATTERS¹⁹⁷

- 5.1 Generally Accepted Accounting Principles** - Subsection 5.1(2) of National Instrument 44-101 provides that if a person or company is incorporated or organized in a foreign jurisdiction, the financial statements of the person or company included in the prospectus shall be prepared in accordance with either Canadian GAAP or foreign GAAP. Foreign GAAP is defined in National Instrument 44-101 to mean a body of generally accepted accounting principles, other than Canadian GAAP, that are as comprehensive as Canadian GAAP. The Canadian securities regulatory authorities are of the view that foreign GAAP will be as comprehensive as Canadian GAAP if it covers substantially the same core subject matter as Canadian GAAP, including recognition and measurement principles and disclosure requirements. National Instrument 44-101 permits foreign GAAP to be used only if the notes to the financial statements explain and quantify the effect of material differences between the foreign GAAP and Canadian GAAP that relate to measurements and provide disclosure consistent with Canadian GAAP requirements. The Canadian securities regulatory authorities expect that in most cases the reconciliation will be adequate to ensure clear and understandable disclosure for investors in Canada, unless the differences are so pervasive as to render the financial statements misleading.
- 5.2 Auditor's Report** - Subsection 5.2(1) of National Instrument 44-101 requires financial statements in a short form prospectus to be accompanied by an auditor's report which, by definition, is prepared in accordance with generally accepted auditing standards. For issuers incorporated or organized in a foreign jurisdiction, the generally accepted auditing standards may be other than those applied in Canada, if those auditing standards are substantially equivalent to Canadian auditing standards. The foreign auditor's report must be accompanied by a statement that the auditing standards applied are substantially equivalent to Canadian GAAS and include a comment disclosing any material differences in the form and content of the foreign auditor's report. Under subparagraph 4 of paragraph 7.2(1)(a) of National Instrument 44-101, the issuer must also file a letter from the auditor setting out the auditor's expertise to make the determination that foreign GAAS is substantially equivalent to Canadian GAAS.
- 5.3 Acceptable Auditors** - National Instrument 44-101 provides foreign issuers with flexibility as to their choice of auditor for purposes of a short form prospectus filing. However, issuers should also recognize that Canadian securities legislation in some jurisdictions requires the regulator not to issue a receipt for a prospectus if it appears to the regulator that a person or company who has prepared any part of the prospectus or is named as having prepared or certified a report used in or in connection with a prospectus is not acceptable to the regulator. The Canadian securities regulatory authorities are of the view that in order for auditing standards to be substantially equivalent to Canadian GAAS, they must require underlying work that is comparable in scope, nature and timing to the work required in connection with an audit in accordance with Canadian GAAS. For instance, auditing standards of foreign jurisdictions such as the United States are known to the Canadian securities regulatory authorities to be substantially equivalent to the standards of the CICA. Foreign issuers using auditors from foreign jurisdictions with audit standards and supervision that are less well known to the Canadian securities regulatory authorities are encouraged to consult with staff of the Canadian securities regulatory authorities in advance of filing a preliminary prospectus to resolve uncertainty as to whether the Canadian securities regulatory authorities will consider a particular auditor or auditing standards to be acceptable.
- 5.4 Third Quarter Financial Statements (Section 5.5 of National Instrument 44-101)** - In the case where an issuer files a short form prospectus before its directors have approved the comparative audited annual financial statements for its most recently completed financial year and before the time period for filing the statements under securities legislation has expired, section 5.4 of National Instrument 44-101 permits an issuer to include the interim financial statements for the third quarter of the most recently completed financial year, instead of the financial statements for the entire most recently completed financial year. The Canadian securities regulatory authorities are of the view that directors of issuers should endeavour to consider and approve financial statements in a timely manner and should not delay the approval and release of the statements for the purpose of avoiding their inclusion in a prospectus. Issuers are also reminded of their obligation to disclose all material facts relating to the securities to be distributed. For example, if the fourth quarter results are or are expected by the issuer to be materially different from the results of the fourth quarter in previous years, or would have a material impact on the results for the financial year as a whole, or are otherwise materially different from the market's expectations, the issuer is expected to discuss the fourth quarter results in its short form prospectus.

