POLICY STATEMENT

TO REGULATION 41-101

RESPECTING GENERAL PROSPECTUS REQUIREMENTS

Securities Act
(R.S.Q., c. V-1.1, s. 274)

PART 1
INTRODUCTION, INTERRELATIONSHIP WITH SECURITIES LEGISLATION, AND DEFINITIONS

1.1. Introduction and purpose

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

1.2. Interrelationship with other securities legislation

(1) **This Policy Statement –** The Regulation applies to any prospectus filed under securities legislation and any distribution of securities subject to the prospectus requirement, other than a prospectus filed under Regulation 81-101 respecting Mutual Fund Prospectus Disclosure or a distribution of securities under such a prospectus, or unless otherwise stated. Parts of this Policy may not apply to all issuers.

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

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

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

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

(5) **Shelf distributions (Regulation 44-102) –** Issuers qualified under Regulation 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 Regulation 44-102 respecting Shelf Distributions ("Regulation 44-102"). The Policy Statement to Regulation 44-102 explains that the distribution of securities under the shelf system is governed by the requirements and procedures of Regulation 44-101 and securities legislation, except as supplemented or varied by Regulation 44-102. Therefore, issuers qualified to file a short form prospectus and selling securityholders of those issuers that wish to distribute securities under the shelf system should refer to the Regulation, this Policy, Regulation 44-101 and its Policy Statement, and Regulation 44-102 and its Policy Statement.

(6) **PREP procedures (Regulation 44-103) –** Regulation 44-103 contains the post-receipt pricing (PREP) procedures. All issuers and selling securityholders can use the PREP procedures of Regulation 44-103 to distribute securities, other than rights under a rights offering. Issuers and selling securityholders that wish to distribute securities using the PREP procedures as provided for in Regulation 44-103 should refer to the Regulation, this Policy, and Regulation 44-103 and its Policy Statement. Issuers and selling securityholders that wish to distribute securities under a short form prospectus using the PREP procedures should also refer to Regulation 44-101 and its Policy Statement for any additional requirements.

(7) **Process for prospectus reviews in multiple jurisdictions (Policy Statement 11-202) –** Policy Statement 11-202 respecting Process for Prospectus Reviews in Multiple Jurisdictions ("Policy Statement 11-202") describes the process for filing and review of prospectuses, including investment fund and shelf prospectuses, amendments to prospectuses and related materials in multiple jurisdictions. Policy Statement 11-202 represents the means by which an issuer can enjoy the benefits of co-ordinated review by the securities regulatory authorities in the various jurisdictions in which the issuer has filed a prospectus. Under Policy Statement 11-202, one securities regulatory authority acts as the principal regulator for all materials relating to a filer.

1.3. Definitions

(1) **Asset-backed security –** The definition of "asset-backed security" is the same definition used in Regulation 51-102.

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

The term, a "discrete pool" of assets, can refer to a single group of assets as a "pool" or to multiple groups of

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

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

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

PART 2
GENERAL REQUIREMENTS

2.1. Experience of officers and directors

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

2.2. Role of underwriter

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

2.3. Indirect distributions

Securities legislation prohibits a person from distributing a security unless a prospectus is filed and receipted or the distribution is exempt from the prospectus requirement. Securities legislation also prohibits a person from trading in a security where the trade would be a distribution of such security, unless a prospectus is filed and receipted or the distribution is exempt from the prospectus requirement. Securities legislation defines distribution as including a trade in a security that has not been previously issued, a trade out of a control block and any transaction or series of

transactions involving a purchase and sale of or a repurchase and resale in the course of or incidental to a distribution. In Québec, the definition of "distribution" is broad enough to include these transactions.

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

Where the offering and subsequent resale are in substance a single distribution, in order to comply with securities legislation, the distribution to the public purchasers should be made by way of prospectus in order that the subsequent purchasers have the benefit of prospectus disclosure and all the rights and remedies provided to prospectus purchasers under securities legislation.

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

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

2.4. Over-allocation

Underwriters of a distribution may over-allocate a distribution in order to hold a short position in the securities following closing. This over-allocation position allows the underwriters to engage in limited market stabilization to compensate for the increased liquidity in the market following the distribution. If the market price of the securities decreases following the closing of the distribution, the short position created by the over-allocation position may be filled through purchases in the market. This creates upward pressure on the price of the securities. If the market price of the securities increases following the closing of the distribution, the over-allocation position may be filled through the exercise of an over-allotment option (at the issue offering price). Underwriters would not generally engage in market stabilization activities without the protection provided by an over-allotment option.

Over-allotment options are permitted solely to facilitate the over-allocation of the distribution and consequent market stabilization. Accordingly, an over-allotment option may only be exercised for the purpose of filling the underwriters' over-allocation position. The exercise of an over-allotment option for any other purpose would raise public policy concerns.

To form part of the over-allocation position, securities must be sold to bona fide purchasers as of the closing of the offering. Securities held by an underwriter or in proprietary accounts of an underwriter for sale at a future date do

not form part of the over-allocation position. Further, as discussed below, section 11.2 of the Regulation restricts the distribution of securities under a prospectus to an underwriter. Since section 11.1 of the Regulation requires that all securities that are sold to create the over-allocation position be distributed under the prospectus, securities cannot be sold to an underwriter to increase the size of the over-allocation position.

2.5. Distribution of securities under a prospectus to an underwriter

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

2.6. Certificates

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

(2) **Discretion of the regulator to request certificates –** Subsection 5.15(1) of the Regulation provides the regulator in each jurisdiction except Ontario with the discretion to require additional certificates. The exercise of this discretion will generally be informed by pubic interest concerns, including those discussed in subsection (1) above.

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

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

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

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

2.7. Promoters of issuers of asset-backed securities

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

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

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

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

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

2.8. Special warrants

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

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

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

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

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

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

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

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

2.9. Offerings of convertible or exchangeable securities

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

may reasonably be regarded as incidental to the offering as a whole.

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

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

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

2.10. Lapse date

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

PART 3
FILING AND RECEIPTING REQUIREMENTS

3.1. Extension of 90-day period for issuance of final receipt

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

3.2. Confidential material change reports

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

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

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

3.3. Supporting documents

Material that is filed in a jurisdiction will be made available for public inspection in that jurisdiction, subject to the

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

3.4. Consents of lawyers

The names of lawyers or law firms frequently appear in prospectuses in two ways. First, the underwriters, the issuer and selling securityholders may name the lawyers upon whose advice they are relying. Second, the opinions of counsel that the securities may be eligible for investment under certain statutes may be expressed or opinions on the tax consequences of the investment may be given.

