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POLICY STATEMENT TO REGULATION 41-101 RESPECTING GENERAL PROSPECTUS REQUIREMENTS

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* (chapter V-1.1, r. 3) 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* (chapter V-1.1, r. 38) 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* (chapter V-1.1, r. 24), *Regulation 81-106 respecting Investment Fund Continuous Disclosure* (chapter V-1.1, r. 42) 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 respecting Short Form Prospectus Distributions***)** – As set out in section 2.1 of *Regulation 44-101 respecting Short Form Prospectus Distributions* (chapter V-1.1, r. 16), 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 respecting Short Form Prospectus Distributions* 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 respecting Short Form Prospectus Distributions*, including the filing requirements of Part 4 of *Regulation 44-101 respecting Short Form Prospectus Distributions*, 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 respecting Short Form Prospectus Distributions* and its Policy Statement.

(5) **Shelf distributions (Regulation 44-102)** – Issuers qualified under *Regulation 44-101 respecting Short Form Prospectus Distributions* 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* (chapter V-1.1, r. 17) ("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 respecting Short Form Prospectus Distributions* 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 respecting Short Form Prospectus Distributions* and its Policy Statement, and Regulation 44-102 and its Policy Statement.

(6) **PREP procedures (Regulation 44-103)** – *Regulation 44-103 respecting Post-Receipt Pricing* (chapter V-1.1, r. 18) ("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 respecting Short Form Prospectus Distributions* 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.

(8) **Electronic transmission** – *Regulation 13-103 respecting System for Electronic Data Analysis and Retrieval + (SEDAR+)* (chapter V-1.1, r. 2.3) prescribes that each document that is required or permitted to be provided to a regulator, except in Québec, or securities regulatory authority must be transmitted to the regulator, except in Québec, or securities regulatory authority electronically through the System for Electronic Data Analysis and Retrieval + (SEDAR+).

The reference to a document includes any report, form, application, information, material and notice, as well as a copy thereof, and applies to documents that are required or permitted to be filed or deposited with, or delivered, furnished, sent, provided, submitted or otherwise transmitted to, a regulator, except in Québec, or securities regulatory authority.

To reflect the phased implementation of SEDAR+, the Appendix of *Regulation 13-103 respecting System for Electronic Data Analysis and Retrieval + (SEDAR+)* sets out securities legislation under which documents are excluded from being filed or delivered in SEDAR+.

Regulation 13-103 respecting System for Electronic Data Analysis and Retrieval + (SEDAR+) should be consulted when providing any document to a regulator, except in Québec, or securities regulatory authority under the Regulation and this Policy Statement.

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 3 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.

(3) **Accounting terms** - The Regulation uses accounting terms that are defined or used to, in Canadian GAAP applicable to publicly accountable enterprises. In certain cases, some of those terms are defined differently in securities legislation. In deciding which meaning applies, you should consider that *Regulation 14-101 respecting Definitions* (chapter V-1.1, r. 3) provides that a term used in the Regulation and defined in the securities statute of a local jurisdiction has the meaning given to it in the statute unless: (a) the definition in that statute is restricted to a specific portion of the statute that does not govern prospectuses; or (b) the context otherwise requires.

(4) **Acceptable accounting principles other than Canadian GAAP applicable to publicly accountable enterprises** - If an issuer is permitted under *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* (chapter V-1.1, r. 25) to file financial statements in accordance with acceptable accounting principles other than Canadian GAAP applicable to publicly accountable enterprises, then the issuer may interpret any reference in the Regulation to a term or provision defined or used in Canadian GAAP applicable to publicly accountable enterprises as a reference to the corresponding term or provision in the other acceptable accounting principles.

(5) **Financial statements prepared in accordance with different accounting principles** - Issuers intending to include financial statements that are prepared in accordance with different accounting principles should consider the guidance in section 2.8 of *Policy Statement to Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards*.

(6) **Rate-regulated activities** - If a qualifying entity is relying on the exemption in paragraph 5.4(1)(a) of *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards*, then the qualifying entity may interpret any reference in the Regulation to a term or provision defined or used in Canadian GAAP applicable to publicly accountable enterprises as a reference to the corresponding term or provision in Part V of the Handbook.

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.

2.2.1. Minimum offering amount

If the distribution of securities is being done on a best efforts basis, an issuer will need to determine if a minimum offering is required for the issuer to achieve one or more of the stated purposes of the offering, as expressed in the “Use of Proceeds” section of the prospectus. If this is the case, the issuer will need to provide a minimum and maximum offering amount. Otherwise, the issuer is required to provide the cautionary statement prescribed in paragraph 1.4(3)(b) of Form 41-101F1.

Although an issuer may determine that a minimum offering amount is not necessary for the prospectus offering, a regulator may reasonably infer that a minimum offering amount is appropriate in certain circumstances. This could occur, for example, if we have concerns that a minimum amount of proceeds must be raised in order for the issuer to achieve its stated objectives. Also, if we have concerns about an issuer

continuing as a going concern, we may take the view that the issuer cannot achieve its stated objectives unless a minimum offering amount is raised. The imposition of a minimum offering amount by a regulator derives from the general responsibility of a regulator under securities laws to refuse a receipt for a prospectus if it appears that the aggregate of the proceeds from the sale of the securities under the prospectus and other resources of the issuer are insufficient to accomplish the purposes stated in the prospectus, or if it would not be in the public interest to issue a receipt. A benefit of the imposition of a minimum offering amount is that if the issuer fails to raise the minimum amount, investors benefit from an investor protection mechanism that facilitates the return of their subscription funds to them, if previously deposited.

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 2 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 2 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 2 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, 2 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, exchangeable or exercisable securities

Investor protection concerns may arise where the distribution of a convertible, exchangeable or exercisable security is qualified under a prospectus and the subsequent conversion, exchange or exercise of this security is made on a prospectus-exempt basis. Specifically, this concern arises when the subsequent conversion, exchange or exercise occurs within a short period of time – generally 180 days or less - following the purchase of the original security.

The concerns arise because the conversion, exchange or exercise feature of the security may operate to limit or "strip away" the remedies available to an investor for a misrepresentation in a prospectus.

In particular, we are concerned about offerings of subscription receipts, or other types of securities which may be convertible, exchangeable or exercisable within a short period of time following the purchase of the original security (generally 180 days or less), where the investor, when purchasing the subscription receipt, or other similar type of security, is in effect also making an investment decision in respect of the underlying security.

Public interest concerns arise if the subsequent distribution of the underlying security is not part of the initial distribution and is not qualified by the prospectus. These concerns arise because when the security is converted, exchanged or exercised prior to the end of the statutory period for a right of action for rescission under securities legislation (which in many jurisdictions is 180 days from the date of purchase of the

original security), the purchaser of a convertible, exchangeable or exercisable security does not retain the same rights to rescission because the convertible, exchangeable or exercisable security that was issued under the prospectus has been replaced by the underlying security. In these circumstances, the original purchaser should retain the benefit of any remaining statutory right of rescission that would otherwise apply in respect of the convertible, exchangeable or exercisable security. As such, the issuer should provide the original purchaser of the convertible, exchangeable or exercisable security with a contractual right of rescission in respect of the conversion, exchange or exercise transaction.

In some cases, the subsequent distribution of the underlying security may be part of the initial distribution as it is part of a series of transactions involving further purchases and sales in the course of or incidental to a distribution. If this is the case the issuer should consider whether its prospectus should qualify the distribution of both the subscription receipt, or other similar type of security, as well as the underlying security.

The guidance above would not apply to an offering of warrants where the warrants may reasonably be regarded as incidental to the offering as a whole. For example, in the case of a typical special warrant offering, the special warrant converts into i) a common share, and ii) a common share purchase warrant (or a fraction thereof). In such cases, we have generally accepted that the common share purchase warrant component merely represents a “sweetener”, and that the primary investment decision relates to the common share underlying the special warrant. This would also generally be the case with a unit offering where the unit consists of a common share, and a common share purchase warrant. Therefore, the regulator would not generally request that the issuer provide the original purchaser with a contractual right of rescission in respect of the sweetener warrants.

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. An amendment to an ETF facts document also does not change the lapse date for a prospectus of an ETF.

2.11 Rights offerings

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

(2) Subparagraph 8A.2(1)(d)(ii) of the Regulation provides that if there is no published market for the securities, the subscription price must be lower than fair value unless the issuer restricts all insiders from increasing their proportionate interest in the issuer

through the rights offering or a stand-by commitment. Under subsection 8A.2(2), the issuer must deliver to the regulator or, in Québec, the securities regulatory authority evidence of fair value. For this purpose, the regulator or the securities regulatory authority will consider such things as fairness opinions, valuations and letters from registered dealers as evidence of the fair value.

(3) Under paragraph 8A.4(b) of the Regulation, if there is a stand-by commitment for a rights offering, the issuer must deliver to the regulator or, in Québec, the securities regulatory authority evidence that the person providing the stand-by commitment has the financial ability to carry out the stand-by commitment. For this purpose, the regulator or, in Québec, the securities regulatory authority may consider any of the following:

- a statement of net worth attested to by the person making the commitment,

- a bank letter of credit,

- the most recent audited financial statements of the person making the commitment,

- other evidence that provides comfort to the regulator or, in Québec, the securities regulatory authority.

2.12. Revocation of purchase – Alberta

In Alberta, section 130 of the Securities Act (R.S.A.2000, c S 4) provides that an agreement to purchase securities is not binding on the purchaser if the dealer receives notice in writing that the purchaser does not intend to be bound by the agreement to purchase within the timelines set out in the regulations. If access to the final prospectus or any amendment is provided in accordance with subsection 2A.5(2) of the Regulation, the applicable timeline is that set forth in section 2A.4(3) of the Regulation. Otherwise, the applicable timeline is that set forth in Alberta Securities Commission Rule 46-503 Revocation of Purchase.

PART 2A
ACCESS TO A PROSPECTUS

2A.1. Delivery obligation

Securities legislation generally requires a dealer who receives an order to purchase a security offered in a distribution to deliver or send to the purchaser a copy of the prospectus and any amendment. Securities legislation generally requires a dealer who solicits expressions of interest from a prospective purchaser to deliver or send to the prospective purchaser a copy of the preliminary prospectus and any amendment.

Part 2A of the Regulation provides alternative procedures whereby a dealer may provide access to a preliminary prospectus, final prospectus and any amendment. In British Columbia, Québec and New Brunswick, the alternative procedures are structured as an exemption from the delivery obligation, while in all other jurisdictions the alternative

is structured as procedures to provide access to the preliminary prospectus, final prospectus and any amendment. The access procedures and the conditions of the exemption are substantially equivalent and both result in providing access to a preliminary prospectus, final prospectus and any amendment.

In jurisdictions except British Columbia, Alberta, Québec and New Brunswick, under subsection 2A.2(2) of the Regulation, a dealer may satisfy its delivery obligation under securities legislation if access to the document is provided in accordance with subsection 2A.5(2) or (3) of the Regulation.

In Alberta, under section 2A.3 of the Regulation, a dealer may satisfy its access obligation under securities legislation if access to the document is provided in accordance with subsection 2A.5(2) or (3) of the Regulation.

In British Columbia and New Brunswick, a dealer is provided with an exemption from the requirement in securities legislation to send a preliminary prospectus, final prospectus and any amendment if the conditions set out in subsection 2A.6(1) or (2) of the Regulation are met.

In Québec, a dealer is provided with an exemption from the requirement in securities legislation to send a final prospectus and any amendment if the conditions set out in subsection 2A.6(1) of the Regulation are met. It is permissible to provide access to a preliminary prospectus if the document has been filed on SEDAR+ and a receipt has been issued and posted on SEDAR+ for the document.

2A.2. Purchaser's or subscriber's rights

Subsections 2A.4(2), 2A.4(3), 2A.4(4), 2A.6(4) and 2A.6(5) of the Regulation set out the period of time within which a purchaser's or subscriber's right to withdraw or rescind from, revoke or cancel an agreement to purchase a security or a contract to purchase or a subscription for a security must be exercised when access to a prospectus and any amendment is provided.

For the purposes of section 2A.4 and subsections 2A.6(4) and (5) of the Regulation, securities legislation in a jurisdiction sets out any provisions for who may exercise the right to provide a written notice, whether the notice is required and if so by when and to whom it must be provided, when receipt of the notice is deemed to be provided and who has the onus of proving time to provide a notice has expired.

If a purchaser or subscriber requests an electronic or paper copy of the final prospectus or any amendment from the issuer or dealer as permitted by subsections 2A.5(4) or 2A.6(3) of the Regulation, the request will not affect the calculation of the period of time during which the purchaser or subscriber may exercise these rights.

2A.3. News release

To provide access to a prospectus under Part 2A of the Regulation, a news release including prescribed information must be issued and filed on SEDAR+ after a receipt for

the final prospectus and any amendment is posted. The requirements under paragraph 2A.5(2)(b) of the Regulation and the conditions under paragraph 2A.6(1)(b) of the Regulation may be satisfied by including the prescribed information in a news release that contains other information, for example a news release announcing information with respect to the applicable offering."

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 2 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(1.1) 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.

3.5.1 Personal information forms

(1) If issuers are relying upon a previously delivered personal information form or predecessor personal information form pursuant to subsections 9.1(2) or 9.1(3) of the Regulation, issuers are reminded of paragraphs 9.1(2)(b) and 9.1(3)(b), which require that the responses to certain questions in the form must still be correct. Accordingly, in order to meet these requirements issuers should obtain appropriate confirmations from the individual concerned.

(2) Paragraph 9.1(2)(c) of the Regulation requires that in certain circumstances an issuer deliver a copy of a previously delivered personal information form, or “alternative information that is satisfactory to the regulator or, in Québec, the securities regulatory authority”. Our interpretation of what would potentially be alternative information satisfactory to the regulator is, with respect to the previous delivery of an individual’s personal information form, the System for Electronic Data Analysis and Retrieval + (SEDAR+) project number and name of issuer. In most cases this information will be sufficient. Staff will contact issuers in cases where it is not. Issuers wishing to proceed in

this manner should provide the information in the cover letter for the preliminary or pro forma long form prospectus.

(3) If an issuer is delivering a copy of a previously delivered personal information form pursuant to paragraph 9.1(2)© of the Regulation, the issuer should deliver it as a personal information form on SEDAR+, in the same way that a new personal information form would be delivered.

