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* or a definition regulation in force in the jurisdiction.

1.2. Interrelationship with other securities legislation

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

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

(3) **Continuous disclosure (Regulation 51-~~102~~102, Regulation 51-103 and Regulation 81-106)** – *Regulation 51-~~-~~102 respecting Continuous Disclosure Obligations*, *Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers*, *Regulation 81-106 respecting Investment Fund Continuous Disclosure* and other securities legislation imposes ongoing disclosure and filing obligations on reporting issuers. The regulator may consider issues raised in the context of a continuous disclosure review when determining whether it is in the public interest to refuse to issue a receipt for a prospectus. Consequently, unresolved issues may delay or prevent the issuance of a receipt.

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

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

(5) **Shelf distributions (Regulation 44-102)** – Issuers qualified under Regulation 44-101 to file a prospectus in the form of a short form prospectus and their securityholders can distribute securities under a short form prospectus using the shelf distribution procedures under *Regulation 44-102 respecting Shelf Distributions* ("Regulation 44-102"). The Policy

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

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

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

1.3. Definitions

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

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

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

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

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

(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* 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* 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.

2.3. Indirect distributions

Securities legislation prohibits a person from distributing a security unless a prospectus is filed and receipted or the distribution is exempt from the prospectus requirement. Securities legislation also prohibits a person from trading in a security where the trade would be a distribution of such security, unless a prospectus is filed and receipted or the distribution is exempt from the prospectus requirement. Securities legislation defines distribution as including a trade in a security that has not been previously issued, a trade out of a control block and any transaction or series of transactions involving a purchase and sale of or a repurchase and resale in the course of or incidental to a distribution. In Québec, the definition of "distribution" is broad enough to include these transactions.

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

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

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

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

2.4. Over-allocation

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

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

To form part of the over-allocation position, securities must be sold to bona fide purchasers as of the closing of the offering. Securities held by an underwriter or in proprietary accounts of an underwriter for sale at a future date do not form part of the over-allocation position. Further, as discussed below, section 11.2 of the Regulation restricts the distribution of securities under a prospectus to an underwriter. Since section 11.1 of the Regulation requires that all securities that are sold to create the over-allocation position be distributed under the prospectus, securities cannot be sold to an underwriter to increase the size of the over-allocation position.

2.5. Distribution of securities under a prospectus to an underwriter

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

2.6. Certificates

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

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

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

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

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

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

2.7. Promoters of issuers of asset-backed securities

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

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

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

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

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

2.8. Special warrants

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

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

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

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

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

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

registrants to participate in the due diligence investigation of the issuer is also beneficial to the secondary market.

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

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

2.9. Offerings of convertible or exchangeable securities

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

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

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

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

2.10. Lapse date

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

PART 3 FILING AND RECEIPTING REQUIREMENTS

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

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

3.2. Confidential material change reports

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

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

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

3.3. Supporting documents

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

3.4. Consents of lawyers

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

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

3.5. Documents affecting the rights of securityholders

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

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

3.6. Material contracts

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

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

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

(3) **Contract of employment** – Paragraph 9.3(2)(a) of the Regulation provides that a material contract with certain individuals is not eligible for the ordinary course of business exemption, unless it is a "contract of employment". One way for issuers to determine whether a contract is a contract of employment is to consider whether the contract contains payment or other provisions that are required disclosure under Form 51-102F6 or Form 51-103F1, as applicable, as if the individual were a named executive officer or director of the issuer.

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

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

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

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

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

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

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

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

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

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

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

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

(7) **Disclosure seriously prejudicial to interests of issuer** – Under subsection 9.3(3) of the Regulation, an issuer may omit or redact certain provisions of a material contract that is required to be filed if an executive officer of the issuer reasonably believes that disclosure of the omitted or redacted provision would be seriously prejudicial to the interests of the issuer. One example of disclosure that may be seriously prejudicial to the interests of the issuer is disclosure of information in violation of applicable Canadian privacy legislation. However, in situations where securities legislation requires disclosure of the particular type of information, applicable privacy legislation generally provides an exemption for the disclosure. Generally, disclosure of information that an issuer or other party has already publicly disclosed is not seriously prejudicial to the interests of the issuer.

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

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

(b) disclosure about related party transactions;

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

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

3.7. Response letters and marked up copies

In response to a comment letter for a preliminary prospectus, an issuer should include draft wording for the changes it proposes to make to a prospectus to address staff's comments. When the comments of the various securities regulators have been resolved, an issuer should clearly mark a draft of the prospectus with all proposed changes from the preliminary prospectus and submit it as far as possible in advance of the filing of final

material. These procedures may prevent delay in the issuing of a receipt for the prospectus, particularly if the number or extent of changes are substantial.

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

Under subparagraph 9.2(a)(x) of the Regulation, an issuer must file an undertaking to file the periodic and timely disclosure of a credit supporter. For credit supporters that are reporting issuers with a current AIF (as defined in Regulation 44-101), the undertaking will likely be to continue to file the documents it is required to file under Regulation 51-~~102.~~ 102 or 51-103, as applicable. 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 41-101F~~1,~~1 or section 34.2 of Form 41-101F4, as applicable, 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 41-101F~~1,~~1 or section 34.3 of Form 41-101F4, as applicable, 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 or section 34.3 of Form 41-101F4, as applicable, for continuous disclosure filings, the undertaking should provide that the issuer will file with its consolidated financial statements,

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

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

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

(b) for any periods covered by issuer's consolidated financial statements, consolidating summary financial information for the issuer presented in the format set out in subparagraph 34.4(e)(ii) of Form 41-101F~~1.~~1 or section 34.3 of Form 41-101F4, as applicable.

3.9. Disclosure of investigations or proceedings

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

- ~~———·———~~an issuer,

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

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

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

3.10. Amendments

(1) Subsection 6.5(1) of the Regulation and other securities legislation provides that if a material adverse change occurs after a receipt for a preliminary prospectus is obtained, an amendment to the preliminary prospectus must be filed as soon as practicable, but in any event within 10 days after the change occurs. If a preliminary prospectus indicates the number or value of the securities to be distributed under the prospectus, an increase in the number or value is, absent unusual circumstances, unlikely to constitute a material adverse change requiring an amendment to the preliminary prospectus.

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

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

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

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

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

3.11. Reduced price distributions

Subsection 7.2(3) of the Regulation permits an issuer to reduce the offering price of the securities being distributed without filing an amendment to the prospectus if certain conditions are satisfied. Satisfying the conditions in this subsection means the underwriter's compensation should decrease by the amount that the aggregate price paid by purchasers for the securities is less than the gross proceeds paid by the underwriter to the issuer or selling securityholder. Section 20.8 of Form 41-101F1 or Form 41-101F4, as applicable, requires disclosure of this fact.

3.12. Licences, registrations and approvals

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

3.13. Registration requirements

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

PART 4 GENERAL CONTENT OF LONG FORM PROSPECTUS

4.1. Style of long form prospectus

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

- using short sentences;
- using definite everyday language;
- using the active voice;
- avoiding superfluous words;
- organizing the document into clear, concise sections, paragraphs and sentences;
- avoiding jargon;
- using personal pronouns to speak directly to the reader;
- avoiding reliance on glossaries and defined terms unless it facilitates understanding of the disclosure;
- avoiding vague boilerplate wording;

- avoiding abstract terms by using more concrete terms or examples;

- avoiding multiple negatives;

- using technical terms only when necessary and explaining those terms;

- using charts, tables and examples where it makes disclosure easier to understand.

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

4.2. Pricing disclosure

(1) If the offering price or the number of securities being distributed, or an estimate of the range of the offering price or the number of securities being distributed, has been publicly disclosed in a jurisdiction or a foreign jurisdiction as of the date of the preliminary long form prospectus, section 1.7 of Form 41-101F1 or Form 41-101F4, as applicable, 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 or Form 41-101F4, as applicable, if the offering price or size of the offering has not been disclosed as of the date of the preliminary long form prospectus. However, given the materiality of pricing or offering size information, subsequent disclosure of this information on a selective basis could constitute conduct that is prejudicial to the public interest.

4.3. Principal purposes – generally

(1) Subsection 6.3(1) of Form 41-101F1 or Form 41-101F4, as applicable, 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 41-101F~~1~~.1 or Form 41-101F4, as applicable. 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 41-101F~~1~~,1 or Form 41-101F4, as applicable, the phrase “for general corporate purposes” is not generally sufficient.

4.4. MD&A

(1) Additional information for senior unlisted issuers, IPO venture issuers and venture issuers without significant revenue – Section 8.6 of Form 41-101F1 or section 5.8 of 41-101F4, as applicable, requires certain senior unlisted issuers, IPO 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 or section 11.2 of Form 41-101F4, as applicable, 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 or section 5.10 of Form 41-101F4, as applicable, requires issuers with significant equity investees to provide in their long form prospectuses summarized information about the equity investee. Generally, we will consider that an equity investee is significant if the equity investee would meet the thresholds for the significance tests in Item 35 of Form 41-101F1 or in the guidance provided under Item 20 in Form 51-103F1, as applicable, using the financial statements of the equity investee and the issuer as at the issuer's financial year-end.

4.5. Distribution of asset-backed securities

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

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

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

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

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

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

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

origination or the future sales of underlying assets by the seller to or through the issuer may be a critical aspect of an investor's investment decision.

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

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

4.6. Distribution of derivatives and underlying securities

(1) Section 10.4 of Form 41-101F1 or Form 41-101F4, as applicable, 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 or Form 41-101F4, as applicable, 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 41-101F~~1,~~1 or Form 41-101F4, as applicable, 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 or Form 41-101F4, as applicable, provides exemptions from the requirement to include both issuer and credit supporter disclosure where such disclosure is not necessary to ensure that the long form prospectus includes full, true and plain disclosure of all material facts concerning the securities to be distributed.

These exemptions are based on the principle that, in these instances, investors will generally require issuer disclosure or credit supporter disclosure to make an informed investment decision. These exemptions are not intended to be comprehensive and issuers

may apply for exemptive relief from the requirement to provide both issuer and credit supporter disclosure, as appropriate.

4.10. Previously disclosed material forward-looking information

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

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

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

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

PART 5 CONTENT OF LONG FORM PROSPECTUS (FINANCIAL STATEMENTS)

5.1. Exemptions from financial disclosure requirements

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

5.1.1. Presentation of Financial Results

Canadian GAAP applicable to publicly accountable enterprises provides an issuer two 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 or subsections 32.2(1.1) or 32.3(4) of Form 41-101F4, as applicable).

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 or sections 32.6 and 35.9 of Form 41-101F4, as applicable, 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 or Form 41-101F4, as applicable, for a business or related businesses that a reasonable investor would regard as the primary business of the issuer. Examples of when a reasonable investor would regard the primary business of the issuer to be the acquired business or related businesses are when the acquisition(s) was

(a) a reverse takeover,

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

(c) an acquisition that is a significant acquisition at over the 100% level under subsection 35.1(4) of Form 41-101F~~1.~~1 or a major acquisition, as applicable.

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

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

5.4. Interpretation of issuer – predecessor entity

(1) An issuer is required to provide historical financial statements under Item 32 of the Form 41-101F1 or Form 41-101F4, as applicable, for any predecessor entity. This includes financial statements of acquired businesses that are unrelated and not otherwise individually significant, but together form the basis of the business of the issuer. In these circumstances, the issuer should consider including pro forma financial statements in the prospectus giving effect to the recently completed or proposed acquisition of a predecessor entity.

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

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

(1) Item 32 of Form 41-101F1 or Form 41-101F4, as applicable, 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 or Form 41-101F4, as applicable, 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) An issuer is subject to certain additional disclosure requirements when it discloses an interim financial report for a period in the year of adopting IFRS, as set out in subparagraph 32.3(2)(e) and subsection 32.3(4) of Form 41-101F~~1~~.1 or subparagraph 32.3(2)(e) and subsection 32.3(5) of Form 41-101F4, as applicable. These requirements only apply to interim financial reports relating to periods in the year of adopting IFRS and therefore do not apply if the prospectus includes annual financial statements prepared in accordance with IFRS.

An issuer is required to provide an opening IFRS statement of financial position at the date of transition to IFRS. An issuer with, for example, a year-end of December 31, 2010 that files a prospectus for which it must include its first interim financial report in the year of adopting IFRS for the period ended March 31, 2011, must generally provide an opening IFRS statement of financial position at January 1, 2010.

An issuer must also include various reconciliations required by IFRS 1 to explain how the transition from previous GAAP to IFRS has affected its reported financial position, financial performance and cash flows. In the first interim period IFRS 1 requires certain additional reconciliations which relate to annual periods and the date of transition to IFRS. Where an issuer that was not a reporting issuer in at least one jurisdiction immediately before filing the prospectus includes an interim financial report in respect of the second or third interim period in the year of adopting IFRS, subsection 32.3(4) of Form 41-101F1 or subsection 32.3(5) of Form 41-101F4, as applicable, requires these additional reconciliations to be included in the prospectus. Alternatively, pursuant to subsection 32.3(4) of Form 41-101F1, or subsection 32.3(5) of Form 41-101F4, as applicable, the issuer may include the first interim financial report in the year of adopting IFRS as this report includes the required reconciliations.

These additional reconciliations may be summarized as follows:

- reconciliations of the issuer's equity presented in accordance with previous GAAP to its equity in accordance with IFRS for the date of transition to IFRS (January 1, 2010 in the above-noted example);

- reconciliations of the issuer's equity presented in accordance with previous GAAP to its equity in accordance with IFRS for the end of the latest period presented in the issuer's most recent annual financial statements in accordance with previous GAAP (December 31, 2010 in the above-noted example); and

- a reconciliation of the issuer's total comprehensive income (or total profit or loss) presented in accordance with previous GAAP to its total comprehensive income in accordance with IFRS for the latest period in the issuer's most recent annual financial statements presented in the prospectus in accordance with previous GAAP (year ended December 31, 2010 in the above-noted example).

The reconciliations summarized above must give sufficient detail to enable investors to understand the material adjustments to the statement of financial position, statement of comprehensive income and statement of cash flows.

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 under Form 41 101F1 no less than three years of audited historical financial statements and under Form 41-101F4 no less than two years of audited historical financial statements and that relief from the financial statements requirements should be granted only in unusual circumstances and generally not related solely to the cost or the time involved in preparing and auditing the financial statements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.7. Additional information

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

5.8. Audit and review of financial statements included or incorporated by reference into a long form prospectus

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

(2) *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* (""Regulation 52-107"") requires that financial statements, other than acquisition statements, that are required to be audited by securities legislation, such as this Regulation, be accompanied by an auditor's report that 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, 1 or Form 41-101F4, as applicable, 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 or Form 41-101F1. 4, as applicable. 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 six 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 Regulation 51-102 or Regulation 51-103, as applicable, requires an issuer's comparative financial statements be accompanied by an auditors' report that expresses an unmodified opinion.

5.9. Financial statement disclosure for significant acquisitions and major acquisitions

(1) **Applicable principles in Regulation 51-102 and Regulation 51-103** – Generally, it is intended that the disclosure requirements set out in Item 35 of Form 41-101F1 for significant acquisitions or Form 41-101F4 for major acquisitions, as applicable, follow the requirements in Part 8 of Regulation 51-102. 102 or in section 22 of Regulation 51-103, as applicable.

(1.1.) The guidance in Part 8 of the Policy Statement to Regulation 51-102 ("Policy Statement 51-102") apply to any disclosure of a significant business acquisition in a long form prospectus required by Item 35 of Form 41-101F1, except

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

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

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

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

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

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

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

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

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

(ii) the sentence "For any proposed acquisition of a business or related businesses by an issuer that has progressed to a state where a reasonable person would believe that the likelihood of the issuer completing the acquisition is high, the test must be applied using the financial statements included in the long form prospectus." should be added after "the business.", and

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

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

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

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

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

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

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

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

(p) in subsection 8.9(1) of Policy Statement 51-102, the term "before the filing deadline for the business acquisition report and before the closing date of the transaction, if

applicable. Reporting issuers are reminded that many securities regulatory authorities and regulators do not have the power to grant retroactive relief" should be read as "using the pre-filing procedures referred to in section 5.1 of this Policy", ~~and~~

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

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

(2) **Completed significant acquisitions and major acquisitions and the obligation to provide business acquisition report or Report of Material Change, Material Related Entity Transaction or Major Acquisition level disclosure for a non-reporting issuer**~~(2)~~ – For an issuer that is not a reporting issuer in any jurisdiction immediately before filing the long form prospectus (a "non-reporting issuer"), the long form prospectus disclosure requirements for a significant acquisition or a major acquisition, as applicable, are generally intended to mirror those for reporting issuers subject to Part 8 of Regulation 51-~~102.~~ 102 or section 22 of Regulation 51-103, as applicable. To determine whether an acquisition is a significant acquisition or a major acquisition, as applicable, non-reporting issuers would first look to the guidance under section 8.3 of Regulation 51-~~102. The~~102 or to the definition of "major acquisition" in Regulation 51-103, as applicable.

For other than venture issuers and IPO venture issuers, the initial test for significance would be calculated based on the financial statements of the issuer and acquired business or related businesses for the most recently completed financial year of each that ended before the acquisition date.

~~To~~For other than venture issuers and IPO venture issuers, to recognize the possible growth of a non-reporting issuer between the date of its most recently completed year end and the acquisition date and the corresponding potential decline in significance of the acquisition to the issuer, issuers should refer to the guidance in paragraph 35.1(4)(b) of Form 41-101F1 to perform the optional test. The applicable time period for this optional test for the issuer is the most recently completed interim period or financial year for which financial statements of the issuer are included in the prospectus and for the acquired business or related businesses is the most recently completed interim period or financial year ended before the date of the long form prospectus

The significance thresholds for IPO ~~venture~~senior unlisted issuers are identical to the significance thresholds for ~~venture~~senior unlisted issuers~~.~~ in the case of Regulation 51-102.

The timing of the disclosure requirements set out in subsection 35.3(1) of Form 41-~~101F1~~-101F1or subsection 35.4(1) of Form 41-101F4, as applicable, are based on the principles under section 8.2 of Regulation 51-~~102.~~ 102 or section 21 of Regulation 51-103. For reporting issuers, subsection 8.2(2) of Regulation 51-102 or paragraph 21(2)(b) of Regulation 51-103, as applicable, sets out the timing of disclosures for significant acquisitions or major acquisitions, as applicable, where the acquisition occurs within 45 days after the year end of the acquired business. However, for IPO senior unlisted issuers and IPO venture issuers, paragraph 35.3(1)(d) ~~imposes~~of Form 41-101F1 and paragraph 35.4(1)(d) of Form 41-101F4, respectively, impose 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 deadlines for filing a business acquisition report ~~filing deadline~~ for ~~venture~~senior unlisted issuers under paragraph 8.2(2)(b) of Regulation 51-102 ~~where the~~or financial statements in a material change report for venture issuers under section 21 of Regulation 51-103, as applicable. 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 acquisition date. For a venture issuer, the deadline for filing financial statements under a Report of Material Change, Material Related Entity Transaction or Major Acquisition is the same.

(3) **Probable acquisitions** – When interpreting the phrase "where a reasonable person would believe that the likelihood 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 acquisition is the subject of an executed agreement;

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

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

We generally presume that the inclusion of financial statements or other information is required for all acquisitions that are, or would be, significant under Part 8 of Regulation 51-~~102.~~ 102 or in the definition of "major acquisition" in Regulation 51-103, as applicable. 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 or sections 35.6 and 35.7 of Form 41-101F4, as applicable, by including either:

(i) the financial statements or other information that would be required by Part 8 of Regulation 51-102 or section 22 of Regulation 51-103, as applicable; 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 or subsection 35.6(3) or subsection 35.7(3) of Form 41-101F4, as applicable, when the financial statements or other information that would be required by Part 8 of Regulation 51-~~102~~-102 or section 22 of Regulation 51-103, as applicable, 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 senior unlisted issuers or a mid-year 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 senior unlisted issuers or 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) for issuers that are senior unlisted issuers, 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~~.

(c) for issuers that are venture issuers, a mid-year period ended within 60 days before the date of the long form prospectus,

(d) for issuers that are IPO venture issuers, a mid-year period ended within 45 days before the date of the long form prospectus; or

(e) for issuers that are not senior unlisted issuers, venture issuers or IPO venture issuers an interim period ended within 45 days before the date of the long form prospectus.

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

(~~e~~f) 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 or section 22 of Regulation 51-103 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~~g) a comparative interim financial report or other information for the acquisition or probable acquisition for

(i) 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~~senior unlisted issuers~~,~~ and 45 days for issuers that are not senior unlisted issuers, venture issuers or IPO venture issuers reviewed in accordance with section 4.3 of the Regulation; or

(ii) any mid-year 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 IPO venture issuers reviewed in accordance with section 4.3 of the Instrument; and

(~~e~~) h) for issuers that are not venture issuers or IPO venture issuers, pro forma financial statements or other information required under Part 8 of Regulation 51-102.

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

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

- if the indirect acquisition would meet any of the significance tests in section 35.1(4) of Form 41-101F1 or in the definition of "major acquisition" in Regulation 51-103, as applicable, when the issuer applies each of those tests to its proportionate interest in the indirect acquisition of the business;

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

(6) **Financial statements or other information** – Paragraphs 35.5(2)(b) and 35.6(2)(b) of Form 41-101F1 and paragraphs 35.6(2)(b) and 35.7(2)(b) of Form 41-101F4, as applicable, 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 and section 22 of Regulation 51-103, as applicable, 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.~~102 or section 29 of Regulation 51-103, as applicable.

Section 3.11 of Regulation 52-107 permits acquisition statements included in a business acquisition report under Regulation 51-102 or financial statements in a material change report under Regulation 51-103, as applicable, 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.

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

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

PART 6 ADVERTISING OR MARKETING ACTIVITIES IN CONNECTION WITH PROSPECTUS OFFERINGS

6.1. Scope

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

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

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

6.2. The prospectus requirement

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

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

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

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

- any sale or disposition of a security for valuable consideration,

- any receipt by a registrant of an order to buy or sell a security, and

- any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing.

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

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

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

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

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

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

6.3. Advertising or marketing activities

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

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

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

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

(3) Any activities that form part of a plan or series of activities undertaken in anticipation or in furtherance of a distribution would usually trigger the prospectus requirement, even if they would be permissible if viewed in isolation. Similarly, we may

still consider advertising or marketing activities that do not indicate that a distribution of securities is contemplated to be in furtherance of a distribution by virtue of their timing and content. In particular, where a private placement or other exempt distribution occurs prior to or contemporaneously with a prospectus offering, we may consider activities undertaken in connection with the exempt distribution as being in furtherance of the prospectus offering.

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

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

(2) In the context of a bought deal, a limited exception to the prospectus requirement has been provided in Part 7 of Regulation 44-101. The exception is limited to communications by a dealer, directly or through any of its directors, officers, employees or agents, with any person (other than another dealer) for the purpose of obtaining from that person information as to the interest that it, or any person that it represents, may have in purchasing securities of the type that are proposed to be distributed, prior to a preliminary prospectus relating to those securities being filed with the relevant securities regulatory authorities.

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

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

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

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

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

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

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

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

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

upon the direction, suggestion or inducement of a person or persons referred to in paragraph 5(a) or (b) above until the earliest of

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

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

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

(7) We note that the Investment 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.

6.5. Advertising or marketing activities during the waiting period

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

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

- "identify" the securities proposed to be issued,

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

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

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

(b) distribute the preliminary prospectus, and

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

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

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

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

- indicate whether a security represents debt or a share in a company or an interest in a non-corporate entity (e.g. a unit of undivided ownership in a film property) or a partnership interest,

- name the issuer if the issuer is a reporting issuer, or name and describe briefly the business of the issuer if the issuer is not already a reporting issuer (the description of the business should be cast in general terms and should not attempt to summarize the proposed use of proceeds),

- indicate, without giving details, whether the security qualifies the holder for special tax treatment, and

- indicate how many securities will be made available.

6.6. Green sheets

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

(2) Including material information in a green sheet or other marketing communication that is not contained in the preliminary prospectus could indicate a failure to provide in the preliminary prospectus full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and result in the prospectus certificate constituting a misrepresentation.

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

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

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

6.8. Sanctions and enforcement

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

6.9. Media reports and coverage

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

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

6.10. Disclosure practices

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

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

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

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

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

6.11. Misleading or untrue statements

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

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

Chart 2 – Non-Reporting Issuer

POLICY STATEMENT TO REGULATION 44-101 RESPECTING SHORT FORM PROSPECTUS DISTRIBUTIONS

PART 1 INTRODUCTION AND DEFINITIONS

1.1. Introduction and Purpose

Regulation 44-101 respecting Short Form Prospectus Distributions ("Regulation 44-101") sets out the substantive tests for an issuer to qualify to file a prospectus in the form of a short form prospectus. The purpose of Regulation 44-101 is to shorten the time period in which, and streamline the procedures by which, qualified issuers and their selling securityholders can obtain access to the Canadian capital markets through a prospectus offering.

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

This Policy Statement to Regulation 44-101 (also referred to as "this Policy Statement" or "this Policy") provides information relating to the manner in which the provisions of Regulation 44-101 are intended to be interpreted or applied by the provincial and territorial securities regulatory authorities, as well as the exercise of discretion under Regulation 44-101. The Policy Statement to *Regulation 41-101 respecting General Prospectus Requirements* provides guidance for prospectuses filed under securities legislation including short form prospectuses. Issuers should refer to the Policy Statement to Regulation 41-101 as well as this Policy Statement.

Terms used and not defined in this Policy Statement that are defined or interpreted in Regulation 44-101, Regulation 41-101 or a definition instrument in force in the jurisdiction should be read in accordance with Regulation 44-101, Regulation 41-101 or the definition instrument, unless the context otherwise requires.