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

3.5. Documents affecting the rights of securityholders

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

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

3.6. Material contracts

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

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

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

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

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

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

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

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

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

(6) **Confidentiality provisions –** Under subsection 9.3(3) of the Regulation, an issuer may omit or redact a provision of a material contract that is required to be filed if an executive officer of the issuer reasonably believes that disclosure of the omitted or redacted provision would violate a confidentiality provision. A provision of the type described in paragraphs 9.3(4)(a), (b) or (c) of the Regulation may not be omitted or redacted even if disclosure would violate a confidentiality provision, including a blanket confidentiality provision covering the entire material contract.

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

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

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

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

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

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

(7) **Disclosure seriously prejudicial to interests of issuer –** Under subsection 9.3(3) of the Regulation, an issuer may omit or redact certain provisions of a material contract that is required to be filed if an executive officer of the issuer reasonably believes that disclosure of the omitted or redacted provision would be seriously prejudicial to the interests of the issuer. One example of disclosure that may be seriously prejudicial to the interests of the issuer is

disclosure of information in violation of applicable Canadian privacy legislation. However, in situations where securities legislation requires disclosure of the particular type of information, applicable privacy legislation generally provides an exemption for the disclosure. Generally, disclosure of information that an issuer or other party has already publicly disclosed is not seriously prejudicial to the interests of the issuer.

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

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

(b) disclosure about related party transactions;

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

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

3.7. Response letters and marked up copies

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

3.8. Undertaking in respect of credit supporter disclosure, including financial statements

Under subparagraph 9.2(a)(x) of the Regulation, an issuer must file an undertaking to file the periodic and timely disclosure of a credit supporter. For credit supporters that are reporting issuers with a current AIF (as defined in Regulation 44-101), the undertaking will likely be to continue to file the documents it is required to file under Regulation 51-102. For credit supporters registered under the 1934 Act, the undertaking will likely be to file the types of documents that would be required to be incorporated by reference into a Form S-3 or Form F-3 registration statement. For other credit supporters, the types of documents to be filed pursuant to the undertaking will be determined through discussions with the regulators on a case-by-case basis.

If an issuer, a parent credit supporter, and a subsidiary credit supporter satisfy the conditions of the exemption in section 34.3 of Form 41-101F1, an undertaking may provide that the subsidiary credit supporter will file periodic and timely disclosure if the issuer and the credit supporters no longer satisfy the conditions of the exemption in that section.

If an issuer and a credit supporter satisfy the conditions the exemption in section 34.4 of Form 41-101F1, an undertaking may provide that the credit supporter will file periodic and timely disclosure if the issuer and the credit supporter no longer satisfy the conditions of the exemption in that section.

For the purposes of such an undertaking, references to disclosure included in the prospectus should be replaced with references to the issuer or parent credit supporter's continuous disclosure filings. For example, if an issuer and subsidiary credit supporter(s) plan to continue to satisfy the conditions of the exemption in section 34.4 of Form 41-101F1 for continuous disclosure filings, the undertaking should provide that the issuer will file with its consolidated financial statements,

(a) a statement that the financial results of the credit supporter(s) are included in the consolidated financial results of the issuer if

(i) the issuer continues to have limited independent operations, and

(ii) the impact of any subsidiaries of the issuer on a combined basis, excluding the credit supporter(s) but including any subsidiaries of the credit supporter(s) that are not themselves credit supporters, on the consolidated financial statements of the issuer continues to be minor, or

(b) for any periods covered by issuer's consolidated financial statements, consolidating summary financial information for the issuer presented in the format set out in subparagraph 34.4(e)(ii) of Form 41-101F1.

3.9. Disclosure of investigations or proceedings

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

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

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

If the facts and circumstances do not warrant the denial of a receipt for a prospectus, securities legislation nonetheless imposes an obligation to provide full, true and plain disclosure of all material facts relating to the securities offered by the prospectus. Disclosure of an ongoing or recently concluded investigation or proceeding relating to a person involved in a proposed distribution may be necessary to meet this standard. The circumstances in which disclosure will be required and the nature and extent of the disclosure will also be determined on a case-by-case basis. In making this determination, all relevant facts, including the allegations that gave rise to the investigation or proceeding, the status of the investigation or proceeding, the seriousness of the alleged breaches that are the subject of the investigation or proceeding and the degree of involvement in the proposed distribution by the person under investigation will be considered.

3.10. Amendments

(1) Subsection 6.5(1) of the Regulation and other securities legislation provides that if a material adverse change

occurs after a receipt for a preliminary prospectus is obtained, an amendment to the preliminary prospectus must be filed as soon as practicable, but in any event within 10 days after the change occurs. If a preliminary prospectus indicates the number or value of the securities to be distributed under the prospectus, an increase in the number or value is, absent unusual circumstances, unlikely to constitute a material adverse change requiring an amendment to the preliminary prospectus.

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

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

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

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

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

3.11. Reduced price distributions

Subsection 7.2(3) of the Regulation permits an issuer to reduce the offering price of the securities being distributed without filing an amendment to the prospectus if certain conditions are satisfied. Satisfying the conditions in this subsection means the underwriter's compensation should decrease by the amount that the aggregate price paid by purchasers for the securities is less than the gross proceeds paid by the underwriter to the issuer or selling securityholder. Section 20.8 of Form 41-101F1 requires disclosure of this fact.

3.12. Licences, registrations and approvals

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

3.13. Registration requirements

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

PART 4
GENERAL CONTENT OF LONG FORM PROSPECTUS

4.1. Style of long form prospectus

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

- using short sentences;
- using definite everyday language;
- using the active voice;
- avoiding superfluous words;
- organizing the document into clear, concise sections, paragraphs and sentences;
- avoiding jargon;
- using personal pronouns to speak directly to the reader;
- avoiding reliance on glossaries and defined terms unless it facilitates understanding of the disclosure;
- avoiding vague boilerplate wording;
- avoiding abstract terms by using more concrete terms or examples;
- avoiding multiple negatives;
- using technical terms only when necessary and explaining those terms;
- using charts, tables and examples where it makes disclosure easier to understand.

Question and answer and bullet point formats are consistent with the disclosure requirements of the Regulation.