PART 6 FILING AND RECEIPTING OF SHORT FORM PROSPECTUS¹⁹⁸

- 6.1 Confidential Material Change Reports** - Confidential material change reports cannot be incorporated by reference into a short form prospectus. Accordingly, an issuer may not file a confidential material change report during a distribution. However, if circumstances arise that cause an issuer to file a confidential material change report during the distribution period of securities under a short form prospectus, the issuer should cease all activities related to the distribution until

¹⁹⁷ This Part is new and has been added in light of Part 5 of the National Instrument.

¹⁹⁸ This Part appeared as Part 4 in the 1998 proposed Policy. Section 4.1 of the 1998 proposed Policy has been moved to section 6.7. Section 4.2 of the 1998 proposed Policy has been moved to section 5.4 as it relates to financial statement matters. Section 4.2 of the 1998 proposed Policy has been omitted as it referred to Appendix A to the 1998 proposed Policy which listed the supporting documents to be filed with a short form prospectus. Appendix A has been omitted in light of the MRRS.

- (a) the material change is generally disclosed and an amendment to the short form prospectus is filed, if required; or
- (b) the decision to implement the material change has been rejected and the issuer has so notified the regulator of each jurisdiction where the confidential material change report was filed.

6.2 Supporting Documents¹⁹⁹

- (1) Documents that are filed in a jurisdiction will be made available for public inspection in that jurisdiction, subject to the provisions of securities legislation in the local jurisdiction regarding confidentiality of filed material. Documents that are delivered to a regulator, but not filed, will not be made available by the regulator for inspection by the public.
- (2) Any material incorporated by reference in a preliminary short form prospectus or a short form prospectus is required under section 7.1 and 7.2 of National Instrument 44-101 to be filed with the preliminary short form prospectus or short form prospectus unless previously filed. When an issuer using SEDAR files a previously unfiled document with its short form prospectus, the issuer should ensure that the document is filed under the SEDAR category of filing and filing subtype specifically applicable to the document, rather than the generic type "Other". For example, an issuer that has incorporated by reference an interim financial statement in its short form prospectus and has not previously filed the statement should file that statement under the "Continuous Disclosure" category of filing, and the "Interim Financial Statements" filing subtype.

6.3 Material Contracts²⁰⁰

- (1) Section 7.6 of National Instrument 44-101 requires an issuer to make available all material contracts referred to in a short form prospectus. The Canadian securities regulatory authorities recognize that certain material contracts or portions thereof may contain sensitive operational or financial information, disclosure of which would be competitively disadvantageous or otherwise detrimental to the issuer. The regulator will consider granting relief from the requirement to make these contracts available for public inspection if disclosure would be unduly detrimental to the issuer and the disclosure would not be necessary in the public interest.
- (2) Under subsections 7.1(2) and 7.2(3) of National Instrument 44-101, issuers are not required to file or deliver all material contracts in Ontario, but are only required to deliver to the regulator those that create or materially affect the rights or obligations of the holders of the securities being distributed. However, issuers are reminded that in connection with the prospectus review process, the regulator in Ontario may request an issuer to deliver to it copies of other material contracts.

6.4 Amendments and Incorporation by Reference of Subsequently Filed Material Change Reports - The requirement in securities legislation for the filing of an amendment to a preliminary prospectus and prospectus is not satisfied by the incorporation by reference in a preliminary short form prospectus or a short form prospectus of a subsequently filed material change report.²⁰¹

6.5 Short Form Prospectus Review - No timeframe applies to the review of a short form prospectus of an issuer filed in multiple jurisdictions, if the issuer has not elected to use MRRS. Nor does a timeframe apply to a review of a short form prospectus filed in only one jurisdiction.²⁰²

6.6 "Waiting Period" - If the securities legislation of the local jurisdiction contains the concept of a "waiting period" such that the securities legislation requires that there be a specified period of time between the issuance of a receipt for a preliminary short form prospectus and the issuance of a receipt for a short form prospectus, the implementing law of the jurisdiction removes that requirement as it would otherwise apply to a distribution under National Instrument 44-101.