To the extent that any provision of this Policy is inconsistent or conflicts with the applicable provisions of Regulation 44-101 and Regulation 41-101 in those jurisdictions that have adopted Regulation 44-101 by way of related blanket ruling or order, the provisions of Regulation 44-101 and Regulation 41-101 prevail over the provisions of this Policy.

1.2. Interrelationship with Local Securities Legislation

Regulation 44-101 and Regulation 41-101, while being the primary instruments regulating short form prospectus distributions, are not exhaustive. Issuers are reminded to refer to the implementing law of the jurisdiction and other securities legislation of the local jurisdiction for additional requirements that may be applicable to the issuer's short form prospectus distribution.

1.3. Interrelationship with Continuous Disclosure (Regulation 51-~~102~~102, Regulation 51-103 and Regulation 81-106)

The short form prospectus distribution system established under Regulation 44-101 is based on the continuous disclosure filings of reporting issuers pursuant to Regulation 51-~~102~~102, Regulation 51-103 or, in the case of an investment fund, Regulation 81-106. Issuers who wish to use the system should be mindful of their ongoing disclosure and filing obligations under the applicable CD rule. Issues raised in the context of a continuous disclosure review may be taken into consideration by the regulator when determining whether it is in the public interest to refuse to issue a receipt

for a short form prospectus. Consequently, unresolved issues may delay or prevent the issuance of a receipt.

1.4. Process for Prospectus Reviews in Multiple Jurisdictions (Policy Statement 11-202)

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

1.5. Interrelationship with Shelf Distributions (Regulation 44-102)

Issuers qualified under Regulation 44-101 to file a prospectus in the form of a short form prospectus and their securityholders can distribute securities under a short form prospectus using the shelf distribution procedures under Regulation 44-102. The Policy Statement to Regulation 44-102 explains that the distribution of securities under the shelf system is governed by the requirements and procedures of Regulation 44-101 and securities legislation, except as supplemented or varied by Regulation 44-102. Therefore, issuers qualified to file a prospectus in the form of a short form prospectus and selling securityholders of those issuers that wish to distribute securities under the shelf system should have regard to Regulation 44-101 and this Policy first, and then refer to Regulation 44-102 and the accompanying policy for any additional requirements.

1.6. Interrelationship with PREP Procedures (Regulation 44-103)

Regulation 44-103 respecting Post-Receipt Pricing contains the post-receipt pricing procedures (the "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 under a prospectus in the form of a short form prospectus using the PREP procedures should have regard to Regulation 44-101 and this Policy first, and then refer to Regulation 44-103 and the accompanying policy for any additional requirements.

1.7. Definitions

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

A rating agency may also restrict its rating to securities of an issuer that are denominated in local currency. This restriction may be denoted, for example, by the designation "LC". The inclusion of such a designation in a rating that would otherwise fall within one of the categories of an approved rating does not detract from the rating being considered to be an approved rating for the purposes of Regulation 44-101.

(2) **Asset-backed security** – Issuers should refer to section 1.3(1) of the Policy Statement to Regulation 41-101.

(3) **Current AIF** – An issuer's AIF filed under the applicable CD rule is a "current AIF" until the issuer files an AIF for the next financial year, or is required by the applicable CD rule to have filed its annual financial statements for the next financial year.

"Current AIF" for a venture issuer means its annual report filed in accordance with Regulation 51-103 which is required to include its annual financial statements, or, in the case of an SEC issuer, the alternative disclosure permitted by section 42 of Regulation 51-103. If an issuer fails to file a new AIF by the filing deadline under the applicable CD rule for its annual financial statements, it will not have a current AIF and will not qualify under Regulation 44-101 to file a prospectus in the form of a short form prospectus. If an issuer files a revised or amended AIF for the same financial year as an AIF that has previously been filed, the most recently filed AIF will be the issuer's current AIF.

An issuer that is a ~~venture~~senior unlisted issuer for the purpose of Regulation 51-102, and certain investment funds, may have no obligation under the applicable CD rule to file an AIF. However, to qualify under Regulation 44-101 to file a prospectus in the form of a short form prospectus, that issuer will be required to file an AIF in accordance with the applicable CD rule so as to have a "current AIF". A current AIF filed by an issuer that is a ~~venture~~senior unlisted issuer for the purposes of Regulation 51-102 can be expected to expire later than the AIF of an issuer that is not a ~~non-~~venture issuer~~'s AIF~~, due to the fact that the deadlines for filing annual financial statements under Regulation 51-102 are later for ~~venture~~senior unlisted issuers than for other issuers.

(4) **Current annual financial statements** – An issuer's comparative annual financial statements filed under the applicable CD rule, together with the accompanying auditor's report, are "current annual financial statements" until the issuer files, or is required under the applicable CD rule to have filed, its comparative annual financial statements for the next financial year. If an issuer fails to file its comparative annual financial statements by the filing deadline under the applicable CD rule, it will not have current annual financial statements and will not be qualified under Regulation 44-101 to file a prospectus in the form of a short form prospectus.

Where there has been a change of auditor and the new auditor has not audited the comparative period, the report of the predecessor auditor on the comparative period must be included in the prospectus. The issuer may file the report of the predecessor auditor on the comparative period with the annual financial statements that are being incorporated by reference into the short form prospectus, and clearly incorporate by reference the predecessor auditor's report in addition to the new auditor's report. Alternatively, the issuer can incorporate by reference into the short form prospectus its comparative financial statements filed for the previous year, including the audit reports thereon.

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

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

2.1. Basic Qualification Criteria – Reporting Issuers with Equity Securities Listed on a Short Form Eligible Exchange (Section 2.2 of Regulation 44-101)

(1) Section 2.2 of Regulation 44-101 provides that an issuer with equity securities listed and posted for trading on a short form eligible exchange and that is up-to-date in its periodic and timely disclosure filings in all jurisdictions in which it is a reporting issuer satisfies the criteria for being qualified to file a prospectus in the form of a short form prospectus if it meets the other general qualification criteria. In addition to the listing

requirement, the issuer may not be an issuer whose operations have ceased or whose principal asset is its exchange listing. The purpose of this requirement is to ensure that eligible issuers have an operating business in respect of which the issuer must provide current disclosure through application of the applicable CD rule.

The basic qualification criteria are structured to allow most Canadian listed issuers to participate in the expedited offering system created by Regulation 44-101, provided their public disclosure record provides investors with satisfactory and sufficient information about the issuer and its business, operations or capital. The securities regulatory authorities believe that it is in the public interest to allow an issuer's public disclosure to be incorporated into a short form prospectus, provided that the resulting prospectus provides prospective investors with full, true and plain disclosure about the issuer and the securities being distributed. The securities regulatory authority may not be prepared to issue a receipt for a short form prospectus if the prospectus, together with the documents incorporated by reference, fails to provide such full, true and plain disclosure and, in Québec, disclosure of material facts likely to affect the value or the market price of the securities to be distributed. In such circumstances, the securities regulatory authority may require, in the public interest, that the issuer utilize the long form prospectus regime. In addition, the securities regulatory authority may also require that the issuer utilize the long form prospectus regime if the offering is, in essence, an initial public offering by a business or if:

(a) the offering is for the purpose of financing a dormant or inactive issuer whether or not the issuer intends to use the proceeds to reactivate the issuer or to acquire an active business; or

(b) the offering is for the purpose of financing a material undertaking that would constitute a material departure from the business or operations of the issuer as at the date of its current annual financial statements and current AIF.

(2) A new reporting issuer or a successor issuer may satisfy the criteria to have current annual financial statements or a current AIF by filing its comparative annual financial statements or an AIF, respectively, in accordance with Regulation 51-~~102~~102, Regulation 51-103 or Regulation 81-106, as applicable, for its most recently completed financial year. It is not necessary that the issuer be required by the applicable CD rule to have filed such documents. An issuer may voluntarily choose to file either of these documents in accordance with the applicable CD rule for the purposes of satisfying the eligibility criteria under Regulation 44-101.

Alternatively, an issuer may rely on the exemption from the requirement to file such documents in section 2.7 of Regulation 44-101. That section provides an exemption from the current AIF and current annual financial statement requirements for new reporting issuers and successor issuers who have not yet been required to file such documents and who have filed a prospectus or information circular containing disclosure which would have been included in such documents had they been filed under the applicable CD rule.

(3) An issuer need not have filed all of its continuous disclosure filings in the local jurisdiction in order to be qualified to file a short form prospectus, but under sections 4.1 and 4.2 of Regulation 44-101 it will be required to file in the local jurisdiction all documents incorporated by reference into the short form prospectus no later than the date of filing the preliminary short form prospectus.

2.2. Alternative Qualification Criteria ~~–~~ = Issuers that are Not Listed (Sections 2.3, 2.4, 2.5 and 2.6 of Regulation 44-101)

Issuers that do not have equity securities listed and posted for trading on a short form eligible exchange in Canada may nonetheless be qualified to file a prospectus in the form of a short form prospectus under the following alternative qualification criteria of Regulation 44-101:

1. Section 2.3, which applies to issuers which are reporting issuers in at least one jurisdiction, and who are intending to issue non-convertible securities with a provisional approved rating.

2. Section 2.4, which applies to issuers of non-convertible debt securities, non-convertible preferred shares or non-convertible cash settled derivatives, if another person that satisfies prescribed criteria provides full and unconditional credit support for the payments to be made by the issuer of the securities.

3. Section 2.5, which applies to issuers of convertible debt securities or convertible preferred shares, if the securities are convertible into securities of a credit supporter that satisfies prescribed criteria and provides full and unconditional credit support for the payments to be made by the issuer of the securities.

4. Section 2.6, which applies to issuers of asset-backed securities.

Under sections 2.4, 2.5 and 2.6 of Regulation 44-101, an issuer is not required to be a reporting issuer in any jurisdiction in order to qualify to file a prospectus in the form of a short form prospectus. Section 2.3 requires the issuer to be a reporting issuer in at least one jurisdiction of Canada.

2.3. Alternative Qualification Criteria – Issuers of Guaranteed Debt Securities, Preferred Shares and Cash Settled Derivatives (Sections 2.4 and 2.5 of Regulation 44-101)

Sections 2.4 and 2.5 of Regulation 44-101 allow an issuer to qualify to file a prospectus in the form of a short form prospectus based on full and unconditional credit support, which may take the form of a guarantee or alternative credit support. The securities regulatory authorities are of the view that a person that provides the full and unconditional guarantee or alternative credit support is not, simply by providing that guarantee or alternative credit support, issuing a security.

2.4. Alternative Qualification Criteria – Issuers of Asset-Backed Securities (Section 2.6 of Regulation 44-101)

(1) In order to be qualified to file a prospectus in the form of a short form prospectus under section 2.6 of Regulation 44-101, an issuer must have been established in connection with a distribution of asset-backed securities. Ordinarily, asset-backed securities are issued by special purpose issuers established for the sole purpose of purchasing financial assets with the proceeds of one or more distributions of these securities. This ensures that the credit and performance attributes of the asset-backed securities are dependent on the underlying financial assets, rather than upon concerns relating to ancillary business activities and their attendant risks. Qualification to file a prospectus in the form of a short form prospectus under section 2.6 of Regulation 44-101 has been limited to special purpose issuers to avoid the possibility that an otherwise ineligible issuer would structure securities falling within the definition of “asset-backed security”.

(2) The qualification criteria for a distribution of asset-backed securities under a prospectus in the form of a short form prospectus are intended to provide sufficient flexibility to accommodate future developments. To qualify under section 2.6 of Regulation 44-101, the securities to be distributed must satisfy the following two criteria:

1. First, the payment obligations on the securities must be serviced primarily by the cash flows of a pool of discrete liquidating assets such as accounts receivable, instalment sales contracts, leases or other assets that by their terms convert into cash within a specified or determinable period of time.

2. Second, the securities must (i) receive an approved rating on a provisional basis, (ii) not have been the subject of an announcement regarding a downgrade to a rating that is not an approved rating, and (iii) not have received a provisional or final rating lower than an approved rating from any approved rating organization.

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

2.5. Timely and Periodic Disclosure Documents

To be qualified to file a short form prospectus under sections 2.2 and 2.3 of Regulation 44-101, an issuer must file with the securities regulatory authority in each jurisdiction in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction under applicable securities legislation, pursuant to an order issued by the securities regulatory authority, or pursuant to an undertaking to the securities regulatory authority. Similarly, a credit supporter must satisfy this qualification criterion for an issuer to be qualified to file a short form prospectus under sections 2.4 and 2.5 of Regulation 44-101.

This qualification criterion applies to all disclosure documents including, if applicable, a disclosure document the issuer or credit supporter (i) has undertaken to file with a provincial or territorial securities regulatory authority, (ii) must file pursuant to a condition in a written order or decision granting exemptive relief to the issuer or credit supporter from a requirement to file periodic and timely disclosure documents, (iii) must file pursuant to a condition in securities legislation exempting the issuer or credit supporter from a requirement to file periodic and timely disclosure documents, and (iv) has represented that it will file pursuant to a representation in a written order or decision granting exemptive relief to the issuer or credit supporter from a requirement to file periodic and timely disclosure documents. These disclosure documents must be incorporated by reference into a short form prospectus pursuant to paragraph 9 or 10 of subsection 11.1(1) of Form 44-101F1.

2.6. Notice Declaring Intention

Subsection 2.8(1) of Regulation 44-101 provides that an issuer is not qualified to file a short form prospectus under Part 2 of Regulation 44-101 unless it has filed, with its notice regulator, a notice declaring its intention to be qualified to file a short form prospectus under Regulation 44-101. This notice must be filed in substantially the form of Appendix A of Regulation 44-101 at least 10 business days prior to the issuer filing its first preliminary short form prospectus. This is a new requirement that came into effect on December 30, 2005. The securities regulatory authorities expect that this notice will be a one-time filing for issuers that intend to be participants in the short form prospectus distribution system established under Regulation 44-101. Subsection 2.8(2) provides that this notice is operative until withdrawn. Though the notice must be filed with the notice regulator, an issuer may voluntarily file the notice with any other securities regulatory authority or regulator of a jurisdiction of Canada.

Subsection 2.8(4) of Regulation 44-101 is a transitional provision that has the effect of deeming issuers that, as of December 29, 2005, have a current AIF under the pre-December 30, 2005 short form prospectus distribution system to have filed this notice and no additional filing is required to satisfy the notice requirements set out in subsection 2.8(1) of Regulation 44-101.

PART 3 FILING AND RECEIPTING OF SHORT FORM PROSPECTUS

3.1. Previously filed documents

Sections 4.1 and 4.2 of Regulation 44-101 require the filing of specified documents that have not been previously filed. Issuers that are relying on previous filing of these specified documents are reminded that the documents should have been filed on the issuer’s filer profile for SEDAR.

3.2. Confidential Material Change Reports

Confidential material change reports cannot be incorporated by reference into a short form prospectus. Issuers should refer to section 3.2 of the Policy Statement to Regulation 41-101 for further guidance.

3.3. Supporting Documents

Issuers should refer to section 3.3 of the Policy Statement to Regulation 41-101.

3.4. Experts' Consent

Issuers are reminded that under section 10.1 of Regulation 41-101 an auditor's consent is required to be filed for audited financial statements that are included as part of other continuous disclosure filings that are incorporated by reference into a short form prospectus. For example, a separate auditor's consent is required for each set of audited financial statements that are included as part of a business acquisition report or an information circular incorporated by reference into a short form prospectus. Issuers should also refer to section 3.4 of the Policy Statement to Regulation 41-101 for further guidance.

3.5. Undertaking in Respect of Credit Supporter Disclosure

Under subparagraph 4.2(a)(ix) of Regulation 44-101, 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, the undertaking will likely be to continue to file the documents it is required to file under Regulation 51-~~102.~~102 or Regulation 51-103, as applicable. 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 item 13.3 of Form 44-101F1, 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 item.

If an issuer and a credit supporter satisfy the conditions of the exemption in item 13.4 of Form 44-101F1, 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 item.

For the purposes of such an undertaking, references to disclosure included in the short form 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 item 13.4 of Form 44-101F1 for continuous disclosure filings, the undertaking should provide that the issuer will file with its consolidated financial statements,

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

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

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

(b) for any periods covered by issuer's consolidated financial statements, consolidating summary financial information for the issuer presented in the format set out in subparagraph 13.4(e)(ii) of Form 44-101F1.

3.6. Amendments and Incorporation by Reference of Subsequently Filed Material Change Reports

The requirement in Regulation 41-101 and securities legislation for the filing of an amendment to a preliminary prospectus and prospectus is not satisfied by the incorporation by reference in a preliminary short form prospectus or a short form prospectus of a subsequently filed material change report. Issuers should refer to the Policy Statement to Regulation 41-101 for further guidance regarding amendments.

3.7. Short Form Prospectus Review

No target time frame applies to the review of a short form prospectus of an issuer if the issuer has not elected to use the process set out in Policy Statement 11-202.

3.8. Review time frames for "equity line" short form prospectuses

An issuer that is eligible to use the short form prospectus system may file a preliminary short form prospectus relating to the distribution of securities in connection with an "equity line" financing. Under an equity line arrangement, the issuer typically enters into an agreement with one or more purchasers which provides that, over a certain term, the issuer may from time to time require the purchasers to subscribe for a certain number of securities of the issuer usually at a discount from the market price. Equity line financing raises a number of important policy issues relating to the appropriate treatment of such offerings under existing securities law. Accordingly, these prospectuses will generally be reviewed within the time periods applicable to a long form prospectus.

3.9. Registration Requirements

Issuers should refer to section 3.13 of the Policy Statement to Regulation 41-101 for further guidance.

PART 4 CONTENT OF SHORT FORM PROSPECTUS

4.1. Prospectus Liability

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

4.2. Style of Short Form Prospectus

Securities legislation requires that a short form prospectus contain "full, true and plain" disclosure of the securities to be distributed. Issuers should apply plain language principles when they prepare a short 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 Regulation 44-101.

4.3. 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 short form prospectus, item 1.7.1 of Form 44-101F1 requires the issuer to disclose that information in the preliminary short 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 short form prospectus. If the issuer discloses this information in the preliminary short 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 short form prospectus.

(2) No disclosure is required under item 1.7.1 of Form 44-101F1 if the offering price or size of the offering has not been disclosed as of the date of the preliminary short form prospectus. However, given the materiality of pricing or offering size information, subsequent disclosure of this information on a selective basis could constitute conduct that is prejudicial to the public interest.

4.4. Principal Purposes – Generally

(1) Section 4.2 of Form 44-101F1 requires disclosure of each of the principal purposes for which the net proceeds will be used by an issuer. 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 short form prospectus, the issuer should prominently disclose that fact in the use of proceeds section of the short form prospectus. The issuer should also disclose whether, and if so, to what extent, the proceeds of the distribution will be used 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 17.1(1) of Form 44-101F1 or item 5.2 in ~~Regulation~~Form 51-102F~~2~~2 or section 22 in Form 51-103F1, as applicable. 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 4.2 of Form 44-101F1, the phrase “for general corporate purposes” is not generally sufficient.

4.5. Distribution of Asset-backed Securities

Item 7.3 of Form 44-101F1 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 these factors in preparing its short 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) Requested disclosure respecting the business and affairs of the issuer should be interpreted to apply to the financial assets underlying the asset-backed securities.

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

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

Subsection 7.3(5) of Form 44-101F1 requires issuers of asset-backed securities to describe any person who originated, sold or deposited a material portion of the financial assets comprising the pool, irrespective of whether the person has an on-going relationship with the assets comprising the pool. The securities regulatory authorities consider 33% of the dollar value of the financial assets comprising the pool to be a material portion in this context.

4.6. Distribution of Derivatives

Section 7.4 of Form 44-101F1 specifies additional disclosure applicable to distributions of derivatives. This prescribed disclosure is formulated in general terms for issuers to customize appropriately in particular circumstances.

4.7. Underlying Securities

If 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 would generally be necessary to meet the requirement of securities legislation that a prospectus contain full, true and plain disclosure of all material facts relating to the securities being distributed.

4.8. Restricted Securities

Section 7.7 of Form 44-101F1 specifies additional disclosure applicable to 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.

4.9. Recent and Proposed Acquisitions

(1) ~~Subsection~~Subsections 10.2(2) and 10.3(2) of Form 44-101F1 ~~requires~~require prescribed disclosure of a proposed acquisition that has progressed to a state "where a reasonable person would believe that the likelihood of the acquisition being completed is high" and that would, if completed on the date of the short form prospectus, be a significant acquisition for the purposes of Part 8 of Regulation 51-~~102.~~102 or a major acquisition as defined in Regulation 51-103, as applicable. When interpreting the phrase "where a reasonable person would believe that the likelihood 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 acquisition is the subject of an executed agreement; and

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

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.

(2) ~~Subsection~~Subsections 10.2(3) and 10.3(3) of Form 44-101F1 ~~requires~~require inclusion of the financial statements or other information relating to certain acquisitions or proposed acquisitions if the inclusion of the financial statements or other information is necessary in order for the short form prospectus to contain full, true and plain disclosure of all material facts relating to the securities being distributed. 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.~~102 or a major acquisition as defined in Regulation 51-103, as applicable. 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.

~~Subsection~~Subsections 10.2(4) and 10.3(4) of Form 44-101F1 ~~provides~~provide that issuers must satisfy the requirements of ~~subsection~~subsections 10.2(3) and 10.3(3) of Form 44-101F1 by including either:

(i) the financial statements or other information that would be required by Part 8 of Regulation 51-102 or section 22 of Regulation 51-103, as applicable; 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~~subsections 10.2(3) or 10.3(3) when the financial statements or other information that would be required by Part 8 of Regulation 51-102 or section 22 of Regulation 51-103, as applicable, relate to a financial year ended within 90 days before the date of the prospectus or an interim period ended within 60 days before the date of the prospectus for issuers that are senior unlisted issuers or a mid-year period ended within 60 days before the date of the prospectus for venture issuers, and an interim period ended within 45 days before the date of the prospectus for issuers that are not senior unlisted issuers or 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 short form prospectus; or

(b) for issuers that are senior unlisted issuers, an interim period ended within 60 days before the date of the short form prospectus,

(c) for issuers that are venture issuers, ~~and 45 days~~ a mid-year period ended within 60 days before the date of the short form prospectus,

(d) for issuers that are not senior unlisted issuers or venture issuers, an interim period ended within 45 days before the date of the short form prospectus.

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

(~~c~~e) 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 or section 22 of Regulation 51-103, as applicable, that ended more than 90 days before the date of the short form prospectus, audited for the most recently completed financial period in accordance with *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards*, and reviewed for the comparative period in accordance with section 4.3 of Regulation 44-101;

(~~d~~f) a comparative interim financial report or other information for the acquisition or probable acquisition for

(i) any interim period ended subsequent to the latest annual financial statements included in the short form prospectus and more than 60 days before the date of the short form prospectus for issuers that are ~~venture~~senior unlisted issuers, and 45 days for issuers that are not ~~venture~~senior unlisted issuers reviewed in accordance with section 4.3 of Regulation 44-101; or

(ii) any mid-year period ended subsequent to the latest annual financial statements included in the short form prospectus and more than 60 days before the date of the short form prospectus for issuers that are venture issuers, and 45 days for issuers that are not senior unlisted issuers or venture issuers reviewed in accordance with section 4.3 of Regulation 44-101; and

(~~e)~~ g) for issuers that are not venture issuers, 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 or other information, we ask that this be highlighted in the cover letter to the 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, we encourage the utilization of pre-filing procedures.

(3) 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 prospectus disclosure about the indirect acquisition, including historical financial statements, is necessary to satisfy the requirement that the prospectus contain full, true and plain disclosure of all material facts relating to the securities being distributed. In making this determination, the issuer should consider the following factors:

- ~~·~~ if the indirect acquisition would meet any of the significance tests in Part 8 of Regulation 51-102 or in the definition of "major acquisition" in Regulation 51-103, as applicable, when the issuer applies each of those tests to its proportionate interest in the indirect acquisition of the business; and

- ~~·~~ 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.

(4) ~~Subsection~~Subsections 10.2(3) ~~discusses~~and 10.3(3) of Form 41-101F1 discuss financial statements or other information for the completed or proposed acquisition of the business or related businesses. This "other information" is intended to capture the financial information disclosures required under Part 8 of Regulation 51-102 or section 22 of Regulation 51-103, as applicable, 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.~~102 or section 29 of Regulation 51-103, as applicable.

4.10. Updated pro forma financial statements to date of prospectus

In addition to the pro forma financial statements for completed acquisitions that are required to be included in a business acquisition report incorporated by reference into a prospectus under Item 11 of Form 44-101F1, an issuer may include a set of pro forma financial statement prepared as at the date of the prospectus.

4.11. General Financial Statement Requirements

A reporting issuer is required under the applicable CD rule to file its annual financial statements ~~and related MD&A~~ 90 days after year end (or 120 days if the issuer is a ~~venture~~senior unlisted issuer as defined in Regulation 51-102~~). Certain transition rules in the applicable CD rule apply to the first interim financial report required to be filed in the year of adopting IFRS in respect of an interim period beginning on or after January 1, 2011. Otherwise, an interim financial report and related MD&A must be filed 45 days after the last day of an interim period (or 60 days for~~ or a venture issuer as defined in Regulation 51-103, as applicable). The financial statement requirements in Regulation 44-101 are based on these continuous disclosure reporting time frames and do not impose accelerated filing deadlines for a reporting issuer's financial statements. However, to the extent an issuer has filed financial statements in advance of the deadline for doing so, those financial statements must be incorporated by reference in the short form prospectus. We are of the view that 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 short form prospectus. Once the financial statements have been approved, they should be filed as soon as possible.

4.12. Credit Supporter Disclosure

In addition to the issuer's documents required to be incorporated by reference under sections 11.1 and 11.2 of Form 44-101F1 and the issuer's earnings coverage ratios required to be included under Item 6 of Form 44-101F1, a short form prospectus must include, under section 12.1 of Form 44-101F1, 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. Accordingly, disclosure about a credit supporter may be required even if the credit supporter has not provided full and unconditional credit support.