4.2. Pricing disclosure

(1) If the offering price or the number of securities being distributed, or an estimate of the range of the offering price or the number of securities being distributed, has been publicly disclosed in a jurisdiction or a foreign jurisdiction as of

the date of the preliminary long form prospectus, section 1.7 of Form 41-101F1 requires the issuer to disclose that information in the preliminary long form prospectus. For example, if an issuer has previously disclosed this information in a public filing or a press release, in a foreign jurisdiction, the information must also be disclosed in the preliminary long form prospectus. If the issuer discloses this information in the preliminary long form prospectus, we will not consider a difference between this information and the actual offering price or number of securities being distributed to be, in itself, a material adverse change for which the issuer must file an amended preliminary long form prospectus.

(2) No disclosure is required under section 1.7 of Form 41-101F1 if the offering price or size of the offering has not been disclosed as of the date of the preliminary long form prospectus. However, given the materiality of pricing or offering size information, subsequent disclosure of this information on a selective basis could constitute conduct that is prejudicial to the public interest.

4.3. Principal purposes – generally

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

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

4.4. MD&A

(1) **Additional information for venture issuers without significant revenue –** Section 8.6 of Form 41-101F1 requires certain venture issuers and IPO venture issuers to disclose a breakdown of material costs whether capitalized, deferred or expensed. A component of cost is generally considered to be a material component if it exceeds the greater of

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

(b) $25,000.

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

(3) **Additional disclosure for issuers with significant equity investees –** Section 8.8 of Form 41-101F1 requires issuers with significant equity investees to provide in their long form prospectuses summarized information about the equity investee. Generally, we will consider that an equity investee is significant if the equity investee would meet the thresholds for the significance tests in Item 35 of Form 41-101F1 using the financial statements of the equity investee and the issuer as at the issuer’s financial year-end.

4.5. Distribution of asset-backed securities

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

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

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

An issuer of asset-backed securities should consider the following factors when preparing its long form prospectus:

(a) The extent of disclosure respecting an issuer will depend on the extent of the issuer's on-going involvement in the conversion of the assets comprising the pool to cash and the distribution of cash to securityholders; this involvement may, in turn, vary dramatically depending on the type, quality and attributes of the assets comprising the pool and on the overall structure of the transaction.

(b) Disclosure about the business and affairs of the issuer should relate to the financial assets underlying the asset-backed securities.

(c) Disclosure about the originator or the seller of the underlying financial assets will often be relevant to investors in the asset-backed securities particularly where the originator or seller has an on-going involvement with the financial assets comprising the pool. For example, if asset-backed securities are serviced with the cash flows from a revolving pool of receivables, an evaluation of the nature and reliability of the future origination or the future sales of underlying assets by the seller to or through the issuer may be a critical aspect of an investor's investment decision.

To address this, the focus of disclosure respecting an originator or seller of the underlying financial assets should deal with whether there are current circumstances that indicate that the originator or seller will not generate adequate assets in the future to avoid an early liquidation of the pool and, correspondingly, an early payment of the asset-backed securities. Summary historical financial information respecting the originator or seller will ordinarily be adequate to satisfy the disclosure requirements applicable to the originator or seller in circumstances where the originator or seller has an ongoing relationship with the assets comprising the pool.

Subsection 10.3(10) of Form 41-101F1 requires issuers of asset-backed securities to describe any person who originated, sold or deposited a material portion of the financial assets comprising the pool, irrespective of whether the person has an on-going relationship with the assets comprising the pool. The securities regulatory authorities consider 33?% of the dollar value of the financial assets comprising the pool to be a material portion in this context.

4.6. Distribution of derivatives and underlying securities

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

(2) If the securities being distributed are convertible into or exchangeable for other securities, or are a derivative of,

or otherwise linked to, other securities, a description of the material attributes of the underlying securities will generally be necessary to meet the requirements of securities legislation that a long form prospectus contain full, true and plain disclosure of all material facts concerning the securities being distributed.

4.7. Restricted securities

Section 10.6 of Form 41-101F1 specifies additional disclosure for restricted securities, including a detailed description of any significant provisions under applicable corporate and securities law that do not apply to the holders of the restricted securities but do apply to the holders of another class of equity securities. An example of such provisions would be rights under takeover bids.

4.8. Credit supporter disclosure

A long form prospectus must include, under Item 33 of Form 41-101F1, disclosure about any credit supporters that have provided a guarantee or alternative credit support for all or substantially all of the payments to be made under the securities being distributed. Disclosure about a credit supporter may be required even if the credit supporter has not provided full and unconditional credit support.

4.9. Exemptions for certain issues of guaranteed securities

Requiring disclosure about the issuer and any applicable credit supporters in a long form prospectus may result in unnecessary disclosure in some instances. Item 34 of Form 41-101F1 provides exemptions from the requirement to include both issuer and credit supporter disclosure where such disclosure is not necessary to ensure that the long form prospectus includes full, true and plain disclosure of all material facts concerning the securities to be distributed.

These exemptions are based on the principle that, in these instances, investors will generally require issuer disclosure or credit supporter disclosure to make an informed investment decision. These exemptions are not intended to be comprehensive and issuers may apply for exemptive relief from the requirement to provide both issuer and credit supporter disclosure, as appropriate.

4.10. Previously disclosed material forward-looking information

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

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

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

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

PART 5
CONTENT OF LONG FORM PROSPECTUS (FINANCIAL STATEMENTS)

5.1. Exemptions from financial disclosure requirements

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

5.2. General financial statement requirements

If an issuer has filed annual or interim financial statements for periods that are more recent than those that the issuer must otherwise include in a long form prospectus before it files the prospectus, sections 32.6 and 35.8 of Form 41-101F1 require the issuer to include those financial statements in the long form prospectus. Issuers should update the disclosure in the prospectus accordingly in order to satisfy the requirement that the long form prospectus contain full, true and plain disclosure of all material facts relating to the securities being distributed. However, if historical financial information derived from more recent annual or interim financial statements is released to the public by the issuer before the financial statements are filed, the prospectus should include the information included in the news release or public communication. There is no specific requirement in the Regulation to otherwise update the prospectus, or pro forma financial statements to reflect the more recent information.

We think the directors of an issuer should endeavor to consider and approve financial statements in a timely manner and should not delay the approval and filing of the statements for the purpose of avoiding their inclusion in a long form prospectus. Once the directors have approved an issuer's financial statements, the issuer should file them as soon as possible.

5.3. Interpretation of issuer – primary business

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

(a) a reverse takeover,

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

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

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

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

of Form 41-101F1 should be read as two years under paragraphs 32.4(a), (b), (d) and (e) of Form 41-101F1.