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, an©(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 exempt©:

(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 transac©ns;

(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 respecting Short Form Prospectus Distributions*), 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 subpa©raph 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 and preliminary ETF facts document 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 to the prospectus. In this case, a preliminary ETF facts document for the new class or series must still be filed.

(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.

(6) Marketing materials prepared under section 13.7 or 13.8 of the Regulation cannot amend a preliminary prospectus, a final prospectus or any amendment.

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.

4.1.1. Plan summary for a scholarship plan

To help write the plan summary for a scholarship plan in plain language, scholarship plan providers may use the Flesch-Kincaid methodology to assess the readability of a plan summary. The Flesch-Kincaid grade level scale is a methodology that rates the readability of a text to a corresponding grade level and can be determined by the use of Flesch-Kincaid tests built into commonly used word processing programs.

For French-language documents, scholarship plan providers may wish to consider using other appropriate readability tools.

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.

(3) If a minimum offering amount is not provided and the issuer faces significant short-term expenditures or commitments, the issuer must provide additional disclosure as required under subsections 6.3(3) and (4) of Form 41-101F1 or subsections 4.2(3) and (4) of Form 44-101F1. The issuer must provide disclosure of how it will use the proceeds at different thresholds, describing what business objectives will be accomplished at each threshold as well as the priority of how the proceeds will be used. In describing the use of proceeds under each threshold, the disclosure must also include an assessment of the impact of raising this amount on the issuer's liquidity, operations, capital resources and solvency.

Disclosures that may be necessary to understand this impact may include the following examples:

(a) for issuers without significant revenue and available working capital, disclose the anticipated length of time that the proceeds at each threshold will suffice to meet expected cash requirements;

(b) for issuers that have or anticipate having within the next 12 months any cash flow or liquidity problems, disclose how the proceeds at each threshold may impact the issuer's ability to continue in operation for the foreseeable future and realize assets and discharge liabilities in the normal course of©erations;

(c) for issuers that have significant projects that have not yet commenced operations and the projects have therefore not yet generated revenue, describe how the

proceeds at each threshold may impact the anticipated timing and costs of the project and other critical milestones;

(d) for issuers that have exploration and development expenditures or research and development expenditures required to maintain properties or agreements in good standing, describe how the proceeds at each threshold may impact these properties or agreements.

If the issuer anticipates additional funds from other sources are to be used in conjunction with the proceeds and the available working capital, the issuer will need to sufficiently describe the amounts of those funds, the source of those funds and whether those funds are firm or contingent. If the funds are contingent, the issuer should describe the nature of the contingency.

Depending on the particular circumstances of the issuer, one or more of the above examples may require the provision of a minimum offering amount in the prospectus. Refer to section 2.2.1 of this Policy Statement for additional guidance.

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 cash flow from operating activities 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 cash flow from operating activities in future periods. An issuer should disclose negative cash flow from operating activities as a risk factor under subsection 21.1(1) of Form 41-101F1. For the purposes of this section, in determining cash flow from operating activities, the issuer must include cash payments related to dividends and borrowing costs.

(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 expensed or recognized as assets. 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, using the financial statements of the equity investee and the issuer as at the issuer's financial year-end, either of the following apply:

(a) for an issuer that is not a venture issuer or an IPO venture issuer, the equity investee would meet the thresholds for the significance tests in Item 35 of Form 41-101F1;

(b) for a venture issuer or an IPO venture issuer, the equity investee would meet the thresholds for the significance tests in Item 35 of Form 41-101F1 if "100%" is read as "40%".

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-ba©d 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 $33^{1/3}$% 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

Requests 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.

5.1.1. Presentation of Financial Results

Canadian GAAP applicable to publicly accountable enterprises provides an issuer 2 alternatives in presenting its income: (a) in one single statement of comprehensive income, or (b) in a statement of comprehensive income with a separate income statement. If an issuer presents its income using the second alternative, both statements must be filed to satisfy the requirements of this Regulation. (See subsections 32.2(1.1) and 32.3(3) of Form 41-101F1).

5.2. General financial statement requirements

If an issuer has filed annual financial statements or an interim financial report 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 financial statements or an interim financial report 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 financial 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. The issuer is also required to include the applicable MD&A for the primary business.

However, if the issuer is a reporting issuer whose principal assets are not cash, cash equivalents or an exchange listing, and the acquisition of the primary business represents a significant acquisition, the reporting issuer is subject to the requirements of Item 35 of Form 41-101F1, and not Item 32 of Form 41-101F1, in respect of the financial statements and other disclosure for that acquisition.

A reporting issuer cannot rely on the exemption in subsection 32.1(2) of Form 41-101F1 if the applicable transaction is a reverse takeover. In such circumstances, the reverse takeover acquirer would be considered the primary business under either paragraph 32.1(1)(a) or (b) of Form 41-101F1.

Examples of when a reasonable investor would regard the business or businesses acquired, or proposed to be acquired, to be the primary business of the issuer, thereby triggering the application of Item 32 of Form 41-101F1, are when the acquisition(s) was or will be

(a) a reverse takeover,

(b) a qualifying transaction for a capital pool company under the policies of the TS©enture Exchange,

(c) a qualifying acquisition or qualification transaction by a special purpose acquisition corporation under the policies of a recognized exchange,

(d) an acquisition that satisfies any of the applicable significance tests set out in subsection 8.3(2) of Regulation 51-102 if “30 percent” is read as “100 percent ©e example 1 below),

(e) an acquisition that results in a fundamental change in the primary business of the issuer, as disclosed in the prospectus (see example 2 below).

For paragraph (d), if the issuer qualifies as an IPO venture issuer, it should refer to paragraphs 8.3(2)(a) and (b) of Regulation 51-102 for the applicable significance tests.

An issuer may re-calculate the significance of a transaction using the optional significance tests set out in subsection 8.3(4) of Regulation 51-102, and should refer to paragraph 35.1(4)(b) of Form 41-101F1, except (i) and (ii), for the applicable financial periods and references.

For any proposed acquisition, the issuer should refer to the guidance in subsection 5.9(3) of this Policy to determine whether a reasonable person would believe that the likelihood of the acquisition being completed is high.

In addition to the above, the issuer should consider the facts of each situation, including the facts of the business or related businesses acquired or proposed to be acquired, and determine whether a reasonable investor would regard the primary business of the issuer to be the acquired business or related businesses.

The disclosure in the prospectus, including financial statements and applicable MD&A, must satisfy the requirement that the long form prospectus contain full, true and plain disclosure of all material facts relating to the securities being distributed.

Example 1: A non-venture issuer completed an acquisition exceeding the 100% threshold for any of the significance tests in the year prior to its most recently completed financial year

Facts:

- A non-venture issuer filed a preliminary IPO prospectus on April 1, 2021 that included audited annual financial statements for its financial year ended December 31, 2020.

- The issuer disclosed in the prospectus that it had completed Acquisition A on October 1, 2019.

- Both the issuer and Acquisition A have a December 31 year-end.

The initial determination of the significance of an acquisition would be calculated based on the financial statements of the issuer and the acquired business or related businesses for the most recently completed financial year of each that ended before the acquisition date. In this case, the significance tests would be based on the most recently completed financial year before the acquisition date–(i.e., December 31, 2018) - applying paragraph 35.1(4)(b) of Form 41-101F1 for the purposes of the periods used for the calculation.

Initial tests: Significance tests results based on the most recently completed financial year before the acquisition date (i.e., December 31, 2018)

- The following is a summary of certain key information:

Entity	**Assets**	**Investments**	**Specified profit or loss**
Issuer	$100	n/a	$8
Acquisition A	$125	$80	$7
Significance tests results	*125%*	*80%*	*87.5%*

Acquisition A is regarded to be the primary business of the issuer because it exceeded the 100% threshold for the asset test.

In some circumstances, an issuer may have grown between the date on which the significance tests are calculated and the date of the IPO such that the acquisition is no longer significant enough for a reasonable investor to regard the acquisition as the primary business of the issuer. An issuer could demonstrate this by testing significance using optional significance tests as set out in subsection 8.3(4) of Regulation 51-102, for the periods set out in subparagraphs 35.1(4)(b)(iii) and (iv) of Form 41-101F1. In this

specific example, the applicable time period for the optional significance tests is the year-ended December 31, 2020 for both the issuer and Acquisition A.

We note that financial statements for the year ended December 31, 2020 for Acquisition A are required for the issuer to use the optional significance tests, which can only be used by the issuer after the acquisition date if the business remained substantially intact and was not significantly reorganized, and no significant assets or liabilities were transferred to other entities, as set out in subsection 8.3(6) of Regulation 51-102.

Optional significance tests: Significance tests results based on the most recently completed financial year (i.e., as at December 31, 2020)

- The following is a summary of certain key information:

Entity	**Assets**	**Investments**	**Specified profit or loss**
Issuer (excluding Acquisition A)	$150	n/a	$15
Acquisition A	$117	$80	$7
Significance tests results	*78.0%*	*53.3%*	*46.7%*

Application of paragraph 32.1(1)(b) of Form 41-101F1:

- Although Acquisition A exceeds the 100% threshold for the asset test using the initial significance tests, by applying the optional significance tests, the issuer may be able to demonstrate that a reasonable investor would not regard Acquisition A to be the primary business of the issuer.

- In this circumstance, the issuer experienced growth subsequent to acquiring Acquisition A such that Acquisition A no longer exceeds the 100% threshold. As a result, a reasonable investor would not regard Acquisition A to be the primary business of the issuer. Therefore, the issuer would not be required to provide historical financial statements of Acquisition A under Item 32 of Form 41-101F1.

- However, if the issuer applied the optional significance tests and Acquisition A still exceeded the 100% threshold for any of the significance tests, the issuer would have been required to provide audited financial statements of Acquisition A for enough periods so that when those periods are added to the periods for which the issuer's financial statements are included in the prospectus, the results of the issuer and Acquisition A, either separately or on a consolidated basis, total 3 years. This means that the issuer would have been required to include in the IPO prospectus:

- its audited consolidated financial statements for each of the 3 years ended December 31, 2020, 2019 and 2018, which include the results of Acquisition A from October 1, 2019 onwards, and

- the audited standalone financial statements of Acquisition A for the period from January 1, 2019 to September 30, 2019, and for the year-ended December 31, 2018.

Example 2: An issuer has recently changed its primary business through the acquisition of a new business and the acquisition does not meet the 100% threshold for any of the significance tests.

Facts:

- An IPO venture issuer filed a preliminary IPO prospectus on April 1, 2021.

- The issuer was incorporated on January 1, 2015 to operate a mining exploration and development business.

- On December 19, 2020, the issuer acquired a cannabis cultivation property and announced its intention to convert its existing business to a cannabis cultivation business in 2021.

- The year end of the issuer and the acquired cannabis cultivation business is December 31.

Application of paragraph 32.1(1)(b) of Form 41-101F1:

- To meet the requirements of paragraph 32.1(1)(b) of Form 41-101F1, the issuer must include in the prospectus its audited financial statements for the years ended December 31, 2020 and 2019.

- In addition, given that the issuer has fundamentally changed its primary business to cannabis cultivation activities, the pre-acquisition financial statements for the acquired cannabis cultivation business (along with the related MD&A) must also be included in the prospectus.

- This is because a reasonable investor reading the prospectus would regard the primary business of the issuer to be the cannabis cultivation business, as referenced in paragraph 32.1(1)(b) of Form 41-101F1.

(2) The periods for which the issuer must provide financial statements under Item 32 of Form 41-101F1 for an acquired business or related 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 par©aphs 32.4(1)(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 3 years in paragraph 32.2(6)(a) of Form 41-101F1 should be read as 2 years under paragr©s 32.4(1)(a), (b), (d) and (e) of Form 41-101F1.

In addition, subsection 32.2(6) of Form 41-101F1 requires an issuer to include the financial statements for those entities or businesses set out in paragraphs 32.1(1)(a) and (b) of Form 41-101F1 for as many periods before the acquisition as may be necessary. This is so that when these periods are added to the periods for which the issuer's financial statements are included in the prospectus, the results of the entities or businesses, either separately or on a consolidated basis, total the required number of annual periods (2 or 3 years). These financial statements must be audited.

The issuer must also consider the necessity of including pro forma financial statements pursuant to section 32.7 of Form 41-101F1 to illustrate the impact of the acquisition of the primary business on the issuer's financial position and results of operations. For additional guidance, an issuer should refer to section 5.10 of this Policy.

(3) Reporting issuers are reminded that an acquisition may constitute the acquisition of a business for securities legislation purposes, even if the acquired set of activities or assets d“es not m”et the definition of a "business" for accounting purposes.

5.4. Interpretation of issuer – predecessor entity

(1) An issuer that has not existed for 3 years is required under paragraph 32.1(1)(a) of Form 41-101F1 to provide historical financial statements of any predecessor entity that forms or will form the basis of the business of the issuer (see example 3 below). This may include financial statements of predecessor entities that have been, or are contemplated to be, put together to form the basis of the business of the issuer. If an issuer is not able to provide financial statements of certain predecessor entities that are required in the prospectus to meet the requirements in paragraph 32.1(1)(a) of Form 41-101F1, or if the financial statements for certain predecessor entities are not considered material for an investment decision or otherwise necessary for the prospectus to contain full, true and plain disclosure, the issuer should utilize the pre-filing procedures in Policy Statement 11-202.

Example 3: A newly incorporated non-venture issuer with minimal operations will acquire several real estate properties immediately prior to, or concurrently with, the closing of an IPO

Facts:

- A non-venture issuer is a real estate investment trust incorporated on December 21, 2020 for the purpose of acquiring an initial portfolio of 4 real estate properties in order to generate rental income from the properties. The issuer filed a preliminary IPO prospectus on April 1, 2021.

- Concurrent with the closing of the IPO, the issuer will complete the acquisition of 4 real estate properties, which were previously operated as rental properties

by the vendors, generating rental income. The year end of the issuer and each of the acquired businesses is December 31.

Application of paragraph 32.1(1)(a) of Form 41-101F1:

- The issuer must include in the prospectus its audited financial statements for the period from December 21, 2020 (incorporation) to December 31, 2020.

- In addition, the issuer would need to include audited financial statements in accordance with Item 32 of Form 41-101F1 (and related MD&A) for each of the real estate properties that form the basis of the business of the issuer.

- If either one or more of the rental properties is immaterial, or if the issuer is not able to provide financial statements for one or more of them, the issuer should utilize the pre-filing procedures in Policy Statement 11-202.

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.