6.7 Refusal to Issue Prospectus Receipt - The regulator has the discretion under securities legislation to refuse, in the public interest, to issue a receipt for a prospectus. Despite acceptance by a regulator of an issuer's AIF, if, at the time the issuer files a preliminary short form prospectus, a regulator has concerns about the adequacy or timeliness of the disclosure in the AIF and the disclosure is not supplemented in the short form prospectus, the regulator may refuse to issue a receipt for the short form prospectus.²⁰³

¹⁹⁹ This section is new.

²⁰⁰ This section is new.

²⁰¹ This section is new. It has been moved to the Policy from subsection 2.1(4) of the 1998 proposed National Instrument as it is more interpretative than mandatory in nature.

²⁰² This section is new. The short form prospectus review procedures that appeared in the 1998 proposed Policy have been omitted as a consequence of the MRRS.

²⁰³ This section previously appeared in section 4.1 of the 1998 proposed Policy. Section 4.6 "National Instrument 44-101 Receipt System" and Part 5 "Exemptions" that appeared in the 1998 proposed Policy have been omitted as a consequence of the MRRS.

PART 7 CONTENT OF AIF**7.1 Issuers of Asset-backed Securities**

- (1) Item 4.2 of Form 44-101F1 AIF specifies additional disclosure applicable to issuers of asset-backed securities that were distributed under a prospectus. Form 44-101F1 leaves to asset-backed issuers the determination of which other prescribed disclosure is applicable and ought to be included in the AIF. Applicable disclosure for a special purpose issuer of asset-backed securities generally pertains to the nature, performance and servicing of the underlying pool of financial assets. The nature and extent of required disclosure may vary depending on the type and attributes of the underlying pool.

The following factors should be considered by an issuer of asset-backed securities in preparing its AIF:

1. The extent of disclosure respecting an issuer will depend on the extent of the issuer's on-going involvement in the conversion of the assets comprising the pool to cash and the distribution of cash to securityholders; this involvement may, in turn, vary dramatically depending on the type, quality and attributes of the assets comprising the pool and on the overall structure of the transaction.
 2. Requested disclosure respecting the business and affairs of the issuer should be interpreted to apply to the financial assets underlying the asset-backed securities.
 3. Financial information respecting the pool of assets to be described and analyzed in the AIF will consist of information commonly set out in servicing reports prepared to describe the performance of the pool and the specific allocations of income, loss and cash flows applicable to outstanding asset-backed securities made during the relevant period.
- (2) Item 4.2(b)(i) of Form 44-101F1 AIF requires issuers of asset-backed securities that were distributed by way of prospectus to include information relating to the composition of the underlying pool of financial assets, the cash flows from which service the asset-backed securities. Disclosure respecting the composition of the pool will vary depending upon the nature and number of the underlying financial assets. For example, in a geographically dispersed pool of financial assets, it may be appropriate to provide summary disclosure based on the location of obligors. In the context of a revolving pool, it may be appropriate to provide details relating to aggregate outstanding balances during a year in order to illustrate historical fluctuations in asset origination due, for example, to seasonality. In pools of consumer debt obligations, it may be appropriate to provide a breakdown within ranges of amounts owing by obligors in order to illustrate limits on available credit extended.

- 7.2 Non-corporate Issuers** - Item 8 of Form 44-101F1 AIF requires disclosure concerning the directors and officers of an issuer. An issuer that is not a corporation must refer to the definitions in securities legislation of "director" and "officer". The definition of "officer" may include any individual acting in a capacity similar to that of an officer of a company. Similarly, the definition of "director" typically includes a person acting in a capacity similar to that of a director of a company. Therefore, non-corporate issuers must make a determination in light of the particular circumstances which individuals or persons are acting in such capacities for the purposes of complying with Item 8 of Form 44-101F1.²⁰⁴

PART 8 CONTENT OF SHORT FORM PROSPECTUS

- 8.1 Prospectus Liability** - Nothing in the short form prospectus regime established by National Instrument 44-101 is intended to provide relief from liability arising under the provisions of Canadian securities legislation of any jurisdiction in which a short form prospectus is filed if the short form prospectus contains an untrue statement of a material fact or omits to state a material fact that is required to be stated therein or that is necessary to make a statement not misleading in light of the circumstances in which it was made.