5.4. Interpretation of issuer – predecessor entity

(1) An issuer is required to provide historical financial statements under Item 32 of the Form 41-101F1 for any predecessor entity. This includes financial statements of acquired businesses that are unrelated and not otherwise individually significant, but together form the basis of the business of the issuer. In these circumstances, the issuer should consider including pro forma financial statements in the prospectus giving effect to the recently completed or proposed acquisition of a predecessor entity.

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

5.5. Sufficiency of financial history included in a long form prospectus

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

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

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

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

(2) In view of our reluctance to grant exemptions from the requirement to include audited historical financial statements, issuers seeking relief should consult with staff on a pre-filing basis.

(3) Considerations relevant to granting an exemption from the requirement to include financial statements, generally for the years immediately preceding the issuer's most recently completed financial year, may include the following:

The issuer's historical accounting records have been destroyed and cannot be reconstructed.

(a) In this case, as a condition of granting the exemption, the issuer may be requested by a securities

regulatory authority or regulator to

(i) represent in writing to the securities regulatory authority or regulator, no later than the time the preliminary long form prospectus is filed, that the issuer made every reasonable effort to obtain copies of, or reconstruct, the historical accounting records necessary to prepare and audit the financial statements, but such efforts were unsuccessful, and

(ii) disclose in the long form prospectus the fact that the historical accounting records have been destroyed and cannot be reconstructed.

The issuer has emerged from bankruptcy and current management is denied access to the historical accounting records necessary to audit the financial statements.

(b) In this case, as a condition of granting the exemption, the issuer may be requested by a securities regulatory authority or regulator to

(i) represent in writing to the securities regulatory authority or regulator, no later than the time the preliminary long form prospectus is filed, that the issuer has made every reasonable effort to obtain access to, or copies of, the historical accounting records necessary to audit the financial statements but that such efforts were unsuccessful, and

(ii) disclose in the long form prospectus the fact that the issuer has emerged from bankruptcy and current management is denied access to the historical accounting records.

The issuer has undergone a fundamental change in the nature of its business or operations affecting a majority of its operations and all, or substantially all, of the executive officers and directors of the company have changed.

(c) The evolution of a business or progression along a development cycle will not be considered to be a fundamental change in an issuer's business or operations. Relief from the requirement to include financial statements of the issuer required by the Regulation for the year in which the change occurred, or for the most recently completed financial year if the change in operations occurred during the issuer's current financial year, generally will not be granted.

(4) If, in unusual circumstances, relief from Part 4 of the Regulation is granted, additional financial information will likely be requested to allow a reader to gain a similar understanding of the entity's financial position and prospects as one would gain from the information required in Part 4 of the Regulation.

Examples of acceptable additional information include audited interim financial statements, audited divisional statements of income or cash flows, financial statements accompanied by an auditor's report containing a reservation of opinion, or audited statements of net operating income.

5.7. Additional information

An issuer may find it necessary, in order to meet the requirement for full, true and plain disclosure contained in securities legislation, to include certain additional information in its long form prospectus, such as separate financial statements of a subsidiary of the issuer in a long form prospectus, even if the financial statements of the subsidiary are included in the consolidated financial statements of the issuer. For example, separate financial statements of a subsidiary may be necessary to help explain the risk profile and nature of the operations of the subsidiary.

5.8. Audit and review of financial statements included or incorporated by reference

into a long form prospectus

(1) Part 4 of the Regulation requires that all financial statements included in a long form prospectus be audited, except financial statements specifically exempted in the Regulation. This requirement extends to financial statements of subsidiaries and other entities even if the financial statements are not required to be included in the long form prospectus but have been included at the discretion of the issuer.

(2) Regulation 52-107 respecting Acceptable Accounting Principles, Auditing Standards and Reporting Currency ("Regulation 52-107") requires that financial statements, other than acquisition statements, that are required to be audited by securities legislation, such as this Regulation, be accompanied by an auditor's report that does not contain a reservation if they were audited in accordance with Canadian GAAS, or contain an unqualified opinion if they were audited in accordance with U.S. GAAS. This requirement applies to all financial statements included in the long form prospectus under Item 32 of Form 41-101F1, including financial statements from entities acquired or to be acquired that are the primary business or the predecessor of the issuer. For greater clarity, subsection 6.2(6) of Regulation 52-107 only applies to financial statements included in the long form prospectus pursuant to Item 35 of Form 41-101F1. Relief may be granted to non-reporting issuers in appropriate circumstances to permit the auditor's report on financial statements to contain a reservation relating to opening inventory if there is a subsequent audited period of at least six months on which the auditor's report contains no reservation and the business is not seasonal. Issuers requesting this relief should be aware that Regulation 51-102 requires an issuer's comparative financial statements be accompanied by an unqualified auditors' report.

5.9. Financial statement disclosure for significant acquisitions

(1) **Applicable principles in Regulation 51-102 –** Generally, it is intended that the disclosure requirements set out in Item 35 of Form 41-101F1 for significant acquisitions follow the requirements in Part 8 of Regulation 51-102. The guidance in Part 8 of the Policy Statement to Regulation 51-102 ("Policy Statement 51-102") apply to any disclosure of a significant business acquisition in a long form prospectus required by Item 35 of Form 41-101F1, except

(a) any headings in Part 8 of Policy Statement 51-102 should be disregarded,

(b) subsections 8.1(1), 8.1(5), 8.7(8), and 8.10(2) of Policy Statement 51-102 do not apply,

(c) other than in subsections 8.3(4) and 8.7(7) of Policy Statement 51-102, any references to a "reporting issuer" should be read as an "issuer",

(d) any references to the "Regulation" should be read as "Regulation 51-102",

(e) any references to a provision in Regulation 51-102 in Policy Statement 51-102 should be read to include the following "as it applies to a long form prospectus pursuant to Item 35 of Form 41-101F1",

(f) any references to "business acquisition report" should be read as "long form prospectus",

(g) in subsection 8.1(2) of Policy Statement 51-102, the term "file a copy of the documents as its business acquisition report" should be read as "include that disclosure in its long form prospectus in lieu of the significant acquisition disclosure required under Item 35 of Form 41-101F1",

(h) in subsection 8.2(1) of Policy Statement 51-102,

(i) the term "The test" should be read as "For any completed acquisition, the test",