(3) *(paragraph repealed).*

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 3 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 director©f 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 an audited interim financial report, audited divisional statements of comprehensive income or cash flows, financial 'tatements accompanied by an auditor's report that expresses a modified opinion, or audited statements of net operating income.

5.7. Additional information that may be required

(1) In order to meet the requirement for full, true and plain disclosure contained in securities legislation, an issuer may be required to include certain additional financial information in its long form prospectus. For instance, in exceptional circumstances, we may require separate financial statements of a subsidiary of the issuer, even if that subsidiary is included in the consolidated financial statements of the issuer. This exception may be necessary to help explain the risk profile and nature of the operations of the subsidiary.

(2) There may be other exceptional scenarios where issuers may be required to include additional financial information, other than financial statements, in a prospectus in order for the prospectus to meet the requirement for full, true and plain disclosure. An example would be where an issuer incurred significant growth through one or more acquisitions prior to the IPO filing resulting in insufficient financial history of the primary business as disclosed in the prospectus and one of the following situations occurred:

- an IPO venture issuer acquired or proposes to acquire a business that would result in any of the applicable significance tests, as calculated in section 8.3 of Regulation 51-102, close to exceeding the 100% threshold;

- the issuer made or proposed to make one or more acquisitions during the relevant period, but financial disclosure was not triggered by Item 32 or 35 of Form 41-101F1;

- the issuer completed a relatively large number of unrelated and individually immaterial acquisitions (that are not predecessor entities) in the relevant periods prior to filing the prospectus.

The types of additional financial information that might be necessary to meet the full, true and plain disclosure standard will vary on a case-by-case basis but may include:

- property or business valuation reports;

- forecasted cash flow information;

- additional disclosure about an acquired business, such as key financial information that explains the financial performance and operations of that business prior to its acquisition.

While it is our expectation that these circumstances will be rare, if an issuer thinks that it might fall into an exceptional circumstance where additional financial information might be required, it could utilize the pre-filing procedures in Policy Statement 11-202.

(3) If the issuer cannot provide sufficient financial history reflected in the financial statements in a prospectus or the 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, we would consider this important when determining whether the prospectus provides full, true and plain disclosure of all material facts relating to the securities being distributed.

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 and Auditing Standards* (chapter V-1.1, r. 24) ("Regulation 52-107") requires that financial statements, other than acquisition statements, that are required to be audited by securities legislation, such as this Regu'ation, be accompanied by an auditor's report that expresses an unmodified opinion if they were audited in accordance with Canadian GAAS or International Standards on Auditing, or contain an unqualified opinion if they were audited in accordance with U.S. PCAOB 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, subsections 3.12(3) and 4.12(6) of Regulation 52-107 only apply 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 qualified opinion relating to opening inventory if there is a subsequent audited period of at'least 6 months on which the auditor's report expresses an unmodified opinion and the business is not seasonal. Issuers requesting this relief should be aware that Regul'tion 51-102 requires that an issuer's comparative financial stat'ments be accompanied by an auditors' report that expresses an unmodified opinion.

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 Pol© 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" s©ld 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 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 ref©ed 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) **Completed significant acquisitions and the obligation to provide business acquisition report level disclosure for a non-reporting issuer –** For an issuer that is not a reporting issuer in any jurisdiction immediately prior to 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, a non-reporting issuer would first look to the guidance under section 8.3 of Regulation 51-102.

The initial tests to determine significance of an acquisition would be calculated based on the financial statements of the issuer and the acquired business or related businesses for the most recently completed financial year of each that ended before the acquisition date.

To recognize the possible growth of an issuer between the date of its most recently completed financial year or interim period and the acquisition date, and the corresponding potential decline in significance of the acquisition relative to the issuer, an issuer could perform optional significance tests as set out in subsection 8.3(4) of Regulation 51-102, for the periods set out in subparagraphs 35.1(4)(b)(iii) and (iv) of Form 41-101F1. Specifically, for an issuer, the applicable time period for the optional significance tests 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.

For more information, see Chart 2 of Appendix A – *Financial Statement Disclosure Requirements for Significant Acquisitions of this Policy*.

The significance tests threshold for an IPO venture issuer is identical to the significance tests threshold for a venture issuer. For any business or related businesses acquired by an IPO venture issuer or venture issuer within 2 years before the date of the prospectus, or proposed to be acquired, which exceed any of the significance tests thresholds, the issuer is required to include in a prospectus the financial statements referred to in subsection 5.3(1) of this Policy.

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 acquisi“ion date.

(3) When interpreting the phrase "where a reasonable person would believe that the likeliho”d of the acquisition being completed is high", 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 acquisiti©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 th©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) a comparative interim financial report 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 a©rdance 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 be considered a significant acquisition under subsection 35.1(4) of Form 41-101F1 if the issuer applied those provisions 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.

(7) Section 3.11 of *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* (chapter V-1.1, r. 25) permits acquisition statements included in a business acquisition report or prospectus to be prepared in accordance with Canadian GAAP applicable to private enterprises in certain circumstances. The ability to present acquisition statements using Canadian GAAP applicable to private enterprises would not extend to a situation where an entity acquired or to be acquired is considered the primary business or the predecessor of the issuer and the issuer must provide financial statements for this acquisition under Item 32.

5.10. Financial statements for acquisitions of a predecessor entity, a business or businesses acquired by reporting and non-reporting issuers

(1) The financial statements for acquisitions of a predecessor entity, a business or businesses acquired by the issuer, or other entity must be included in the prospectus under Item 32 of Form 41-101F1, if the entities or businesses satisfy the conditions of paragraph 32.1(1)(a), (b), or (c) unless, as contemplated in subsection 32.1(2) with respect to paragraph 32.1(1)(a) or (b)

(a) the issuer was a reporting issuer in any jurisdiction of Canada on the acquisition date in the case of a completed acquisition or immediately prior to the prospectus filing in the case of a proposed acquisition,

(b) the issuer did not have only cash, cash equivalent©r an exchange listing as its principal asset, and

(c) the issuer provides disclosure under Item 35 of Form 41-101F1.

The disclosure requirements applicable to a reporting issuer in Item 35 are intended to reflect the requirements that would be prescribed for such acquisitions in the reporting issuer's business acquisition report.

(2) An issuer that is subject to Item 32 must also consider the necessity of including pro forma financial statements pursuant to section 32.7 of Form 41-101F1 to illustrate the impact of the acquisition on the issuer's financial position and results of operations. However, these pro forma financial statements are only required if their inclusion is necessary for the prospectus to contain full, true and plain disclosure of all material facts relating to the securities being distributed. Examples of when pro forma financial statements would likely be necessary are in cases where:

(a) the issuer has acquired multiple businesses over the relevant period; or

(b) the issuer has an active business and has acquired another business that will constitute its primary business going forward.

In certain circumstances, an issuer may need to disclose multiple acquisitions in its prospectus where the acquisitions include an acquisition of a primary business or predecessor entity to which section 32.1 of Form 41-101F1 applies and a significant acquisition to which only item 35 of Form 41-101F1 applies. In this case, the issuer may

wish to present one set of pro forma financial statements reflecting the results of all of the acquisitions, as contemplated separately in each of sections 32.8 and 35.7 of Form 41-101F1. The securities regulatory authority or regulator would not generally object to providing this relief. However the issuer must request the relief when filing its preliminary prospectus.

5.11. Determination of what constitutes a business – mining assets

While an acquisition of mining assets may constitute an acquisition of a business for securities legislation purposes even if the acquired assets do not meet the definition of a "business" for accounting purposes, we would not consider an acquisition of mining assets to be a business requiring financial statements under either Item 32 or Item 35 of Form 41-101F1 if all of the following apply:

(a) the acquisition of the mining assets was an arm's length transaction;

(b) no other assets were transferred and no othe©iabilities were assumed as part of the acquisition;

(c) there has been no exploration, development or production activity on the mining assets in the 3 years (2 years for an IPO venture issuer or a venture issuer) before the date of the preliminary prospectus.

PART 5A
ETF FACTS DOCUMENTS FOR ETFS

5A.1. General Purpose

(1) The Regulation requires that the ETF facts document be in plain language, be no longer than four pages in length, and highlight key information important to investors, including performance, risk and cost. The ETF facts document is incorporated by reference into the prospectus. A sample ETF facts document is set out in Appendix B to this Policy Statement. The sample is provided for illustrative purposes only.

(2) The Regulation and Form 41-101F4 set out detailed requirements on the content and format of an ETF facts document, while allowing some flexibility to accommodate different kinds of ETFs. The Regulation requires an ETF facts document to include only information that is specifically mandated or permitted by the required Form 41-101F4 and to use the headings and sub-headings stipulated in the Regulation and Form 41-101F4. The requirements are designed to ensure that the information in an ETF facts document of an ETF is clear, concise, understandable and easily comparable with information in the ETF facts documents of other ETFs.

(3) The CSA encourages the use and distribution of the ETF facts document as a key part of the sales process in helping to inform investors about ETFs they are considering for investment.

5A.2. Plain Language and Presentation

(1) Section 3B.2 of the Regulation requires that an ETF facts document be written in plain language. Issuers should apply the plain language principles set out in section 4.1 when they prepare an ETF facts document.

(2) Section 3B.2 of the Regulation requires that an ETF facts document be presented in a format that assists in readability and comprehension. The Regulation and Form 41-101F4 also set out certain aspects of an ETF facts document that must be presented in a required format, requiring some information to be presented in the form of tables, charts or diagrams. Within these requirements, ETFs have flexibility in the format used for ETF facts documents.

The formatting of documents can contribute substantially to the ease with which the document can be read and understood.

(3) To help write the ETF facts document in plain language, the Flesch-Kincaid methodology can be used to assess the readability of an ETF facts document. The Flesch-Kincaid grade level scale is a methodology that rates the readability of a text to a corresponding grade level and can be determined by the use of Flesch-Kincaid tests built into commonly used word processing programs. The CSA will generally consider a grade level of 6.0 or less on the Flesch-Kincaid grade level scale to indicate that an ETF facts document is written in plain language. For French-language documents, ETF companies may wish to consider using other appropriate readability tools.

5A.3. Filing

(1) Subparagraph 9.1(1)(a)(iv.2) of the Regulation requires that an ETF facts document for each class and series of the securities of an ETF be filed concurrently with the prospectus.

(2) The most recently filed ETF facts document for an ETF is incorporated by reference into the prospectus under section 15.2 of the Regulation, with the result that any ETF facts document filed under the Regulation after the date of receipt for the prospectus supersedes the ETF facts document previously filed.

(3) Any amendment to an ETF facts document must be in the form of an amended and restated ETF facts document. Accordingly, the commercial copy of an amended and restated ETF facts document can only be created by reprinting the entire document.

(4) An amendment to the ETF facts document should be filed when there is a material change to the ETF that requires a change to the disclosure in the ETF facts document. This is consistent with the requirement in paragraph 11.2(1)(d) of Regulation 81-106 respecting Investment Fund Continuous Disclosure. We would not generally consider changes to the top 10 investments, investment mix or year-by-year returns of the ETF to be material changes. We would generally consider changes to the ETF's investment objective or risk level to be mater© changes under securities legislation.

(5) Subsection 6.2(e) of the Regulation requires an amendment to a prospectus to be filed whenever an amendment to an ETF facts document is filed. If the substance of the amendment to the ETF facts document would not require a change to the text of the prospectus, the amendment to the prospectus would consist only of the certificate page referring to the ETF to which the amendment to the ETF facts document pertains.

(6) General Instruction (9) of Form 41-101F4 permits an ETF to disclose a material change and proposed fundamental change, such as a proposed merger, in an amended and restated ETF facts document. We would permit flexibility in selecting the appropriate section of the amended and restated ETF facts document to describe the material change or proposed fundamental change. However, we also expect that the variable sections of the ETF facts document, such as the Top 10 investments and investment mix, to be updated within 60 days before the date of the ETF facts document. In addition, if an ETF completes a calendar year or files a management report of fund performance prior to the filing of the amended and restated ETF facts document, we expect the ETF facts document to reflect the updated information.

5A.4. Website

(1) Section 3B.4 of the Regulation requires an ETF to post its ETF facts document on its designated website. An ETF facts document should remain on the designated website at least until the next ETF facts document for the ETF is posted. Only a final ETF facts document filed under this Regulation should be posted to a designated website. A preliminary or pro forma ETF facts document, for example, should not be posted. An ETF facts document must be displayed in an easily visible and accessible location on the designated website. It should also be presented in a format that is convenient for both reading online and printing on paper.

(2) Many ETFs have fund profiles which they can choose to make available on their designated website, or another website. These profiles provide summary information about the ETF that supplements the information contained in the ETF Facts and that is typically updated on a more frequent basis. In cases where the ETF Facts makes a cross-reference on the ETF's designated website or another website to highlight the availability of more up-to-date trading and pricing information for an ETF, the information should be presented in a manner that is consistent with what is disclosed under the Quick Facts, Trading Information and Pricing Information sections of the ETF Facts, including the manner of calculating the information that is presented.

5A.5. Delivery

(1) The Regulation contemplates delivery to all investors of an ETF facts document in accordance with the requirements in securities legislation. It does not require the delivery of the prospectus, or any other documents incorporated by reference into the prospectus, unless requested. ETFs or dealers may also provide purchasers with any of the other disclosure documents incorporated by reference into the prospectus.

(2) For delivery of the ETF facts document, subsection 3C.3(1) of the Regulation permits an ETF facts document to be combined with certain other materials or documents. With the exception of a general front cover, a table of contents or a trade confirmation, subsection 3C.3(4) requires the ETF facts document to be located as the first item in the package of documents or materials.

(3) Nothing in the Regulation prevents an ETF facts document from being prepared in other languages, provided that these documents are delivered or sent in addition to any disclosure document filed and required to be delivered in accordance with the Regulation. We would consider such documents to be sales communications.

(4) The Regulation and related forms contain no restrictions on the delivery of non-educational material such as promotional brochures with the prospectus. This type of material may, therefore, be delivered with, but cannot be included within, or attached to, the prospectus. The Regulation does not permit the binding of educational and non-educational material with the ETF facts document. The intention of the Regulation is not to unreasonably encumber the ETF facts document with additional documents.

PART 5B
EXEMPTIVE RELIEF TO FILE PROSPECTUS PREPARED IN ACCORDANCE WITH FORM 81-101F1

5B.1. Previous Form Exemptions

A mutual fund granted an exemption to file a simplified prospectus prepared in accordance with Form 81-101F1 and an annual information form prepared in accordance with Form 81-101F2 in lieu of a prospectus prepared in accordance with Form 41-101F2, may comply with such an exemption after January 5, 2022 by filing a simplified prospectus in accordance with Form 81-101F1.