- 8.2 Style of Prospectus** - Canadian securities legislation requires that a prospectus contain "full, true and plain" disclosure. To that end, issuers and their advisors are reminded that they should ensure that disclosure documents are easy to read, and encourage issuers to adopt the following plain language principles in preparing a prospectus in the form of a short form prospectus:

- ! the use of short sentences
- ! the use of definite, concrete, everyday language
- ! the use of the active voice
- ! the avoidance of superfluous words
- ! the organization of the document into clear, concise sections, paragraphs and sentences
- ! the avoidance of legal or business jargon
- ! the use of strong verbs
- ! the use of personal pronouns to speak directly to the reader
- ! the avoidance of reliance on glossaries and defined terms unless it facilitates understanding of the disclosure
- ! the avoidance of vague boilerplate wording

²⁰⁴ This section is new.

- ! the avoidance of abstractions by using more concrete terms or examples
- ! the avoidance of excessive detail
- ! the avoidance of multiple negatives.

If technical or business terms are required, clear and concise explanations should be used. The Canadian securities regulatory authorities are of the view that question and answer and bullet point formats are consistent with the disclosure requirements of National Instrument 44-101.²⁰⁵

8.3 Firm Commitment Underwritings - If an underwriter has agreed to purchase a specified number or principal amount of the securities to be distributed at a specified price, Item 1.8(4) of Form 44-101F2 requires the short form prospectus to contain a statement that the securities are to be taken up by the underwriter, if at all, on or before a date not later than 42 days after the date of the receipt for the short form prospectus. If the Canadian securities legislation of a jurisdiction requires that a prospectus indicate that the securities must be taken up by the underwriter within a period that is different than the period provided under National Instrument 44-101, the implementing law of a jurisdiction exempts issuers from that requirement if they comply with National Instrument 44-101.

8.4 Minimum Distribution - If a minimum amount of funds is required by an issuer and the securities are proposed to be distributed on a best efforts basis, Item 6.5 of Form 44-101F2 requires that the short form prospectus state that the distribution will not continue for a period of more than 90 days after the date of receipt for the short form prospectus if subscriptions representing the minimum amount of funds are not obtained within that period unless each of the persons and companies who subscribed within that period has consented to the continuation. If the Canadian securities legislation of a jurisdiction requires that a distribution may not continue for more than a specified period if subscriptions representing the minimum amount of funds are not obtained within that period and the specified period is different than the period provided under National Instrument 44-101, the implementing law of a jurisdiction exempts issuers from that requirement if they comply with National Instrument 44-101.²⁰⁶

8.5 Distribution of Asset-backed Securities²⁰⁷

- (1) Item 8.3 of Form 44-101F2 specifies additional disclosure applicable for distributions of asset-backed securities. Applicable disclosure for a special purpose issuer of asset-backed securities generally pertains to the nature, performance and servicing of the underlying pool of financial assets, the structure of the securities and dedicated cash flows and any third party or internal support arrangements established to protect holders of the asset-backed securities from losses associated with non-performance of the financial assets or disruptions in payment. The nature and extent of required disclosure may vary depending on the type and attributes of the underlying pool and the contractual arrangements through which holders of the asset-backed securities take their interest in such assets.
- (2) The following factors should be considered by an issuer of asset-backed securities in preparing its short form prospectus:
 1. The extent of disclosure respecting an issuer will depend on the extent of the issuer's on-going involvement in the conversion of the assets comprising the pool to cash and the distribution of cash to securityholders; this involvement may, in turn, vary dramatically depending on the type, quality and attributes of the assets comprising the pool and on the overall structure of the transaction.
 2. Requested disclosure respecting the business and affairs of the issuer should be interpreted to apply to the financial assets underlying the asset-backed securities.
 3. Disclosure respecting the originator or the seller of the underlying financial assets will be relevant to investors in the asset-backed securities particularly in circumstances where the originator or seller has an on-going relationship with the financial assets comprising the pool. For example, if asset-backed securities are serviced with the cash flows from a revolving pool of receivables, an evaluation of the nature and reliability of the future origination or the future sales of underlying assets by the seller to or through the issuer may be a critical aspect of an investor's investment decision. To address this, the focus of disclosure respecting an originator or seller of the underlying financial assets should deal with whether there are current circumstances that indicate that the originator or seller will not generate adequate assets in the future to avoid an early liquidation of the pool and, correspondingly, an early payment of the asset-backed securities. Summary historical financial information respecting the originator or seller will ordinarily be adequate to satisfy the disclosure requirements applicable to the originator or seller in circumstances where the originator or seller has an ongoing relationship with the assets comprising the pool.
- (3) Item 8.3(d)(i) of Form 44-101F2 requires issuers of asset-backed securities to describe any person or company who originated, sold or deposited a material portion of the financial assets comprising the pool, irrespective of