4.13. Exemptions for Certain Issues of Guaranteed Securities

Requiring disclosure about the issuer and any applicable credit supporters in a short form prospectus may result in unnecessary disclosure in some instances. Item 13 of Form 44-101F1 provides exemptions from the requirement to include both issuer and credit supporter disclosure where such disclosure is not necessary to ensure that the short form prospectus includes full, true and plain disclosure of all material facts concerning the securities to be distributed.

The exemptions in Item 13 of Form 44-101F1 are based on the principle that, in these instances, investors will generally require either issuer disclosure or credit supporter disclosure to make an informed investment decision. The exemptions set out in Item 13 of Form 44-101F1 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.

4.14 Previously Disclosed Material Forward-Looking Information

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

1. has previously disclosed to the public material forward-looking information for a period that is not yet complete;

2. is aware of events and circumstances that are reasonably likely to cause actual results to differ materially from the material forward-looking information; and

3. has not filed an MD&A with the securities regulatory authorities that discusses those events and circumstances and expected differences from the material forward-looking information, as required by section 5.8 of Regulation 51-~~102,~~102 or section 37 of Regulation 51-103, as applicable,

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

PART 5 CERTIFICATES

5.1. General

Issuers should refer to section 2.6 of the Policy Statement to Regulation 41-101.

PART 6 TRANSITION

6.1. Transition

The amendments to Regulation 44-101 and this Policy Statement which came into effect on January 1, 2011 only apply to a preliminary short form prospectus, an amendment to a preliminary short form prospectus, a final short form prospectus or an amendment to a final short form prospectus of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning on or after January 1, 2011.

POLICY STATEMENT TO REGULATION 45-106 RESPECTING PROSPECTUS AND REGISTRATION EXEMPTIONS

PART 1 INTRODUCTION

Regulation 45-106 respecting Prospectus and Registration Exemptions ("Regulation 45-106") provides: (i) exemptions from the prospectus requirement; (ii) exemptions from registration requirements; and (iii) one exemption from the issuer bid requirements.

The registration exemptions in Part 3 of Regulation 45-106 will not apply in any jurisdiction six months after *Regulation 31-103 respecting Registration Requirements and Exemptions* ("Regulation 31-103") comes into force. A subset of registration exemptions will continue to apply after the six month transition period and will be located in Regulation 31-103.

1.1. Purpose

The purpose of this Policy Statement is to help users understand how the provincial and territorial securities regulatory authorities and regulators interpret or apply certain provisions of Regulation 45-106. This Policy Statement includes explanations, discussion and examples of the application of various parts of Regulation 45-106.

1.2. All trades are subject to securities legislation

The securities legislation of a local jurisdiction applies to any trade in a security in the local jurisdiction, whether or not the issuer of the security is a reporting issuer in that jurisdiction. Likewise, the definition of "trade" in securities legislation includes any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a trade. A person who engages in these activities, or other trading activities, must comply with the securities legislation of each jurisdiction in which the trade occurs.

1.3. Multi-jurisdictional distributions

A distribution can occur in more than one jurisdiction. If it does, the person conducting the distribution must comply with the securities legislation of each jurisdiction in which the distribution occurs. For example, a distribution from a person in Alberta to a purchaser in British Columbia may be considered a distribution in both jurisdictions.

1.4. Other exemptions

In addition to the exemptions in Regulation 45-106, exemptions may also be available to persons under securities legislation of each local jurisdiction. The CSA has issued CSA Staff Notice 45-304 that lists other exemptions available under securities legislation.

1.5. Discretionary relief

In addition to the exemptions contained in Regulation 45-106 and those available under securities legislation of a local jurisdiction, the securities regulatory authority or regulator in each jurisdiction has the discretion to grant exemptions from the prospectus requirement and the registration requirements.

1.6. Advisers

Subsection 1.5(2) of Regulation 45-106 provides that an exemption from the dealer registration requirement in Regulation 45-106 is deemed to be an exemption from the underwriter registration requirement. However, it is not deemed to be an exemption from the adviser registration requirement. The adviser registration requirement is distinct from the dealer registration requirement. In general terms, persons engaged in the business of, or holding themselves out as being in the business of, providing investment advice are

required to be registered, or exempted from registration, under applicable securities legislation. Accordingly, only advisers registered or exempted from registration as advisers may act as advisers in connection with a trade made under Regulation 45-106.

1.7. Underwriters

Underwriters should not sell securities to the public without providing a prospectus. If an underwriter purchases securities with a view to distribution, the underwriter should purchase the securities under the prospectus exemption in section 2.33 of Regulation 45-106. If the underwriter purchases securities under this exemption, the first trade in the securities will be a distribution. As a result, the underwriter will only be able to resell the securities if it can rely on another exemption from the prospectus requirement, or if a prospectus is delivered to the purchasers of the securities.

There may be legitimate transactions where a dealer purchases securities under a prospectus exemption other than the exemption in section 2.33 of Regulation 45-106; however, these transactions are only appropriate when the dealer purchases the securities with investment intent and not with a view to distribution.

If a dealer purchases securities through a series of exempt transactions in order to avoid the obligation to deliver a prospectus, the transactions will be viewed as a whole to determine if they constitute a distribution. If a transaction is in effect an indirect distribution, a prospectus will be required to qualify the sale of the securities despite the fact that each interim step in the transaction could otherwise be completed under a prospectus exemption. Such indirect distributions cannot be legitimately structured under Regulation 45-106.

1.8. Persons created to use exemptions (“syndication”)

Sections 2.3(5), 3.3(5), 2.4(1), 3.4(1), 2.9(3), 3.9(3), 2.10(2) and 3.10(2) of Regulation 45-106 specifically prohibit syndications. A distribution or a trade of securities to a person that had no pre-existing purpose and is created or used solely to purchase or hold securities under exemptions (a “syndicate”) may be considered a distribution of, or trade in, securities to the persons beneficially owning or controlling the syndicate.

For example, a newly formed company with 15 shareholders is set up with the intention of purchasing $150 000 worth of securities under the minimum amount investment exemption. Each shareholder of the newly formed company contributes $10 000. In this situation the shareholders of the newly formed company are indirectly investing $10 000 when the exemption requires that they each invest $150 000. Consequently, both the newly formed company and its shareholders may need to comply with the requirements of the minimum amount investment exemption, or find an alternative exemption to relyon.

Syndication related concerns should not ordinarily arise if the purchaser under the exemption is a corporation, syndicate, partnership or other form of entity that is pre-existing and has a bona fide purpose other than investing in the securities being sold. However, it is an inappropriate use of these exemptions to indirectly distribute or trade securities when the exemption is not available to directly distribute or trade securities to each person in the syndicate.

1.9. Responsibility for compliance

A person distributing or trading securities is responsible for determining when an exemption is available. In determining whether an exemption is available, a person may rely on factual representations by a purchaser, provided that the person has no reasonable grounds to believe that those representations are false. However, the person distributing or trading securities is responsible for determining whether, given the facts available, the exemption is available. Generally, a person distributing or trading securities under an exemption should retain all necessary documents that show the person properly relied upon the exemption.

For example, an issuer distributing securities to a close personal friend of a director could require that the purchaser provide a signed statement describing the purchaser's relationship with the director. On the basis of that factual information, the issuer could determine whether the purchaser is a close personal friend of the director for the purposes of a family, friends and business associates exemption. The issuer should not rely merely on a representation: "I am a close personal friend of a director". Likewise, under the accredited investor exemptions, the seller must have a reasonable belief that the purchaser understands the meaning of the definition of "accredited investor". Prior to discussing the particulars of the investment with the purchaser, the seller should discuss with the purchaser the various criteria for qualifying as an accredited investor and whether the purchaser meets any of the criteria.

It is not appropriate for a person to assume an exemption is available. For instance a seller should not accept a form of subscription agreement that only states that the purchaser is an accredited investor. Rather the seller should request that the purchaser provide the details on how they fit within the accredited investor definition.

1.10. Prohibited activities

Securities legislation in certain jurisdictions prohibits any person from making certain representations to a purchaser of securities, including an undertaking about the future value or price of the securities. In certain jurisdictions, these provisions also prohibit a person from making any statement that the person knows or ought reasonably to know is a misrepresentation. These prohibitions apply whether or not a trade is made under an exemption.

Misrepresentation is defined in securities legislation. The use of exaggeration, innuendo or ambiguity in an oral or written representation about a material fact, or other deceptive behaviour relating to a material fact, might be a misrepresentation.

PART 2 INTERPRETATION

2.1. Definitions

Unless defined in Regulation 45-106, terms used in Regulation 45-106 have the meaning given to them in local securities legislation or in *Regulation 14-101 respecting Definitions*.

The term "contract of insurance" in the definition of "financial assets" has the meaning assigned to it in the legislation for the jurisdiction referenced in Appendix A of Regulation 45-106.

2.2. Executive officer ("policy making function")

The definition of "executive officer" in Regulation 45-106 is based on the definition of the same term contained in *Regulation 51-102 respecting Continuous Disclosure Obligations* ("Regulation 51-102").

Paragraph (c) of the definition "executive officer" includes individuals that are not employed by the issuer or any of its subsidiaries, but who perform a policy-making function in respect of the issuer.

The definition includes someone who "performs a policy-making function" in respect of the issuer. The CSA is of the view that an individual who "performs a policy-making function" in respect of an issuer is someone who is responsible, solely or jointly with others, for setting the direction of the issuer and is sufficiently knowledgeable of the business and affairs of the issuer so as to be able to respond meaningfully to inquiries from investors about the issuer.

2.3. Directors, executive officers and officers of non-corporate issuers

The term “director” is defined in Regulation 45-106 and it includes, for non-corporate issuers, individuals who perform functions similar to those of a director of a company.

When the term “officer” is used in Regulation 45-106, or any of the Regulation 45-106 forms, a non-corporate issuer should refer to the definitions in securities legislation. Securities legislation in most jurisdictions defines “officer” to include any individual acting in a capacity similar to that of an officer of a company. Therefore, in most jurisdictions, non-corporate issuers must determine which individuals are acting in capacities similar to that of directors and officers of corporate issuers, for the purposes of complying with Regulation 45-106 and its forms.

For example, the determination of who is acting in the capacity of a director or executive officer may be important where a person intends to distribute or trade securities of a limited partnership under an exemption that is conditional on a relationship with a director or executive officer. The person must conclude that the purchaser has the necessary relationship with an individual who is acting in a capacity with the limited partnership that is similar to that of a director or executive officer of a company.

2.4. Founder

The definition of “founder” includes a requirement that, at the time of the distribution of, or trade in, a security the person be actively involved in the business of the issuer. Accordingly, a person who takes the initiative in founding, organizing or substantially reorganizing the business of the issuer within the meaning of the definition but subsequently ceases to be actively engaged in the day to day operations of the business of the issuer would no longer be a “founder” for the purposes of Regulation 45-106, regardless of the person’s degree of prior involvement with the issuer or the extent of the person’s continued ownership interest in the issuer.

2.5. Investment fund

Generally, the definition of “investment fund” would not include a trust or other entity that issues securities that entitle the holder to net cash flows generated by: (i) an underlying business owned by the trust or other entity, or (ii) the income-producing properties owned by the trust or other entity. Examples of trusts or other entities that are not included in the definition are business income trusts, real estate investment trusts and royalty trusts.

2.6. Affiliate, control and related entity

(1) Affiliate

Section 1.3 of Regulation 45-106 contains rules for determining whether persons are affiliates for the purposes of Regulation 45-106, which may be different than those contained in other securities legislation.

(2) Control

The concept of control has two different interpretations in Regulation 45-106. For the purposes of Division 4 of Part 2 and Division 4 of Part 3 (trades to employees, executive officers, directors and consultants), the interpretation of control is contained in section 2.23(1) and section 3.23(1), respectively. For the purposes of the rest of Regulation 45-106, the interpretation of control is found in section 1.4 of Regulation 45-106. The reason for having two different interpretations of control is that the exemptions for distributions of, and trades in, securities to employees, executive officers, directors and consultants require a broader concept of control than is considered necessary for the rest of

Regulation 45-106 to accommodate the issuance of compensation securities in a wide variety of business structures.

2.7. Close personal friend

For the purposes of both the private issuer exemptions and the family, friends and business associates exemptions, a "close personal friend" of a director, executive officer, founder or control person of an issuer is an individual who knows the director, executive officer, founder or control person well enough and has known them for a sufficient period of time to be in a position to assess their capabilities and trustworthiness. The term "close personal friend" can include a family member who is not already specifically identified in the exemptions if the family member satisfies the criteria described above.

The relationship between the individual and the director, executive officer, founder or control person must be direct. For example, the exemption is not available to a close personal friend of a close personal friend of a director of the issuer.

An individual is not a close personal friend solely because the individual is:

(a) a relative,

(b) a member of the same organization, association or religious group, or

(c) a client, customer, former client or former customer.

2.8. Close business associate

For the purposes of both the private issuer exemptions and the family, friends and business associates exemptions, a "close business associate" is an individual who has had sufficient prior business dealings with a director, executive officer, founder or control person of the issuer to be in a position to assess their capabilities and trustworthiness.

An individual is not a close business associate solely because the individual is:

(a) a member of the same organization, association or religious group, or

(b) a client, customer, former client or former customer.

The relationship between the individual and the director, executive officer, founder or control person must be direct. For example, the exemptions are not available for a close business associate of a close business associate of a director of the issuer.

2.9. Indirect interest

Under paragraph (t) of the definition of "accredited investor" in section 1.1 of Regulation 45-106, an "accredited investor" includes a person in respect of which all of the owners of interests in that person, direct, indirect or beneficial, are accredited investors. The interpretive provision in section 1.2 of Regulation 45-106 is needed to confirm the meaning of indirect interest in British Columbia.

PART 3 CAPITAL RAISING EXEMPTIONS

3.1. Soliciting purchasers

Part 2, Division 1, and Part 3, Division 1 (capital raising exemptions) in Regulation 45-106 do not prohibit the use of registrants, finders, or advertising in any form (for example, internet, e-mail, direct mail, newspaper or magazine) to solicit purchasers under any of the exemptions. However, use of any of these means to find purchasers under the private issuer exemptions in sections 2.4 and 3.4 of Regulation 45-106, or under the family, friends and business associates exemptions in sections 2.5 and 3.5 of Regulation 45-106, may give rise to a presumption that the relationship required for use of these exemptions is

not present. If, for example, an issuer advertises or pays a commission or finder's fee to a third party to find purchasers under the family, friends and business associates exemptions, it suggests that the precondition of a close relationship between the purchaser and the issuer may not exist and therefore the issuer cannot rely on these exemptions.

Use of a finder by a private issuer to find an accredited investor, however, would not preclude the private issuer from relying upon the private issuer exemptions, provided that all of the other conditions to those exemptions are met.

Any solicitation activities that aim to identify a particular category of investor should clearly state the kind of investor being sought and the criteria that investors will be required to meet. Any print materials used to find accredited investors, for example, should clearly and prominently state that only accredited investors should respond to the solicitation.

3.2. Soliciting purchasers – Newfoundland and Labrador and Ontario

In Newfoundland and Labrador and Ontario, the exemptions from the dealer registration requirement identified in section 3.01 of Regulation 45-106 are not available to a "market intermediary", except as therein provided (or as otherwise provided in local securities legislation – see, for instance, in the case of Ontario, OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*). Generally, a person is a market intermediary if the person is in the business of trading in securities as principal or agent. In Ontario, the term "market intermediary" is defined in Ontario Securities Commission Rule 14-501 *Definitions*.

The Ontario Securities Commission takes the position that if an issuer retains an employee whose primary job function is to actively solicit members of the public for the purposes of selling the issuer's securities, the issuer and its employee are in the business of selling securities. Further, if an issuer and its employees are deemed to be in the business of selling securities the Ontario Securities Commission considers both the issuer and its employees to be market intermediaries. This applies whether the issuer and its employees are located in Ontario and solicit members of the public outside of Ontario or whether the issuer and its employees are located outside of Ontario and solicit members of the public in Ontario. Accordingly, in order to be in compliance with securities legislation, these issuers and their employees should be registered under the appropriate category of registration in Ontario.

3.3. Advertising

Regulation 45-106 does not restrict the use of advertising to solicit or find purchasers. However, issuers and selling security holders should review other securities legislation and securities directions for guidelines, limitations and prohibitions on advertising intended to promote interest in an issuer or its securities. For example, any advertising or marketing communications must not contain a misrepresentation and should be consistent with the issuer's public disclosure record.

3.4. Restrictions on finder's fees or commissions

The following restrictions apply with respect to certain exemptions under Regulation 45-106:

(1) no commissions or finder's fees may be paid to directors, officers, founders and control persons in connection with a distribution or a trade made under the private issuer exemptions or the family, friends and business associates exemptions, except in connection with a distribution of, or trade in, a security to an accredited investor under a private issuer exemption; and

(2) in Northwest Territories, Nunavut and Saskatchewan, only a registered dealer may be paid a commission or finder's fee in connection with a distribution of, or a

trade in, a security to a purchaser in one of those jurisdictions under an offering memorandum exemption.

3.4.1. Reinvestment plans

(1) When is a plan administrator acting "for or on behalf of the issuer"?

Sections 2.2 and 3.2 of Regulation 45-106 contain prospectus and dealer registration exemptions for distributions of, and trades in, securities by a trustee, custodian or administrator acting for or on behalf of the issuer. If the trustee, custodian or administrator is engaged by the issuer, the plan administrator acts "for or on behalf of the issuer" and therefore falls within the language contained in sections 2.2(1) and 3.2(1) of Regulation 45-106. The fact that the plan administrator may act on or in accordance with instructions of a plan participant, under the plan, does not preclude the administrator from relying on the exemptions contained in sections 2.2 or 3.2 of Regulation 45-106.

(2) Providing a description of material attributes and characteristics of securities

The prospectus and dealer registration reinvestment plan exemptions in sections 2.2(5) and 3.2(5) of Regulation 45-106 add a requirement, effective September 28, 2009, that if the securities distributed or traded under a reinvestment plan, in reliance upon a reinvestment plan exemption, are of a different class or series than the securities to which the dividend or distribution is attributable, the issuer or plan agent must have provided the plan participants with a description of the material attributes and characteristics of the securities being distributed or traded. An issuer or plan agent with an existing reinvestment plan can satisfy this requirement in a number of ways. If plan participants have previously signed a plan agreement or received a copy of a reinvestment plan that included this information, the issuer or plan agent does not need to take any further action for current plan participants. (Future participants should receive the same type of information before their first trade of a security under the plan.)

If plan participants have not received this information in the past, the issuer or plan agent can provide the required information or a reference to a website where the information is available with other materials sent to holders of that class of securities, for example with proxy materials. Section 8.3.1 of Regulation 45-106 provides a transition period, allowing the issuer or plan agent to meet this requirement not later than 140 days after the next financial year end of the issuer ending on or after September 28, 2009.

(3) Interest payments

The exemptions in sections 2.2 and 3.2 of Regulation 45-106 may be available where a person invests interest payable on debentures or other similar securities into other securities of the issuer. The words "distributions out of earnings…or other sources" cover interest payable on debentures.

3.5. Accredited investor

(1) Individual qualification – financial tests

An individual is an "accredited investor" for the purposes of Regulation 45-106 if he or she satisfies, either alone or with a spouse, any of the financial asset test in paragraph (j), the net income test in paragraph (k) or the net asset test in paragraph (l) of the "accredited investor" definition in section 1.1 of Regulation 45-106.

These branches of the definition are designed to treat spouses as a single investing unit, so that either spouse qualifies as an "accredited investor" if the combined financial assets, net income, or net assets of both spouses exceed the $1 000 000, $300 000, or $5 000 000 thresholds, respectively.

For the purposes of the financial asset test in paragraph (j), “financial assets” are defined in Regulation 45-106 to mean cash, securities, or a contract of insurance, a deposit or an evidence of a deposit that is not a security for the purposes of securities legislation. These financial assets are generally liquid or relatively easy to liquidate. The value of a purchaser’s personal residence would not be included in a calculation of financial assets. By comparison, the net asset test under paragraph (l) involves a consideration of all of the purchaser’s total assets minus the purchaser’s total liabilities. Accordingly, for the purposes of the net asset test, the calculation of total assets would include the value of a purchaser’s personal residence and the calculation of total liabilities would include the amount of any liability (such as a mortgage) in respect of the purchaser’s personal residence.

If the combined net income of both spouses does not exceed $300 000, but the net income of one of the spouses exceeds $200 000, only the spouse whose net income exceeds $200 000 qualifies as an accredited investor.

(2) Bright-line standards – individuals

The monetary thresholds in the “accredited investor” definition are intended to create “bright-line” standards. Investors who do not satisfy these monetary thresholds do not qualify as accredited investors under the applicable paragraph.

(3) Beneficial ownership of financial assets

Paragraph (j) of the “accredited investor” definition refers to an individual who, either alone or with a spouse, beneficially owns financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $1 000 000. As a general matter, it should not be difficult to determine whether financial assets are beneficially owned by an individual, an individual’s spouse, or both, in any particular instance. However, financial assets held in a trust or in other types of investment vehicles for the benefit of an individual may raise questions as to whether the individual beneficially owns the financial assets in the circumstances. The following factors are indicative of beneficial ownership of financial assets:

(a) physical or constructive possession of evidence of ownership of the financial asset;

(b) entitlement to receipt of any income generated by the financial asset;

(c) risk of loss of the value of the financial asset; and

(d) the ability to dispose of the financial asset or otherwise deal with it as the individual sees fit.

For example, securities held in a self-directed RRSP, for the sole benefit of an individual, are beneficially owned by that individual. In general, financial assets in a spousal RRSP would also be included for the purposes of the threshold test because paragraph (j) takes into account financial assets owned beneficially by a spouse. However, financial assets held in a group RRSP under which the individual would not have the ability to acquire the financial assets and deal with them directly would not meet these beneficial ownership requirements.

(4) Calculation of purchaser’s net assets

To calculate a purchaser’s net assets under paragraph (l) of the “accredited investor” definition, subtract the purchaser’s total liabilities from the purchaser’s total assets. The value attributed to assets should reasonably reflect their estimated fair value. Income tax should be considered a liability if the obligation to pay it is outstanding at the time of the distribution of, or trade in, the security.

(5) Financial statements

The minimum net asset threshold of $5 000 000 specified in paragraph (m) of the "accredited investor" definition must, in the case of a non-individual entity, be shown on the entity's "most recently prepared financial statements". The financial statements must be prepared in accordance with applicable generally accepted accounting principles.

(6) Time for assessing qualification

The financial tests prescribed in the accredited investor definition are to be applied only at the time of the distribution of, or trade in, the security. The person is not required to monitor the purchaser's continuing qualification as an accredited investor after the distribution of, or trade in, the security is completed.

(7) Recognition or Designation as an Accredited Investor

Paragraph (v) of the "accredited investor" definition in Regulation 45-106 contemplates that a person may apply to be recognized or designated as an accredited investor by the securities regulatory authorities or regulators, except in Ontario and Québec, the regulators. The securities regulatory authorities or regulators have not adopted any specific criteria for granting accredited investor recognition or designation to applicants, as the securities regulatory authorities or regulators believe that the "accredited investor" definition generally covers all types of persons that do not require the protection of the prospectus requirement or the dealer registration requirement. Accordingly, the securities regulatory authorities or regulators expect that applications for accredited investor recognition or designation will be utilized on a very limited basis. If a securities regulatory authority or regulator considers it appropriate in the circumstances, it may grant accredited investor recognition or designation to a person on terms and conditions, including a requirement that the person apply annually for renewal of accredited investor recognition or designation.

3.6. Private issuer

(1) Meaning of "the public"

Whether or not a person is a member of the public must be determined on the facts of each particular case. The courts have interpreted "the public" very broadly in the context of securities trading. Whether a person is a part of the public will be determined on the particular facts of each case, based on the tests that have developed under the relevant case law. A person who intends to distribute or trade securities, in reliance upon the private issuer prospectus exemption in section 2.4(2) or the private issuer dealer registration exemption in section 3.4(2) of Regulation 45-106, to a person not listed in paragraphs (a) through (j) of that section will have to satisfy itself that the distribution of, or trade in, the security is not to the public.

(2) Meaning of "close personal friends" and "close business associates"

See sections 2.7 and 2.8 of this Policy Statement for a discussion of the meaning of "close personal friend" and "close business associate".

(2.1) Meaning of "non-convertible debt securities"

Paragraph (b) of the definition of private issuer has a number of restrictions that apply to the securities, other than non-convertible debt securities, of a private issuer. Non-convertible debt securities are debt securities that do not have a right or obligation to exchange or convert into another security of the issuer.

(3) Business combination of private issuers

A distribution of, or trade in, securities in connection with an amalgamation, merger, reorganization, arrangement or other statutory procedure involving two private issuers, to holders of securities of those issuers is not a distribution of, or trade in, a security to the public, provided that the resulting issuer is a private issuer.

Similarly, a distribution of, or trade in, securities by a private issuer in connection with a share exchange take-over bid for another private issuer is not a distribution of, or trade in, securities to the public, provided the offeror remains a private issuer after completion of the bid.

(4) Acquisition of a private issuer

Persons relying on a private issuer exemption in Regulation 45-106 must be satisfied that the purchaser is not a member of the public. Generally, however, if the owner of a private issuer sells the business of the private issuer by way of a sale of securities, rather than assets, to another party who acquires all of the securities, the sale will not be considered to have been to the public.

(5) Ceasing to be a private issuer

The term “private issuer” is defined in section 2.4(1) (with the same definition repeated in section 3.4(1) of Regulation 45-106). A private issuer can distribute securities only to the persons listed in section 2.4(2) of Regulation 45-106. If a private issuer distributes securities to a person not listed in section 2.4(2), even under another exemption, it will no longer be a private issuer and will not be able to continue to use the private issuer prospectus exemption in section 2.4(2) (or the private issuer dealer registration exemption in section 3.4(2)). For example, if a private issuer distributes securities under the offering memorandum exemption, it will no longer be a private issuer.