(ii) the sentence "For any proposed acquisition of a business or related businesses by an issuer that

has progressed to a state where a reasonable person would believe that the likelihood of the issuer completing the acquisition is high, the test must be applied using the financial statements included in the long form prospectus." should be added after "the business.", and

(iii) the term "business acquisition or report will be required to be filed" should be read as "disclosure regarding the significant acquisition is required to be included in the issuer's long form prospectus",

(i) in subsection 8.3(1) of Policy Statement 51-102, the term "filing a business acquisition report" should be read as "the financial statements used for the optional tests",

(j) in section 8.5, and subsection 8.7(4), of Policy Statement 51-102, the term "filed" wherever it occurs, should be read as "included in the long form prospectus",

(k) in subsection 8.7(1) of Policy Statement 51-102, the term "as already filed" should be read as "included in the long form prospectus",

(l) in subsection 8.7(2) of Policy Statement 51-102, the term "filed under the Regulation" should be read as "included in the long form prospectus",

(m) in subsection 8.7(4) of Policy Statement 51-102, the term "presented" should be read as "for which financial statements are included in the prospectus",

(n) in subsection 8.7(6) of Policy Statement 51-102, the term "for which financial statements are included in the long form prospectus" should be added after "financial year",

(o) in paragraph 8.8(a) of Policy Statement 51-102, the term "prior to the deadline for filing the business acquisition report" should be read as "using the pre-filing procedures referred to in section 5.1 of this Policy",

(p) in subsection 8.9(1) of Policy Statement 51-102, the term "before the filing deadline for the business acquisition report and before the closing date of the transaction, if applicable. Reporting issuers are reminded that many securities regulatory authorities and regulators do not have the power to grant retroactive relief" should be read as "using the pre-filing procedures referred to in section 5.1 of this Policy", and

(q) in subparagraphs 8.9(4)(a)(i) and 8.9(4)(b)(i) of Policy Statement 51-102, the term "no later than the time the business acquisition report is required to be filed" wherever it occurs should be read as "using the pre-filing procedures referred to in section 5.1 of this Policy".

(r) in subparagraph 8.10(1) of Policy Statement 51-102, the term "but must be reviewed" should be added after "may be unaudited".

Completed significant acquisitions and the obligation to provide business acquisition report level disclosure for a non-reporting issuer

(2) For an issuer that is not a reporting issuer in any jurisdiction immediately before filing the long form prospectus (a "non-reporting issuer"), the long form prospectus disclosure requirements for a significant acquisition are generally intended to mirror those for reporting issuers subject to Part 8 of Regulation 51-102. To determine whether an acquisition is significant, non-reporting issuers would first look to the guidance under section 8.3 of Regulation 51-102. The initial test for significance would be calculated based on the financial statements of the issuer and acquired business or related businesses for the most recently completed financial year of each that ended before the date of acquisition.

To recognize the possible growth of a non-reporting issuer between the date of its most recently completed year end and the date of the acquisition and the corresponding potential decline in significance of the acquisition to the

issuer, issuers should refer to the guidance in paragraph 35.1(4)(b) of Form 41-101F1 to perform the optional test. The applicable time period for this optional test for the issuer is the most recently completed interim period or financial year for which financial statements of the issuer are included in the prospectus and for the acquired business or related businesses is the most recently completed interim period or financial year ended before the date of the long form prospectus

The significance thresholds for IPO venture issuers are identical to the significance thresholds for venture issuers.

The timing of the disclosure requirements set out in subsection 35.3(1) of Form 41-101F1 are based on the principles under section 8.2 of Regulation 51-102. For reporting issuers, subsection 8.2(2) of Regulation 51-102 sets out the timing of disclosures for significant acquisitions where the acquisition occurs within 45 days after the year end of the acquired business. However, for IPO venture issuers, paragraph 35.3(1)(d) imposes a disclosure requirement for all significant acquisitions completed more than 90 days before the date of the long form prospectus, where the acquisition occurs within 45 days after the year end of the acquired business. This differs from the business acquisition report filing deadline for venture issuers under paragraph 8.2(2)(b) of Regulation 51-102 where the business acquisition report deadline for any significant acquisition where the acquisition occurs within 45 days after the year end of the acquired business is within 120 days after the date of the acquisition.

(3) **Probable acquisitions –** Our interpretation of the phrase "where a reasonable person would believe that the likelihood of the acquisition being completed is high" is consistent with the concept of a likely contingency in CICA Handbook section 3290 "Contingencies". It is our view that the following factors may be relevant in determining whether the likelihood of an acquisition being completed is high:

(a) whether the acquisition has been publicly announced;

(b) whether the acquisition is the subject of an executed agreement;

(c) the nature of conditions to the completion of the acquisition including any material third party consents required.

The test of whether a proposed acquisition "has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high" is an objective, rather than subjective, test in that the question turns on what a "reasonable person" would believe. It is not sufficient for an officer of an issuer to determine that he or she personally believes that the likelihood of the acquisition being completed is or is not high. The officer must form an opinion as to what a reasonable person would believe in the circumstances. In the event of a dispute, an objective test requires an adjudicator to decide whether a reasonable person would believe in the circumstances that the likelihood of an acquisition being completed was high. By contrast, if the disclosure requirement involved a subjective test, the adjudicator would assess an individual's credibility and decide whether the personal opinion of the individual as to whether the likelihood of the acquisition being completed was high was an honestly held opinion. Formulating the disclosure requirement using an objective test rather than a subjective test strengthens the basis upon which the regulator may object to an issuer's application of the test in particular circumstances.

We generally presume that the inclusion of financial statements or other information is required for all acquisitions that are, or would be, significant under Part 8 of Regulation 51-102. Reporting issuers can rebut this presumption if they can provide evidence that the financial statements or other information are not required for full, true and plain disclosure.

(4) **Satisfactory alternative financial statements or other information –** Issuers must satisfy the disclosure requirements in section 35.5 or section 35.6 of Form 41-101F1 by including either:

(i) the financial statements or other information that would be required by Part 8 of Regulation 51-102; or

(ii) satisfactory alternative financial statements or other information.

Satisfactory alternative financial statements or other information may be provided to satisfy the requirements of subsection 35.5(3) or subsection 35.6(3) of Form 41-101F1 when the financial statements or other information that would be required by Part 8 of Regulation 51-102 relate to a financial year ended within 90 days before the date of the long form prospectus or an interim period ended within 60 days before the date of the long form prospectus for issuers that are venture issuers, and 45 days for issuers that are not venture issuers. In these circumstances, we believe that satisfactory alternative financial statements or other information would not have to include any financial statements or other information for the acquisition or probable acquisition related to:

(a) a financial year ended within 90 days before the date of the long form prospectus; or

(b) an interim period ended within 60 days before the date of the long form prospectus for issuers that are venture issuers, and 45 days for issuers that are not venture issuers.