PART 6
ADVERTISING OR MARKETING ACTIVITIES IN CONNECTION WITH PROSPECTUS OFFERINGS OF ISSUERS OTHER THAN INVESTMENT FUNDS

6.0. Application

This Part applies to issuers other than investment funds filing a prospectus in the form of Form 41-101F2 or Form 41-101F3.

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 other persons that engage in advertising or marketing activities should also consider the impact of the requirement to register as a dealer in each jurisdiction where such advertising or marketing activities are undertaken. In particular, the persons would have to consider whether their activities result in the party being in the business of

trading in securities. For further information, refer to section 1.3 of *Policy Statement to Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* (Decision 2011-PDG-0074, 2011-06-07).

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.

Although the "testing of the waters" exemption in subsection 13.4(2) of the Regulation allows an investment dealer to solicit expressions of interest from accredited investors before the filing of a preliminary prospectus for an initial public offering, we note that the exemption is

- a limited accommodation to issuers and investment dealers that want a greater opportunity to confidentially test the waters before filing a preliminary prospectus for an initial public offering, and

- subject to a number of conditions to address our regulatory concerns, including conditions to deter conditioning of the market.

(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.

6.3A. Research reports

(1) In order to address regulatory concerns such as conditioning of the market, an investment dealer involved with a potential prospectus offering for an issuer should not

issue a research report on the issuer or provide media commentary on the issuer prior to the filing of a preliminary prospectus, the announcement of a bought deal under section 7.2 of *Regulation 44-101 respecting Short Form Prospectus Distributions* (chapter V-1.1, r. 16) or the filing of a shelf prospectus supplement under Regulation 44-102, unless the investment dealer has appropriate "ethical wall" policies and procedures in place between:

- the business unit that proposes to issue the research report or provide media commentary, and

- the business unit that proposes to act as underwriter for the distribution.

We understand that many investment dealers have adopted written ethical wall policies and procedures designed to contain non-public information about an issuer and assist the investment dealer and its officers and employees in complying with applicable securities laws relating to insider trading and trading by "tippees" (these laws are summarized in sections 3.1 and 3.2 of National Policy 51-201: *Disclosure Standards* (Decision 2002-C-0244, 2002-07-09)).

(2) Any research reports would have to comply with section 7.7 of the Universal Market Integrity Rules of the Investment Industry Regulatory Organization of Canada and any applicable local rule.

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 exemption from the prospectus requirement has been provided in Part 7 of *Regulation 44-101 respecting Short Form Prospectus Distributions*. The exemption 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 respecting Short Form Prospectus Distributions*, including the entering into of a bought deal agreement between the issuer and an underwriter or underwriters who have agreed to purchase the securities and the issuance and filing of a news release announcing the agreement, must be satisfied prior to any solicitation of expressions of interest.

(4) We consider that 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.

CSA staff do not agree with interpretations that a distribution of securities does not commence until a later time (e.g., when a proposed engagement letter or a proposal for an underwriting of securities with indicative terms is provided by a dealer to an issuer or a selling securityholder).

Similarly, we do not agree with interpretations that if an issuer rejects a proposed engagement letter or a proposal for an underwriting from a dealer, the "distribution" has ended and the dealer could immediately resume communications with potential investors concerning their interest in purchasing securities from the issuer. In these situations, we expect the dealer not to resume communications with potential investors until after a "cooling off" period. We have concerns that such interpretations would allow dealers to circumvent the pre-marketing restrictions by continuing to test the waters between a series of rejected proposals in close succession until the issuer finally accepts a proposal.

By way of example, the following are situations which would indicate that "sufficient specificity" has occurred and a distribution of securities has commenced:

- Following discussions with an issuer, a dealer provides the issuer with a document outlining possible prospectus financing scenarios at one or more specified share price ranges. Subsequently, management of the issuer recommends to its board of directors that the issuer pursue a prospectus financing at a share price range contemplated by the dealer, the directors of the issuer give management broad authority to execute on a prospectus financing opportunity within that share price range if one arose and the dealer is advised of this approval.

- Following discussions with an issuer, a dealer advises the issuer that the market was looking good for a possible prospectus offering and that the dealer would likely provide indicative terms for an offering later that day.

CSA staff are aware that a practice has developed for "non-deal road shows" where issuers and dealers will meet with institutional investors to discuss the business and affairs of the issuer. If such a non-deal road show was undertaken in anticipation of a prospectus offering, it would generally be prohibited under securities legislation by virtue of the prospectus requirement.

CSA staff would also have selective disclosure concerns if the issuer provided the institutional investors with material information that has not been publicly disclosed. In this regard, see the guidance in Part V of National Policy 51-201: *Disclosure Standards* (Decision 2002-C-0244, 2002-07-09).

(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 eff54ublic5454tetermining 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 news release that announces the entering into of a bought deal agreement is issued and filed in accordance with Part 7 of *Regulation 44-101 respecting Short Form Prospectus Distributions*, and

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

(7) We note that the Investment Industry Regulatory Organization of Canada has adopted IROC Rule 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 securities, or a combination.

(8) The bought deal exemption in Part 7 of *Regulation 44-101 respecting Short Form Prospectus Distributions* is a limited accommodation to facilitate issuers seeking certainty of financing. This policy rationale is reflected in the terms and conditions of the exemption. In particular, in order for the exemption to be available for use, the issuer must have entered into a bought deal agreement with an underwriter who has, or underwriters who have, agreed to purchase the securities on a firm commitment basis. The definition of bought deal agreement in subsection 7.1(1) in *Regulation 44-101 respecting Short Form Prospectus Distributions* provides that a bought deal agreement must not have:

- a “market-out clause” (as defined in subsection 7.1(1) of *Regulation 44-101 respecting Short Form Prospectus Distributions*),

- an upsizing option (other than an over-allotment option as defined in section 1.1 of the Regulation), or

- a confirmation clause (other than a confirmation clause that complies with section 7.4 of *Regulation 44-101 respecting Short Form Prospectus Distributions*).

(9) Section 7.3 of *Regulation 44-101 respecting Short Form Prospectus Distributions* allows a bought deal agreement to be modified in certain circumstances. Subsection 7.3(2) sets out conditions for any amendment to increase the number of securities to be purchased by the underwriters. Subsection 7.3(4) sets out conditions for any amendment to provide for a different type of securities to be purchased by the underwriters, and a different price for the securities. Subsection 7.3(5) sets out conditions for any amendment to add additional underwriters or remove an underwriter. Subsection 7.3(6) provides that a bought deal agreement may be replaced with a more extended form of underwriting agreement if the more extended form of underwriting agreement complies with the terms and conditions that apply to a bought deal agreement under Part 7 of *Regulation 44-101 respecting Short Form Prospectus Distributions*. Subsection 7.3(7) provides that the parties may agree to terminate a bought deal agreement if the parties decide not to proceed with the distribution. However, section 7.3 is not intended to prevent a party from exercising a termination right under a provision in a bought deal agreement, or a more extended form of underwriting agreement, that permits a party to terminate the agreement if:

- another party or person performs, or fails to perform, certain actions, or

- certain events occur or fail to occur.

(10) Subsection 7.3(3) of *Regulation 44-101 respecting Short Form Prospectus Distributions* provides that a bought deal agreement may be amended to reduce the number of securities to be purchased, or the price of the securities, provided the amendment is made on or after the date which is four business days after the date the original agreement was entered into. As noted above, the policy rationale of the bought deal exemption is to facilitate issuers seeking certainty of financing. This policy rationale has not been met when a bought deal agreement is amended to provide for a smaller offering or a lower share price, particularly within a short period of time after the original agreement has been signed. If an underwriter does not wish to assume the risk of a bought deal, the underwriter may want to consider proposing a fully marketed offering to the issuer, rather than a bought deal.

(11) Section 7.4 of *Regulation 44-101 respecting Short Form Prospectus Distributions* provides that a bought deal agreement may not contain a confirmation clause (as defined in section 7.1 of *Regulation 44-101 respecting Short Form Prospectus Distributions*) unless certain conditions apply. In particular, confirmation clauses are not permitted

unless the confirmation period is only between the day on which the bought deal agreement is signed, and the next business day.

Since "sufficient specificity", as discussed in subsection (4), will have occurred before the time the signed bought deal agreement is presented to the issuer pursuant to paragraph 7.4(1)(a) of *Regulation 44-101 respecting Short Form Prospectus Distributions*, underwriters cannot communicate with investors about the issuer or the distribution until the bought deal agreement is signed by the issuer, confirmed by the lead underwriter in accordance with section 7.4 of *Regulation 44-101 respecting Short Form Prospectus Distributions*, and announced in a news release. Furthermore, the issuer and underwriters would be bound by insider trading and tippee prohibitions in securities legislation until the news release announcing the bought deal has been broadly disseminated.

(12) We note that the use of confirmation clauses in bought deal agreements under Part 7 of *Regulation 44-101 respecting Short Form Prospectus Distributions* is different from the practice of "overnight marketed deals". In an overnight marketed offering, the issuer is not relying on the bought deal exemption in Part 7 of *Regulation 44-101 respecting Short Form Prospectus Distributions*. Instead, in a typical overnight marketing offering,

- On the first day (day 1), the issuer will file a preliminary prospectus with "bullets" for size of the offering and the price per security.

- After a receipt for the preliminary prospectus is issued on day 1, the underwriters will, after the close of trading, market the deal "overnight" to institutional and other investors.

- On the morning of the second day (day 2), the underwriters will provide the issuer with details of the proposed size of the offering and the price per security. If the issuer accepts the proposed terms, the issuer and the underwriters will sign an agreement in which the underwriters agree to purchase the base amount of the offering on a firm commitment basis. The issuer will then issue and file a news release announcing the agreement.

- Later on day 2, the issuer will file an amended and restated preliminary prospectus that discloses the agreement, the size of the offering and the price per security.

- Alternatively, if the issuer does not accept the terms proposed by the underwriters after the overnight marketing, the issuer will withdraw the preliminary prospectus.

(13) We note that underwriters often specify in a bought deal agreement, or a more extended form of underwriting agreement, that the issuer must file and obtain a receipt for the final prospectus within a short period of time after the first comment letter in respect of the preliminary prospectus is issued by staff of the principal regulator under *Policy Statement 11-202 respecting Process for Prospectus Reviews in Multiple Jurisdictions*

(Decision 2008-PDG-0060, 2008-02-22). However, issues may arise in the first comment letter that cannot be resolved within the time frame contemplated in the bought deal agreement or the underwriting agreement. Accordingly, issuers and underwriters should not expect that all comments can be resolved within a particular period of time.

As noted above, the policy rationale of the bought deal exemption is to facilitate issuers seeking certainty of financing. This policy rationale may not have been met if a bought deal agreement is terminated because regulatory comments are not settled within a short period of time after the first comment letter. If an underwriter does not want to assume the risk of a bought deal and allow for a reasonable period of time for the issuer to settle any comments from staff of the principal regulator, the underwriter may want to consider proposing a fully marketed offering to the issuer, rather than a bought deal.

(14) If an underwriter enters into an engagement letter, or similar agreement, with an issuer solely for the purpose of conducting due diligence before a potential bought deal under Part 7 of *Regulation 44-101 respecting Short Form Prospectus Distributions*, that event will not, in and of itself, indicate that "sufficient specificity" has been achieved as discussed in subsection (4), provided that the engagement letter does not contain any other information which indicates that "it is reasonable to expect that the dealer will propose to the issuer an underwriting of securities".

If permitted by the issuer, an underwriter may want to conduct sufficient due diligence before proposing a bought deal under Part 7 of *Regulation 44-101 respecting Short Form Prospectus Distributions*. Where an issuer is required to file technical reports under *Regulation 43-101 respecting Standards of Disclosure for Mineral Projects* (chapter V-1.1, r. 15), the underwriter may want to confirm, as part of its due diligence before proposing a bought deal, that the issuer's technical reports are compliant with the requirements of that regulation.

As noted above, the policy rationale of the bought deal exemption is to facilitate issuers seeking certainty of financing. While we recognize that a bought deal agreement or a more extended form of underwriting agreement often contain provisions giving the underwriters a right to terminate the agreement under a "due diligence out", these provisions should not be used in a way that would defeat the policy rationale of the bought deal exemption.

Where underwriters are not willing or able to conduct sufficient due diligence in advance of proposing a bought deal to an issuer, the underwriters may want to consider proposing a fully marketed offering to the issuer, rather than a bought deal.

6.4A. Testing of the waters exemption – IPO issuers

(1) The testing of the waters exemption for issuers planning to conduct an initial public offering (IPO issuers) in subsection 13.4(2) of the Regulation is intended for issuers that have a reasonable expectation of filing a long form prospectus in respect of an initial public offering (IPO) in at least one jurisdiction of Canada. The exemption permits an IPO issuer, through an investment dealer, to determine interest in a potential IPO through

limited confidential communication with accredited investors. The purpose of the exemption is to provide a way for an IPO issuer to ascertain if there is adequate investor interest before starting the IPO process and incurring costs (e.g., retaining advisors to engage in formal due diligence activities and draft a preliminary prospectus).

The exemption is not intended to allow an investment dealer to "pre-sell" the IPO and "fill their book" before the filing of a preliminary prospectus. Consequently, subsection 13.4(4) of the Regulation provides that if any investment dealer solicits an expression of interest under the exemption, the issuer must not file a preliminary prospectus in respect of an IPO until the date which is at least 15 days after the date on which an investment dealer last solicited an expression of interest from an accredited investor under the exemption.

(2) The testing of the waters exemption for IPO issuers permits an investment dealer to solicit expressions of interest from accredited investors if the conditions of the exemption are met. Any investment dealer relying on this exemption would be required to be registered as an investment dealer (unless an exemption from registration is available in the circumstances) in any jurisdiction where it engages in the business of trading, including engaging in acts in furtherance of a trade (which would include soliciting expressions of interest).

(3) In order for the exemption to be used, paragraph 13.4(2)(b) of the Regulation provides that the IPO issuer must not be a "public issuer", as defined in subsection 13.4(1). This means that the IPO issuer must not be a public company in any country, and must not have its securities traded in any country on a stock exchange, marketplace or any other facility for bringing together buyers and sellers of securities and with respect to which trade data is publicly reported. Similarly, subsection 13.4(7) of the Regulation provides that the exemption is not available for use if:

- any of the IPO issuer's securities are held by a control person that is a public issuer, and

- the IPO of the IPO issuer would be a material fact or material change with respect to the control person.