²⁰⁵ This section is new.

²⁰⁶ Section 7.4 "Business Acquisitions" that appeared in the 1998 proposed Policy has been omitted in light of Part 4 of the National Instrument.

²⁰⁷ Minor changes have been made in this section for clarification.

whether the person or company has an on-going relationship with the assets comprising the pool. The Canadian securities regulatory authorities consider 33a% of dollar value of the financial assets comprising the pool to be a material portion in this context.

8.6 Distribution of Specified Derivatives - Item 8.4 of Form 44-101F2 specifies additional disclosure applicable to distributions of specified derivatives. This prescribed disclosure is formulated in general terms for issuers to customize appropriately in particular circumstances.

8.7 Underlying Securities - Issuers are reminded that if securities being distributed are convertible into or exchangeable for other securities, a description of the material attributes of the underlying securities may be necessary to meet the requirement of securities legislation that a prospectus contain full, true and plain disclosure of all material facts relating to the securities.²⁰⁸

8.8 Financial Statements

- (1) Item 12.1 of Form 44-101F2 specifies which financial statements of an issuer are required to be incorporated by reference into an issuer's short form prospectus. The issuer's most recent comparative interim financial statements and the most recent comparative year end financial statements, together with the accompanying report of the auditor, if they have been approved by the board of directors of the issuer, are required to be incorporated by reference under subparagraphs 3(b) and 4(b) of Item 12.1, even if they have not yet been filed. The Canadian securities regulatory authorities are of the view that directors of issuers should endeavour to consider and approve financial statements in a timely manner and should not delay the approval and release of the statements for the purpose of avoiding their inclusion in a short form prospectus. Issuers are also reminded of their obligation to disclose all material facts relating to the securities to be distributed. For example, if there have been significant variations in an issuer's financial results, the issuer is expected to discuss the variations in its short form prospectus.
- (2) Documents incorporated by reference in a preliminary short form prospectus are required under section 7.1 of National Instrument 44-101 to be filed with the preliminary short form prospectus if they have not previously been filed. Section 7.2 of National Instrument 44-101 contains a similar provision for a short form prospectus. This may result in financial statements that have been incorporated by reference under Item 12.1 of Form 44-101F2 being filed earlier than would otherwise be the case under the continuous disclosure requirements of securities legislation. The implementing law of each jurisdiction provides relief, if necessary, from the requirement of securities legislation to send these statements concurrently to securityholders and, in British Columbia, to file written confirmation of having sent these statements. The conditions to the relief require the issuer to send the financial statements to securityholders within the time periods and in accordance with the other provisions of continuous disclosure requirements of securities legislation and, in British Columbia, to file written confirmation of sending to securityholders.

PART 9 CIRCULARS

9.1 Fee for Documents - The CSA are of the view that issuers that charge non-securityholders that request copies of the documents referred to in paragraph (a) of section 10.3 of National Instrument 44-101 should not charge an amount more than the issuer's reasonable cost of sending the documents. If the issuer's practice is to charge non-securityholders for the documents, a statement to that effect should be included in the information circular.²⁰⁹

PART 10 CERTIFICATES

10.1 Non-corporate Issuers²¹⁰

- (1) Item 20.1(a) of Form 44-101F2 requires an issuer to include a certificate in the prescribed form signed by the chief executive officer and the chief financial officer or, if no such officers have been appointed, a person acting on behalf of the issuer in a capacity similar to a chief executive officer and a person acting on behalf of the issuer in a capacity similar to a chief financial officer. For a non-corporate issuer, such as a trust, this officers' certificate will typically be signed by officers of the trust company acting as trustee of the issuer. However, if the declaration of trust governing the issuer delegated the trustee's signing authority, the officers' certificate may be signed by the persons to whom authority is delegated under the declaration of trust to sign documents on behalf of the trustee or on behalf of the trust.²¹¹

²⁰⁸ This section is new.