An example of satisfactory alternative financial statements or other information that we will generally find acceptable would be:

(c) comparative annual financial statements or other information for the acquisition or probable acquisition for at least the number of financial years as would be required under Part 8 of Regulation 51-102 that ended more than 90 days before the date of the long form prospectus, audited for the most recently completed financial period in accordance with section 4.2 of the Regulation, and reviewed for the comparative period in accordance with section 4.3 of the Regulation;

(d) comparative interim financial statements or other information for the acquisition or probable acquisition for any interim period ended subsequent to the latest annual financial statements included in the long form prospectus and more than 60 days before the date of the long form prospectus for issuers that are venture issuers, and 45 days for issuers that are not venture issuers reviewed in accordance with section 4.3 of the Regulation; and

(e) pro forma financial statements or other information required under Part 8 of Regulation 51-102.

If the issuer intends to include financial statements as set out in the example above as satisfactory alternative financial statements, we ask that this be highlighted in the cover letter to the long form prospectus. If the issuer does not intend to include financial statements or other information, or intends to file financial statements or other information that are different from those set out above, the issuer should use the pre-filing procedures in Policy Statement 11-202.

(5) **Acquired business has recently completed an acquisition –** When an issuer acquires a business or related businesses that has itself recently acquired another business or related businesses (an "indirect acquisition"), the issuer should consider whether long form prospectus disclosure about the indirect acquisition, including historical financial statements, is necessary to satisfy the requirement that the long form prospectus contain full, true and plain disclosure of all material facts relating to the securities being distributed. In making this determination, the issuer should consider the following factors:

- if the indirect acquisition would meet any of the significance tests in section 35.1(4) of Form 41-101F1 when the issuer applies each of those tests to its proportionate interest in the indirect acquisition of the business;

- if the amount of time between the separate acquisitions is such that the effect of the first acquisition is not adequately reflected in the results of the business or related businesses the issuer is acquiring.

(6) **Financial statements or other information –** Paragraphs 35.5(2)(b) and 35.6(2)(b) discuss financial

statements or other information for the acquired business or related businesses. This "other information" is intended to capture the financial information disclosures required under Part 8 of Regulation 51-102 other than financial statements. An example of "other information" would include the operating statements, property descriptions, production volumes and reserves disclosures described under section 8.10 of Regulation 51-102.

5.10. Pro forma financial statements for acquisitions of a predecessor entity, a business or businesses acquired by the issuer, or other entity

The financial statements for acquisitions of a predecessor entity, a business or businesses acquired by the issuer, or other entity must be filed under Item 32 of Form 41-101F1, if the entities or businesses satisfy the conditions of paragraph 32.1(a), (b), or (c) of Form 41-101F1. Despite this requirement, acquisitions of a predecessor entity, a business or businesses acquired by the issuer, or other entity may also be subject to the requirements in Item 35 of Form 41-101F1. For example, the long form prospectus should include pro forma financial statements and a description of the entities or businesses.

PART 6
ADVERTISING OR MARKETING ACTIVITIES IN CONNECTION WITH PROSPECTUS OFFERINGS

6.1. Scope

(1) The discussion below is focused on the impact of the prospectus requirement on advertising or marketing activities in connection with a prospectus offering.

(2) Issuers and market participants who engage in advertising or marketing activities must also consider the impact of the registration requirement in each jurisdiction where such advertising or marketing activities are undertaken. Unless an exemption to the registration requirement is available, such activities may be made only by a person who is registered in the appropriate category having regard to the securities that are the subject of the advertising or marketing activities.

(3) Advertising or marketing activities are also subject to regulation under securities legislation and other rules, including those relating to disclosure, and insider trading and registration, which are not discussed below.

6.2. The prospectus requirement

(1) Securities legislation generally provides that no one may trade in a security where that trade would be a distribution unless the prospectus requirement has been satisfied, or an exemption is available.

(2) The analysis of whether any particular advertising or marketing activities is prohibited by virtue of the prospectus requirement turns largely on whether the activities constitute a trade and, if so, whether such a trade would constitute a distribution.

(3) In Québec, since securities legislation has been designed without the notion of a "trade", the analysis is dependent solely on whether the advertising or marketing activities constitute a distribution.

(4) **Definition of "trade" –** Securities legislation (other than the securities legislation of Québec) defines a "trade" in a non-exhaustive manner to include, among other things

- any sale or disposition of a security for valuable consideration,
- any receipt by a registrant of an order to buy or sell a security, and
- any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing.

(5) Any advertising or marketing activities that can be reasonably regarded as intended to promote a distribution of securities would be "conduct directly or indirectly in furtherance" of the distribution of a security and, therefore, would fall within the definition of a trade.

(6) **Definition of distribution –** Even though advertising or marketing activities constitute a "trade" for the purposes of securities legislation (other than the securities legislation of Québec), they would be prohibited by virtue of the prospectus requirement only if they also constitute a distribution under securities legislation. Securities legislation (other than the securities legislation of Québec) defines a distribution to include a "trade" in, among other things, previously unissued securities and securities that form part of a control block.

(7) The definition of distribution under the securities legislation of Québec includes the endeavour to obtain or the obtaining of subscribers or purchasers of previously unissued securities.

(8) **Prospectus exemptions –** It has been suggested by some that advertising or marketing activities, even if clearly made in furtherance of a distribution, could be undertaken in certain circumstances on a prospectus exempt basis. Specifically, it has been suggested that if an exemption from the prospectus requirement is available in respect of a specific distribution (even though the securities will be distributed under a prospectus), advertising or marketing related to such distribution would be exempt from the prospectus requirement. This analysis is premised on an argument that the advertising or marketing activities constitute one distribution that is exempt from the prospectus requirement while the actual sale of the security to the purchaser constitutes a second discrete distribution effected pursuant to the prospectus.

(9) We are of the view that this analysis is contrary to securities legislation. In these circumstances, the distribution in respect of which the advertising or marketing activities are undertaken is the distribution pursuant to the anticipated prospectus. Advertising or marketing must be viewed in the context of the prospectus offering and as an activity in furtherance of that distribution. If it were otherwise, the overriding concerns implicit and explicit in securities legislation regarding equal access to information, conditioning of the market, tipping and insider trading, and the provisions of the legislation designed to ensure such access to information and curb such abuses, could be easily circumvented.