Issuers that cease to be private issuers will still be able to use other exemptions to distribute their securities. For example, such issuers could rely on the family, friends and business associates prospectus exemption (except in Ontario) or the accredited investor prospectus exemption. However, issuers that rely on these prospectus exemptions must file a report of exempt distribution with the securities regulatory authority or regulator in each jurisdiction in which the distribution tookplace.

An issuer that completes a going private transaction (for example, by way of an amalgamation squeeze out or a takeover bid with a subsequent statutory compulsory acquisition) can however use the private issuer exemption after a going private transaction.

3.7. Family, friends and business associates

(1) Number of purchasers

There is no restriction on the number of persons that the issuer may sell securities to under the family, friends and business associates exemptions in sections 2.5 and 3.5 of Regulation 45-106. However, an issuer selling securities to a large number of persons under this exemption may give rise to a presumption that not all of the purchasers are family, close personal friends or close business associates and that the exemption may not be available.

(2) Meaning of “close personal friends” and “close business associates”

See sections 2.7 and 2.8 of this Policy Statement for a discussion of the meaning of “close personal friend” and “close business associate”.

(3) Risk acknowledgement - Saskatchewan

Under sections 2.6 and 3.6 of Regulation 45-106, the corresponding family, friends and business associates exemption in section 2.5 or 3.5 of Regulation 45-106 cannot be relied upon in Saskatchewan for a distribution of, or trade in, securities based on a close personal friendship or close business association unless the person obtains a signed "risk acknowledgement" in the required form from the purchaser and retains the form for eight years after the distribution of, or trade in, securities.

3.8. Offering memorandum

(1) Eligibility criteria – Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec and Saskatchewan

Alberta, Manitoba, Northwest Territories, Nunavut, Prince Edward Island, Québec, Saskatchewan, and Yukon impose eligibility criteria on persons investing under the offering memorandum exemptions. In these jurisdictions, the purchaser must be an eligible investor if the purchaser's acquisition cost is more than $10 000.

In determining the acquisition cost to a purchaser who is not an eligible investor, include any future payments that the purchaser will be required to make. Proceeds which may be obtained on exercise of warrants or other rights, or on conversion of convertible securities, are not considered to be part of the acquisition cost unless the purchaser is legally obligated to exercise or convert the securities. The $10 000 maximum acquisition cost is calculated per distribution of, or trade in, security.

Nevertheless, concurrent and consecutive, closely-timed offerings to the same purchaser will usually constitute one distribution of, or trade in, a security. Consequently, when calculating the acquisition cost, all of these offerings by or on behalf of the issuer to the same purchaser who is not an eligible investor would be included. It would be inappropriate for an issuer to try to circumvent the $10 000 threshold by dividing a subscription in excess of $10 000 by one purchaser into a number of smaller subscriptions of $10 000 or less that are made directly or indirectly by the same purchaser.

A purchaser can qualify as an eligible investor under various categories of the definition, including if the purchaser has and has had in prior years either $75 000 pre-tax net income or profit or has $400 000 worth of net assets. In calculating a purchaser's net assets, subtract the purchaser's total liabilities from the purchaser's total assets. The value attributed to assets should reasonably reflect their estimated fair value. Income tax should be considered a liability if the obligation to pay it is outstanding at the time of the distribution of, or trade in, a security.

Another way a purchaser can qualify as an eligible investor is to obtain advice from an eligibility adviser. An eligibility adviser is a person registered as an investment dealer (or in an equivalent category of unrestricted dealer in the purchaser's jurisdiction) that is authorized to give advice with respect to the type of security being distributed or traded. In Saskatchewan and Manitoba, certain lawyers and public accountants may also act as eligibility advisers.

A registered investment dealer providing advice to a purchaser in these circumstances is expected to comply with the "know your client" and suitability requirements under applicable securities legislation and SRO rules and policies. Some dealers have obtained exemptions from the "know your client" and suitability requirements because they do not provide advice. An assessment of suitability by these dealers is not sufficient to qualify a purchaser as an eligible investor.

(2) Form of offering memorandum

There are two forms of offering memorandum: Form 45-106F3, which may be used by qualifying issuers, and Form 45-106F2, which must be used by all other issuers. Form

45-106F3 requires qualifying issuers to incorporate by reference their annual information form (AIF), annual report or alternate AIF, as applicable, management's discussion and analysis (MD&A), annual financial statements, if applicable, and subsequent specified continuous disclosure documents required under Regulation 51-102.

A qualifying issuer is a reporting issuer that has filed an AIF under Regulation 51-102-102, an annual report under Regulation 51-103, or an alternate AIF, as applicable, and has met all of its other continuous disclosure obligations, including those in Regulation 51-102, Regulation 51-103, *Regulation 43-101 respecting Standards of Disclosure for Mineral Projects*, and *Regulation 51-101 respecting Standards of Disclosure for Oil and Gas Activities*. Under Regulation 51-102, ventureseniorunlisted issuers are not required to file AIFs. However, if a ventureseniorunlisted issuer wants to use Form 45-106F3, the ventureseniorunlisted issuer must voluntarily file an AIF under Regulation 51-102 in order to incorporate that AIF into its offering memorandum.

(3) Date of certificate and required signatories

The issuer must ensure that the information provided to the purchaser is current and does not contain a misrepresentation. For example, if a material change occurs in the business of the issuer after delivery of an offering memorandum to a potential purchaser, the issuer must give the potential purchaser an update to the offering memorandum before the issuer accepts the agreement to purchase the securities. The update to the offering memorandum may take the form of an amendment describing the material change, a new offering memorandum containing up-to-date disclosure or a material change report, whichever the issuer decides will most effectively inform purchasers.

Whatever form of update the issuer uses, it must include a newly signed and dated certificate as required in the applicable subsection 2.9(9), (10), (10.1), (10.2), (10.3), (11), (11.1), or (12) or 3.9(9), (10), (10.1), (10.2), (10.3), (11), (11.1), or (12) of Regulation 45-106.

"Promoter" is defined differently in provincial and territorial securities legislation across CSA jurisdictions. It is generally defined as meaning a person who has taken the initiative in founding, organizing or substantially reorganizing the business of the issuer or who has received consideration over a prescribed amount for services or property or both in connection with founding, organizing or substantially reorganizing the issuer. "Promoter" has not been defined in the Securities Act (Québec) and a broad interpretation is taken in Québec in determining who would be considered a promoter.

Under securities legislation, persons who receive consideration solely as underwriting commissions or in consideration of property and who do not otherwise take part in the founding, organizing or substantially reorganizing the issuer are not promoters. Simply selling securities, or in some way facilitating sales in securities, does not make a person a promoter under the offering memorandum exemptions.

(4) Consideration to be held in trust

The purchaser has, or must be given, the right to cancel the agreement to purchase the securities until midnight on the 2nd business day after signing the agreement. During this period, the issuer must arrange for the consideration to be held in trust on behalf of the purchaser.

It is up to the issuer to decide what arrangements are necessary to preserve the consideration received from the purchaser. The requirement to hold the consideration in trust may be satisfied if, for example, the issuer keeps the purchaser's cheque, without cashing or depositing it, until the expiration of the two business day cancellation period.

It is also the issuer's responsibility to ensure that whoever is holding the consideration promptly returns it to the purchaser if the purchaser cancels the agreement to purchase the securities.

(5) Filing of offering memorandum

The issuer is required to file the offering memorandum with the securities regulatory authority or regulator in each of the jurisdictions in which the issuer distributes or trades securities under an offering memorandum exemption. The issuer must file the offering memorandum on or before the 10th day after the distribution.

If the issuer is conducting multiple closings, the offering memorandum must be filed on or before the 10th day after the first closing. Once the offering memorandum has been filed, there is no need to file it again after subsequent closings, unless it has been updated.

(6) Purchasers' rights

Unless securities legislation in a purchaser's jurisdiction provides a purchaser with a comparable right of cancellation or revocation, an issuer must give each purchaser under an offering memorandum a contractual right to cancel the agreement to purchase the securities by delivering a notice to the issuer not later than midnight on the 2nd business day after the purchaser signs the agreement.

Unless securities legislation in a purchaser's jurisdiction provides purchasers with comparable statutory rights, the issuer must also give the purchaser a contractual right of action against the issuer in the event the offering memorandum contains a misrepresentation. This contractual right of action must be available to the purchaser regardless of whether the purchaser relied on the misrepresentation when deciding to purchase the securities. This right is similar to that given to a purchaser under a prospectus. The purchaser may claim damages or ask that the agreement be cancelled. If the purchaser wants to cancel the agreement, the purchaser must commence the action within 180 days after signing the agreement to purchase the securities. If the purchaser is seeking damages, the purchaser must commence the action within the earlier of 180 days after learning of the misrepresentation or 3 years after signing the agreement to purchase the securities.

The issuer is required to describe in the offering memorandum any rights available to the purchaser, whether they are provided by the issuer contractually as a condition to the use of the exemption or provided under securities legislation.

3.9. Minimum amount investment

An issuer may wish to distribute or trade more than one kind of security of its own issue, such as shares and debt, in a single transaction under a minimum investment amount exemption. Provided that the shares and debt are sold in units that have a total acquisition cost of not less than $150 000 paid in cash at the time of the distribution of, or trade in, a security, the exemptions can, if otherwise available, be used, notwithstanding that the acquisition cost of the shares and the acquisition cost of the debt, taken separately, are both less than $150 000.

PART 4 OTHER EXEMPTIONS

4.1. Employee, executive officer, director and consultant exemptions

Trustees, custodians or administrators who engage in activities, contemplated in the prospectus and dealer registration exemptions in sections 2.27 and 3.27 of Regulation 45-106, that bring together purchasers and sellers of securities should have regard to the provisions of *Regulation 21-101 respecting Marketplace Operation* respecting "marketplaces" and "alternative trading systems".

The employee, executive officer, director and consultant exemptions are based on the alignment of economic interests between an issuer and its employees. They may, where available, be used to provide employees and other similar persons with an opportunity to

participate in the growth of the employer's business and to compensate persons for the services they provide to an issuer. The securities regulatory authorities or regulators will generally not grant exemptive relief analogous to these exemptions except in very limited circumstances.

4.2. Business combination and reorganization

(1) Statutory procedure

The securities regulatory authorities interpret the phrase "statutory procedure" broadly and are of the view that the prospectus and dealer registration exemptions contained in sections 2.11 and 3.11 of Regulation 45-106 apply to all distributions of, and trades in, securities of an issuer that are both part of the procedure and necessary to complete the transaction, regardless of when the distribution of, or trade in, a security occurs.

The prospectus and dealer registration exemptions contained in sections 2.11 and 3.11 of Regulation 45-106 exempt distributions of, and trades in, securities in connection with an amalgamation, merger, reorganization or arrangement if the same is done "under a statutory procedure". The securities regulatory authorities or regulators are of the view that the references to statutory procedure in sections 2.11 and 3.11of Regulation 45-106 are to any statute of a jurisdiction or foreign jurisdiction under which the entities involved have been incorporated or created and exist or under which the transaction is taking place. This would include, for example, an arrangement under the Companies' Creditors Arrangement Act (Canada).

(2) Three-cornered amalgamations

Certain corporate statutes permit a so-called "three-cornered merger or amalgamation" under which two companies will amalgamate or merge and security holders of the amalgamating or merging entities will receive securities of a third party affiliate of one amalgamating or merging entity. The prospectus and dealer registration exemptions contained in sections 2.11 and 3.11 of Regulation 45-106 refer to these distributions of, or trades in, a security when they refer to a distribution of, or a trade in, a security made in connection with an amalgamation or merger done under a statutory procedure.

(3) Exchangeable shares

A transaction involving a procedure described in the prospectus and dealer registration exemptions contained in sections 2.11 and 3.11 of Regulation 45-106 may include an exchangeable share structure to achieve certain tax-planning objectives. For example, where a non-Canadian company seeks to acquire a Canadian company under a plan of arrangement, an exchangeable share structure may be used to allow the Canadian shareholders of the company to be acquired to receive, in substance, shares of the non-Canadian company while avoiding the adverse tax consequences associated with exchanging shares of a Canadian company for shares of a non-Canadian company. Instead of receiving shares of the non-Canadian company directly, the Canadian shareholders receive shares of a Canadian company which, through various contractual arrangements, have economic terms and voting rights that are essentially identical to the shares of the non-Canadian company and permit the holder to exchange such shares, at a time of the holder's choosing, for shares of the non-Canadian company.

Historically, the use of an exchangeable share structure in connection with a statutory procedure has raised a question as to whether the exemptions now contained in sections 2.11 and 3.11 of Regulation 45-106 were available for all distributions or trades necessary to complete the transaction. For example, in the case of the acquisition under a plan of arrangement noted above, the use of an exchangeable share structure may result in a delay of several months or even years between the date of the arrangement and the date the shares of the non-Canadian company are distributed to the former shareholders of the acquired company. As a result of this delay, some filers have questioned whether the

distribution of the non-Canadian company's shares upon the exercise of the exchangeable shares may still be viewed as being "in connection with" the statutory transaction, and have made application for exemptive relief to address this uncertainty.

The securities regulatory authorities or regulators take the position that the statutory procedure exemptions contained in section 2.11 and section 3.11 of Regulation 45-106 refer to all distributions or trades of securities that are necessary to complete an exchangeable share transaction involving a procedure described in section 2.11 or section 3.11, even where such distributions or trades occur several months or years after the transaction. In the case of the acquisition noted above, the investment decision of the shareholders of the acquired company at the time of the arrangement represented a decision to, ultimately, exchange their shares for shares of the non-Canadian company. The distribution of such shares upon the exercise of the exchangeable shares does not represent a new investment decision, but merely represents the completion of that original investment decision. Accordingly, additional exemptive relief is not warranted in circumstances where the original transaction was completed in reliance on these exemptions.

4.3. Asset acquisition - character of assets to be acquired

When issuing securities, issuers must comply with the requirements under applicable corporate or other governing legislation that the securities be issued for fair value. Where securities are issued for non-cash consideration such as assets or resource properties, it is the responsibility of the issuer and its board of directors to determine the fair market value of the assets or resource properties and to retain records to demonstrate how that fair market value was determined. In some situations, cash assets that make up working capital could also be considered in the total calculation of the fair market value.

4.4. Securities for debt - bona fide debt

A bona fide debt is one that was incurred for value, on commercially reasonable terms and that on the date the debt was incurred the parties believed would be repaid in cash.

A reporting issuer may distribute or trade securities to settle a debt only after the debt becomes due, as evidenced by the creditor issuing an invoice, demand letter or other written statement to the issuer indicating that the debt is due. The securities for debt exemptions may not be relied on for the issuance of securities by an issuer to secure a debt that will remain outstanding after the issuance.

4.5. Take-over bid and issuer bid

(1) Exempt bids

The terms take-over bid and issuer bid, for the purposes of sections 2.16 and 3.16 of Regulation 45-106, include an exempt take-over bid and exempt issuer bid.

(2) Bids involving exchangeable shares

The take-over bid and issuer bid exemptions refer to all distributions or trades necessary to complete a take-over bid or an issuer bid that involves an exchangeable share structure (as described under section 4.2 of this Policy Statement), even where such distributions or trades may occur several months or even years after the bid is completed.

4.6. Isolated distribution or trade

The exemptions contained in section 2.30 and 3.30 of Regulation 45-106 are limited to distributions of, or trades in, a security made by an issuer in a security of its own issue. There is also an additional isolated trade dealer registration exemption contained in section 3.29 of Regulation 45-106. While the latter exemption refers to trades in any security, it does not apply to any trades by an issuer in a security that is issued by the issuer.

It is intended that these exemptions will only be used rarely and are not available for registrants or others whose business is trading in securities.

Reliance upon the isolated trade exemption might, for example, be appropriate when a person who is not involved in the business of trading securities wishes to make a single trade of a security that the person owns to another person. The exemption would not be available to a person for any subsequent trades for a period of time adequate to ensure that each transaction was truly isolated and unconnected.

4.7. Mortgages

In British Columbia, Alberta, Manitoba, Québec and Saskatchewan, Regulation 45-106 specifically excludes syndicated mortgages from the mortgage prospectus and dealer registration exemptions in sections 2.36 and 3.36. In determining what constitutes a syndicated mortgage, issuers will need to refer to the corresponding definition provided in section 2.36(1) or 3.36(1) of Regulation 45-106.

The mortgage exemptions do not apply to distributions or trades in securities that secure mortgages by bond, debenture, trust deed or similar obligation. The mortgage exemptions also do not apply to a distribution of, or a trade in, a security that represents an undivided co-ownership interest in a pool of mortgages, such as a pass-through certificate issued by an issuer of asset-backed securities.

4.8. Not for profit issuer

(1) Eligibility to use these exemptions

These exemptions apply to distributions of, and trades in, securities of an issuer that is organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit ("not for profit issuer"). To use these exemptions, an issuer must be organized exclusively for one or more of the listed purposes and use the funds raised for those purposes.

If an issuer is organized exclusively for one of the listed purposes, but its mandate changes so that it is no longer primarily engaged in the purpose it was organized for, the issuer may no longer be able to rely on these exemptions. For example, if an issuer organized exclusively for educational purposes over time devotes more and more of its efforts to lending money, even if it is only to other educational entities, the lending issuer may be unable to rely on these exemptions. The same would also be true if one of an issuer's mandates was to provide an investment vehicle for its members. An issuer that issues securities that pay dividends would also not be able to use these exemptions, because no part of the issuer's net earnings can go to any security holder. However, if the securities are debt securities and the issuer agrees to repay the principal amount with or without interest, the security holders are not considered to be receiving part of the net earnings of the issuer. The debt securities may be secured or unsecured.

If investors could receive any special treatment as a result of purchasing securities, the security holders are not typically receiving part of the net earnings of the issuer and the sale may still fit within these exemptions. For example, if the not for profit issuer runs a golf course and offers security holders a waiver of greens fees for three years, it could still rely on these exemptions, provided all other conditions are met (and the exemption remains available in the relevant jurisdiction(s)).

If, at the time of the distribution of, or trade in, the security, the purchaser has an entitlement to the assets of the issuer on the basis that they would be getting part of the net earnings of the issuer, then the sale would not fit within these exemptions.

In Québec, not for profit issuers may still rely on the broad exemption available for not for profit issuers under section 3 of the Securities Act (Québec).

(2) Meaning of “no commission or other remuneration”

Sections 2.38(b) and 3.38(b) provide that “no commission or other remuneration is paid in connection with the sale of the security”. This is intended to ensure that no one is paid to find purchasers of the securities. However, the issuer may pay its legal and accounting advisers for their legal or accounting services in connection with the sale.

4.9. Exchange contracts

The dealer registration exemption for exchange contracts contained in section 3.45 of Regulation 45-106 (and as limited by section 3.0 of Regulation 45-106) is only available in Alberta, British Columbia, Québec and Saskatchewan. In Manitoba and Ontario, exchange contracts are governed by commodity futures legislation.

Except in Saskatchewan, the dealer registration exemption for exchange contracts contained in section 3.45(1)(b) (and as limited by section 3.0) of Regulation 45-106 provides for trades resulting from unsolicited orders placed with an individual resident outside the jurisdiction. However, if the individual conducts further trades in the future, that individual will be deemed to be carrying on business in the jurisdiction and will not be able to rely on this exemption.

PART 5 FORMS

5.1. Report of Exempt Distribution

(1) Requirement to file

An issuer that has distributed a security of its own issue under any of the prospectus exemptions listed in section 6.1 of Regulation 45-106 is required to file Form 45-106F1 Report of Exempt Distribution, on or before the 10th day after the distribution. Alternatively, if an underwriter distributes securities acquired under section 2.33 of Regulation 45-106, either the issuer or the underwriter may complete and file the form. If there is a syndicate of underwriters, the lead underwriter may file the form on behalf of the syndicate or each underwriter may file a form relating to the portion of the distribution it was responsible for.

In determining if it is required to file a report in a particular jurisdiction, the issuer or underwriter should consider the following questions:

(a) Is there a distribution in the jurisdiction? (Please refer to the securities legislation of the jurisdiction for guidance, if any, on when a distribution occurs in the jurisdiction.)

(b) If there is a distribution in the jurisdiction, what exemption from the prospectus requirement is the issuer relying on for the distribution of the security?

(c) Does the exemption referred to in paragraph (b) trigger a reporting requirement? (Reports of exempt distribution are required for distributions made in reliance on the prospectus exemptions listed in section 6.1 of Regulation 45-106.)

A distribution may occur in more than one jurisdiction. In this case, the issuer is required to file a single report in each Canadian jurisdiction where the distribution has occurred. The report will set out all distributions in each Canadian jurisdiction.

(2) Access to information

The securities legislation of several provinces requires that information filed with the securities regulatory authority or, where applicable, the regulator under such securities

legislation, be made available for public inspection during normal business hours except for information that the securities regulatory authority, or where applicable, the regulator,

(a) believes to be personal or other information of such a nature that the desirability of avoiding disclosure thereof in the interest of any affected individual outweighs the desirability of adhering to the principle that information filed with the securities regulatory authority or the regulator, as applicable, be available to the public for inspection,

(b) in Alberta, considers that it would not be prejudicial to the public interest to hold the information in confidence, and

(c) in Québec, considers that access to the information could result in serious prejudice.

Based on the above mentioned provisions of securities legislation, the securities regulatory authorities or regulators, as applicable, have determined that the information listed in Form 45-106F1 Report of Exempt Distribution, Schedule I ("Schedule I") discloses personal or other information of such a nature that the desirability of avoiding disclosure of this personal information outweighs the desirability of making the information available to the public for inspection. In addition, in Alberta, the regulator considers that it would not be prejudicial to the public interest to hold the information listed in Schedule I in confidence. In Québec, the securities regulatory authority considers that access to Schedule I by the public in general could result in serious prejudice and consequently, the information listed in Schedule I will not be made publicly available.

(3) Filings in British Columbia

For filings made in British Columbia, issuers are required to file Form 45-106F1 and pay the fees associated with that filing electronically using BCSC e-services. This requirement only applies to Form 45-106F1 filings that are required to be made within 10 days of the distribution. It does not apply to Form 45-106F1 filings made annually by investment funds under section 6.2(2) of Regulation 45-106. Please refer to BC Instrument 13-502 Electronic Filing of Reports of Exempt Distribution for further information.

5.2. Forms required under the offering memorandum exemption

Regulation 45-106 designates two forms of offering memorandum. The first, Form 45-106F2, is for non-qualifying issuers and the second, Form 45-106F3, can only be used by qualifying issuers (as defined in Regulation 45-106).

The required form of risk acknowledgment under sections 2.9(1), 3.9(1), 2.9(2) and 3.9(2) of Regulation 45-106 is Form 45-106F4.

5.3. Real estate securities

Certain jurisdictions impose alternative or additional disclosure requirements in relation to the distribution of real estate securities by offering memorandum. Refer to securities legislation in the jurisdictions where securities are being distributed.

5.4. Risk Acknowledgement Form Respecting Close Personal Friends andCloseBusiness Associates – Saskatchewan

In Saskatchewan, a risk acknowledgment is also required under section 2.6(1) of Regulation 45-106 (and under section 3.6(1)) if the person intends to rely upon the "family, friends and business associates exemption" in section 2.5 (or in section 3.5) of Regulation 45-106, which is based on a relationship of close personal friendship or close business association. The form of risk acknowledgement required in these circumstances is Form 45-106F5.

PART 6 RESALE OF SECURITIES ACQUIRED UNDER AN EXEMPTION

6.1. Resale restrictions

In most jurisdictions, securities distributed under a prospectus exemption may be subject to restrictions on their resale. The particular resale, or "first trade", restrictions depend on the parties to the distribution and the particular exemption that was relied upon to distribute the securities. In certain circumstances, no resale restrictions will apply and the securities acquired under an exempt distribution will be freely tradable.

Resale restrictions are imposed under *Regulation 45-102 respecting Resale of Securities* ("Regulation 45-102"). While Regulation 45-106 contains text boxes providing commentary on resale, these text boxes are intended as guidance only and are not a substitute for reviewing the applicable provisions in Regulation 45-102 to determine what resale restrictions, if any, apply to the securities in question.

The resale restrictions operate by the resale transaction triggering the prospectus requirement unless certain conditions are satisfied. Securities that are subject to such restrictions in circumstances where the conditions cannot be satisfied may nevertheless be distributed under an exemption from the prospectus requirement, whether under Regulation 45-106 or other securities legislation.

PART 7 TRANSITION

7.1. Transition - Application of Amendments

The amendments to *Regulation 45-106 respecting Prospectus and Registration Exemptions* and this Policy Statement which came into effect on January 1, 2011 only apply in respect of an offering memorandum or an amendment to an offering memorandum of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning on or after January 1, 2011.

POLICY STATEMENT TO REGULATION 51-102 RESPECTING CONTINUOUS DISCLOSURE OBLIGATIONS

PART 1 INTRODUCTION AND DEFINITIONS

1.1 Introduction and Purpose

(1) *Regulation 51-102 respecting Continuous Disclosure Obligations* (the "Regulation") sets out disclosure requirements for all issuers, other than investment funds~~,~~ and venture issuers, that are reporting issuers in one or more jurisdictions in Canada.

(2) The purpose of this Policy Statement is to help you understand how the provincial and territorial regulatory authorities interpret or apply certain provisions of the Regulation. This Policy Statement includes explanations, discussion and examples of various parts of the Regulation.

1.2 Filing Obligations

(1) Reporting issuers must file continuous disclosure documents under the Regulation only in the local jurisdictions in which they are a reporting issuer.

(2) In some circumstances, the Regulation permits an issuer to satisfy a filing requirement by filing a different document instead. If an issuer is relying on one of these sections, the issuer must file the substitute document in the appropriate filing category and type on SEDAR. For example, an exchangeable share issuer relying on section 13.3(2) that must file a copy of its parent issuer's annual financial statements, must file those financial statements under the exchangeable share issuer's SEDAR profile in the "Annual Financial Statement" filing type.