(4) Subsection 13.4(5) of the Regulation requires an issuer to keep a written record of any investment dealer that it authorized to act on its behalf in making solicitations in reliance on the testing of the waters exemption for IPO issuers in subsection 13.4(2) of the Regulation. The issuer must also keep copies of the written authorizations referred to in paragraph 13.4(2)(d) of the Regulation. To meet this requirement, we would expect the issuer to record the name of a contact person for each investment dealer that it authorized and contact information for that person. During compliance reviews, securities regulators may ask the issuer to provide them with copies of these documents.

(5) The testing of the waters exemption for IPO issuers may be used at the same time by more than one investment dealer in respect of the same issuer, provided that the issuer

has authorized each investment dealer in accordance with paragraph 13.4(2)(d) of the Regulation.

(6) Paragraph 13.4(6)(a) of the Regulation requires an investment dealer to keep a written record of the accredited investors that it solicits pursuant to the exemption, a copy of any written material and written approval referred to in subparagraph 13.4(3)(a)(i) and a copy of the written confirmations referred to in paragraph 13.4(3)(b). To meet this requirement, we would expect the investment dealer to record the name of the contact person for each accredited investor that it solicited and contact information for that person. During compliance reviews, securities regulators may ask the investment dealer to provide them with copies of these documents.

(7) An investment dealer soliciting expressions of interest in accordance with the testing of the waters exemption for IPO issuers in subsection 13.4(2) of the Regulation may only solicit expressions of interest from an accredited investor if certain conditions are met. One condition in paragraph 13.4(3)(b) of the Regulation is that before providing the investor with information about the proposed offering, the investment dealer must obtain confirmation in writing from the investor that the investor will keep information about the proposed offering confidential, and will not use the information for any purpose other than assessing the investor's interest in the offering, until the earlier of the information being generally disclosed in a preliminary long form prospectus, or the issuer confirming in writing that it will not be pursuing the potential offering. An investment dealer may obtain this written confirmation from an accredited investor by return email. Here is a sample email that an investment dealer could use:

"We want to provide you with information about a proposed initial public offering of securities. Before we can provide you with this information, you must confirm by return email that:

- You agree to receive certain confidential information about a proposed initial public offering by an issuer.

- You agree to keep the information about the proposed offering confidential and not to use the information for any purpose other than assessing your interest in the offering, until the earlier of (i) the information being generally disclosed in a preliminary prospectus or otherwise, or (ii) the issuer confirming in writing that it will not be pursuing the potential offering.".

An accredited investor may respond to this email by simply stating "I so confirm".

We remind investment dealers and accredited investors that they should not be using the information received under the testing of the waters exemption for IPO issuers in a way that may be considered abusive. For example, we would consider it inappropriate for an accredited investor to use information about the IPO issuer to make decisions about trading in securities of competitors of the IPO issuer. We note that CSA staff may investigate subsequent trading in securities of competitors of IPO issuers that have used the testing of the waters exemption.

(8) Subparagraph 13.4(3)(a)(i) of the Regulation requires that any written materials used by an investment dealer to solicit expressions of interest under the testing of the waters exemption be approved by the issuer. We remind issuers and investment dealers that:

- Any preliminary prospectus filed by the issuer subsequent to the solicitation must contain full, true and plain disclosure of all material facts.

- Selective disclosure concerns would arise if accredited investors were provided with material facts that are not disclosed in any subsequent preliminary prospectus.

(9) We would expect an investment dealer seeking to solicit accredited investors in reliance on the testing of the waters exemption for IPO issuers to:

- conduct reasonable diligence to determine that an investor is an accredited investor before soliciting the investor, and

- retain all documentation that they receive in this regard.

(10) Since soliciting accredited investors under the testing of the waters exemption for IPO issuers would be an act in furtherance of a trade, an issuer and an investment dealer acting on behalf of the issuer would not be able to rely on the exemption if the issuer was subject to a cease trade order.

(11) We refer issuers and investment dealers to the guidance in section 6.10 of this Policy Statement. We note that issuers and investment dealers should have procedures in place to prevent “leaks” of information before the filing of a preliminary prospectus for an initial public offering.

6.5. Advertising or marketing activities during the waiting period

(1) Securities legislation provides for certain exceptions 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 a preliminary prospectus notice (as defined in the Regulation) that

- “identifies” the securities proposed to be issued,

- states the price of such securities, if then determined, and

- states the name and address of a person from whom purchases of securities may be made,

provided that any such notice states the name and address of a person from whom a preliminary prospectus may be obtained and contains the legend required by subsection 13.1(1) of©e Regulation;

(b) distribute the preliminary prospectus;

(c) provide standard term sheets, if the conditions in section 13.5 of the Regulation are complied with;

(d) provide marketing materials, if the cond©ons in section 13.7 of the Regulation are complied with; and

(e) 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 contemplated by paragraph 6.5(1)(a) above 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 marke61ublicctivities 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 as contemplated by paragraph 6.5(1)(a) above, 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.

6.5A. Standard term sheets

(1) The standard term sheet provisions in sections 13.5 and 13.6 of the Regulation, section 7.5 of *Regulation 44-101 respecting Short Form Prospectus Distributions*,

section 9A.2 of Regulation 44-102 and section 4A.2 of Regulation 44-103 permit an investment dealer to provide a standard term sheet to a potential investor if the conditions of the applicable provision are met.

Any investment dealer relying on these provisions would be required to be registered as an investment dealer (unless an exemption from registration is available in the circumstance) in any jurisdiction where it engages in the business of trading, including engaging in acts in furtherance of a trade (which would include providing a standard term sheet to an investor).

(2) The Regulation defines "standard term sheet" to mean a written communication regarding a distribution of securities under a prospectus that contains no information other than that referred to in subsections 13.5(2) and (3) or subsections 13.6(2) and (3) of the Regulation, subsections 7.5(2) and (3) of *Regulation 44-101 respecting Short Form Prospectus Distributions*, subsections 9A.2(2) and (3) of Regulation 44-102 or subsections 4A.2(2) and (3) of Regulation 44-103 relating to an issuer, securities or an offering. A standard term sheet does not include a preliminary prospectus notice or a final prospectus notice, each as defined in the Regulation.

(3) Standard term sheets are subject to the provisions in applicable securities legislation which prohibit misleading or untrue statements. Furthermore, standard term sheets must contain the legends required by subsections 13.5(2) and 13.6(2) of the Regulation, subsection 7.5(2) of *Regulation 44-101 respecting Short Form Prospectus Distributions*, subsection 9A.2(2) of Regulation 44 102 and subsection 4A.2(2) of Regulation 44-103, as applicable.

(4) In the case of a standard term sheet provided during the waiting period or after a receipt for the final prospectus, paragraphs 13.5(1)(b) and 13.6(1)(b) of the Regulation require that, other than contact information for the investment dealer or underwriters, all information in the standard term sheet concerning the issuer, the securities or the offering must be disclosed in, or derived from, the preliminary prospectus or the final prospectus, respectively.

Similarly, in the case of a standard term sheet for a bought deal under Part 7 of *Regulation 44-101 respecting Short Form Prospectus Distributions* that is provi© before the filing of the preliminary prospectus, paragraph 7.5(1)(c) of *Regulation 44-101 respecting Short Form Prospectus Distributions* requires that all information in the standard term sheet must either:

- currently be disc©ed in, or derived from, a document referred to in subparagraph 7.5(1)(c)(i) of *Regulation 44-101 respecting Short Form Prospectus Distributions*, or

- later be disclosed in, or derived from, the preliminary prospectus that is subsequently filed.

In the case of a standard term sheet for a tranche of securities to be offered under the shelf procedures (a draw-down) pursuant to a final base shelf prospectus,

paragraph 9A.2(1)(b) of Regulation 44-102 provides that all information in the standard term sheet must either:

- currently be disclosed in, or derived from, a document referred to in subparagraph 9A.2(1)(b)(i) of Regulation 44-102, or

- later be disclosed in, or derived from, an applicable shelf prospectus supplement that is subsequently filed.

In the case of a standard term sheet after a receipt for a final base PREP prospectus, paragraph 4A.2(1)(b) of Regulation 44-103 provides that all information in the standard term sheet must either:

- currently be disclosed in, or derived from, a document referred to in subparagraph 4A.2(1)(b)(i) of Regulation 44-103, or

- later be disclosed in, or derived from, the supplemented PREP prospectus that is subsequently filed.

In this regard, if an investment dealer includes information in a standard term sheet for a bought deal, a draw-down under a shelf prospectus or an offering under the PREP procedures that is not currently on the public record, the investment dealer and the issuer should be mindful of selective disclosure concerns and take measures to ensure compliance with applicable securities laws relating to selective disclosure, insider trading and trading by "tippees" (these laws are summarized in sections 3.1 and 3.2 of National Policy 51-201: *Disclosure Standards* (Decision 2002-C-0244, 2002-07-09)). For example, if the information could affect the market price of the issuer's securities, it should be broadly disseminated in a news release before being included in a standard term sheet. If the information was a material change, it would be subject to the material change news release and reporting requirements set out in Part 7 of Regulation 51-102.

(5) A standard term sheet must not be provided unless a receipt for the relevant prospectus has been issued in the local jurisdiction. Similarly, in the case of a standard term sheet for a bought deal under Part 7 of *Regulation 44-101 respecting Short Form Prospectus Distributions* that is provided before the filing of the preliminary prospectus, the standard term sheet must not be provided unless the preliminary prospectus will be filed in the local jurisdiction.

6.5B. Marketing materials

(1) The marketing materials provisions in sections 13.7 and 13.8 of the Regulation, section 7.6 of *Regulation 44-101 respecting Short Form Prospectus Distributions*, section 9A.3 of Regulation 44-102 and section 4A.3 of Regulation 44-103 permit an investment dealer to provide marketing materials to a potential investor if the conditions of the applicable provision are met.

Any investment dealer relying on these provisions would be required to be registered as an investment dealer (unless an exemption from registration is available in

the circumstance) in any jurisdiction where it engages in the business of trading, including engaging in acts in furtherance of a trade (which would include providing marketing materials to an investor).

(2) The Regulation defines “marketing materials” to mean written communications intended for potential investors regarding a distribution of securities under a prospectus that contain material facts relating to an issuer, securities or an offering. The definition does not include a standard term sheet, a preliminary prospectus notice or a final prospectus notice. The definition is not intended to include other communications from an investment dealer to an investor, such as a cover letter or email that encloses a copy of a prospectus, a standard term sheet or marketing materials, but does not include any material facts about issuer, securities or an offering.

(3) The applicable interpretation provisions in the prospectus rules clarify that a reference to “provide” in sections 13.7 and 13.8 of the Regulation, section 7.6 of *Regulation 44-101 respecting Short Form Prospectus Distributions*, section 9A.3 of Regulation 44-102 and section 4A.3 of Regulation 44-103 includes showing marketing materials to an investor without allowing the investor to retain, or make a copy of, the materials. This means that the rules apply not only to situations where marketing materials are physically provided to a potential investor, but also to situations where a potential investor is shown marketing materials but is not permitted to retain a copy. For example, the rules would apply where a potential investor is shown a paper copy of marketing materials during a meeting or other interaction with a broker, but is not permitted to retain the paper copy. Similarly, the rules would apply where a potential investor is shown a version of marketing materials on a projector screen or laptop computer.

(4) Marketing materials are subject to provisions in applicable securities legislation which prohibit misleading or untrue statements. Accordingly, the issuer and investment dealers involved should have a reasonable, factual basis for any statement in marketing materials. We remind issuers to be cautious when including disclosure in marketing materials about mineral projects. Where this is the case, the disclosure would be considered “written disclosure” within the meaning of *Regulation 43-101 respecting Standards of Disclosure for Mineral Projects* (chapter V-1.1, r. 15) and would have to comply with the requirements of that regulation.

Marketing materials must contain the legends, or words to the same effect, referred to in subsections 13.7(5) and 13.8(5) of the Regulation, subsection 7.6(5) of *Regulation 44-101 respecting Short Form Prospectus Distributions*, subsection 9A.3(5) of Regulation 44-102 and subsection 4A.3(6) of Regula©n 44-103, as applicable.

Furtherm©, paragraphs 13.7(1)(c) and 13.8(1)(c) o©he Regulation, paragraph 9A.3(1)(c) of Regulation 44-102 and paragraph 4A.3(1)(c) of Regulation 44-103 provide that if the cover page or the summary of the prospectus contains cautionary language, other than prescribed language, in bold type (e.g., the suitability of the investment, a material condition to the closing of the offering or a key risk factor), the marketing materials must contain the same cautionary language. For

example, if the cover page of the prospectus contained cautionary language in bold type that the offering is suitable only to those investors who are prepared to risk the loss of their entire investment, the marketing materials must contain the same warning. In contrast, the requirement would not apply to prescribed language that is required to be presented in bold type on the cover page of a prospectus (e.g., section 1.8 and subsections 1.9(3) and 1.11(5) of Form 41 101F1).

(5) In the case of marketing materials provided during the waiting period or after a receipt for the final prospectus, paragraphs 13.7(1)(b) and 13.8(1)(b) of the Regulation require that, other than contact information for the investment dealer or underwriters and any comparables, all information in the marketing materials concerning the issuer, the securities or the offering must be disclosed in, or derived from, the preliminary prospectus or the final prospectus, respectively. For example, marketing materials provided during the waiting period could only include an estimate of the range of the offering price or the number of securities if that estimate was in the preliminary prospectus or any amendment.

Similarly, in the case of marketing materials for a bought deal under Part 7 of *Regulation 44-101 respecting Short Form Prospectus Distributions* are provided before the filing of the preliminary prospectus, paragraph 7.6(1)(c) of *Regulation 44-101 respecting Short Form Prospectus Distributions* requires that all information in the marketing materials must either:

- be disclosed in, or derived from, a document referred to in subparagraph 7.6(1)(c)(i) of *Regulation 44-101 respecting Short Form Prospectus Distributions*, or

- later be disclosed in, or derived from, the preliminary prospectus that is subsequently filed.

In the case of marketing materials for a draw-down under a final base shelf prospectus, paragraph 9A.3(1)(b) of Regulation 44-102 provides that all information in the marketing materials must either:

- currently be disclosed in, or derived from, a document referred to in subparagraph 9A.3(1)(b)(i) of Regulation 44-102, or

- later be disclosed in, or derived from, an applicable shelf prospectus supplement that is subsequently filed.