(10) We recognize that an issuer and a dealer may have a demonstrable bona fide intention to effect an exempt distribution and this distribution may be abandoned in favour of a prospectus offering. In these very limited circumstances, there may be two separate distributions. From the time when it is reasonable for a dealer to expect that a bona fide exempt distribution will be abandoned in favour of a prospectus offering, the general rules relating to advertising or marketing activities that constitute an act in furtherance of a distribution will apply.

6.3. Advertising or marketing activities

(1) The prospectus requirement applies to any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a distribution unless a prospectus exemption is available. Accordingly, advertising or marketing activities intended to promote the distribution of securities, in any form, would be prohibited by virtue of the prospectus requirement. Advertising or marketing activities subject to the prospectus requirement may be oral, written or electronic and include the following:

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

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

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

(3) Any activities that form part of a plan or series of activities undertaken in anticipation or in furtherance of a distribution would usually trigger the prospectus requirement, even if they would be permissible if viewed in isolation. Similarly, we may still consider advertising or marketing activities that do not indicate that a distribution of securities is contemplated to be in furtherance of a distribution by virtue of their timing and content. In particular, where a private placement or other exempt distribution occurs prior to or contemporaneously with a prospectus offering, we may consider activities undertaken in connection with the exempt distribution as being in furtherance of the prospectus offering.

6.4. Pre-marketing and solicitation of expressions of interest in the context of a bought deal

(1) In general, any advertising or marketing activities undertaken in connection with a prospectus prior to the issuance of a receipt for the preliminary prospectus are prohibited under securities legislation by virtue of the prospectus requirement.

(2) In the context of a bought deal, a limited exception to the prospectus requirement has been provided in Part 7 of

Regulation 44-101. The exception is limited to communications by a dealer, directly or through any of its directors, officers, employees or agents, with any person (other than another dealer) for the purpose of obtaining from that person information as to the interest that it, or any person that it represents, may have in purchasing securities of the type that are proposed to be distributed, prior to a preliminary prospectus relating to those securities being filed with the relevant securities regulatory authorities.

(3) The conditions set out in Part 7 of Regulation 44-101, including the entering into of an enforceable agreement between the issuer and an underwriter or underwriters who have agreed to purchase the securities and the issuance and filing of a press release announcing the agreement, must be satisfied prior to any solicitation of expressions of interest.

(4) A distribution of securities commences at the time when

- a dealer has had discussions with an issuer or a selling securityholder, or with another dealer that has had discussions with an issuer or a selling securityholder about the distribution, and

- those distribution discussions are of sufficient specificity that it is reasonable to expect that the dealer (alone or together with other dealers) will propose to the issuer or the selling securityholder an underwriting of the securities.

(5) We understand that many dealers communicate on a regular basis with clients and prospective clients concerning their interest in purchasing various securities of various issuers. We will not generally consider such ordinary course communications as being made in furtherance of a distribution. However, from the commencement of a distribution, communications by the dealer, with a person designed to have the effect of determining the interest that it, or any person that it represents, may have in purchasing securities of the type that are the subject of distribution discussions, that are undertaken by any director, officer, employee or agent of the dealer

(a) who participated in or had actual knowledge of the distribution discussions, or

(b) whose communications were directed, suggested or induced by a person referred to in (a), or another person acting directly or indirectly at or upon the direction, suggestion or inducement of a person referred to in (a),

are considered to be in furtherance of the distribution and contrary to securities legislation.

(6) From the commencement of the distribution no communications, market making, or other principal trading activities in securities of the type that are the subject of distribution discussions may be undertaken by a person referred to in paragraph 5(a), above, or at or upon the direction, suggestion or inducement of a person or persons referred to in paragraph 5(a) or (b) above until the earliest of

- the issuance of a receipt for a preliminary prospectus in respect of the distribution,

- the time at which a press release that announces the entering into of an enforceable agreement in respect of a bought deal is issued and filed in accordance with Part 7 of Regulation 44-101, and

- the time at which the dealer determines not to pursue the distribution.

(7) We note that the Investment Dealers Association has adopted IDA by-law 29.13 which is consistent with the above discussion relating to pre-marketing of bought deals of equity securities. However, the principles articulated above apply to all offerings, whether of debt or equity, or a combination.

6.5. Advertising or marketing activities during the waiting period

(1) Securities legislation provides an exception to the prospectus requirement for limited advertising or marketing activities during the waiting period between the issuance of the receipt for the preliminary prospectus and the receipt for the final prospectus. Despite the prospectus requirement, it is permissible during the waiting period to

(a) distribute notices, circulars, advertisements, letters or other communications that

- "identify" the securities proposed to be issued,
- state the price of such securities, if then determined, and
- state the name and address of a person from whom purchases of securities may be made,

provided that any such notice, circular, advertisement, letter or other communication states the name and address of a person from whom a preliminary prospectus may be obtained,

(b) distribute the preliminary prospectus, and

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

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

(3) The "identification" of the security does not permit an issuer or dealer to include a summary of the commercial features of the issue. These details are set out in the preliminary prospectus which is intended as the main disclosure vehicle pending the issuance of the final receipt. The purpose of the permitted advertising or marketing activities during the waiting period is essentially to alert the public to the availability of the preliminary prospectus.

(4) For the purpose of identifying a security, the advertising or marketing material may only

- indicate whether a security represents debt or a share in a company or an interest in a non-corporate entity (e.g. a unit of undivided ownership in a film property) or a partnership interest,
- name the issuer if the issuer is a reporting issuer, or name and describe briefly the business of the issuer if the issuer is not already a reporting issuer (the description of the business should be cast in general terms and should not attempt to summarize the proposed use of proceeds),
- indicate, without giving details, whether the security qualifies the holder for special tax treatment, and
- indicate how many securities will be made available.

6.6. Green sheets

(1) Some dealers prepare summaries of the principal terms of an offering, sometimes referred to as green sheets. Typically green sheets include information beyond the limited information for which an exemption to the prospectus requirement is available during the waiting period. If so, we would consider the distribution of a green sheet to a potential investor to contravene the prospectus requirement.

(2) Including material information in a green sheet or other marketing communication that is not contained in the

preliminary prospectus could indicate a failure to provide in the preliminary prospectus full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and result in the prospectus certificate constituting a misrepresentation.