1.3 Corporate Law Requirements

Reporting issuers are reminded that they may be subject to requirements of corporate law that address matters similar to those addressed by the Regulation, and which may impose additional or more onerous requirements. For example, applicable corporate law may require the delivery of annual financial reports to shareholders or may require the board of directors to approve interim financial reports.

1.4 Definitions

(1) **General** – Many of the terms for which the Regulation or Forms prescribed by the Regulation provide definitions are defined somewhat differently in the applicable securities legislation of several local jurisdictions. 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 continuous disclosure; or (b) the context otherwise requires.

For instance, the terms "form of proxy", "material change", "proxy", and "recognized quotation and trade reporting system" are defined in local securities legislation of most jurisdictions. The provincial and territorial regulatory authorities consider the meanings given to these terms in securities legislation to be substantially similar to the definitions set out in the Regulation.

(2) **Asset-backed security** – Section 1.8 of *Policy Statement to Regulation 44-101 respecting Short Form Prospectus Distributions* provides guidance for the definition of "asset-backed security".

(3) **Directors and Executive Officers** – Where the Regulation or any of the Forms use the term "directors" or "executive officers", a reporting issuer that is not a corporation must refer to the definitions in securities legislation of "director". The definition of "director"

typically includes a person acting in a capacity similar to that of a director of a company. Therefore, non-corporate issuers must determine in light of the particular circumstances which individuals or persons are acting in such capacities for the purposes of complying with the Regulation and the Forms. Further, in considering paragraph (c) of the definition of "executive officer", we would consider an individual that is employed by an entity separate from the reporting issuer, but that performs a policy-making function in respect of the reporting issuer through that separate entity or otherwise, to fit within this definition. Similarly, 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.

(4) **Investment Fund** – Generally, the definition of "investment fund" would not include a trust or other entity that issues securities which entitle the holder to substantially all of the net cash flows generated by: (i) an underlying business owned by the trust or other entity, or (ii) the income-producing properties owned by the trust or other entity. Examples of trusts or other entities that are not included in the definition are business income trusts, real estate investment trusts and royalty trusts.

(5) **Reverse Takeover** – The definition of reverse takeover includes reverse acquisitions as defined or interpreted in Canadian GAAP applicable to publicly accountable enterprises and any other transaction in which an issuer issues enough voting securities as consideration for the acquisition of an entity such that control of the issuer passes to the securityholders of the acquired entity (such as a Qualifying Transaction, as that term is defined in the TSX Venture Exchange policies). In a reverse acquisition, although legally the entity (the legal parent) that issued the securities is regarded as the parent, the entity (the legal subsidiary) whose former securityholders now control the combined entity is treated as the acquirer for accounting purposes. As a result, for accounting purposes, the issuing entity (the legal parent) is deemed to be a continuation of the acquirer and the acquirer is deemed to have acquired control of the assets and business of the issuing entity in consideration for the issue of capital.

(6) **Restructuring transaction** – A "restructuring transaction" includes a transaction in which a reporting issuer acquires assets, which may include assets that constitute a business, and issues securities resulting in

- new securityholders owning or controlling more than 50% of the reporting issuer's outstanding voting securities, and

- a new control person, or new control group.

The acquisition and issuance may be in a single transaction, or a series of transactions. To be a "series of transactions", the transactions must be related to each other.

The phrase "new securityholders" includes both beneficial owners who did not hold any of the reporting issuer's securities before the restructuring transaction, and beneficial owners that held some securities in the reporting issuer before the transaction, but who now, as a result of the transaction, own more than 50% of the outstanding voting securities.

(7) **Accounting terms** – The Regulation uses accounting terms that are defined or used 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* 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 continuous disclosure; or (b) the context otherwise requires.

For example, the term "associate" is defined in local securities statutes and Canadian GAAP applicable to publicly accountable enterprises. Securities regulatory authorities are of the view that the references to the term "associate" in the Regulation and its forms (e.g., item 7.1(g) of Form 51-102F5 Information Circular) should be given the meaning of the term under local securities statutes since the context does not indicate that the accounting meaning of the term should be used.

(8) **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* 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.

(9) **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.

1.5 Plain Language Principles

You should apply plain language principles when you prepare your disclosure including:

- using short sentences
- using definite everyday language
- using the active voice
- avoiding superfluous words
- organizing the document in 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
- not relying on 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 bullet point formats are consistent with the disclosure requirements of the Regulation.

1.6 Signature and Certificates

Reporting issuers are not required by the Regulation to sign or certify documents filed under the Regulation. Certification requirements apply to some documents under *Regulation 52-109 respecting Certification of Disclosure in Companies' Annual and Interim Filings*. Whether or not a document is signed or certified, it is an offence under securities legislation to make a false or misleading statement in any required document.

1.7 Audit Committees

Reporting issuers are reminded that their audit committees must fulfill their responsibilities set out in other securities legislation. For example, the responsibilities of audit committees are set out in *Regulation 52-110 respecting Audit Committees*.

1.8 Acceptable Accounting Principles and Auditing Standards

An issuer filing any of the following items under the Regulation must comply with *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standard*s:

(a) financial statements;

(b) an operating statement for an oil and gas property as referred to in section 8.10 of the Regulation;

(c) summarized financial information, including the aggregated amounts of assets, liabilities, revenue and profit or loss of a business as referred to in section 8.6 of the Regulation; or

(d) financial information derived from a credit support issuer's financial statements as referred to in section 13.4 of the Regulation.

Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards sets out, among other things, the use of accounting principles other than Canadian GAAP applicable to publicly accountable enterprises or auditing standards other than Canadian GAAS in preparing or auditing financial statements.

1.9 Ordinary Course of Business

Whether a contract has been entered into in the ordinary course of business is a question of fact. It must be considered in the context of the reporting issuer's business and the industry in which it operates.

1.10 Material Deficiencies

After filing a document under the Regulation, a reporting issuer may determine that the document was materially deficient in some respect and, as a result, the filing does not comply with the requirements of the Regulation. In this situation, the reporting issuer is expected to comply with the Regulation by filing an amended version of the materially deficient document.

PART 2 FOREIGN ISSUERS AND INVESTMENT FUNDS

2.1 Foreign Issuers

Regulation 71-102 respecting Continuous Disclosure and Other Exemptions Relating to Foreign Issuers provides relief for foreign reporting issuers from certain

continuous disclosure and other obligations, including certain obligations contained in the Regulation.

2.2 Investment Funds and Venture Issuers

Section 2.1 of the Regulation states that the Regulation does not apply to an investment fund or to a venture issuer. Investment funds should look to securities legislation of the local jurisdiction including *Regulation 81-106 respecting Investment Fund Continuous Disclosure* to find the continuous disclosure requirements applicable to them and venture issuers should also look to the securities legislation of the local jurisdiction including *Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers* to determine applicable continuous disclosure requirements.

PART 3 FINANCIAL STATEMENTS

3.1 Financial Year

(1) **Length of Financial Year** – For the purposes of the Regulation, unless otherwise expressly provided, references to a financial year apply irrespective of the length of that year. The first financial year of a reporting issuer commences on the date of its incorporation or organization and ends at the close of that year.

(2) **Non-Standard Year** – An issuer with a non-standard year should advise the regulator or securities regulatory authority how it calculates its interim and annual periods before its first financial statements are due under the Regulation.

3.2 Audit of Comparative Annual Financial Statements

Section 4.1 of the Regulation requires a reporting issuer to file annual financial statements that include comparative information for the immediately preceding financial year and that are audited. The auditor's report must cover both the most recently completed financial year and the comparative period, except if the issuer changed its auditor during the periods presented in the annual financial statements and the new auditor has not audited the comparative period. In this situation, the auditor's report would normally refer to the predecessor auditor's report unless the predecessor auditor's report on the prior period's annual financial statements is reissued with the financial statements. This is consistent with Canadian Auditing Standard 710 Comparative Information - Corresponding Figures and Comparative Financial Statements.

3.3 Filing Deadline for Annual Financial Statements and Auditor’s Report

Section 4.2 of the Regulation sets out filing deadlines for annual financial statements. While section 4.2 of the Regulation does not address the auditor’s report date, reporting issuers are encouraged to file their annual financial statements as soon as practicable after the date of the auditor’s report. The delivery obligations set out in section 4.6 of the Regulation are not tied to the filing of the annual financial statements.

3.4 Auditor Involvement with Interim Financial Report

(1) The board of directors of a reporting issuer, in discharging its responsibilities for ensuring the reliability of an interim financial report, should consider engaging an external auditor to carry out a review of the interim financial report.

(2) Subsection 4.3(3) of the Regulation requires a reporting issuer to disclose if an auditor has not performed a review of the interim financial report, to disclose if an auditor was unable to complete a review and why, and to file a written report from the auditor if the auditor has performed a review and expressed a reservation in the auditor's interim review report. No positive statement is required when an auditor has performed a review and provided an unqualified communication. If an auditor was engaged to perform a review on

an interim financial report applying review standards set out in the Handbook, and the auditor was unable to complete the review, the issuer's disclosure of the reasons why the auditor was unable to complete the review would normally include a discussion of

(a) inadequate internal control;

(b) a limitation on the scope of the auditor's work; or

(c) the failure of management to provide the auditor with the written representations the auditor believes are necessary.

(3) If a reporting issuer's annual financial statements are audited in accordance with Canadian GAAS, the terms "review" and "interim review report" used in subsection 4.3(3) of the Regulation refer to the auditor's review of, and report on, an interim financial report applying standards for a review of an interim financial report by the auditor as set out in the Handbook. However, if the reporting issuer's financial statements are audited in accordance with auditing standards other than Canadian GAAS, the corresponding review standards should be applied.

3.5 Delivery of Financial Statements

Section 4.6 of the Regulation requires reporting issuers to send a request form to the registered holders and beneficial owners of their securities. The registered holders and beneficial owners may use the request form to request a copy of the reporting issuer's annual financial statements and related MD&A, an interim financial report and related MD&A, or both. Reporting issuers are only required to deliver financial statements and MD&A to the person that requests them. As a result, if a beneficial owner requests financial statements and MD&A through its intermediary, the issuer is only required to deliver the requested documents to the intermediary.

Failing to return the request form or otherwise specifically request a copy of the financial statements or MD&A from the reporting issuer will override the beneficial owner's standing instructions under *Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer* in respect of the financial statements.

The Regulation does not prescribe when the request form must be sent, or how it must be returned to the reporting issuer.

3.6 Comparative Interim Financial Information After Becoming a Reporting Issuer

Section 4.7(4) of the Regulation provides that a reporting issuer does not have to provide comparative financial information when it first becomes a reporting issuer if it complies with specific requirements. Section 4.10(3) of the Regulation provides a similar exemption for comparative financial information for a reverse takeover acquirer. These exemptions may, for example, apply to an issuer that was, before becoming a reporting issuer or before the reverse takeover, a private entity and that is unable to prepare the comparative financial information because it is impracticable to do so. The test of whether "to a reasonable person it is impracticable to present prior-period information on a basis consistent with subsection 4.3(2)" is objective, rather than subjective. Securities regulatory authorities are of the view that a reporting issuer can rely on the exemption only if it has made every reasonable effort to present prior-period information on a basis consistent with subsection 4.3(2) of the Regulation. We are of the view that an issuer should only rely on this exemption in unusual circumstances and generally not related solely to the cost or the time involved in preparing the financial statements.

3.7 Change in Year-End

Appendix A to this Policy Statement is a chart outlining the financial statement filing requirements under section 4.8 of the Regulation if a reporting issuer changes its financial year-end.

3.8 Reverse Takeovers

(1) Following a reverse takeover, although the reverse takeover acquiree is the reporting issuer, from an accounting perspective, the financial statements will be those of the reverse takeover acquirer. Those financial statements must be prepared and filed as if the reverse takeover acquirer had always been the reporting issuer.

(2) The reverse takeover acquiree must file its own financial statements required by sections 4.1 and 4.3 and the related MD&A for all interim and annual periods ending before the date of the reverse takeover, even if the filing deadline for those financial statements is after the date of the reverse takeover.

3.9 Change in Corporate Structure

(1) Section 4.9 of the Regulation requires a reporting issuer to file a notice if the issuer has been party to certain transactions. The reporting issuer may satisfy this requirement by filing a copy of its material change report or news release, provided that

(a) the material change report or news release contains all the information required in the notice; and

(b) the reporting issuer files the material change report or news release with the securities regulatory authority or regulator

(i) under the Change in Corporate Structure category on SEDAR, or

(ii) if the issuer is not an electronic filer, as a notice under section 4.9.

(2) If the transaction was a reverse takeover, the notice should state that fact and who the reverse takeover acquirer was.

(3) Under paragraph 4.9(h) of the Regulation, the issuer must state the periods of the interim financial reports and the annual financial statements it has to file for its first financial year. Issuers should explain how they determined the periods, particularly if section 4.7 of the Regulation applies.

3.10 Change of Auditor

The term “disagreement” defined in subsection 4.11(1) should be interpreted broadly. A disagreement may not involve an argument, but rather, a mere difference of opinion. Also, where a difference of opinion occurs that meets the criteria in item (b) of the definition of “disagreement”, and the issuer reluctantly accepts the auditor’s position in order to obtain an unqualified report, a reportable disagreement may still exist. The subsequent rendering of an unqualified report does not, by itself, remove the necessity for reporting a disagreement.

Subsection 4.11(5) of the Regulation requires a reporting issuer, upon a termination or resignation of its auditor, to prepare a change of auditor notice, have the audit committee or board of directors approve the notice, file the reporting package with the regulator or securities regulatory authority in each jurisdiction where it is a reporting issuer, and if there are any reportable events, issue and file a news release describing the information in the reporting package. Subsection 4.11(6) of the Regulation requires the reporting issuer to perform these procedures upon an appointment of a successor auditor. If a termination or resignation of a former auditor and appointment of a successor auditor occur within a short

period of time, it may be possible for a reporting issuer to perform the procedures described above required by both subsections 4.11(5) and 4.11(6) concurrently and meet the timing requirements set out in those subsections. In other words, the reporting issuer would prepare only one comprehensive notice and reporting package.

PART 4 DISCLOSURE AND PRESENTATION OF FINANCIAL INFORMATION

4.1 Disclosure of Financial Information

(1) Subsection 4.5(1) of the Regulation requires that annual financial statements be approved by the board of directors before filing. Subsections 4.5(2) and 4.5(3) of the Regulation require that each interim financial report be approved by the board of directors or by the company's audit committee before filing. We believe that extracting information from financial statements that have not been approved as required by those provisions and releasing that information to the marketplace in a news release is inconsistent with the prior approval requirement. Also see National Policy 51-201 Disclosure Standards.

(2) Reporting issuers that intend to disclose financial information to the marketplace in a news release should consult *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards*. We believe that disclosing financial information in a news release without disclosing the accounting principles used is inconsistent with the requirement in *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* to identify the accounting principles used in the financial statements.

4.2 Non-GAAP Financial Measures

Reporting issuers that intend to publish financial measures other than those prescribed by Canadian GAAP applicable to publicly accountable enterprises should refer to CSA Staff Notice 52-306 *Non-GAAP Financial Measures* for a discussion of staff expectations concerning the use of non-GAAP measures.

~~4.3.~~4.3 Presentation of Financial Information

Canadian GAAP applicable to publicly accountable enterprises provides an issuer two 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 4.1(3) and 4.3(2.1) of the Regulation).

PART 4A FORWARD-LOOKING INFORMATION

4A.1 Application

Section 4A.1 of the Regulation indicates that Part 4A applies to forward-looking information that is disclosed by a reporting issuer other than forward-looking information contained in oral statements. Reporting issuers should consider broadly the various instances of forward-looking information made available to the public in considering the scope of forward-looking information that is disclosed. This includes, but is not limited to:

- Information that a reporting issuer files with securities regulators
- Information contained in news releases issued by a reporting issuer
- Information published on a reporting issuer's website

- Information published in marketing materials or other similar materials prepared by a reporting issuer or distributed to the public by a reporting issuer.

4A.2 Reasonable Basis

Section 4A.2 of the Regulation requires a reporting issuer to have a reasonable basis for any forward-looking information it discloses. When interpreting "reasonable basis", reporting issuers should consider:

(a) the reasonableness of the assumptions underlying the forward-looking information; and

(b) the process followed in preparing and reviewing forward-looking information.

4A.3 Material Forward-Looking Information

Section 4A.3 and section 5.8 of the Regulation require a reporting issuer to include specified disclosure in material forward-looking information it discloses. Reporting issuers should exercise judgement when determining whether information is material. If a reasonable investor's decision whether or not to buy, sell or hold securities of the reporting issuer would be influenced or changed if the information were omitted or misstated, then the information is likely material.

Section 1.1 contains definitions of the terms "financial outlook" and "FOFI". We consider FOFI and most financial outlooks to be material forward-looking information. Examples of financial outlooks include expected revenue, profit or loss, earnings per share and R&D spending. A financial outlook relating to profit or loss is commonly referred to as "earnings guidance".

An example of forward-looking information that is not a financial outlook or FOFI would be an estimate of future store openings by an issuer in the retail industry. This type of information may or may not be material, depending on whether a reasonable investor's decision whether or not to buy, sell or hold securities of that issuer would be influenced or changed if the information were omitted or misstated.

4A.4 Location of Disclosure

Section 4A.3 of the Regulation requires that any material forward-looking information include specified disclosure. This disclosure should be presented in a manner that allows an investor who reads the document or other material containing the forward-looking information to be able to readily:

(a) understand that the forward-looking information is being provided in the document or other material;

(b) identify the forward-looking information; and

(c) inform himself or herself of the material assumptions underlying the forward-looking information and the material risk factors associated with the forward-looking information.

4A.5 Disclosure of Cautionary Language and Material Risk Factors

(1) Paragraph 4A.3(b) of the Regulation requires a reporting issuer to accompany any material forward-looking information with disclosure that cautions users that actual results may vary from the forward-looking information and identifies material risk factors that could cause material variation. The material risk factors identified in the cautionary language should be relevant to the forward-looking information and the disclosure should not be boilerplate in nature.

(2) The cautionary statements required by paragraph 4A.3(b) of the Regulation should identify significant and reasonably foreseeable factors that could reasonably be expected to cause results to differ materially from those projected in the material forward-looking statement. Reporting issuers should not interpret this as requiring a reporting issuer to anticipate and discuss everything that could conceivably cause results to differ.

4A.6 Disclosure of Material Factors or Assumptions

Paragraph 4A.3(c) of the Regulation requires a reporting issuer to disclose the material factors or assumptions used to develop material forward-looking information. The factors or assumptions should be relevant to the forward-looking information. Disclosure of material factors or assumptions does not require an exhaustive statement of every factor or assumption applied – a materiality standard applies.

4A.7 Date of Assumptions

Management of a reporting issuer that discloses material forward-looking information should satisfy itself that the assumptions are appropriate as of the date management discloses the material forward-looking information even though the material forward-looking information may have been prepared at an earlier time, and may be based on information accumulated over a period of time.

4A.8 Time Period

Paragraph 4B.2(2)(a) of the Regulation requires a reporting issuer to limit the period covered by FOFI or a financial outlook to a period for which the information can be reasonably estimated. In many cases that time period will not go beyond the end of the reporting issuer's next fiscal year. Some of the factors a reporting issuer should consider include the reporting issuer's ability to make appropriate assumptions, the nature of the reporting issuer's industry, and the reporting issuer's operating cycle.

4A.9 (Repealed).

PART 5 MD&A

5.1 Delivery of MD&A

Reporting issuers are not required to send a request form to their securityholders under Part 5 of the Regulation. This is because the request form that must be delivered under section 4.6 of the Regulation relates to both a reporting issuer's financial statements, and the MD&A applicable to those financial statements.

5.2 Additional Information for ~~Venture~~Senior Unlisted Issuers Without Significant Revenue

Section 5.3 of the Regulation requires certain ~~venture~~senior unlisted issuers to provide in their annual or interim MD&A (unless the information is included in their annual financial statements or interim financial report), 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.

5.3 Disclosure of Outstanding Share Data

Section 5.4 of the Regulation requires disclosure of information relating to the outstanding securities of the reporting issuer as of the latest practicable date. The "latest

practicable date" should be current, as close as possible, to the date of filing of the MD&A. Disclosing the number of securities outstanding at the period end is generally not sufficient to meet this requirement.

5.4 Additional Disclosure for Equity Investees

Section 5.7 of the Regulation requires issuers with significant equity investees to provide in their annual or interim MD&A (unless the information is included in their annual financial statements or interim financial report), summarized information about the equity investee. Generally we will consider that an equity investee is significant if the equity investee would meet the thresholds for the significance tests in Part 8 using the financial statements of the equity investee and the issuer as at the issuer's financial year end.

5.5 Previously disclosed material forward-looking information

(1) Subsection 5.8(2) of the Regulation requires a reporting issuer to discuss certain events and circumstances that occurred during the period to which its MD&A relates. The events to be discussed are those that are reasonably likely to cause actual results to differ materially from material forward-looking information for a period that is not yet complete. This discussion is only required if the reporting issuer previously disclosed the forward-looking information to the public. Subsection 5.8(2) also requires a reporting issuer to discuss the expected differences.

For example, assume that a reporting issuer published FOFI for the current year assuming no change in the prime interest rate, but by the end of the second quarter the prime interest rate went up by 2%. In its MD&A for the second quarter, the reporting issuer should discuss the interest rate increase and its expected effect on results compared to those indicated in the FOFI.

A reporting issuer should consider whether the events and circumstances that trigger MD&A disclosure under subsection 5.8(2) of the Regulation might also trigger material change reporting requirements under Part 7 of the Regulation.

(2) Subsection 5.8(4) of the Regulation requires a reporting issuer to disclose and discuss material differences between actual results for the annual or interim period to which its MD&A relates and any FOFI or financial outlook for that period that the reporting issuer previously disclosed to the public. A reporting issuer should disclose and discuss material differences for material individual items included in the FOFI or financial outlook, including assumptions.

For example, if the actual dollar amount of revenue approximates forecasted revenue but the sales mix or sales volume differs materially from what the reporting issuer expected, the reporting issuer should explain the differences.

(3) Subsection 5.8(5) of the Regulation addresses a reporting issuer's decision to withdraw previously disclosed material forward-looking information. The subsection requires the reporting issuer to disclose that decision and discuss the events and circumstances that led the reporting issuer to the decision to withdraw the material forward-looking information, including a discussion of the assumptions included in the material forward-looking information that are no longer valid. A reporting issuer should consider whether the events and circumstances that trigger MD&A disclosure under subsection 5.8(5) of the Regulation might also trigger material change reporting requirements under Part 7 of the Regulation. We encourage all reporting issuers to promptly communicate to the market a decision to withdraw material forward-looking information, even if the material change reporting requirements are not triggered.

PART 6 AIF

6.1 Additional and Supporting Documentation

Any material incorporated by reference in an AIF is required to be filed with the AIF unless the material has been previously filed. When a reporting issuer using SEDAR files a previously unfiled document with its AIF, the reporting issuer should ensure that the document is filed under the appropriate SEDAR filing type and document type specifically applicable to the document, rather than generic type "Documents Incorporated by Reference". For example, a reporting issuer that has incorporated by reference an information circular in its AIF and has not previously filed the circular should file the circular under the "Management Proxy Materials" filing subtype and the "Management proxy/information circular" document type.

If the reporting issuer incorporates a document, or a portion of a document, by reference into its AIF, and that document, or that portion of the document, as applicable, incorporates another document by reference, the issuer must also file the underlying document with its AIF.

6.2 AIF Disclosure of Asset-backed Securities

(1) **Factors to consider** – Issuers that have distributed asset-backed securities under a prospectus are required to provide disclosure in their AIF under section 5.3 of Form 51-102F2. Issuers of asset-backed securities must determine which other prescribed disclosure is applicable and ought to be included in the AIF. 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 AIF:

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

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

3. 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 assetbacked securities. Summary historical financial information respecting the originator or seller will ordinarily be adequate to satisfy the disclosure requirement applicable to the originator or seller in circumstances where the originator or seller has an ongoing relationship with the assets comprising the pool.

Financial information respecting the pool of assets to be described and analyzed in the AIF will consist of information commonly set out in servicing reports prepared to describe the performance of the pool and the specific allocations of profit, loss and cash flows applicable to outstanding asset-backed securities made during the relevant period.

(2) Underlying pool of assets – Paragraph 5.3(2)(a) of Form 51-102F2 requires issuers of asset-backed securities that were distributed by way of prospectus to include financial disclosure relating to the composition of the underlying pool of financial assets, the cash flows from which service the asset-backed securities. Disclosure respecting the composition of the pool will vary depending upon the nature and number of the underlying financial assets. For example, in a geographically dispersed pool of financial assets, it may be appropriate to provide a summary disclosure based on the location of obligors. In the context of a revolving pool, it may be appropriate to provide details relating to aggregate outstanding balances during a year to illustrate historical fluctuations in asset origination due, for example, to seasonality. In pools of consumer debt obligations, it may be appropriate to provide a breakdown within ranges of amounts owing by obligors in order to illustrate limits on available credit extended.

PART 7 MATERIAL CHANGE REPORTS

7.1 Publication of News Release

Section 7.1 of the Regulation requires reporting issuers to immediately issue and file a news release disclosing the nature of a material change. This requirement is substantively the same as the material change reporting requirements in some securities legislation for the news release to be issued forthwith.

PART 8 BUSINESS ACQUISITION REPORTS

8.1 Obligations to File a Business Acquisition Report

(1) **Filing of a Material Change Report** – The requirement in the Regulation for a reporting issuer to file a business acquisition report is in addition to the reporting issuer's obligation to file a material change report, if the significant acquisition constitutes a material change.