In the case of marketing materials after a receipt for a final base PREP prospectus, paragraph 4A.3(1)(b) of Regulation 44-103 provides that all information in the marketing materials must either:

- currently be disclosed in, or derived from, a document referred to in subparagraph 4A.3(1)(b)(i) of Regulation 44-103, or

- later be disclosed in, or derived from, the supplemented PREP prospectus that is subsequently filed.

In this regard, if an issuer and an investment dealer include information in marketing materials for a bought deal, a draw-down under a shelf prospectus or an offering under the PREP procedures that is not currently on the public record, the issuer and the investment dealer should be mindful of selective disclosure concerns and take measures to ensure compliance with applicable securities laws relating to selective disclosure, insider trading and trading by "tippees" (these laws are summarized in sections 3.1 and 3.2 of National Policy 51-201: *Disclosure Standards* (Decision 2002-C-0244, 2002-07-09)). For example, if the information could affect the market price of the issuer's securities, it should be broadly disseminated in a news release before being included in marketing materials. If the information was a material change, it would be subject to the material change news release and reporting requirements set out in Part 7 of Regulation 51-102.

Under the above provisions, it is permissible for marketing materials to include information derived from the prospectus and information that is presented in a manner that differs from the manner of presentation in the prospectus. For example, it is permissible for marketing materials to summarize information from the relevant prospectus or to include graphs or charts based on numbers in the relevant prospectus.

(6) The term "comparables" is defined in each of the prospectus rules to mean information that compares an issuer to other issuers. Comparables may be based on various factors including, but not limited to, market capitalization, the trading price of the securities on a marketplace or other attributes. If an issuer and an investment dealer want to avoid statutory civil liability for comparables in marketing materials, they must comply with subsections 13.7(4) and 13.8(4) of the Regulation, subsection 7.6(4) of *Regulation 44-101 respecting Short Form Prospectus Distributions*, subsection 9A.3(4) of Regulation 44-102 and subsection 4A.3(5) of Regulation 44-103, as applicable. Under these provisions, the issuer may remove any comparables and any disclosure relating to those comparables from the template version of the marketing materials before filing it if:

- The comparables, and any disclosure relating to the comparables, are in a separate section of the template version of the marketing materials.

- The template version of the marketing materials that is filed contains a note advising that the comparables, and any disclosure relating to the comparables, were removed. The note must appear immediately after where the removed comparables and related disclosure would have been.

- If the prospectus is filed in the local jurisdiction, a complete template version of the marketing materials containing the comparables, and any disclosure relating to the comparables, is delivered to the securities regulatory authority. Subject to access to information legislation in each jurisdiction, if a complete template version of the marketing materials is delivered under the applicable prospectus rule, the securities regulatory authority or regulator in each jurisdiction will not make these documents available to the public.

- The complete template version of the marketing materials contains the disclosure referred to in paragraph 13.7(4)(d) of the Regulation.

However, any comparables included in marketing materials provided to an investor would be subject to the provisions in applicable securities legislation which prohibit misleading or untrue statements.

(7) Paragraphs 13.7(1)(d) and 13.8(1)(d) of the Regulation, paragraph 7.6(1)(d) of *Regulation 44-101 respecting Short Form Prospectus Distributions*, paragraph 9A.3(1)(d) of Regulation 44-102 and paragraph 4A.3(1)(d) of Regulation 44-103 provide that a template version of the marketing materials must be approved in writing by the issuer and the lead underwriter before the marketing materials are provided to an investor. This written approval may be given by email.

"Template version" is defined in section 1.1 of the Regulation to mean a version of a document with spaces for information to be added in accordance with subsection 13.7(2) or 13.8(2) of the Regulation, subsection 7.6(2) of *Regulation 44-101 respecting Short Form Prospectus Distributions*, subsection 9A.3(2) of Regulation 44-102 or subsection 4A.3(3) of Regulation 44-103. "Limited-use version" is defined to mean a template version in which the spaces for information have been completed in accordance with those provisions. A template version can have no other spaces for information to be added in a limited-use version.

The above provisions specify that if a template version of the marketing materials is approved in writing by the issuer and the lead underwriter and filed, an investment dealer may provide a limited-use version of the marketing materials that:

- has a date that is different than the template version,

- contains a cover page referring to the investment dealer or underwriters or a particular investor or group of investors,

- contains contact information for the investment dealer or underwriters,

- has text in a format, including the type's font, colour or size, that is different than the template version, or

- in the case of a limited-use version of the marketing materials provided after a receipt final base PREP prospectus, contains the information referred to in paragraph 4A.3(3)(e) of Regulation 44-103 (the PREP information).

Consequently, other than spaces for a date, a cover page, the contact information or the PREP information described above, a template version of the marketing materials must contain all the information that the issuer and the underwriters would like an investment dealer to be able to provide in a limited-use version.

However, the prospectus rules provide that if the template version of the marketing materials is divided into separate sections for separate subjects, an investment dealer

may provide a limited-use version of the marketing materials that includes only one or more of those separate sections.

(8) In the case of marketing materials provided during the waiting period or after a receipt for the final prospectus, paragraphs 13.7(1)(g) and 13.8(1)(g) of the Regulation require that the marketing materials be provided with a copy of the preliminary prospectus or the final prospectus, respectively, and any amendment. The marketing materials can only be provided if a receipt for the relevant prospectus has been issued in the local jurisdiction.

Similarly, in the case of marketing materials for a bought deal under Part 7 of *Regulation 44-101 respecting Short Form Prospectus Distributions* that are provided before the filing of the preliminary prospectus, the marketing materials can only be provided if the prospectus will be filed in the local jurisdiction. Paragraph 7.6(1)(g) of *Regulation 44-101 respecting Short Form Prospectus Distributions* requires that upon issuance of a receipt for the preliminary prospectus for the bought deal, a copy of that prospectus must be sent to each potential investor that received the marketing materials and expressed an interest in acquiring the securities.

In the case of marketing materials for a draw-down under a final base shelf prospectus, the marketing materials can only be provided if a receipt for the final base shelf prospectus has been issued in the local jurisdiction. Paragraph 9A.3(1)(g) of Regulation 44 102 requires that the marketing materials be provided with a copy of the final base shelf prospectus, any amendment to the final base shelf prospectus and any applicable shelf prospectus supplement that has been filed.

In the case of marketing materials provided after a receipt for a final base PREP prospectus, the marketing materials can only be provided if a receipt for the final base PREP prospectus has been issued in the local jurisdiction. Paragraph 4A.3(1)(g) of Regulation 44-103 requires that the marketing materials be provided with a copy of:

- the final base PREP prospectus and any amendment, or

- if it has been filed, the supplemented PREP prospectus and any amendment.

Policy Statement 11-201 respecting Electronic Delivery of Documents (Decision 2011-PDG-0183, 2011-11-17) sets out the circumstances in which a prospectus can be delivered by electronic means. If the investment dealer previously delivered a paper or electronic copy of the prospectus and any amendment to an investor in accordance with applicable securities legislation, it can include a hyperlink to an electronic copy of the prospectus and any amendment with any subsequent marketing materials sent to the investor if no additional amendment to the prospectus has been filed and receipted. The investment dealer should ensure that it is clear to the recipient which of the documents be delivered in the hyperlink constitute the prospectus.

(9) Paragraphs 13.7(1)(e) and 13.8(1)(e) of the Regulation, paragraph 7.6(1)(e) of *Regulation 44-101 respecting Short Form Prospectus Distributions*, paragraph 9A.3(1)(e)

of Regulation 44-102 and paragraph 4A.3(1)(e) of Regulation 44-103 require that a template version of the marketing materials must be filed on SEDAR+ on or before the day that the marketing materials are first provided to an investor. In this regard,

- If an investment dealer wants to rely on section 13.7 of the Regulation and provide marketing materials to an investor on the same day that the preliminary prospectus is filed and receipted, the template version of the marketing materials should be filed with the preliminary prospectus pursuant to subparagraph 9.1(1)(a)(vii) of the Regulation or subparagraph 4.1(1)(a)(vii) of *Regulation 44-101 respecting Short Form Prospectus Distributions*, as applicable.

- If an investment dealer wants to rely on section 13.8 of the Regulation and provide marketing materials to an investor on the same day that the final prospectus is filed and receipted, the template version of the marketing materials should be filed with the final prospectus pursuant to subparagraph 9.2(a)(xiv) of the Regulation or subparagraph 4.2(a)(xii) of *Regulation 44-101 respecting Short Form Prospectus Distributions*, as applicable.

- When a template version of the marketing materials is filed on SEDAR+ as part of a prospectus filing, they will generally be made public within one business day. However, in the case of a template version of marketing materials for a bought deal under section 7.6 of *Regulation 44-101 respecting Short Form Prospectus Distributions*, the template version of the marketing materials will not be made public on SEDAR+ until after the preliminary prospectus is filed and receipted.

- Staff of securities regulatory authorities will not be “pre-clearing” a template version of the marketing materials.

- If an issuer files a template version of marketing materials after staff of a securities regulatory authority have completed their review of a preliminary prospectus filing and indicated that they are “clear for final” on SEDAR+, the filing of the template version of the marketing materials may result in staff revising the filing’s SEDAR+ status to indicate that staff are “not clear for final” so that staff may have an opportunity to review the template version of the marketing materials.

(10) As noted in Item 36A.1 of Form 41-101F1 and Item 11.6 of Form 44-101F1, marketing materials do not, as a matter of law, amend a preliminary prospectus, a final prospectus or any amendment.

(11) The template version of the marketing materials filed on SEDAR+ is required to be included in the final prospectus or incorporated by reference into the final prospectus. An investor who purchases a security distributed under the final prospectus may therefore have remedies under the civil liability provisions of applicable securities legislation if the template version of the marketing materials contains a misrepresentation. Furthermore, an investor who purchases a security of the issuer on the secondary market may have remedies under the civil liability for secondary market disclosure provisions of applicable

securities legislation if the template version of the marketing materials contains a misrepresentation since:

- the template version of the marketing materials is required to be included in the final prospectus or incorporated by reference into the final prospectus (a final prospectus is a “core document” under the secondary market liability provisions), and

- the template version of the marketing materials is required to be filed and is therefore a “document” under the secondary market liability provisions.

(12) If a final prospectus or any amendment modifies a statement of material fact that appeared in marketing materials provided during the waiting period, the issuer is required to:

- prepare and file, at the time the issuer files the final prospectus or any amendment, a revised template version of the marketing materials that is blacklined to show the modified statement, and

- include in the final prospectus, or any amendment, the disclosure referred to in subsection 36A.1(3) of Form 41-101F1 or subsection 11.6(3) of Form 44 101F1, as applicable.

Similar provisions apply for a draw-down under a base shelf prospectus or an offering under the PREP procedures.

If the blacklining software of the issuer or the issuer’s service provider has formatting problems or does not function well with certain kinds of documents or formats, the issuer should try to correct the formatting problems or use another method to reflect changes to the marketing materials, such as using the bold type and underlining features of a software package in order to provide easy-to-read blacklines for filing on SEDAR+.

(13) For guidance on marketing materials for income trusts and other indirect offerings, see Part 5 of *Policy Statement 41-201 respecting Income Trusts and Other Indirect Offerings* (Decision 2007-PDG-0127, 2007-07-05).

6.5C. Standard term sheets and marketing materials - general

In addition to the requirements on standard term sheets and marketing materials in the applicable prospectus rule, issuers and investment dealers should review other securities legislation for limitations and prohibitions on advertising intended to promote interest in an issuer or its securities. For example,

- A standard term sheet and any marketing materials must not contain any representations prohibited by securities legislation, such as:

  - prohibited representations on resales, repurchases or refunds, and

  - prohibited representations on future value.

- A standard term sheet and any marketing materials must comply with the requirements of securities legislation on listing representations.

6.6. Green sheets

(1) Some dealers prepare summaries of the principal terms of an offering, sometimes referred to as green sheets, for the information of their registered representatives during the waiting period. However, distributing the green sheet to the public would generally contravene the prospectus requirement unless the green sheet complies with the provisions in the applicable prospectus rule relating to standard term sheets or marketing materials, or other securities legislation relating to information that can be distributed during a prospectus offering.

(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. For additional guidance on pricing information in a green sheet, see subsection 4.2(2) of this Policy Statement and subsection 4.3(2) of *Policy Statement to Regulation 44-101 respecting Short Form Prospectus Distributions* (Decision 2005-PDG-0388, 2005-12-13).

(3) We may request copies of green sheets 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.

(4) For guidance on green sheets for income trusts or other indirect offerings, see Part 5 Sales and Marketing Materials of *Policy Statement 41-201 respecting Income Trusts and Other Indirect Offerings* (Decision 2007-PDG-0127, 2007-07-05).

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

Advertising or marketing activities that are permitted during the waiting period may also be undertaken on a similar basis after a receipt has been issued for the final prospectus. 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 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.

(3) Nevertheless, we realize that reporting issuers need to consider whether the decision to pursue a potential offering is a material change under applicable securities legislation. If the decision is a material change, the news release and material change report requirements in Part 7 of Regulation 51-102 and other securities legislation apply. However, in order to avoid contravening the pre-marketing restrictions under applicable securities legislation, any news release and material change report filed before the filing of a preliminary prospectus or the announcement of a bought deal under section 7.2 of *Regulation 44-101 respecting Short Form Prospectus Distributions* should be carefully drafted so that it could not be reasonably regarded as intended to promote a distribution of securities or condition the market. The information in the news release and material change report should be limited to identifying the securities proposed to be issued without a summary of the commercial features of the issue (those details should instead be dealt with in the preliminary prospectus which is intended to be the main disclosure vehicle).

Furthermore, after the filing of the news release,

- the issuer should not grant media interviews on the proposed offering, and

- an investment dealer would not be able to solicit expressions of interest until a receipt has been issued for a preliminary prospectus or a bought deal was announced in compliance with section 7.2 of *Regulation 44-101 respecting Short Form Prospectus Distributions*.

6.10. Disclosure practices

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

- We do not consider it appropriate for a director or an officer of an issuer to give interviews to the media immediately prior to or during the waiting period. It may be appropriate, however, for a director or officer to respond to unsolicited inquiries of a factual nature made by shareholders, securities analysts, financial analysts, the media and others who have an interest in such information.