²⁰⁹ This section is new and has been added as a result of the omission of subsection 6.3(2) of the 1998 proposed National Instrument.

²¹⁰ This section has been expanded to provide more guidance for non-corporate issuers.

²¹¹ This subsection has been added to provide guidance as to who can sign the certificate for a non-corporate issuer, such as a trust.

- (2) Paragraph 20.1(b) of Form 44-101F2 requires an issuer to include a certificate in the prescribed form signed on behalf of the board of directors, by two directors of the issuer, other than the persons referred to in paragraph (a), duly authorized to sign. Issuers that are not companies are directed to the definition of "director" in securities legislation to determine the appropriate signatories to the certificate. The definition of "director" in securities legislation typically includes a person acting in a capacity similar to that of a director of a company. Issuers that are not companies are also directed to the definition of "person" in securities legislation.

10.2 Promoters of Issuers of Asset-backed Securities²¹²

- (1) Canadian securities legislation contains definitions of "promoter" and requires, in certain circumstances, a promoter of an issuer to assume statutory liability for prospectus disclosure. Asset-backed securities are commonly issued by a "special purpose" entity, established for the sole purpose of facilitating one or more asset-backed offerings. The Canadian securities regulatory authorities are of the opinion that special purpose issuers of asset-backed securities will have a promoter because someone will typically have taken the initiative in founding, organizing or substantially reorganizing the business of the issuer. The Canadian securities regulatory authorities interpret the business of such issuers to include the business of issuing asset-backed securities and entering into the supporting contractual arrangements.
- (2) For example, in the context of a securitization program under which assets of one or more related entities are financed by issuing asset-backed securities (sometimes called a "single seller program"), an entity transferring or originating a significant portion of such assets, an entity initially agreeing to provide on-going collection, administrative or similar services to the issuer, and the entity for whose primary economic benefit the asset-backed program is established, will each be a promoter of the issuer if it took the initiative in founding, organizing or substantially reorganizing the business of the issuer. Persons or companies contracting with the issuer to provide credit enhancements, liquidity facilities or hedging arrangements or to be a replacement servicer of assets, and investors who acquire subordinated investments issued by the issuer, will not typically be promoters of the issuer solely by virtue of such involvement.
- (3) In the context of a securitization program established to finance assets acquired from numerous unrelated entities (sometimes called a "multi-seller program"), the person or company (frequently a bank or an investment bank) establishing and administering the program in consideration for the payment of an on-going fee, for example, will be a promoter of the issuer if it took the initiative in founding, organizing or substantially reorganizing the business of the issuer. Individual sellers of the assets into a multi-seller program are not ordinarily considered to be promoters of the issuer, despite the economic benefits accruing to such persons or companies from utilizing the program. As with single-seller programs, other persons or companies contracting with the issuer to provide services or other benefits to the issuer of the asset-backed securities will not typically be promoters of the issuer solely by virtue of such involvement.
- (4) While the Canadian securities regulatory authorities have included this discussion of promoters as guidance to issuers of asset-backed securities, the question of whether a particular person or company is a "promoter" of an issuer is ultimately a question of fact to be determined in light of the particular circumstances.²¹³

²¹² Commentary substantially similar to this section previously appeared in subsection 2.6(3) of the 1998 proposed Policy.

²¹³ Sections 8.3 discussing relief from the requirement of a guarantor's certificate has been omitted in light of the revised certificate requirement for credit supporters in Form 44-101F2. Appendix A to the 1998 proposed Policy has been omitted in light of the MRRS.