(2) **Filing of a Business Acquisition Report by SEC Issuers** – If a document or a series of documents that an SEC issuer files with or furnishes to the SEC in connection with a business acquisition contains all of the information, including financial statements, required to be included in a business acquisition report under the Regulation, the SEC issuer may file a copy of the documents as its business acquisition report.

(3) **Financial Statement Disclosure of Significant Acquisitions** – Reporting issuers are reminded that *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* prescribes the accounting principles and auditing standards that must be used to prepare and audit the financial statements required by Part 8 of the Regulation.

(4) **Acquisition of a Business** – A reporting issuer that has made a significant acquisition must include in its business acquisition report certain financial statements of each business acquired. The term "business" should be evaluated in light of the facts and circumstances involved. We generally consider that a separate entity, a subsidiary or a

division is a business and that in certain circumstances a smaller component of a company may also be a business, whether or not the business previously prepared financial statements. In determining whether an acquisition constitutes the acquisition of a business, a reporting issuer should consider the continuity of business operations, including the following factors:

(a) whether the nature of the revenue producing activity or potential revenue producing activity will remain generally the same after the acquisition; and

(b) whether any of the physical facilities, employees, marketing systems, sales forces, customers, operating rights, production techniques or trade names are acquired by the reporting issuer instead of remaining with the vendor after the acquisition.

(5) **Acquisition by a Subsidiary** – If a reporting issuer's subsidiary, which is also a reporting issuer, has acquired a business, both the parent and subsidiary must test the significance of the acquisition. Even if the subsidiary files a business acquisition report, the parent must also file a business acquisition report if the acquisition is also significant for the parent.

8.2 Significance Tests

(1) **Nature of Significance Tests** – Subsection 8.3(2) of the Regulation sets out the required significance tests for determining whether an acquisition of a business by a reporting issuer is a "significant acquisition". The first test measures the assets of the acquired business against the assets of the reporting issuer. The second test measures the reporting issuer's investments in and advances to the acquired business against the assets of the reporting issuer. The third test measures the specified profit or loss of the acquired business against the specified profit or loss of the reporting issuer. If any one of these three tests is satisfied at the prescribed level, the acquisition is considered "significant" to the reporting issuer. The test must be applied as at the acquisition date using the most recent audited annual financial statements of the reporting issuer and the business. These tests are similar to requirements of the SEC and provide issuers with certainty that if an acquisition is not significant at the acquisition date, then no business acquisition report will be required to be filed.

(2) **Business Using Accounting Principles Other Than Those Used by the Reporting Issuer** – Subsection 8.3(13) of the Regulation provides that, for the purposes of calculating the significance tests, the amounts used for the business or related businesses must, subject to subsection 8.3(13.1) of the Regulation, be based on the issuer's GAAP, and translated into the same presentation currency as that used in the reporting issuer's financial statements. This means that in some cases the amounts must be converted to the issuer's GAAP and translated into the same presentation currency as that used in the reporting issuer's financial statements.

Subsection 8.3(13.1) of the Regulation exempts ~~venture~~senior unlisted issuers from the requirement in paragraph 8.3(13)(a) that, for the purposes of calculating the significance tests, the amounts used for the business or related businesses must be based on the issuer's GAAP, but only where the financial statements for the business or related businesses were prepared in accordance with Canadian GAAP applicable to private enterprises and certain other conditions are met.

Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards permits financial statements for a business or related businesses to be prepared in accordance with U.S. GAAP without reconciliation to the issuer's GAAP. This does not impact the application of paragraph 8.3(13)(a) of the Regulation. Thus, if the issuer's GAAP is not U.S. GAAP, paragraph 8.3(13)(a) of the Regulation requires, for the purposes of calculating the significance tests, that the amounts used for the business or related businesses be based on the issuer's GAAP.

Paragraph 8.3(13)(b) of the Regulation applies to all issuers and requires, for the purpose of calculating the significance tests, that the amounts used for the business or related businesses be translated into the same presentation currency as that used in the reporting issuer's financial statements.

(3) **Acquisition of a Previously Unaudited Business** – Subsections 8.3(2) and 8.3(4) of the Regulation require the significance of an acquisition to be determined using the most recent audited annual financial statements of the reporting issuer and the business acquired. However, if the annual financial statements of the business or related businesses for the most recently completed financial year were not audited, subsection 8.3(14) of the Regulation permits use of the unaudited annual financial statements for the purpose of applying the significance tests. If the acquisition is determined to be significant, then the annual financial statements required by subsection 8.4(1) of the Regulation must be audited.

(3.1) **Application of Significance Tests for Business Combinations Achieved in Stages** – IFRS 3 Business Combinations, requires that when a business combination is achieved in stages the acquirer's previously held equity interest in the acquiree is remeasured at its acquisition date fair value with any resulting gain or loss recognized in profit or loss. The remeasurement of the previously held equity interest should not be included in the asset or the investment test and the resulting gain or loss from remeasurement should not be included in the profit or loss test. (See subsection 8.3(4.1) of the Regulation).

(4) **Application of Investment Test for Significance of an Acquisition** – One of the significance tests set out in subsections 8.3(2) and (4) of the Regulation is whether the reporting issuer's consolidated investments in and advances to the business or related businesses exceed a specified percentage of the consolidated assets of the reporting issuer. In applying this test, the "investments in" the business should be determined using the consideration transferred, measured in accordance with the issuer's GAAP, including any contingent consideration. In addition, any payments made in connection with the acquisition which would not constitute consideration transferred but which would not have been paid unless the acquisition had occurred, should be considered part of investments in and advances to the business for the purpose of applying the significance tests. Examples of such payments include loans, royalty agreements, lease agreements and agreements to provide a pre-determined amount of future services. For purposes of the investment test, "consideration transferred" should be adjusted to exclude the carrying value of assets transferred by the reporting issuer to the business or related businesses that will remain with the business or related businesses after the acquisition.

(5) **Application of the Significance Tests When the Financial Year Ends are Non-Coterminous** – Subsection 8.3(2) of the Regulation requires the significance of a business acquisition to be determined using the most recent audited annual financial statements of both the reporting issuer and the acquired business. For the purpose of applying the tests under this subsection, the year-ends of the reporting issuer and the acquired business need not be coterminous. Accordingly, neither the audited annual financial statements of the reporting issuer nor those of the business should be adjusted for the purposes of applying the significance tests. However, if the acquisition of a business is determined to be significant and pro forma income statements are required by subsection 8.4(5) of the Regulation and, if the business' year-end is more than 93 days before the reporting issuer's year-end, the business' reporting period required under paragraph 8.4(7)(c) of the Regulation should be adjusted to reduce the gap to 93 days or less. Refer to subsection 8.7(3) of this Policy Statement for further guidance.

8.3 Optional Significance Tests

(1) **Optional Significance Tests – Decrease in Significance** – If an acquisition is determined under subsection 8.3(2) of the Regulation to be significant, a reporting issuer has the option under subsections 8.3(3) and (4) of the Regulation of applying optional significance tests using more recent financial statements than those used for the required

significance tests in subsection 8.3(2). The optional significance tests under subsections 8.3(3) and (4) have been included to recognize the possible growth of a reporting issuer between the date of its most recently completed year-end and the date of filing a business acquisition report and the corresponding potential decline in significance of the acquisition to the reporting issuer.

(2) **Availability of the Optional Significance Tests** – The optional significance tests permitted under subsections 8.3(4) and (6) of the Regulation are available to all reporting issuers. However, depending on how or when a reporting issuer integrates the acquired business into its existing operations and the nature of post-acquisition financial records it maintains for the acquired business, it may not be possible for a reporting issuer to apply the optional significance test under subsection 8.3(6).

(3) **Optional Investment Test** – For the purpose of applying the optional investment test under paragraph 8.3(4)(b) of the Regulation, the reporting issuer's investments in and advances to the business should be as at the acquisition date and not as at the date of the reporting issuer's financial statements used to determine its consolidated assets for the optional investment test.

(4) **Optional Profit or Loss Test based on Pro Forma Information** – A reporting issuer may apply the optional profit or loss test in subsection 8.3(11.1) of the Regulation based on more recent pro forma consolidated specified profit or loss. By permitting reporting issuers to base the optional profit or loss test on pro forma consolidated specified profit or loss, this test recognizes the possible growth of a reporting issuer as a result of acquisitions completed between its most recently completed year end and the date of filing a business acquisition report and the corresponding potential decline in significance of the acquisition to the reporting issuer.

8.4 Financial Statements of Related Businesses

Subsection 8.4(8) of the Regulation requires that if a reporting issuer includes in its business acquisition report financial statements for more than one related business, separate financial statements must be presented for each business except for the periods during which the businesses were under common control or management, in which case the reporting issuer may present the financial statements on a combined basis. Although one or more of the related businesses may be insignificant relative to the others, separate financial statements of each business for the same number of periods required must be presented. Relief from the requirement to include financial statements of the least significant related business or businesses may be granted depending on the facts and circumstances.

8.5 Application of the Significance Tests for Multiple Investments in the Same Business

Subsection 8.3(11) of the Regulation explains how the significance test should be applied when the reporting issuer has made multiple investments in the same business. If the reporting issuer acquired an interest in the business in a previous year and that interest is reflected in the most recent audited annual financial statements of the reporting issuer filed, then the issuer should determine the significance of only the incremental investment in the business which is not reflected in the reporting issuer's most recent audited annual financial statements filed.

8.6 Preparation of Divisional and Carve-out Financial Statements

(1) **Interpretations** – In this section of this Policy Statement, unless otherwise stated,

(a) a reference to "a business" includes a division or some lesser component of another business acquired by a reporting issuer that constitutes a significant acquisition; and

(b) the term "parent" refers to the vendor from whom the reporting issuer purchased a business.

(2) **Acquisition of a Division** - As discussed in subsection 8.1(4) of this Policy Statement, the acquisition of a division of a business and in certain circumstances, a lesser component of a person, may constitute an acquisition of a business for purposes of the Regulation, whether or not the subject of the acquisition previously prepared financial statements. To determine the significance of the acquisition and comply with the requirements for financial statements in a business acquisition report under Part 8 of the Regulation, financial statements for the business must be prepared. This section provides guidance on preparing these financial statements.

(3) **Divisional and Carve-Out Financial Statements** – The terms "divisional" and "carve-out" financial statements are often used interchangeably although a distinction is possible. Some companies maintain separate financial records and financial statements for a business activity or unit that is operated as a division. Financial statements prepared from these financial records are often referred to as "divisional" financial statements. In other circumstances, no separate financial records for a business activity are maintained; they are simply consolidated with the parent's records. In these cases, if the parent's financial records are sufficiently detailed, it is possible to extract or "carve-out" the information specific to the business activity in order to prepare separate financial statements of that business. Financial statements prepared in this manner are commonly referred to as "carve-out" financial statements. The guidance in this section applies to the preparation of both divisional and carve-out financial statements unless otherwise stated.

(4) **Preparation of Divisional and Carve-Out Financial Statements**

(a) When complete financial records of the business acquired have been maintained, those records should be used for preparing and auditing the financial statements of the business. For the purposes of this section, it is presumed that the parent maintains separate financial records for its divisions.

(b) When complete financial records of the business acquired do not exist, carve-out financial statements must be prepared in accordance with subsection 3.11(6) of *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards*.

(5) **Statements of Assets Acquired, Liabilities Assumed and Statements of Operations** – When it is impracticable to prepare carve-out financial statements of a business, a reporting issuer may be required to include in its business acquisition report an audited statement of assets acquired and liabilities assumed and a statement of operations of the business. The statement of operations should exclude only those indirect operating costs not directly attributable to the business, such as corporate overhead. If indirect operating costs were previously allocated to the business and there is a reasonable basis of allocation, they should not be excluded.

8.7 Preparation of Pro Forma Financial Statements Giving Effect to Significant Acquisitions

(1) **Objective and Basis of Preparation** – The objective of pro forma financial statements is to illustrate the impact of a transaction on a reporting issuer's financial position and financial performance by adjusting the historical financial statements of the reporting issuer to give effect to the transaction. Accordingly, the pro forma financial statements should be prepared on the basis of the reporting issuer's financial statements as already filed. No adjustment should be made to eliminate discontinued operations.

(2) **Pro Forma Statement of Financial Position** – Subsection 8.4(5) of the Regulation does not require a pro forma statement of financial position to be prepared to give effect to significant acquisitions that are reflected in the reporting issuer's most recent annual or interim statement of financial position filed under the Regulation.

(3) **Non-coterminous Year-ends** – Where the financial year-end of a business differs from the reporting issuer's year-end by more than 93 days, paragraph 8.4(7)(c) requires a

statement of comprehensive income for the business to be constructed for a period of 12 consecutive months. For example, if the constructed reporting period is 12 months and ends on June 30, the 12 months should commence on July 1 of the immediately preceding year; it should not begin on March 1st of the immediately preceding year with three of the following 15 months omitted, such as the period from October 1 to December 31, since this would not be a consecutive 12 month period.

(4) **Effective Date of Adjustments** – For the pro forma income statements included in a business acquisition report, the acquisition and the adjustments should be computed as if the acquisition had occurred at the beginning of the reporting issuer's most recently completed financial year and carried through the most recent interim period presented, if any. However, one exception to the preceding is that adjustments related to the allocation of the purchase price, including the amortization of fair value increments and intangibles, should be based on the acquisition date amounts of assets acquired and liabilities assumed as if the acquisition occurred on the date of the reporting issuer's most recent statement of financial position filed.

(5) **Acceptable Adjustments** – Pro forma adjustments are generally limited to the following two types of adjustments required by paragraph 8.4(7)(b) of the Regulation:

(a) those directly attributable to the specific acquisition transaction for which there are firm commitments and for which the complete financial effects are objectively determinable, and

(b) adjustments to conform amounts for the business or related businesses to the issuer's accounting policies.

If financial statements for a business or related businesses are prepared in accordance with accounting principles that differ from the issuer's GAAP and the financial statements do not include a reconciliation to the issuer's GAAP, pro forma adjustments as described in item (b) above will often be necessary. For example, financial statements for a business or related businesses may be prepared in accordance with U.S. GAAP, or in the case of a ~~venture~~senior unlisted issuer, in accordance with Canadian GAAP applicable to private enterprises, in each case without a reconciliation to the issuer's GAAP. Even if financial statements for a business or related businesses are prepared in accordance with the issuer's GAAP, pro forma adjustments as described in item (b) may be necessary to conform amounts for the business or related businesses to the issuer's accounting policies, including, for example, the issuer's revenue recognition policy where the revenue recognition policy of the business or related businesses differs from the issuer's policy.

If the presentation currency used in financial statements for a business or related businesses differs from the presentation currency used in the issuer's financial statements, the pro forma financial statements must present amounts for the business or related businesses in the presentation currency of the issuer's financial statements. The pro forma financial statements should explain any adjustments to conform presentation currency.

(6) **Multiple Acquisitions** – If a reporting issuer has completed multiple acquisitions then, under subsection 8.4(5) of the Regulation, the pro forma financial statements must give effect to each acquisition completed since the beginning of the most recently completed financial year. The pro forma adjustments may be grouped by line item on the face of the pro forma financial statements provided the details for each transaction are disclosed in the notes.

(7) **Pro Forma Financial Statements Based on an Earlier Interim Financial Report** – The pro forma financial statements are prepared on the basis of the financial statements included in the business acquisition report. As a result, if the reporting issuer relies on subsection 8.4(4) of the Regulation to include financial statements for an earlier interim period of the acquired business than would otherwise be required under subsection (3), the issuer uses its comparable interim period to prepare the pro forma financial statements.

(8) **Indirect Acquisitions** – Under the securities legislation of certain jurisdictions, it is generally an offence to make a statement in a document that is required to be filed under securities legislation, and that does not state a fact that is necessary to make the statement not misleading. When a reporting issuer acquires a business that has itself recently acquired another business or related businesses (an "indirect acquisition"), the reporting issuer should consider whether it needs to provide disclosure of the indirect acquisition in the business acquisition report, including historical financial statements, and whether the omission of these financial statements would cause the business acquisition report to be misleading, untrue or substantially incomplete. In making this determination, the reporting issuer should consider the following factors:

- if the indirect acquisition would meet any of the significance tests in section 8.3 of the Regulation when the reporting issuer applies each of those tests to its proportionate interest in the indirect acquisition of the business, and

- 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 reporting issuer is acquiring.

(9) **Pro Forma Financial Statements where Financial Statements of a Business or Related Businesses are Prepared using Accounting Principles that Differ from the Issuer's GAAP** – Section 3.11 of *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* permits reporting issuers to include in a business acquisition report financial statements of a business or related businesses prepared in accordance with U.S. GAAP and without a reconciliation to the issuer's GAAP. That section also permits, subject to specified conditions, a ~~venture~~senior unlisted issuer to include in a business acquisition report financial statements of a business or related businesses prepared in accordance with Canadian GAAP applicable to private enterprises and without a reconciliation to the issuer's GAAP. However, section 3.14 of *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* requires that pro forma financial statements be presented using accounting principles that are permitted by the issuer's GAAP and would apply to the information presented in the pro forma financial statements if that information were included in the issuer's financial statements for the same time period as that of the pro forma financial statements. As well, subsection 8.4(7) of the Regulation requires pro forma financial statements to include a description of the underlying assumptions on which the pro forma financial statements are prepared, cross-referenced to each related pro forma adjustment. Therefore, the pro forma financial statements must describe the adjustments presented in the pro forma income statement relating to the business or related businesses to adjust amounts to the issuer's GAAP and accounting policies.

The pro forma statement of financial position should present the following information:

(i) the statement of financial position of the reporting issuer;

(ii) the statement of financial position of the business or related businesses;

(iii) pro forma adjustments attributable to each significant acquisition that reflect the reporting issuer's accounting for the acquisition and include new values for the business' assets and liabilities; and

(iv) a pro forma statement of financial position combining items (i) through (iii).

The pro forma income statement should present the following information:

(i) the income statement of the reporting issuer;

(ii) the income statement of the business or related businesses;

(iii) pro forma adjustments attributable to each significant acquisition and other adjustments relating to the business or related businesses to conform amounts to the issuer's GAAP and accounting policies; and

(iv) a pro forma income statement combining items (i) through (iii)

8.7.1 Financial Year End Changed

If the transition year of the acquired business is less than 9 months, the issuer may be required to include financial statements for the transition year of the acquired business in addition to financial statements for the two financial years required by subsection 8.4(1) of the Regulation. The transition year may or may not be audited, but at minimum, the most recently completed financial year must be audited in accordance with subsection 8.4(2).

8.8 Relief from the Requirement to Audit Operating Statements of an Oil and Gas Property

The securities regulatory authority or regulator may exempt a reporting issuer from the requirement to audit the operating statements referred to in section 8.10 of the Regulation if, during the 12 months preceding the acquisition date, the average daily production of the property is less than 20% of the total average daily production of the vendor for the same or similar periods, and

(a) the reporting issuer provides written submissions prior to the deadline for filing the business acquisition report which establishes to the satisfaction of the appropriate regulator, that despite reasonable efforts during the purchase negotiations, the reporting issuer was prohibited from including in the purchase agreement the rights to obtain an audited operating statement of the property;

(b) the purchase agreement includes representations and warranties by the vendor that the amounts presented in the operating statement agree to the vendor’s books and records; and

(c) the reporting issuer discloses in the business acquisition report its inability to obtain an audited operating statement, the reasons therefor, the fact that the representations and warranties referred to in paragraph (b) have been obtained, and a statement that the results presented in the operating statement may have been materially different if the statement had been audited.

For the purpose of determining average daily production when production includes both oil and natural gas, production may be expressed in barrels of oil equivalent using the conversion ratio of 6000 cubic feet of gas to one barrel of oil.

8.9 Exemptions From Requirement for Financial Statements in a Business Acquisition Report

(1) **Exemptions** – We are of the view that relief from the financial statement requirements of Part 8 of the Regulation should be granted only in unusual circumstances and generally not related solely to cost or the time involved in preparing and auditing the financial statements. Reporting issuers seeking relief from the financial statement or audit requirements of Part 8 must apply for the relief 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.

(2) **Conditions to Exemptions** – If relief is granted from the requirements of Part 8 of the Regulation to include audited annual financial statements of an acquired business or related businesses, conditions will likely be imposed, such as a requirement to include audited divisional or partial statements of comprehensive income or divisional statements of cash flows, or an audited statement of operations.

(3) **Exemption from Comparatives if Financial Statements Not Previously Prepared** – Section 8.9 of the Regulation provides that a reporting issuer does not have to provide comparative financial information for an acquired business in a business acquisition report if it complies with specific requirements. This exemption may, for example, apply to an acquired business that was, before the acquisition, a private entity and that the reporting issuer is unable to prepare the comparative financial information for because it is impracticable to do so.

(4) **Relief may be granted from the requirement to include certain financial statements of an acquired business or related businesses in a business acquisition report in some situations that may include the following**:

(a) the business's historical accounting records have been destroyed and cannot be reconstructed. In this case, as a condition of granting the exemption, the reporting issuer may be requested by the securities regulatory authority or regulator to

(i) represent in writing to the securities regulatory authority or regulator, no later than the time the business acquisition report is required to be filed, that the reporting 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 business acquisition report the fact that the historical accounting records have been destroyed and cannot be reconstructed; or

(b) the business has recently emerged from bankruptcy and current management of the business and the reporting issuer is denied access to the historical accounting records necessary to audit the financial statements. In this case, as a condition of granting the exemption, the reporting issuer may be requested by the securities regulatory authority or regulator to

(i) represent in writing to the securities regulatory authority or regulator, no later than the time the business acquisition report is required to be filed that the reporting issuer has made every reasonable effort to obtain access to, or copies of, the historical accounting records necessary to prepare and audit the financial statements but that such efforts were unsuccessful; and

(ii) disclose in the business acquisition report the fact that the business has recently emerged from bankruptcy and current management of the business and the reporting issuer are denied access to the historical accounting records.

8.10 Audits and Auditor Review of Financial Statements of an Acquired Business

(1) **Unaudited Comparatives in Annual Financial Statements of an Acquired Business** – Subsection 8.4(1) requires a reporting issuer to include comparative financial information of the business in the business acquisition report. This comparative financial information may be unaudited.

(2) **Auditor Review of an Interim Financial Report of an Acquired Business** – An issuer does not have to engage an auditor to review the interim financial report of an acquired business included in a business acquisition report. However, if the issuer later incorporates the business acquisition report into a prospectus, the interim financial report will have to be reviewed in accordance with the requirements relating to financial statements included in a prospectus.

PART 9 PROXY SOLICITATION AND INFORMATION CIRCULARS

9.1 Beneficial Owners of Securities

Reporting issuers are reminded that *Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer* prescribes certain procedures relating to the delivery of materials, including forms of proxy, to beneficial owners of securities and related matters. It also prescribes certain disclosure that must be included in the proxy-related materials sent to beneficial owners.

9.2 Prospectus-level Disclosure in Certain Information Circulars

Section 14.2 of Form 51-102F5 Information Circular requires an issuer to provide prospectus-level disclosure about certain entities if securityholder approval is required in respect of a significant acquisition under which securities of the acquired business are being exchanged for the issuer's securities or in respect of a restructuring transaction under which securities are to be changed, exchanged, issued or distributed.

Section 14.2 provides that the disclosure must be the disclosure (including financial statements) prescribed by the form of prospectus that the entity would be eligible to use immediately prior to the sending and filing of the information circular in respect of the significant acquisition or restructuring transaction, for a distribution of securities in the jurisdiction.

For example, if disclosure was required in an information circular of Company A for both Company A (an issuer that was only eligible to file a long form prospectus) and Company B (an issuer that was eligible to file a short form prospectus), the disclosure for Company A would be that required by the long form prospectus rules and the disclosure for Company B would be that required by the short form prospectus rules. Any information incorporated by reference in the information circular of Company A would have to comply with paragraph (c) of Part 1 of Form 51-102F5 and be filed under Company A's profile on SEDAR.

9.3 Proxy Solicitations Made to the Public by Broadcast, Speech or Publication

Subsection 9.2(4) of the Regulation provides an exemption from the proxy solicitation and information circular requirements for certain proxy solicitations made to the public by broadcast, speech or publication. The exemption permits securityholders to solicit proxies by public means, including a speech or broadcast, through a newspaper advertisement or over the Internet (provided that the solicitation contains certain information and that information is filed on SEDAR).

The exemption will only apply if the proxy solicitation is made to the public. Securities regulatory authorities generally consider a solicitation to be made to the public if it is disseminated in a manner calculated to effectively reach the marketplace. A solicitation to the public would generally include a solicitation that is made by:

(a) a speech in a public forum; or

(b) a press release, a statement or an advertisement provided through a broadcast medium or by a telephone conference call or electronic or other communication facility generally available to the public, or appearing in a newspaper, a magazine, a website or other publication generally available to the public.

A proxy solicitation to the public would generally not include a solicitation made by phone, mail or email to only a select group of securityholders of a reporting issuer.

PART 10 ELECTRONIC DELIVERY OF DOCUMENTS

10.1 Electronic Delivery of Documents

Any documents required to be sent under the Regulation may be sent by electronic delivery, as long as such delivery is made in compliance with *Notice 11-201 relating to the Delivery of Documents by Electronic Means*, in Québec, and National Policy 11-201, Delivery of Documents by Electronic Means, in the rest of Canada.

PART 11 ADDITIONAL DISCLOSURE REQUIREMENTS

11.1 Additional Filing Requirements

Paragraph 11.1(1)(b) of the Regulation requires a document to be filed only if it contains information that has not been included in disclosure already filed by the reporting issuer. For example, if a reporting issuer has filed a material change report under the Regulation and the Form 8-K filed by the reporting issuer with the SEC discloses the same information, whether in the same or a different format, there is no requirement to file the Form 8-K under the Regulation.