- Because of the prospectus requirement, an issuer should avoid providing information during a prospectus distribution that goes beyond what is disclosed in the prospectus. Therefore, during the prospectus distribution (which commences as described in subsection 6.4(4) of this Policy Statement and ends following closing), a director or officer of an issuer should only make a statement constituting a forecast, projection or prediction with respect to future financial performance if the statement is also contained in the prospectus. Forward-looking information included in a prospectus must comply with sections 4A.2 and 4A.3 and Part 4B, as applicable, of Regulation 51-102.

- We understand that underwriters and legal counsel sometimes only advise the working group members of the pre-marketing and marketing restrictions under securities legislation. However, there are often situations where officers and directors of the issuer outside of the working group also come into contact with the media before or after the filing of a preliminary prospectus. Any discussions between these individuals and the media will also be subject to these same restrictions. Working group members, including underwriters and legal counsel, will usually want to ensure that any other officers and directors of the issuer (as well as the officers and directors of a promoter or a selling securityholder) who may come into contact with the media are also fully aware of the marketing and disclosure restrictions.

- One way for issuers, dealers and other market participants to ensure that advertising or marketing activities contrary to securities legislation are not undertaken (intentionally or through inadvertence) is to develop, implement, maintain and enforce disclosure procedures.

If a director or officer of an issuer (or a promoter, selling securityholder, underwriter or any other party involved with a pending offering) makes a statement to the media after a decision has been made to file a preliminary prospectus or during the waiting period, our regulatory concerns include circumvention of the pre-marketing and marketing restrictions, selective disclosure and unequal access to information, conditioning of the market and the lack of prospectus liability. In addition to the sanctions and enforcement proceedings discussed in section 6.8 of this Policy Statement, staff of a securities regulatory authority may require the issuer to take other remedial action, such as:

- explaining why the issuer’s disclosure procedures failed to prevent the party from making the statement to the media and how those procedures will be improved,

- instituting a “cooling-off period” before the filing of the final prospectus,

- including the statement in the prospectus so that it will be subject to statutory civil liability, or

- issuing a news release refuting the statement if it cannot be included in the prospectus (e.g., because the statement is incorrect or unduly promotional) and disclosing the reasons for the news release in the prospectus.

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.

6.12. Road shows

(1) Sections 13.9 and 13.10 of the Regulation, section 7.7 of *Regulation 44-101 respecting Short Form Prospectus Distributions*, section 9A.4 of Regulation 44-102 and section 4A.4 of Regulation 44-103 provide for road shows for investors. These provisions and the definition of "road show" in section 1.1 of Regulation 41-101 apply to road shows conducted in person, by telephone conference call, on the internet or by other electronic means. The provisions also apply if an investment dealer records a live road show and later makes an audio or audio-visual version of the recorded road show available to investors.

(2) Although members of the media may attend a road show, they should not be specifically invited to the road show by the issuer or by an investment dealer. We note that road shows are intended to be presentations for potential investors and not press conferences for members of the media. Furthermore, issuers and investment dealers should not market a prospectus offering in the media. In this regard, see the guidance in sections 6.9 and 6.10 of this Policy Statement.

(3) Subsections 13.9(3) and 13.10(3) of the Regulation, subsection 7.7(3) of *Regulation 44-101 respecting Short Form Prospectus Distributions*, subsection 9A.4(3) of Regulation 44-102 and subsection 4A.4(3) of Regulation 44-103 provide that if an investment dealer conducts a road show, the investment dealer must establish and follow reasonable procedures to:

- ask any investor attending the road show in person, by telephone conference call, on the internet or by other electronic means to provide their name and contact information;

- keep a record of any information provided by the investor; and

- provide the investor with a copy of the relevant prospectus and any amendment.

However, section 13.11 of the Regulation and section 4A.5 of Regulation 44-103 provide an exception so that, in the case of a road show for certain U.S. cross-border initial public offerings, an investor attending the road show can provide their name and contact information on a voluntary basis.

For a road show held on the internet or by other electronic means, please see the recommended procedures in section 2.7 of National Policy 47-201: *Trading Securities Using the Internet and Other Electronic Means* and, in Québec, *Notice 47-201 relating to Trading Securities Using the Internet and Other Electronic Means*.

(4) An investment dealer must not provide marketing materials to investors attending a road show unless the materials comply with the relevant marketing materials provisions in sections 13.7 and 13.8 of the Regulation, section 7.6 of *Regulation 44-101 respecting Short Form Prospectus Distributions*, section 9A.3 of Regulation 44-102 and section 4A.3 of Regulation 44-103, as applicable. In this context, see the discussion on the meaning of "provide" in subsection 6.5B(3) of this Policy Statement. For example, the provisions would apply where a potential investor is shown a version of marketing materials on a projector screen during a road show conducted in person. Similarly, the provisions would apply where a potential investor is able to view a slide show version of marketing materials during a road show presented online, whether live or recorded.

The above provisions require that a template version of the marketing materials be filed on SEDAR+ on or before the day they are first provided and included in, or incorporated by reference into, the relevant prospectus.

However, section 13.12 of the Regulation, section 7.8 of *Regulation 44-101 respecting Short Form Prospectus Distributions*, section 9A.5 of Regulation 44-102 and section 4A.6 of Regulation 44-103 provide an exception from these filing and incorporation requirements for marketing materials in connection with road shows for certain U.S. cross-border offerings. The exception does not apply to marketing materials other than the marketing materials provided in connection with the road show. Among other things, an issuer relying on the exception must deliver a template version of the marketing materials to the securities regulatory authority in each jurisdiction of Canada where the prospectus was filed. Subject to access to information legislation in each jurisdiction, it is the policy of the securities regulatory authority or regulator in each jurisdiction that the template version of the marketing materials delivered under the applicable prospectus rule will not be made available to the public.

(5) In the past, issuers conducting internet road shows for cross-border IPOs applied for relief from the waiting period restrictions in Canadian securities legislation. However, given the above-noted road show provisions and the exceptions for certain U.S. cross-border offerings, we do not anticipate a need for similar relief in the future and will instead expect these issuers to comply with the applicable road show provision.

In the past, issuers conducting internet road shows for cross-border IPOs also applied for relief from the dealer registration requirements of Canadian securities legislation. However, if a road show is conducted on behalf of an issuer under the above-noted road show provisions, the issuer will not require relief from the dealer registration requirement since the road show will be conducted by an investment dealer that is registered in the appropriate jurisdictions (see subsection 6.12(6) of this Policy Statement). Consequently, we do not expect to grant the relief from the dealer registration requirements that has been granted in the past to cross-border IPO issuers.

(6) The road show provisions permit an investment dealer to conduct a road show for potential investors if the conditions of the applicable provision are met. As noted above, a road show may be conducted in person, by telephone conference call, on the internet or by other electronic means. Unless an exemption from the requirement to register as a dealer is available in the circumstances, any investment dealer relying on one of these provisions would have to be registered as an investment dealer in any jurisdiction where it engages in the business of trading, including engaging in acts in furtherance of a trade (which would include conducting a road show for potential investors). For example, if one or more investment dealers acting as underwriters for a prospectus offering allow potential investors in each jurisdiction of Canada to participate in a road show that the dealers conduct by telephone conference call, then at least one of those dealers must be registered as an investment dealer in every jurisdiction of Canada.

(7) Issuers should note the following with respect to oral statements made at a road show:

- In giving oral presentations at a road show, issuers should generally only discuss information that is contained in, or derived from, the relevant prospectus that has been filed on SEDAR+.

- We recognize that issuers need to respond to questions from investors at a road show. In responding to these questions, issuers should avoid making selective disclosure.

- In particular, issuers should take measures to ensure compliance with applicable securities laws relating to selective disclosure, insider trading and trading by "tippees" when:

    - participating in a road show, and

    - including information in marketing materials for a bought deal road show before the filing of a preliminary prospectus that is not in the bought deal news release or the other continuous disclosure documents filed by the issuer.

These laws are summarized in sections 3.1 and 3.2 of National Policy 51-201: *Disclosure Standards* (Decision 2002-C-0244, 2002-07-09).

- If an issuer discloses material facts at a road show that are not in a preliminary prospectus that has been filed on SEDAR+ the final prospectus should contain that information in order to comply with the statutory requirement that the final prospectus contain full, true and plain disclosure of all material facts.

- Depending on the context, oral statements of a "responsible issuer", as defined in securities legislation, at a road show may be "public oral statements", as defined in securities legislation, and subject to statutory provisions for secondary market civil liability.

- Depending on the nature of the statement, oral statements of an issuer at a road show in relation to mineral projects may fall within the purview of *Regulation 43-101 respecting Standards of Disclosure for Mineral Projects* (chapter V-1.1, r. 15).

- Oral statements made during a road show are subject to the provisions of securities legislation against making misleading or untrue statements.

PART 6A
ADVERTISING AND MARKETING IN CONNECTION WITH PROSPECTUS OFFERINGS OF INVESTMENT FUNDS

6A.1. Application

This Part applies to investment funds filing a prospectus in the form of Form 41-101F2 or Form 41-101F3.

6A.2. 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 other persons that engage in advertising or marketing activities should also consider the impact of the requirement to register as a dealer in each jurisdiction where such advertising or marketing activities are undertaken. In particular, the persons would have to consider whether their activities result in the party being in the business of trading in securities. For further information, refer to section 1.3 of *Policy Statement to Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* (Decision 2011-PDG-0074, 2011-06-07).

(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.

6A.3. 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 activity is prohibited by virtue of the prospectus requirement turns largely on whether the activity constitutes 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, or

- 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 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.

6A.4. 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 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.

6A.5. Pre-marketing and solicitation of expressions of interest

(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) 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.

(3) 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 int80ublic80that 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.

(4) 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 3(a) above, or at or upon the direction, suggestion or inducement of a person or persons referred to in paragraph 3(a) or (b) until the earliest of

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

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

6A.6. 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 a preliminary prospectus notice (as defined in the Regulation) that:

- "identifies" the securities proposed to be issued,

- states the price of such securities, if then determined, and

- states the name and address of a person from whom purchases of securities may be made,

provided that any such notice states the name and address of a pe©n 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 prospectus purchaser indicates an interest in purchasing the securities, a copy of the preliminary prospectus is forwarded to the prospectus 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 contemplated by paragraph 6A.6(1)(a) above 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 pur81ublicf 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 as contemplated by paragraph 6A.6(1)(a) above, the advertising or marketing material may only:

- indicate whether a security represents debt or a share in an incorporated entity or an interest in a non-corporate entity,

- 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 available.

6A.7. 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 containing 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.

6A.8. 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.

6A.9. Sanctions and enforcement

Any contravention of the prospectus requirement through 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.

6A.10. 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.

6A.11. Disclosure practices

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

- We do not consider it appropriate for a director or an officer of an issuer to give interviews to the media immediately prior to or during the waiting period. It may be appropriate, however, for a director or officer to respond 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.

- Because of the prospectus requirement, an issuer is not permitted to provide information during a prospectus distribution that goes beyond what is disclosed in the prospectus. Therefore, during the prospectus distribution (which commences as described in subsection 6A.5(2) of this Policy Statement and ends following closing), a director or officer of an issuer can only make a statement constituting a forecast, projection or prediction with respect to future financial performance if the statement is also contained in the prospectus.

- We understand that underwriters and legal counsel sometimes only advise the working group members of the pre-marketing and marketing restrictions under securities legislation. However, there are often situations where officers and directors of the issuer outside of the working group also come into contact with the media before or after the filing of a preliminary prospectus. Any discussions between these individuals and the media will also be subject to these same restrictions. Working group members, including underwriters and legal counsel, will usually want to ensure that any other officers and directors of the issuer (as well as the officers and directors of a promoter or a selling

securityholder) who may come into contact with the media are also fully aware of the marketing and disclosure restrictions.

- One way for issuers, dealers and other market participants to ensure that advertising or marketing activities contrary to securities legislation are not undertaken (intentionally or through inadvertence) is to develop, implement, maintain and enforce disclosure procedures.

6A.12. Misleading or untrue statements

In addition to the prohibitions on advertising and marketing activities that result from the prospectus requirement, securities legislation in certain jurisdictions prohibits any person from making any misleading or untrue statement 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 advisers 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.

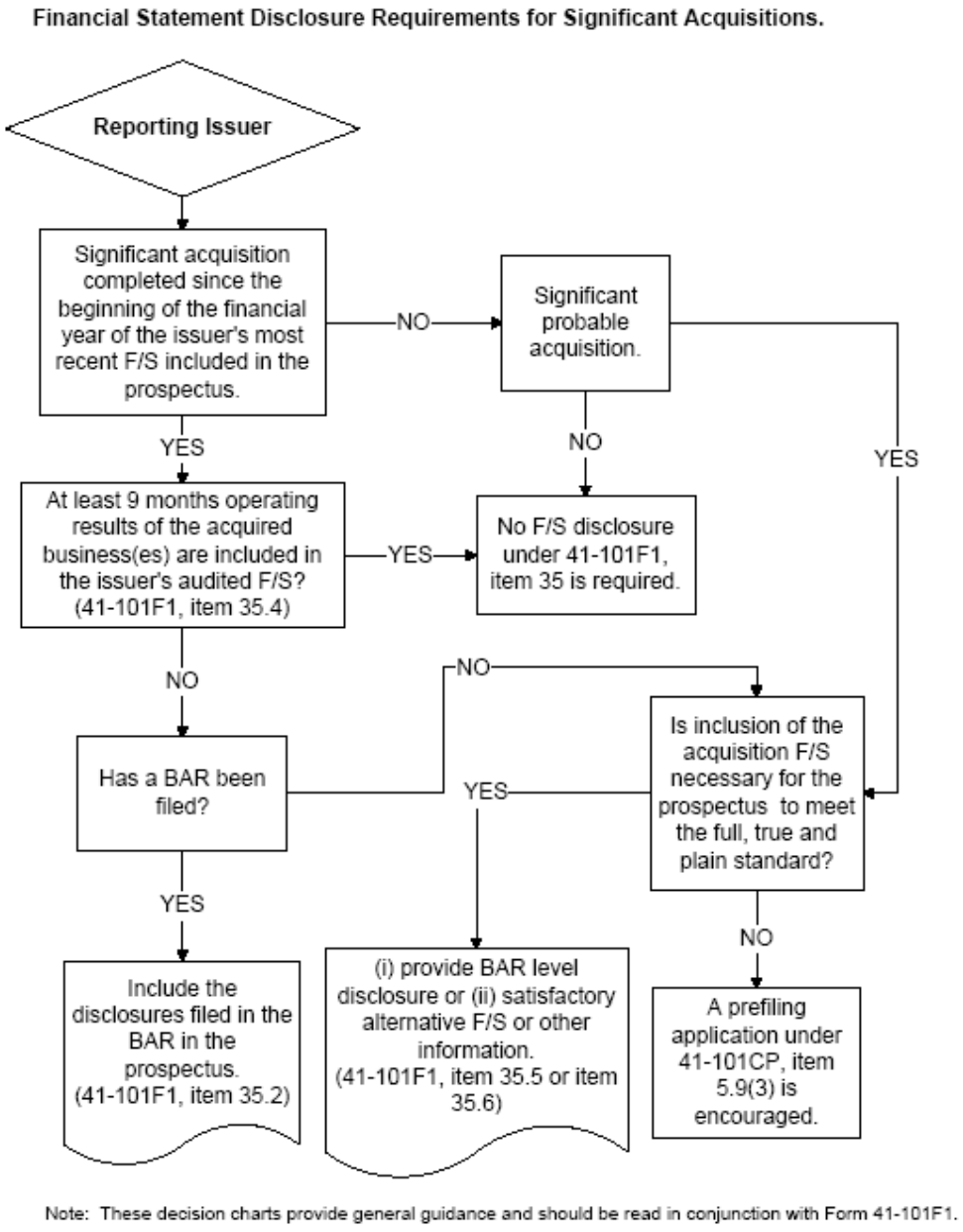
PART 7
TRANSITION

7.1. Transition - Application of Amendments

The amendments to the Regulation and this Policy Statement which came into effect on January 1, 2011 only apply to a preliminary prospectus, an amendment to a preliminary prospectus, a final prospectus or an amendment to a final prospectus of an issuer which includes financial statements of the issuer in respect of periods relating to financial years beginning on or after January 1, 2011.