- 1 This decision chart provides general guidance and should be read in conjunction with National Instrument 44-101 and Companion Policy 44-101CP.
- 2 If more than one acquisition occurs and the businesses are related, for the purpose of determining the significance of the acquisition, the results of the related businesses should be combined.
- 3 If an acquisition of related businesses constitutes a significant acquisition calculated in accordance with the guidance provided in note 2, the required financial statements shall be provided for each of the related businesses.
- 4 If more than one acquisition occurs and the businesses are unrelated, determine the significance of each acquisition and provide the required financial statements for each acquisition.
- 5 For individually insignificant acquisitions, provide an audited balance sheet for a majority of the acquired businesses as at their most recent year end and an unaudited balance sheet for the most recent interim period.

Ontario's Implementing Rule

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**ONTARIO SECURITIES COMMISSION RULES
RULE 44-801
IMPLEMENTING NATIONAL INSTRUMENT 44-101
SHORT FORM PROSPECTUS DISTRIBUTIONS¹**

PART 1 DEFINITIONS²

1.1 Definitions - Every term used in this Rule that is defined or interpreted in Part 1 of National Instrument 44-101 has the meaning ascribed to it in that Part.

PART 2 DISTRIBUTIONS OF SECURITIES OF AN ELIGIBLE ISSUER

2.1 Short Form of Prospectus for Purposes of Section 63 of the Act - A preliminary short form prospectus and a short form prospectus prepared and certified in accordance with National Instrument 44-101 is a short form of preliminary prospectus and a short form of prospectus in the prescribed form, respectively, for the purposes of section 63 of the Act.

2.2 Exemption from Certain Requirements of the Act and Rules

- (1) Despite subsection 65(1) of the Act, the waiting period between the issuance by the Director of a receipt for a preliminary short form prospectus and the issuance by the Director of a receipt for a short form prospectus may be less than ten days.
- (2) National Instrument 41-101 Prospectus Disclosure Requirements does not apply to a preliminary short form prospectus and a short form prospectus certified, filed and received in accordance with National Instrument 44-101.
- (3) With the exception of the following provisions of Rule 41-501 General Prospectus Requirements, Rule 41-501 does not apply to a preliminary short form prospectus and a short form prospectus certified, filed and received in accordance with National Instrument 44-101:
 1. Subsections 3.2(1), (2), (4) and (5).³
 2. Subsection 10.1(3).⁴
- (4) For one year from the date of the receipt for the preliminary short form prospectus, section 53 of the Act does not apply to distributions of securities for which a short form prospectus was certified, filed and received before the coming into force of National Instrument 44-101 in accordance with the Act and National Policy Statement No. 47 only insofar as section 53 of the Act concerns the form and content of a preliminary prospectus and prospectus filed under section 53 of the Act.
- (5) Section 79 of the Act does not apply insofar as it requires issuers to send financial statements filed under section 78 of the Act to each holders of its securities concurrently with their filing, if the issuer files those financial statements earlier than 140 days from the end of its last financial year because it is required to do so by National Instrument 44-101 if the financial statements are sent as required in the Act within the time period specified in the Act.