(3) We may request copies of green sheets and other advertising or marketing materials as part of our prospectus review procedures. Any discrepancies between the content of a green sheet and the preliminary prospectus could result in the delay or refusal of a receipt for a final prospectus and, in appropriate circumstances, could result in enforcement action.

6.7. Advertising or marketing activities following the issuance of a receipt for a final prospectus

Advertising or marketing activities that are not prohibited by the prospectus requirement during the waiting period may also be undertaken on the same basis after a receipt has been issued for the final prospectus relating to the distribution. In addition, the prospectus and any document filed with or referred to in the prospectus may be distributed.

6.8. Sanctions and enforcement

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

6.9. Media reports and coverage

(1) We recognize that an issuer does not have control over media coverage; however, an issuer should take appropriate precautions to ensure that media coverage which can reasonably be considered to be in furtherance of a distribution of securities does not occur after a decision has been made to file a preliminary prospectus or during the waiting period.

(2) We may investigate the circumstances surrounding media coverage of an issuer which appears immediately prior to or during the waiting period and which can reasonably be considered as being in furtherance of a distribution of securities. Action will be taken in appropriate circumstances.

6.10. Disclosure practices

At a minimum, participants in all prospectus distributions should consider the following practices to avoid contravening securities legislation:

- Directors or officers of an issuer should not give interviews to the media immediately prior to or during the waiting period. Directors and officers should normally limit themselves to responding to unsolicited inquiries of a factual nature made by shareholders, securities analysts, financial analysts, the media and others who have a legitimate interest in such information.

- No director or officer of an issuer should make any statement during the period of distribution of securities (which includes the period from the commencement of the distribution as described in subsection 6.4(4) until the closing of the distribution) which constitutes a forecast, projection or prediction with respect to future financial

performance, unless that statement relates to and is consistent with a forecast contained in the prospectus.

- Underwriters and legal counsel have the responsibility of ensuring that the issuer and all directors and officers of the issuer who may come in contact with the media are fully aware of the restrictions applicable during the period of distribution of securities. It is not sufficient to make those restrictions known only to the officers comprising the working group.

- Issuers, dealers and other market participants should develop, implement, maintain and enforce procedures to ensure that advertising or marketing activities that are contrary to securities legislation are not undertaken whether intentionally or through inadvertence.

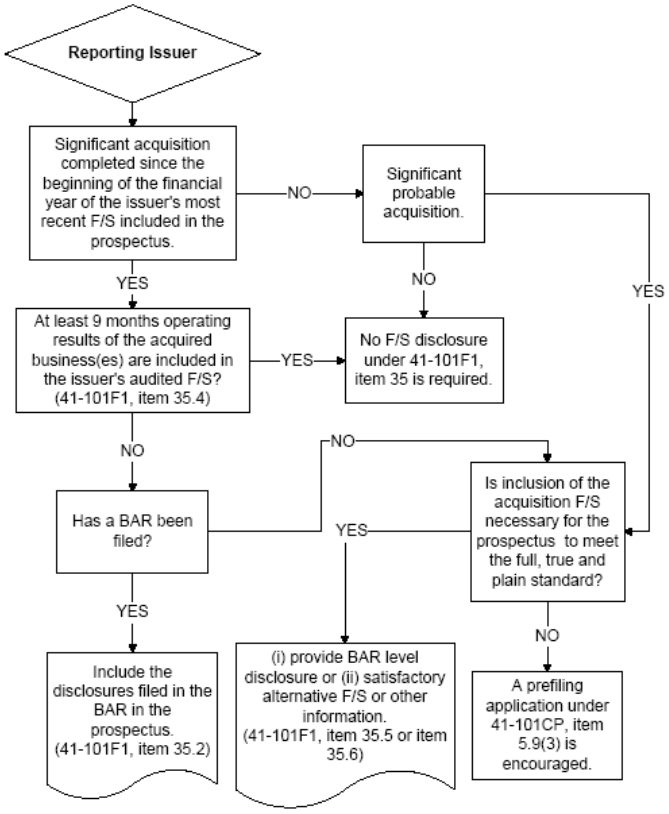
6.11. Misleading or untrue statements

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

Appendix A
Financial Statement Disclosure Requirements for Significant Acquisitions

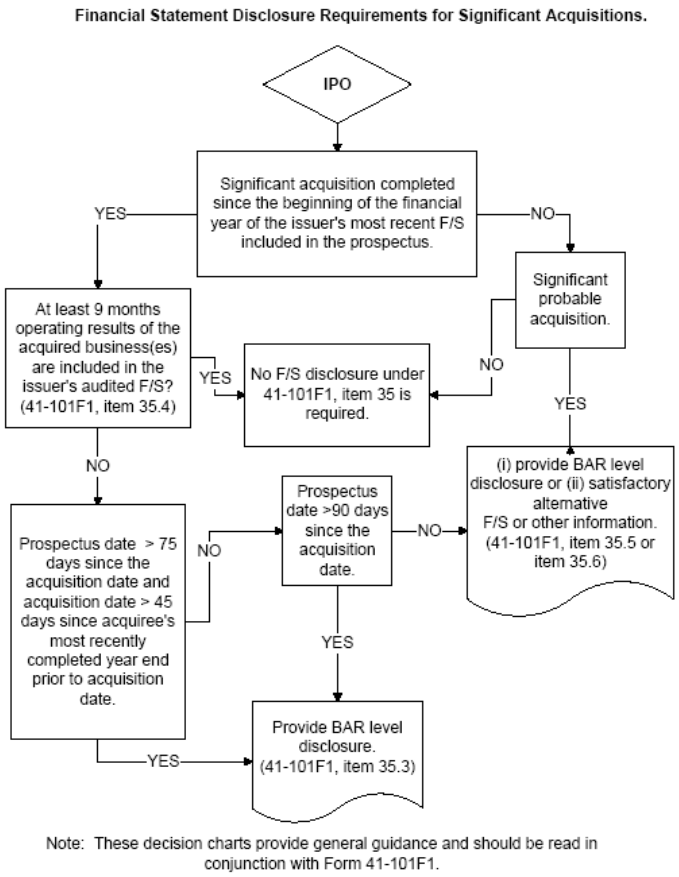
Chart 1 – Reporting Issuer

Financial Statement Disclosure Requirements for Significant Acquisitions.



Note: These decision charts provide general guidance and should be read in conjunction with Form 41-101F1.

Chart 2 – Non-Reporting Issuer



Note: These decision charts provide general guidance and should be read in conjunction with Form 41-101F1.

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