11.2 Re-filing Documents or Re-stating Financial Information

If a reporting issuer decides to re-file a document, or re-state financial information for comparative periods in financial statements for reasons other than retroactive application of a change in an accounting standard or policy or a new accounting standard, and the re-filed or re-stated information is likely to differ materially from the information originally filed, the issuer should disclose in the news release required by section 11.5 of the Regulation when it makes that decision

(a) the facts underlying the changes,

(b) the general impact of the changes on previously filed information, and

(c) the steps the issuer would take before filing an amended document, or filing re-stated financial information, if the issuer is not filing amended information immediately.

PART 12 FILING OF CERTAIN DOCUMENTS

12.1 Statutory or Regulatory Instruments

Paragraph 12.1(1)(a) of the Regulation requires reporting 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.

12.2 Contracts that Affect the Rights or Obligations of Securityholders

Paragraph 12.1(1)(e) of the Regulation requires reporting 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 have to be filed under this paragraph.

12.3 Material Contracts

(1) **Definition** - Under subsection 1(1) of the Regulation, a material contract is defined as a contract that a reporting issuer or any of its subsidiaries is a party to, that is material to the reporting 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 12.2(3) and (4) of the Regulation apply to these schedules, side letters, exhibits or amendments.

(2) **Filing Requirements** - Subject to the exceptions in paragraphs 12.2(2)(a) through (f) of the Regulation, subsection 12.2(2) of the Regulation provides an exemption from the filing requirement for a material contract entered into in the ordinary course of business. Whether a reporting issuer entered into a contract in the ordinary course of business is a question of fact that the reporting issuer should consider in the context of its business and industry.

Paragraphs 12.2(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 12.2(1) of the Regulation requires a reporting issuer to file a material contract of a type described in these paragraphs, the reporting issuer must file that material contract even if the reporting issuer entered into it in the ordinary course of business.

(3) **Contract of Employment** – Paragraph 12.2(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 reporting 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 reporting issuer.

(4) **External Management and External Administration Agreements** – Under paragraph 12.2(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 reporting issuer and a third party, the reporting issuer's parent entity, or an affiliate of the reporting issuer, under which the latter provides management or other administrative services to the reporting issuer.

(5) **Material Contracts on which the Reporting Issuer's Business is Substantially Dependent** – Paragraph 12.2(1)(f) of the Regulation provides that a material contract on which the "reporting issuer's business is substantially dependent" is not eligible for the ordinary course of business exemption. Generally, a contract on which the reporting issuer's business is substantially dependent is a contract so significant that the reporting 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 reporting 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 reporting issuer's property, plant and equipment, long-lived assets, or total assets; and

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

(6) **Confidentiality Provisions** – Under subsection 12.2(3) of the Regulation, a reporting issuer may omit or redact a provision of a material contract that is required to be filed if an executive officer of the reporting issuer has reasonable grounds to believe that

disclosure of the omitted or redacted provision would violate a confidentiality provision. A provision of the type described in paragraphs 12.2(4)(a), (b) or (c) of the Regulation may ~~4~~ 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 12.2(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 adoption of the exceptions in subsection 12.2(4) of the Regulation.

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

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

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

(7) **Disclosure Seriously Prejudicial to Interests of Reporting Issuer** Under subsection 12.2(3) of the Regulation, a reporting issuer may omit or redact certain provisions of a material contract that is required to be filed if an executive officer of the reporting issuer reasonably believes that disclosure of the omitted or redacted provision would be seriously prejudicial to the interests of the reporting issuer. One example of disclosure that may be seriously prejudicial to the interests of the reporting 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 a reporting issuer or other party has already publicly disclosed is not seriously prejudicial to the interests of the reporting issuer.

(8) **Terms Necessary for Understanding Impact on Business of Reporting Issuer** A reporting issuer may not omit or redact a provision of a type described in paragraph 12.2(4)(a), (b), or (c) of the Regulation. Paragraph 12.2(4)(c) of the Regulation provides that a reporting issuer may not omit or redact a “terms necessary for understanding the impact of the material contract on the business of the reporting issuer”. Terms that may be necessary for understanding the impact of the material contract on the business of the reporting issuer include the following:

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

(b) disclosure about related party transactions; and

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

(9) **Summary of Omitted or Redacted Provisions** Under subsection 12.2(5) of the Regulation, a reporting 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 reporting issuer. A brief one-sentence description immediately following the omitted or redacted information is generally sufficient.

PART 13 EXEMPTIONS

13.1 Prior Exemptions and Waivers

Section 13.2 of the Regulation essentially allows a reporting issuer, in certain circumstances, to continue to rely upon an exemption or waiver from continuous disclosure obligations obtained prior to the Regulation coming into force if the exemption or waiver relates to a substantially similar provision in the Regulation and the reporting issuer provides written notice to the securities regulatory authority or regulator of its reliance on such exemption or waiver. Upon receipt of such notice, the securities regulatory authority or regulator, as the case may be, will review it to determine if the provision of the Regulation referred to in the notice is substantially similar to the provision from which the prior exemption or waiver was granted. The written notice should be sent to each jurisdiction where the prior exemption or waiver is relied upon. Contact addresses for these notices are:

Alberta Securities Commission
4th Floor
300 – 5th Avenue S.W.
Calgary, Alberta
T2P 3C4
Attention: Director, Corporate Finance

British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia
V7Y 1L2
Attention: Financial Reporting

Manitoba Securities Commission
500 – 400 St. Mary Avenue
Winnipeg, Manitoba
R3C 4K5
Attention: Corporate Finance

New Brunswick Securities Commission
85 Charlotte Street, Suite 300
Saint John, N.B.
E2L 2J2
Attention: Corporate Finance

Securities Commission of Newfoundland and Labrador
P.O. Box 8700
2nd Floor, West Block
Confederation Building
75 O'Leary Avenue
St. John's, NFLD
A1B 4J6
Attention: Director of Securities

Department of Justice, Northwest Territories
Securities Office
P.O. Box 1320
1st Floor, 5009-49th Street
Yellowknife, NWT X1A 2L9
Attention: Superintendent of Securities

Nova Scotia Securities Commission
2nd Floor, Joseph Howe Building
1690 Hollis Street
Halifax, Nova Scotia B3J 3J9
Attention: Corporate Finance

Department of Justice, Nunavut
Legal Registries Division
P.O. Box 1000 – Station 570
1st Floor, Brown Building
Iqaluit, NT X0A 0H0
Attention: Superintendent of Securities

Ontario Securities Commission
Suite 1903, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
Attention: Manager, Team3, Corporate Finance

Registrar of Securities, Prince Edward Island
P.O. Box 2000
95 Rochford Street, 5th Floor,
Charlottetown, PEI
C1A 7N8
Attention: Registrar of Securities

Autorité des marchés financiers
800 Square Victoria, 22nd Floor
P.O. Box 246, Tour de la Bourse
Montréal, Québec
H4Z 1G3
Attention: Direction des marchés des capitaux

Saskatchewan Financial Services Commission – Securities Division
Suite 601
1919 Saskatchewan Drive
Regina, SK S4P 4H2
Attention: Deputy Director, Corporate Finance

Superintendent of Securities, Government of Yukon
Corporate Affairs J-9
P.O. Box 2703
Whitehorse, Yukon
Y1A 5H3
Attention: Superintendent of Securities

PART 14 TRANSITION

14.1. Transition - Application of Amendments

The amendments to the Regulation and this Policy Statement which came into effect on January 1, 2011 only apply to documents required to be prepared, filed, delivered or sent under the Regulation for periods relating to financial years beginning on or after January 1, 2011.

POLICY STATEMENT 12-202 RESPECTING REVOCATION OF A COMPLIANCE-RELATED CEASE TRADE ORDER

PART 1 INTRODUCTION

This policy statement provides guidance for issuers that are subject to a CTO (as defined below) issued as a result of failing to comply with continuous disclosure requirements.

This policy statement explains what an issuer should do to apply for a partial or full revocation of a CTO. It describes what the issuer should file, the general type of review that the securities regulatory authorities (or "we") will perform, and explains some of the factors that we will consider when determining whether to grant a full or partial revocation of the CTO.

Although this policy statement provides guidance to issuers applying for a revocation order, the policy statement also applies, where the context permits, to a securityholder or other party applying for a revocation order.

PART 2 DEFINITIONS

In this policy statement:

"annual meeting requirement" means the requirement in applicable corporate legislation or any equivalent non-corporate requirement to hold an annual meeting of securityholders;

"application" means an application for a partial or full revocation of a CTO submitted to the applicable jurisdictions (see Appendix A for section references); in British Columbia, if the CTO has been in effect for 90 days or less, the filing of the required continuous disclosure documents constitutes the application;

"CTO" means a cease trade order issued against an issuer or its management or insiders prohibiting trading in the securities of the issuer as a result of a failure to comply with continuous disclosure requirements;

"MD&A" means management's discussion and analysis as defined in *Regulation 51-102 respecting Continuous Disclosure Obligations*;

"Regulation 52-109" means *Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings*;

"MRFP" means management's report on fund performance as defined in *Regulation 81-106 respecting Investment Fund Continuous Disclosure*; and

"partial revocation order" means an order that permits one or more issuers or individuals to conduct specific trades when a CTO is in effect.

In Quebec, "trade" is not defined in the Securities Act ("QSA"). This policy statement covers all securities transactions that may be the object of an order provided for in paragraph 3 of section 265 QSA.

Terms defined in ~~National Instrument~~*Regulation 14-~~101,~~101 respecting Definitions* have the same meaning in this policy statement.

PART 3 QUALIFICATION AND CRITERIA FOR REVOCATION

3.1. Full revocations

(1) Filing requirements

Generally, we will not exercise our discretion to grant a full revocation order, subject to subsections 3.1(2) and 3.1(3), unless the issuer has filed all of its outstanding continuous disclosure. The most common deficiencies relate to disclosure required under:

(a) *Regulation 51-102 respecting Continuous Disclosure Obligations*;

(a.1) *Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers;*

(b) *Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings*;

(c) *Regulation 81-106 respecting Investment Fund Continuous Disclosure*;

(d) *Regulation 43-101 respecting Standards of Disclosure for Mineral Projects*;

(e) *Regulation 51-101 respecting Standards of Disclosure for Oil and Gas Activities*;

(f) *Regulation 52-110 respecting Audit Committees*; and

(g) *Regulation 58-101 respecting Disclosure of Corporate Governance Practices*.

(2) Exceptions to interim filing requirements

In exercising our discretion to revoke a CTO, we may elect not to require the issuer to file certain outstanding interim financial reports, interim MD&A, mid-year reports, interim MRFP or interim certificates under Regulation 52-109, subject to subsection 3.1(3), if the issuer has filed:

(a) all outstanding audited annual financial statements, annual MD&A, annual reports, annual MRFP and annual certificates under Regulation 52-109 required to be filed under applicable securities legislation;

(b) all outstanding annual information forms, information circulars and material change reports required to be filed under applicable securities legislation; and

(c) all outstanding interim financial reports (which include the applicable comparatives from the prior fiscal year), interim MD&A, interim MRFP and interim certificates under Regulation 52-109 for all interim periods in the current fiscal year required to be filed under applicable securities legislation.

(3) Exceptions to annual filing requirements

In certain cases, an issuer seeking a revocation order may consider that the length of time that has elapsed since the date of the CTO may make the preparation and filing of all outstanding disclosure impractical, or of limited use to investors. This may particularly apply to disclosure for periods that ended more than three years before the date of the application, or periods prior to a significant change in the issuer's business. An issuer seeking a revocation order in these circumstances should make detailed submissions explaining its position. In appropriate cases, we will consider whether the filing of certain outstanding disclosure might not be necessary as a precondition of a revocation order. The factors we may consider include:

(a) age of information to be contained in the continuous disclosure filing – information from older periods may be less relevant than information from more recent periods;

(b) access to records – lack of access to records may hinder compliance with some filing requirements;

(c) activity during the period – if an issuer was inactive or changed its business at any time while it was cease-traded, disclosure of information from or prior to this time may be less relevant;

(d) length of time the CTO has been in effect; and

(e) whether the historical disclosure relates to significant transactions or litigation.

We generally consider that disclosure for periods within the most recent three financial years of the issuer provides useful information for investors. We generally do not consider the time and cost required to prepare disclosure to be a compelling factor in our determination of the disclosure to be provided in connection with an application to revoke a CTO.

(4) Outstanding fees

Before we will issue a revocation order, the issuer must pay all outstanding fees to each relevant jurisdiction. Outstanding fees generally include, where applicable, all activity and participation fees, and late filing fees.

Depending on how long the CTO has been in effect, and whether the issuer filed its continuous disclosure documents in a timely manner while it was cease-traded, the amount of outstanding fees can be considerable. Before submitting an application, issuers should contact the relevant regulators to confirm the fees that will be payable.

(5) Annual meeting

An issuer that applies for the revocation of a CTO should ensure that it has complied with the annual meeting requirement.

If the issuer has not complied with the annual meeting requirement, we will generally not exercise our discretion to issue a revocation order unless the issuer provides an undertaking to the relevant securities regulatory authorities to hold the annual meeting within three months after the date on which the CTO is revoked.

Any such undertaking will not, however, relieve the issuer from any obligation it may have under the relevant legislation containing the annual meeting requirement.

(6) Recurring CTOs

An issuer that has been subject to another CTO within the 12-month period before the date of the current CTO should provide a detailed explanation in its application of the reasons for the multiple defaults.

In addition, we may request that the issuer provide to us information relating to disclosure controls and procedures that the issuer applies to ensure compliance with continuous disclosure requirements.

(7) News release

When a revocation order is issued, if the revocation of the CTO is a "material change", the issuer is required by securities legislation to issue and file a news release and material change report. If the revocation of the CTO is not a material change, the issuer should consider issuing a news release that announces the revocation of the CTO and outlines the issuer's future plans.

If the issuer has ceased to carry on an active business, or its business purpose has been abandoned, the news release should disclose this. The news release should also describe the issuer's future plans or state that the issuer has no future plans.

3.2. Partial revocations

(1) **Permitted transactions**

We will consider granting partial revocation orders to permit certain transactions involving trades in securities of the issuer, such as private placements or share-for-debt transactions, to allow the issuer to recapitalize or to raise sufficient funds to prepare and file outstanding continuous disclosure documents. We will generally not exercise our discretion to grant a partial revocation order unless the issuer intends to subsequently apply for a full revocation order and reasonably anticipates having sufficient resources after the proposed transaction to bring its continuous disclosure and fees up to date.

Other circumstances may arise that warrant a partial revocation order. For example, we will generally grant a partial revocation order to permit a securityholder to sell securities for a nominal amount solely to establish a tax loss.

Issuers may wish to consult their legal counsel to determine whether a particular transaction constitutes a trade and therefore requires an application for a partial revocation order. For example, in most jurisdictions, a disposition of securities by way of a bona fide gift, made in good faith and not as part of a plan or scheme to evade requirements of securities legislation, would generally not be considered a "trade" under provincial and territorial securities legislation. As such, where applicable, a partial revocation order would not typically be required in these circumstances. However, after the gift, the securities may remain subject to the CTO depending on the terms of the CTO.

(2) Acts in furtherance of a trade

The definition of trade, where applicable, includes acts in furtherance of a trade. In any particular case, it is a question of legal interpretation whether a step taken by an issuer or other party is an act in furtherance of a trade, and therefore a breach of the CTO. Issuers should consult their legal counsel whenever there is doubt as to whether a proposed action is an act in furtherance of a trade. An issuer must obtain a partial revocation order before carrying out an act in furtherance of a trade.

(3) Continuing effect of CTO

Following the completion of the trades permitted by a partial revocation of a CTO against an issuer, all securities of the issuer may remain subject to the CTO until a full revocation is granted, depending on the terms of the CTO.

PART 4 APPLICATIONS

4.1. Application for a full revocation

An issuer requesting a full revocation order should submit an application, with the application fees, to the securities regulatory authorities in all jurisdictions where the issuer's securities are cease-traded. The application should include the following information:

(a) the jurisdictions where the issuer's securities are cease traded;

(b) details of any revocation applications currently in progress in the other jurisdictions;

(c) copies of any draft material change report or news release as discussed in section 3.1(7);

(d) confirmation that all continuous disclosure documents have been filed with the relevant securities regulatory authorities or a description of the documents that will be filed;

(e) confirmation that the issuer's SEDAR and SEDI profiles are up-to-date;

(f) a draft revocation order; and

(g) of *Regulation 41-101 respecting General Prospectus Requirements* for each current and incoming director, executive officer and promoter of the issuer.

If the promoter is not an individual, the issuer should provide the information for each director and executive officer of the promoter.

If the issuer is an investment fund, the issuer should also provide personal information for each director and executive officer of the manager of the investment fund.

All applications for full revocation will result in some level of review of the issuer's continuous disclosure record for compliance. If the CTO has been in effect for more than 90 days, this review will be similar to the full review under the harmonized continuous disclosure review program described in CSA Staff Notice 51-312 (Revised) - *Harmonized Continuous Disclosure Review Program*.

4.2. Application for a partial revocation

(1) General

An issuer requesting a partial revocation order should submit an application, with the application fees, to the securities regulatory authorities in all jurisdictions where the issuer's securities are cease-traded and where the proposed trades would occur. The application should include the following information:

(a) the jurisdictions where the issuer's securities are cease-traded and where the proposed trades would occur;

(b) details of any revocation applications currently in progress in the other jurisdictions;

(c) a description of the proposed trades and their purpose;

(d) a draft partial revocation order that includes:

(i) a condition that the applicant will obtain and provide to the relevant securities regulatory authorities signed and dated acknowledgements from all participants in the proposed trades, which clearly state that the issuance of a partial revocation order does not guarantee the issuance of a full revocation order in the future; and

(ii) a condition that the applicant will provide a copy of the CTO and partial revocation order to all participants in the proposed trades;

(e) use of proceeds information as discussed in section 4.2(2), in the case of a proposed exempt financing;

(f) if applicable, details of the exemptions the issuer intends to rely on to complete the proposed trades; and

(g) if the proposed trades are the result of a decision by a court, a copy of the relevant court order.

(2) Use of Proceeds

If the purpose of a proposed partial revocation of a CTO is to permit an issuer to carry out an exempt financing, the application and the offering document, if any, should disclose:

(a) an estimate, reasonably supported, of the amount the issuer expects to raise from the financing; and

(b) a reasonably detailed explanation of the purpose of the financing and how the issuer plans to use the funds.

The issuer should also provide in the application and any proposed offering document an estimate, reasonably supported, of the total amount the issuer will need to apply for a full revocation order. That amount would include the funds needed to prepare and file the documents required to bring the issuer's continuous disclosure up to date and pay outstanding fees.

APPENDIX A

Section references for an application under local securities legislation.

British Columbia:
Securities Act: sections 164 and 171.

Alberta:
Securities Act: section 214.

Saskatchewan:
The Securities Act, 1988: subsection 158(4).

Manitoba:
Securities Act: subsection 148(1).

Ontario:
Securities Act: section 144.

Quebec:
Securities Act: section 265.

New Brunswick:
Securities Act: section 206.

Nova Scotia:
Securities Act: section 151.

Prince Edward Island:
Securities Act: section 31.

Newfoundland and Labrador:
Securities Act: section 142.1.

Yukon:
not applicable.

Northwest Territories:
Securities Act: section 43.1.

Nunavut:
Securities Act: section 43.1.

POLICY STATEMENT 12-203 RESPECTING CEASE TRADE ORDERS FOR CONTINUOUS DISCLOSURE DEFAULTS

PART 1 INTRODUCTION

1.1. What is the purpose of the policy statement?

This policy statement provides guidance to issuers, investors and other market participants as to how the Canadian Securities Administrators (CSA or we) will generally respond to certain types of serious continuous disclosure defaults (referred to as specified defaults in this policy statement) by a reporting issuer.

The policy statement provides guidance on the following questions:

1. When will a CSA securities regulatory authority or regulator (a CSA regulator) respond to a specified default by issuing a cease trade order (CTO)? What do we mean by the term "CTO"? Why do we issue CTOs?

2. When will a CSA regulator respond to a specified default by issuing a management cease trade order (MCTO)? What do we mean by the term "MCTO"? Why do we issue MCTOs?

3. If a CSA regulator issues an MCTO, what other actions will we ordinarily take in these circumstances? What do we expect from defaulting reporting issuers in these circumstances?

The guidance in this policy statement represents general guidance only. Each CSA regulator will decide how to respond to a specified default, including whether to issue a CTO (and if so, whether to issue a general CTO or an MCTO), on a case-by-case basis after considering all relevant facts and circumstances.

1.2. What is the scope of the policy statement?

(a) Application

This policy statement describes how the CSA regulators will ordinarily respond to a specified default by a reporting issuer. The term "specified default" is defined in part 2 of this policy statement and is based on the harmonized list of deficiencies developed by the CSA and described in CSA Notice 51-322 *Reporting Issuer Defaults* (CSA Notice 51-322). This notice describes the list of deficiencies that will generally result in a reporting issuer being noted in default of the securities laws of a particular jurisdiction.

The definition of "specified default" does not include certain defaults described in CSA Notice 51-322, such as a failure to file a material change report, or a failure to file technical disclosure or other reports required by *Regulation 43-101 respecting Standards of Disclosure for Mineral Projects* (Regulation 43-101) or *Regulation 51-101 respecting Standards of Disclosure for Oil and Gas Activities* (Regulation 51-101).

We have omitted these items from the definition because these filings will generally be non-periodic in nature, and in some cases it may be unclear whether the issuer has triggered a filing requirement. However, a CSA regulator may apply this policy statement if a reporting issuer is in default of a continuous disclosure requirement that is not included in the definition of specified default.

Similarly, a CSA regulator may apply this policy statement if a reporting issuer has made a required filing but the required filing is deficient in terms of content (a content deficiency). Examples of content deficiencies are set out in section 2 of CSA Notice 51-322.

(b) Mutual reliance principles

In deciding how to respond to a specified default, the CSA regulators will generally follow principles of mutual reliance. The issuer's principal regulator (PR) will normally be the one to decide whether to issue a CTO. The determination as to which regulator will act as PR will be based upon the principles set out in part 3 of *Policy Statement 11-203 respecting Process for exemptive relief applications in multiple jurisdictions* (Policy Statement 11-203). This means that the PR will usually be the regulator in the jurisdiction where the reporting issuer's head office is located.

An issuer that wishes to apply for an MCTO under this policy statement must apply in the issuer's PR jurisdiction and send a copy of the application to the non-principal regulators in each other jurisdiction in which it is a reporting issuer. The issuer's PR will determine whether to issue a general CTO or an MCTO and, in the case of the latter, the appropriate scope of the MCTO. Non-principal regulators will ordinarily make the same decision as the PR on these questions. However, each regulator may still impose a general CTO if it believes it is appropriate.

(c) MCTOs issued under this policy statement are not a "penalty" or "sanction" for disclosure purposes

The CSA regulators do not consider MCTOs issued under this policy statement to be a "penalty or sanction" for the purposes of disclosure obligations in Canadian securities legislation relating to penalties or sanctions. They are not issued as part of an enforcement process and the regulators do not intend them to suggest a finding of fault or wrongdoing on the part of any individual named in the MCTO. For example, a defaulting issuer's board of directors might invite an individual to serve as an officer or director of the issuer to assist the issuer in remedying its default. The individual might have no prior involvement with the defaulting reporting issuer. The fact that the PR may subsequently name the individual in an MCTO does not mean the individual had any responsibility for the default, which occurred before the individual joined the issuer.

However, issuers are required to disclose MCTOs issued under this policy statement in accordance with the following disclosure requirements:

- Section 16.2 of Form 41-101F1 *Information Required in a Prospectus*,
- Section 16.1 of Form 41-101F4 *Information Required in a Venture Issuer Prospectus*,
- Item 16 of Form 44-101F1 *Short Form Prospectus*,
- Paragraph 10.2(1) of Form 51-102F2 *Annual Information Form*, ~~and~~
- Subsection 29(3) of Form 51-103F1 *Annual and Mid-Year Reports*,
- Paragraph 7.2 of Form 51-102F5 *Information Circular*, and
- Subsection 14(1) of Form 51-103F4 *Information Circular*.

If an issuer is required to include disclosure of an MCTO in a public filing, the issuer may supplement the disclosure with additional information explaining the circumstances of the MCTO.

(d) Regulators may consider other action, including enforcement action

If a reporting issuer is in default of a continuous disclosure requirement, the CSA regulators may also consider taking enforcement action against the reporting issuer, the directors and officers of the reporting issuer, or any other responsible party. Accordingly,

nothing in this policy statement should be interpreted as limiting the discretion of the CSA regulators in responding to such a default through enforcement action.

PART 2 DEFINITIONS AND INTERPRETATION

In this policy statement:

"alternative information guidelines" means the guidelines relating to a default announcement and default status report described in part 4 of this policy statement;

"cease trade order" and "CTO" mean an order under a provision of Canadian securities legislation, set out in Appendix A, that prohibits trading in securities of a reporting issuer, whether direct or indirect, by the persons identified in the order, for such period as is specified in the order;

"default announcement" means a news release and report as described in section 4.3 of this policy statement;

"default status report" means a news release as described in section 4.4 of this policy statement;

"management cease trade order" and "MCTO" mean a CTO issued under this policy statement that prohibits trading in securities of a reporting issuer, whether direct or indirect, by

(a) the chief executive officer (CEO) of the reporting issuer,

(b) the chief financial officer (CFO) of the reporting issuer,

(c) at the discretion of the PR, the members of the board of directors of the reporting issuer or other persons who had, or may have had, access directly or indirectly to any material fact or material change with respect to the reporting issuer that has not been generally disclosed, and

(d) in the case of a reporting issuer that does not have a CEO, CFO and/or a board of directors, individuals who perform similar functions to any of such positions;

"principal regulator" and "PR" mean an issuer's principal regulator as determined in accordance with part 3 of *Policy Statement 11-203 respecting Process for exemptive relief applications in multiple jurisdictions* (Policy Statement 11-203).