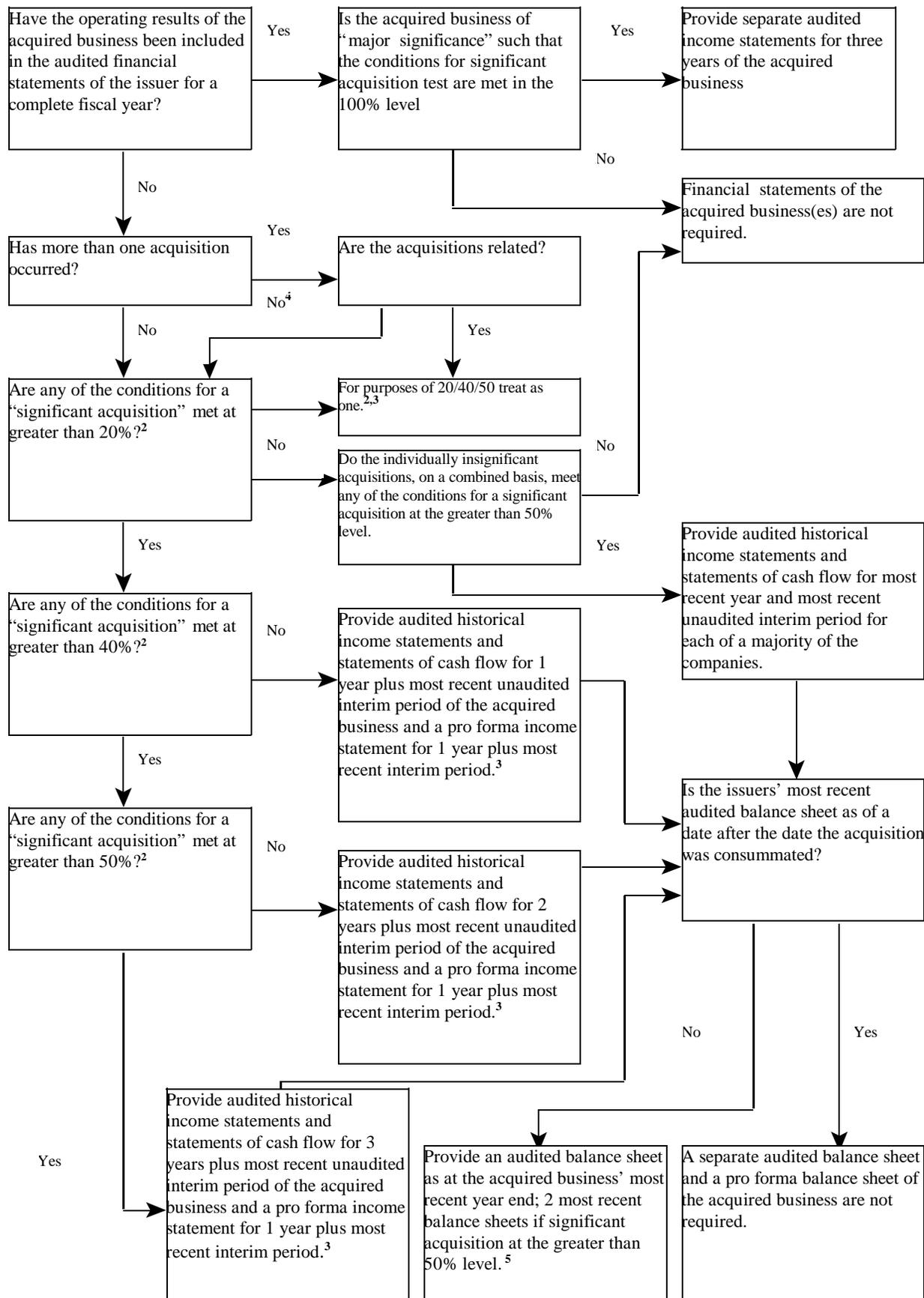
¹ The proposed Rule is based on the Rule *In the Matter of the Prompt Offering Qualification System*, which came into force on March 1, 1997 and which was published at (1997), 20 OSCB 1217 (the "POP Relief Rule"). The POP Relief Rule incorporated by reference the Blanket Ruling of the same name (1993), 16 OSCB 731 as amended by (1993), 16 OSCB 739. The relief relating to the filing of consents provided by the Rule *In the Matter of the Prompt Offering Qualification System Waiver*, which came into force on March 1, 1997 and was published at (1997), 20 OSCB 1217 and the relief relating to solicitation of expressions of interest provided by the Rule *In the Matter of National Policy Statement No. 47 and the Solicitation of Expressions of Interest* which also came into force on March 1, 1997 and was published at (1997), 20 OSCB 1217 do not appear in the proposed Rule as the relief is provided in subsection 7.3(3) and section 11.1 of National Instrument 44-101. The proposed Rule was first published for comment on February 20, 1998 at (1998), 1 OSCB 1138.

² A general definition rule has been adopted as Rule 14-501 Definitions. It contains definitions of certain terms used in more than one rule. Rule 14-501 also provides that a term used in a rule and defined in section 1 of the *Securities Act*, subsection 1(2) of the Regulation or subsection 1.1(3) of National Instrument 14-101 Definitions will have the respective meaning given to it in the *Securities Act*, Regulation or National Instrument 14-101 as appropriate, unless it is otherwise defined or interpreted in the rule or the context otherwise requires.

³ Style of Prospectus

⁴ General.

**APPENDIX A
OVERVIEW OF BUSINESS ACQUISITIONS DECISION CHART¹**



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Short Form Prospectus Distributions

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