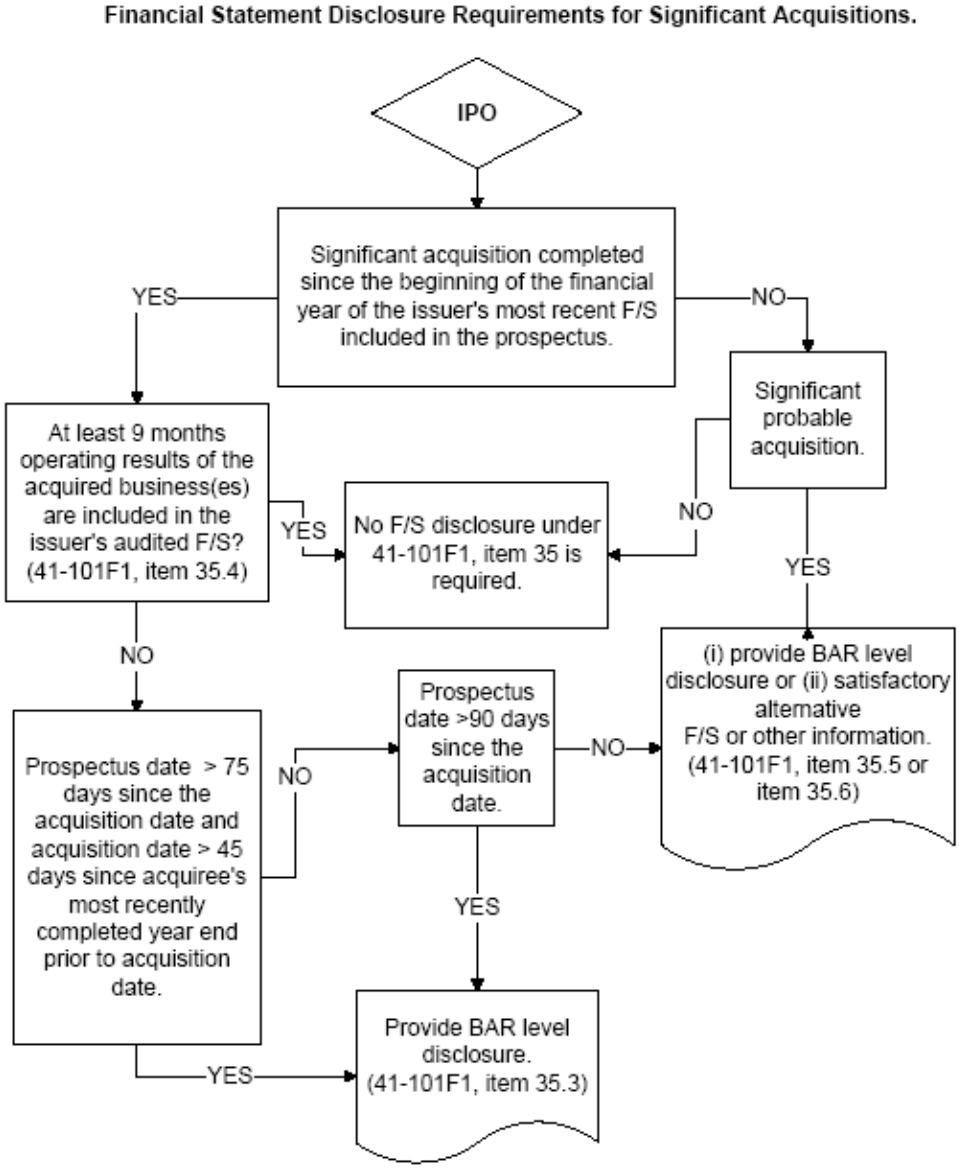
APPENDIX A
FINANCIAL STATEMENT DISCLOSURE REQUIREMENTS FOR SIGNIFICANT ACQUISITIONS

Chart 1 – Reporting Issuer



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.

APPENDIX B
SAMPLE ETF FACTS DOCUMENT

XYZ ETFs

XYZ S&P/TSX 60 Index ETF

ETF FACTS
July 30, 20XX
XYZ

This document contains key information you should know about XYZ S&P/TSX 60 Index ETF. You can find more details about this exchange-traded fund (ETF) in its prospectus. Ask your representative for a copy, contact XYZ ETFs at 1-800-555-5555 or investing@xyzetfs.com, or visit www.xyzetfs.com.

Before you invest, consider how the ETF would work with your other investments and your tolerance for risk.

Quick facts

Date ETF started	March 31, 20XX
Total value on June 1, 20XX	$220.18 million
Management expense ratio (MER)	0.20%
Fund manager	XYZ ETFs
Portfolio manager	Capital Asset Management Ltd.
Distributions	Quarterly

Trading information

(12 months ending June 1, 20XX)

Ticker symbol	XYZ
Exchange	TSX
Currency	Canadian dollars
Average daily volume	308,000 units
Number of days traded	249 out of 251 trading days

Pricing information

(12 months ending June 1, 20XX)

Market price	$9.50-$13.75
Net asset value (NAV)	$9.52-$13.79
Average bid-ask spread	0.07%

What does the ETF invest in?

This ETF invests in the same companies and in the same proportions as the S&P/TSX 60 Index. The S&P/TSX 60 Index is made up of 60 of the largest (by market capitalization) and most liquid securities listed on the Toronto Stock Exchange (TSX), as determined by S&P Dow Jones Indices.

The charts below give you a snapshot of the ETF's investments on June 1, 20XX. The ETF's investments will change to reflect changes in the S&P/TSX Index.

Top 10 investments (June 1, 20XX)

1.	Royal Bank of Canada	7.5%
2.	Toronto-Dominion Bank	7.1%
3.	Canadian Natural Resources	5.8%
4.	The Bank of Nova Scotia	4.1%
5.	Cenovus Energy Inc.	3.7%
6.	Suncor Energy Inc.	3.2%
7.	Enbridge Inc.	3.1%
8.	Canadian Imperial Bank of Commerce	2.9%
9.	Manulife Financial Corporation	2.7%
10.	Canadian National Railway Company	1.9%
	Total percentage of top 10 investments	**42.0%**
	Total number of investments	**60**

Investment mix (June 1, 20XX)

Industry

Financial services	33.9%
Energy	26.1%
Materials	15.0%
Industrials	8.2%
Consumer discretionary	5.9%
Telecommunication	4.1%
Healthcare	2.3%
Consumer staples	2.0%
Information technology	1.9%
Media	0.6%

How risky is it?

The value of the ETF can go down as well as up. You could lose money.

One way to gauge risk is to look at how much an ETF's returns change over time. This is called "volatility". In general, ETFs with higher volatility will have returns that change more over time. They typically have a greater chance of losing money and may have a greater chance of higher returns. ETFs with lower volatility tend to have returns that change less over time. They typically have lower returns and may have a lower chance of losing money.

Risk rating

XYZ ETFs has rated the volatility of this ETF as **medium**. This rating is based on how much the ETF's returns have changed from year to year. It doesn't tell you how volatile the ETF will be in the future. The rating can change over time. An ETF with a low risk rating can still lose money.

LOW	LOW TO MEDIUM	**MEDIUM**	MEDIUM TO HIGH	HIGH

For more information about the risk rating and specific risks that can affect the ETF's returns, see the Risk section of the ETF's prospectus.

No guarantees

ETFs do not have any guarantees. You may not get back the amount of money you invest.

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How has the ETF performed?

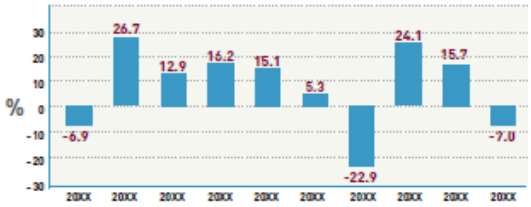
This section tells you how units of the ETF have performed over the past 10 years.

Returns[1] are after expenses have been deducted. These expenses reduce the ETF's returns. This means that the ETF's returns may not match the returns of the S&P/TSX Index.

Year-by-year returns

This chart shows how units of the ETF performed in each of the past 10 years. The ETF dropped in value in 3 of the 10 years.

The range of returns and change from year to year can help you assess how risky the ETF has been in the past. It does not tell you how the ETF will perform in the future.



Best and worst 3-month returns

This table shows the best and worst returns for units of the ETF in a 3-month period over the past 10 years. The best and worst 3-month returns could be higher or lower in the future. Consider how much of a loss you could afford to take in a short period of time.

	Return	3 months ending	If you invested $1,000 at the beginning of the period
Best return	32.6%	Apr. 30, 20XX	Your investment would rise to $1,326.
Worst return	-24.7%	Nov. 30, 20XX	Your investment would drop to $753.

Average return

The annual compounded return of the ETF was 6.8% over the past 10 years. A $1,000 investment in the ETF 10 years ago would now be worth $1,930.

Trading ETFs

ETFs hold a basket of investments, like mutual funds, but trade on exchanges like stocks. Here are a few things to keep in mind when trading ETFs:

Pricing

ETFs have two sets of prices: market price and net asset value (NAV).

Market price

- ETFs are bought and sold on exchanges at the market price. The market price can change throughout the trading day. Factors like supply, demand, and changes in the value of an ETF's investments can affect the market price.
- You can get price quotes any time during the trading day. Quotes have two parts: **bid** and **ask**.
- The bid is the highest price a buyer is willing to pay if you want to sell your ETF units. The ask is the lowest price a seller is willing to accept if you want to buy ETF units. The difference between the two is called the "**bid-ask spread**".
- In general, a smaller bid-ask spread means the ETF is more liquid. That means you are more likely to get the price you expect.

Net asset value (NAV)

- Like mutual funds, ETFs have a NAV. It is calculated after the close of each trading day and reflects the value of an ETF's investments at that point in time.
- NAV is used to calculate financial information for reporting purposes – like the returns shown in this document.

Orders

There are two main options for placing trades: market orders and limit orders. A market order lets you buy or sell units at the current market price. A limit order lets you set the price at which you are willing to buy or sell units.

Timing

In general, market prices of ETFs can be more volatile around the start and end of the trading day. Consider using a limit order or placing a trade at another time during the trading day.

Who is this ETF for?

Investors who:

- are looking for a long-term investment
- want to invest in a broad range of stocks of Canadian companies
- can handle the ups and downs of the stock market.

Don't buy this ETF if you need a steady source of income from your investment.

A word about tax

In general, you'll have to pay income tax on any money you make on an ETF. How much you pay depends on the tax laws where you live and whether or not you hold the ETF in a registered plan, such as a Registered Retirement Savings Plan or a Tax-Free Savings Account.

Keep in mind that if you hold your ETF in a non-registered account, distributions from the ETF are included in your taxable income, whether you get them in cash or have them reinvested.

[1] Returns are calculated using the ETF's net asset value (NAV).

How much does it cost?

This section shows the fees and expenses you could pay to buy, own and sell units of the ETF. Fees and expenses – including any trailing commissions – can vary among ETFs.

Higher commissions can influence representatives to recommend one investment over another. Ask about other ETFs and investments that may be suitable for you at a lower cost.

1. Brokerage commissions

You may have to pay a commission every time you buy and sell units of the ETF. Commissions may vary by brokerage firm. Some brokerage firms may offer commission-free ETFs or require a minimum purchase amount.

2. ETF expenses

You don't pay these expenses directly. They affect you because they reduce the ETF's returns.

As of March 31, 20XX, the ETF's expenses were 0.21% of its value. This equals $2.10 for every $1,000 invested.

	Annual rate (as a % of the ETF's value)
Management expense ratio (MER) This is the total of the ETF's management fee and operating expenses. XYZ ETFs waived some of the ETF's expenses. If it had not done so, the MER would have been higher.	0.20%
Trading expense ratio (TER) These are the ETF's trading costs.	0.01%
ETF expenses	**0.21%**

Trailing commission

The trailing commission is an ongoing commission. It is paid for as long as you own the ETF. It is for the services and advice that your representative and their firm provide to you.

This ETF doesn't have a trailing commission.

What if I change my mind?

Under securities law in some provinces and territories, you have the right to cancel your purchase within 48 hours after you receive confirmation of the purchase.

In some provinces and territories, you also have the right to cancel a purchase, or in some jurisdictions, claim damages, if the prospectus, ETF Facts or financial statements contain a misrepresentation. You must act within the time limit set by the securities law in your province or territory.

For more information, see the securities law of your province or territory or ask a lawyer.

For more information

Contact XYZ ETFs or your representative for a copy of the ETF's prospectus and other disclosure documents. These documents and the ETF Facts make up the ETF's legal documents.

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Toronto, ON M1A 2B3

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Website: www.xyzetfs.com

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