"specified default" means a failure by a reporting issuer to comply with a specified requirement; and

"specified requirement" means the requirement to file within the time period prescribed by securities legislation

(a) annual financial statements;

(b) interim financial report;

(c) annual or interim management's discussion and analysis (MD&A) or annual or interim management report of fund performance (MRFP);

(d) annual information form (AIF);

(d.1) annual report,

(d.2) mid-year report, or

(e) certification of filings under *Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings*.

In certain jurisdictions, the CSA regulators may issue cease trade orders and management cease trade orders that prohibit both trading in and acquisitions of securities of a reporting issuer. In these jurisdictions, references in this policy statement to a "trade" refers to both a trade in or acquisition of securities of the reporting issuer.

In Quebec, "trade" is not defined in the Securities Act (QSA). This policy statement covers all securities transactions that may be the object of an order provided for in paragraph 3 of section 265 of the QSA.

PART 3 REGULATORY RESPONSES TO A SPECIFIED DEFAULT

3.1. Issuance of a general CTO or an MCTO

In the jurisdictions where the issuer is a reporting issuer, the CSA regulators will respond to a specified default by noting the issuer in default on their default lists. For more information about the CSA default lists, please refer to CSA Notice 51-322.

The CSA regulators will then ordinarily respond to a specified default in one of two ways:

- The issuer's PR may issue a CTO.

- Alternatively, if an issuer applies under part 4 of this policy statement, and demonstrates that it is able to comply with this policy statement, the issuer's PR may issue an MCTO instead.

The issuer's PR will decide whether to proceed with a CTO (including whether to issue an MCTO) after considering the principles, factors and criteria described in part 4 of this policy statement and any other facts and circumstances the PR considers relevant. If the issuer's PR decides an MCTO is appropriate, it will similarly decide whether to extend it to the issuer's board of directors or other persons.

If the issuer's PR issues a CTO, the non-principal regulators in the jurisdictions in which the issuer is a reporting issuer will generally issue similar CTOs to ensure the CTO is effective in their jurisdictions. If the issuer's PR issues an MCTO, the non-principal regulators in the jurisdictions in which the issuer is a reporting issuer will generally issue similar MCTOs in respect of persons named in the MCTO who reside in their jurisdiction.

The CSA regulators will generally not grant exemptive relief to a reporting issuer to extend a continuous disclosure filing deadline to enable an issuer to avoid a default. The deadlines relating to the specified requirements represent the CSA's view as to reasonable and appropriate deadlines that should apply to reporting issuers in a consistent manner. While we recognize that issuers may sometimes face difficulties in complying with filing deadlines due to circumstances beyond their control, we do not believe it is appropriate to vary a filing deadline simply to allow an issuer to avoid being in default. The CSA regulators will consider the issuer's circumstances in deciding what action, if any, is appropriate to respond to a default.

If a defaulting reporting issuer is insolvent and is the subject of a stay of proceedings or similar order under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended, or the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended, or similar legislation, the CSA regulators will generally note the issuer in default but take no other action until the relevant stay is lifted, provided the issuer complies with the alternative information guidelines. In situations where this is not the case, or where the default is expected to continue for an extended period, the CSA regulators will determine whether further action is warranted after considering all relevant factors and circumstances.

3.2. Why do we issue cease trade orders in response to a specified default?

Historically, if a reporting issuer has failed to comply with a specified requirement, such as the requirement to file audited annual financial statements, the CSA regulators have generally responded to this default by issuing a CTO.

The CSA regulators have historically taken this action for the following reasons:

- Without adequate continuous disclosure, there may not be sufficient information in the securities marketplace to properly support informed trading decisions regarding securities of the issuer.

- The integrity and fairness, or confidence in the integrity and fairness, of the capital markets, may be compromised if trading in securities of the reporting issuer is permitted to continue during the period of default (when there is heightened potential that some people may have access to information that would normally be reflected in the continuous disclosure document that the reporting issuer is in default of filing).

We acknowledge that a CTO can impose a burden on issuers and investors because

- existing investors are unable to sell their securities, and prospective investors are unable to purchase securities of the issuer, while the CTO remains in effect, and

- issuers are generally unable to access financing while the CTO remains in effect.

Nevertheless, if a reporting issuer is in default of a specified requirement, our overriding concern is generally investor protection. Investors and prospective investors should be able to make an informed investment decision about the securities of the defaulting reporting issuer.

The practice of responding to a specified default with a CTO has a significant positive effect on general compliance. The prospect of a CTO creates a strong incentive for the reporting issuer's management to ensure that the reporting issuer does not go into default. Similarly, the issuance of a CTO once the issuer is in default creates a strong incentive on the part of management to diligently rectify the filing default.

Finally, a CTO represents a rapid, public response by the CSA regulators to a serious continuous disclosure default by a reporting issuer. This sends a message to issuers and investors that filing deadlines are important and that there will be serious consequences for a failure to file, helping to preserve integrity and fairness in the securities marketplace.

PART 4 APPLICATIONS FOR AN MCTO AS AN ALTERNATIVE TO A GENERAL CTO

4.1. Eligibility criteria

A CTO is an appropriate response to a specified default that is not likely to be rectified within a relatively short time and where the circumstances leading to the default are likely to continue. These circumstances include issuers that no longer have an active business, are insolvent, or have lost a majority of their board of directors.

If the outstanding filing is expected to be filed relatively quickly, and the default is not expected to be recurring, an MCTO may be an appropriate response to the default.

Issuers satisfying all of the following criteria are usually eligible for an MCTO:

- The outstanding filings will be filed as soon as they are available and within a reasonable period. In most cases, we expect this to be within two months. However, in

exceptional circumstances, as determined by the PR, we may permit an issuer to take longer than two months to address the default.

- The issuer is generating revenue from its principal business or, if it is in the development stage, the issuer is actively pursuing the development of its products or properties.

- The issuer has the necessary financial and human resources, including a reasonable number of directors and officers in place, to address the default in a timely and effective manner and comply with all other continuous disclosure requirements (other than requirements reasonably linked to the specified default) for the duration of the default.

- The issuer's securities are listed on a Canadian stock exchange and there is an active, liquid market for those securities. Thinly traded issuers will generally not be considered eligible for an MCTO.

- The issuer is not on the defaulting reporting issuer list in any CSA jurisdiction for any reason other than the failure to comply with the specified requirement (and any other requirement that is reasonably linked to the specified requirement).

4.2. Contents of application

If an issuer satisfies the eligibility criteria set out above, it should contact its PR at least two weeks before the due date for the required filings and apply in writing for an MCTO instead of a general CTO against the issuer.

We acknowledge that there will be situations where an issuer, notwithstanding the exercise of reasonable diligence, will be unable to determine whether it can comply with a specified requirement at least two weeks before its due date. However, we believe that, in most cases, an issuer exercising reasonable diligence should be able to make this determination at least two weeks in advance of the deadline.

If an issuer, notwithstanding the exercise of reasonable diligence, is not able to make this determination at least two weeks before its due date, the issuer should include a brief explanation of the reasons for the delayed filing in its application.

In its application, the issuer should

- identify the specified default, the reasons for the default and the anticipated duration of the default;

- explain how the issuer satisfies each of the eligibility criteria described above;

- set out a detailed remediation plan that explains how the issuer proposes to remedy the default and includes a realistic timetable for remedying the default;

- include consents signed by the CEO and the CFO (or equivalent) to the issuance of an MCTO (see Appendix C);

- include a copy of the proposed or actual default announcement (see section 4.3);

- confirm that the issuer will comply with the alternative information guidelines described in sections 4.3 and 4.4 of this policy statement;

- include a copy of the issuer undertaking described in section 4.7 of this policy statement; and

- briefly describe the issuer's blackout policies and other policies and procedures relating to insider trading.

The issuer should send copies of the application to the regulators in all jurisdictions in which the issuer is a reporting issuer.

We will consider an issuer's history of complying with its continuous disclosure obligations when evaluating the issuer's request for an MCTO.

4.3. Alternative information guidelines – Default Announcement

If a reporting issuer determines that it will not comply, or subsequently determines that it has not complied, with a specified requirement, this will often represent a material change that the issuer should immediately communicate to the securities marketplace by way of a news release and material change report in accordance with part 7 of *Regulation 51-102 respecting Continuous Disclosure Obligations* (Regulation 51-102) or part 6 of *Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers* (Regulation 51-103), as applicable. In determining whether a failure to comply with a specified requirement is a material change, the issuer should consider both the events leading to the failure and the failure itself.

If the circumstances leading to the default, or the default, do not represent a material change, the issuer should nevertheless consider whether the circumstances involve important information that should be immediately communicated to the marketplace by way of news release.

The regulators will generally not exercise their discretion to issue an MCTO unless the issuer issues and files a default announcement containing the information set out below. If the default involves a material change, the material change report may contain this information, in which case a separate default announcement is not necessary. The default announcement should be authorized by the CEO or the CFO (or equivalent) of the reporting issuer, be approved by the board or audit committee and be prepared and filed with the CSA regulators on SEDAR in the same manner as a news release and material change report referred to in part 7 of Regulation 51-~~102.~~102 or part 6 of Regulation 51-103, as applicable. An issuer will usually be able to determine that it will not comply with a specified requirement at least two weeks before its due date and, as soon as it makes this determination, should issue the default announcement.

The default announcement should:

(i) identify the relevant specified requirement and the (anticipated) default;

(ii) disclose in detail the reason(s) for the (anticipated) default;

(iii) disclose the current plans of the reporting issuer to remedy the default, including the date it anticipates remedying the default;

(iv) confirm that the reporting issuer intends to satisfy the provisions of the alternative information guidelines so long as it remains in default of a specified requirement;

(v) disclose relevant particulars of any insolvency proceeding to which the reporting issuer is subject, including the nature and timing of information that is required to be provided to creditors, and confirm that the reporting issuer intends to file with the CSA regulators throughout the period in which it is in default, the same information it provides to its creditors when the information is provided to the creditors and in the same manner as it would file a material change report under part 7 of Regulation 51-102 or part 6 of Regulation 51-103, as applicable; and

(vi) subject to section 4.5 of this policy statement, disclose any other material information concerning the affairs of the reporting issuer that has not been generally disclosed.

A default announcement is not needed if the issuer is in default of a previous specified requirement, has followed the provisions of section 4.3 regarding a default announcement of that earlier default and is complying with the provisions of section 4.4 regarding default status reports.

4.4. Alternative information guidelines – Default Status Reports

After the default announcement, and during the period of the MCTO, the regulators will generally exercise their discretion to issue a general CTO unless the defaulting reporting issuer issues bi-weekly default status reports, in the form of news releases, containing the following information:

(i) any material changes to the information contained in the default announcement or subsequent default status reports, including a description of all actions taken to remedy the default and the status of any investigations into any events which may have contributed to the default;

(ii) particulars of any failure by the defaulting reporting issuer in fulfilling its stated intentions with respect to satisfying the provisions of the alternative information guidelines;

(iii) information regarding any (anticipated) specified default subsequent to the default which is the subject of the default announcement; and

(iv) subject to section 4.5 of this policy statement, any other material information concerning the affairs of the reporting issuer that has not been generally disclosed.

Where there are no changes otherwise required to be disclosed in items (i) to (iv), this fact should be disclosed in a default status report.

To keep the market continuously informed of any developments during the period of default, the issuer should issue default status reports every two weeks following the default announcement. If a CSA regulator, at any time, issues a general CTO against an issuer, default status reports will no longer be necessary.

Every default status report should be prepared, authorized, filed and communicated to the securities marketplace in the same manner as that specified in section 4.3 for a default announcement.

4.5. Confidential material information

The alternative information guidelines in this policy statement supplement the material change reporting requirements in Regulation 51-102 and Regulation 51-103 and should be interpreted in a similar manner. Similar to the procedures in Regulation 51-~~102,~~102 and Regulation 51-103, an issuer may omit confidential material information from default status announcement or default status reports if in the opinion of the issuer, and if that opinion is arrived at in a reasonable manner, disclosure of the applicable material information would be unduly detrimental to the interests of the reporting issuer.

4.6. Compliance with other continuous disclosure requirements

The alternative disclosure described in sections 4.3 and 4.4 of this policy statement supplement the issuer's disclosure record during the period of default. It does not provide an alternative to the continuous disclosure requirements under Canadian securities legislation.

If a reporting issuer is in default of a specified requirement, the issuer must still comply with all other applicable continuous disclosure requirements, other than requirements reasonably linked to the specified requirement in question. For example, an issuer that has not filed its financial statements on time will also be unable to comply with the requirement to file management's discussion and analysis under Regulation 51-102. However, failure to comply with a requirement to file audited financial statements in accordance with the requirements of part 4 of Regulation 51-102 does not excuse compliance with other requirements of Regulation 51-102 such as the requirement to file an Annual Information Form in accordance with part 6 of Regulation 51-102 or material change reports in accordance with part 7 of Regulation 51-102. The same holds true for venture issuers subject to the requirements in Regulation 51-103; if a venture issuer is in default of a specified requirement, it must still comply with all other continuous disclosure requirements.

4.7. Issuer undertaking to cease certain trading activities

The reporting issuer should include with the application an undertaking that, for so long as the issuer is in default of the specified requirement in question, the issuer will not, directly or indirectly, issue securities to or acquire securities from an insider or employee of the issuer except in accordance with legally binding obligations to do so existing as of the date of the continuous disclosure default. The issuer should address the undertaking to the securities regulatory authorities of each jurisdiction in which the issuer is a reporting issuer.

4.8. Information respecting defaulting reporting issuers subject to insolvency proceedings

As explained in section 3.1, if a defaulting reporting issuer is insolvent and under Court protection, the CSA will generally note the issuer in default but take no other action until the relevant stay is lifted provided the issuer complies with the alternative information guidelines.

If a defaulting reporting issuer is the subject of insolvency proceedings but not under court protection, we will consider an application for an MCTO in cases where

(a) the issuer retains title to its assets,

(b) the issuer's directors and officers continue to manage the affairs of the issuer, and

(c) the issuer

(i) files a default announcement,

(ii) files default status reports,

(iii) files a report disclosing the information it provides to its creditors

- simultaneously with delivery to its creditors, and
- in the same manner as a report of a material change referred to in part 7 of Regulation 51-102; and

(iv) otherwise complies with this policy statement.

If the issuer chooses to file the information provided to creditors with a material change report, then, for purposes of filing on SEDAR, this must be contained in the same electronic document as the material change report.

4.9. Financial information in default announcements and default status reports

Any unaudited financial information that is communicated to the marketplace should, except in certain circumstances involving insolvency, be directly derived from financial statements prepared and presented in accordance with generally accepted accounting principles. In default announcements and default status reports, this information should be accompanied by cautionary language that the information has been prepared by management of the defaulting reporting issuer and is unaudited.

4.10. Default correction announcement

Once the specified default is remedied, the reporting issuer should consider communicating that information to the securities marketplace in the same manner as that specified in this policy statement for a default announcement.

PART 5 TRADING BY MANAGEMENT AND OTHER INSIDERS DURING THE PERIOD OF DEFAULT

Issuers in default of a specified requirement should closely monitor and generally restrict trading by management and other insiders due to the increased risk that such persons may have access to material undisclosed information. Such information may include information that would otherwise have been reflected in the continuous disclosure filing that is the subject of the default, information about any investigation into the events that may have led to the default, and information about the status of remediation activities.

We remind management and other insiders that they should carefully consider the insider trading prohibitions under securities legislation before entering into any transaction involving securities of the issuer in default.

The CSA have articulated in National Policy 51-201 Disclosure Standards detailed best practices for issuers for disclosure and information containment and have provided an interpretation of insider trading laws. Issuers should adopt written disclosure policies to assist directors, officers and employees and other representatives in discharging timely disclosure obligations. Written disclosure policies should also provide guidance on how to maintain the confidentiality of corporate information and to prevent improper trading on inside information. Adopting the CSA best practices may assist issuers to take all reasonable steps to preserve the confidentiality of non-public information.

We also remind issuers and other market participants that an officer or other insider of a reporting issuer in default will generally be unable to sell securities acquired from the issuer on an exempt basis because of the resale restrictions in section 2.5(2)(7) and s. 2.6(3)(5) of *Regulation 45-102 respecting Resale of Securities*.

PART 6 EFFECT OF A CTO ISSUED BY A REGULATOR IN ONE JURISDICTION ON TRADING IN ANOTHER JURISDICTION

Presently, all marketplaces (including exchanges, alternative trading systems and quotation and trade reporting systems) in Canada have retained Investment Industry Regulatory Organization of Canada (IIROC) as their regulation services provider. Under the Universal Market Integrity Rules (UMIR), which have been adopted by IIROC, if a securities commission issues a CTO with respect to an issuer whose securities are traded on a marketplace, IIROC imposes a regulatory halt on trading of those securities on all marketplaces for which IIROC acts as the regulation services provider. Such halt is taken whether or not the CSA regulator that issued the CTO is the PR of the issuer and once the halt is imposed by IIROC, no person subject to UMIR may trade those securities on any marketplace in Canada, over-the-counter or on a foreign organized regulated market. Therefore, the remainder of the guidance in this part deals with market participants who are not otherwise subject to the jurisdiction of IIROC.

Market participants should be cautious about trading in a security in one jurisdiction if a CSA regulator in another jurisdiction has issued a CTO. In most cases, if an issuer's PR issued a CTO in response to a failure by the issuer to comply with a material continuous disclosure requirement, the non-principal regulator will issue a reciprocal CTO on similar terms and conditions.

Continuous disclosure obligations reflect the minimum requirements we feel are necessary to generate sufficient public disclosure to permit investors to make informed investment decisions. The issuance of a CTO by the issuer's PR will generally mean that an issuer has not met the required standard and that there is a significant risk of harm to investors if trading is allowed to continue. Accordingly, market participants should carefully consider the existence of the material continuous disclosure default, and the determination of the issuer's PR, before effecting a trade in a non-principal regulator jurisdiction. Although a trade in one jurisdiction may not violate a CTO in another jurisdiction, the trading activity may still be contrary to the public interest and therefore subject to enforcement or other administrative proceedings.

If a market participant intends to execute a trade in securities of a cease-traded issuer on an exchange or marketplace outside of Canada, the market participant should carefully consider whether the trade may nevertheless be considered to be or include a trade within one or more jurisdictions in Canada where a CTO is in effect. For example, a transaction may be a trade in another jurisdiction if "acts in furtherance of the trade" occur within that jurisdiction. A transaction may also be a trade in another jurisdiction if there are connecting factors or other facts and circumstances that indicate that the securities may not "come to rest" outside Canada but may be resold to investors in a jurisdiction where a CTO is in effect.

PART 7 EFFECTIVE DATE

This policy statement comes into force on September 1, 2008.

APPENDIX A
STATUTORY PROVISIONS FOR CEASE TRADE ORDERS

Jurisdiction	**Legislative reference**
British Columbia	Sections 161 and 164 of the Securities Act
Alberta	Sections 33.1 and 198 of the Securities Act
Saskatchewan	Section 134.1 of The Securities Act, 1988
Manitoba	Sections 147.1 and 148 of the Securities Act
Ontario	Section 127 of the Securities Act
Quebec	Section 265 of the Securities Act
Newfoundland and Labrador	Section 127(1) of the Securities Act
Nova Scotia	Section 134 of the Securities Act
New Brunswick	Section 188.2 of the Securities Act

APPENDIX B
LISTS OF DEFAULTING REPORTING ISSUERS

Certain securities regulatory authorities maintain lists that identify those reporting issuers that have been noted in default in the relevant jurisdiction. The lists identify the name of the reporting issuer, and the nature and description of the default. The lists, together with the harmonized categories of default and nomenclature used to identify each category, can be found on the following websites:

www.bcsc.bc.ca
www.albertasecurities.com
www.sfsc.gov.sk.ca
www.msc.gov.mb.ca
www.osc.gov.on.ca
www.lautorite.qc.ca
www.nbsc-cvmnb.ca
www.gov.ns.ca/nssc

Certain securities regulatory authorities have also published policies or notices containing information relating to defaults by reporting issuers. These local polices or notices are:

Alberta:	Alberta Securities Commission Policy 51-601 – Reporting Issuers List
Saskatchewan:	Saskatchewan Policy Statement 51-601 – *Reporting Issuers in Default*
Manitoba:	Manitoba Securities Commission Local Policy 51-601 – *Reporting Issuers List*
Ontario:	Ontario Securities Commission Policy 51-601 – *Reporting Issuer Defaults*
Quebec:	*AMF Notice on Reporting Issuer Defaults*
New Brunswick:	New Brunswick Securities Commission Policy 51-601 – *Reporting Issuers List*
Nova Scotia	Nova Scotia Securities Commission Policy 51-601 – *Reporting Issuers List*

APPENDIX C
SAMPLE FORM OF CONSENT

CONSENT

To: [Name of Issuer's Principal Regulator], as principal regulator,

And to: [Name(s) of other CSA regulator(s) in whose jurisdiction(s) the Issuer is a reporting issuer] (collectively with the principal regulator, the CSA regulators)

Re: Consent to issuance of management cease trade order

I, [name of individual providing the consent], hereby confirm as follows:

1. I am the [name of position with the Issuer, e.g., the chief executive officer or chief financial officer] of [name of Issuer] (the Issuer).

2. The Issuer is a [nature of entity, e.g., a corporation incorporated under the Canada Business Corporations Act] with a head office located in [province or territory].

3. The Issuer is a reporting issuer in [identify all jurisdictions in which the issuer is a reporting issuer]. The Issuer's principal regulator, as determined in accordance with part 3 of Policy Statement 11-203 respecting Process for exemptive relief applications in multiple jurisdictions (Policy Statement 11-203) is [name of principal regulator].

4. The Issuer [is] [is not] [delete as applicable] a "venture issuer" as defined in *Regulation 51-~~102~~103 respecting ~~Continuous~~Ongoing Governance and Disclosure Obligations Requirements for Venture Issuers (Regulation 51-~~102~~103)*. The Issuer has a financial year ending [state the issuer's year end, e.g., December 31].

5. On or about [identify the deadline for filing] (the filing deadline), the Issuer will be required to file [briefly describe the required filings, e.g.,

a. annual report, as required by part 7 of Regulation 51-103;

b. audited annual financial statements for the year ended December 31, 2007, as required by Part 4 of Regulation 51-102;

~~b~~c. management's discussion and analysis (MD&A) relating to the audited annual financial statements, as required by Part 5 of Regulation 51-102; and

~~c~~d. CEO and CFO certificates relating to the audited annual financial statements, as required by *Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings* (collectively, the required filings).

6. The Issuer has determined that it may not be able to make the required filings by the filing deadline. The Issuer wishes to apply to the CSA regulators for a management cease trade order (an MCTO) as an alternative to a general cease trade order in accordance with Policy Statement 12-203 respecting Cease Trade Orders for Continuous Disclosure Defaults (Policy Statement 12-203).

7. I am providing this consent in support of the Issuer's application for an MCTO in accordance with Part 4 of Policy Statement 12-203.

8. I hereby consent to the issuance of an MCTO against me by the Issuer's principal regulator under the applicable statutory authority listed in Appendix A to Policy Statement 12-203.

9. Specifically, I understand that the MCTO will prohibit me from trading in or acquiring securities of the Issuer, directly or indirectly, until two full business days following the receipt by the principal regulator of all filings the Issuer is required to make under the securities legislation of the principal regulator or until further Order of the principal regulator.

10. I hereby further consent to the issuance of any substantially similar MCTO that another CSA regulator may consider necessary to issue by reason of the default described above.

11. I hereby waive any requirement of a hearing, as may be provided for under the applicable statutory authority listed in Appendix A to Policy Statement 12-203, and any corresponding notice of hearing, in respect of the issuance of the MCTO.

DATED this day of [DATE] by: _____
Name:
Title:

POLICY STATEMENT TO REGULATION 43-101 RESPECTING STANDARDS OF DISCLOSURE FOR MINERAL PROJECTS

This Policy Statement (the "Policy Statement") sets out the views of the Canadian securities regulatory authorities (the "securities regulatory authorities" or "we") as to how we interpret and apply certain provisions of *Regulation 43-101 respecting Standards of Disclosure for Mineral Projects* and Form 43-101F1 (the "Regulation").

GENERAL GUIDANCE

(1) **Application of the Regulation**

The definition of "disclosure" in the Regulation includes oral and written disclosure. The Regulation establishes standards for disclosure of scientific and technical information regarding mineral projects and requires that the disclosure be based on a technical report or other information prepared by or under the supervision of a qualified person. The Regulation does not apply to disclosure concerning petroleum, natural gas, bituminous sands or shales, groundwater, coal bed methane, or other substances that do not fall within the meaning of the term "mineral project" in section 1.1 of the Regulation.

(2) **Supplements Other Requirements**

The Regulation supplements other continuous disclosure requirements of securities legislation that apply to reporting issuers in all business sectors.

(3) **Forward-Looking Information**

Part 4 of *Regulation 51-102 respecting Continuous Disclosure Obligations* (Regulation 51-102) sets out the requirements for disclosing forward-looking information. Frequently, scientific and technical information about a mineral project includes or is based on forward-looking information. A mining issuer must comply with the requirements of Part 4A of Regulation 51-102, including identifying forward-looking information, stating material factors and assumptions used, and providing the required cautions. Examples of forward-looking information include metal price assumptions, cash flow forecasts, projected capital and operating costs, metal or mineral recoveries, mine life and production rates, and other assumptions used in preliminary economic assessments, pre-feasibility studies, and feasibility studies.

(4) **Materiality**

An issuer should determine materiality in the context of the issuer's overall business and financial condition taking into account qualitative and quantitative factors, assessed in respect of the issuer as a whole**.**

In making materiality judgements, an issuer should consider a number of factors that cannot be captured in a simple bright-line standard or test, including the potential effect on both the market price and value of the issuer's securities in light of the current market activity. An assessment of materiality depends on the context. Information that is immaterial today could be material tomorrow; an item of information that is immaterial alone could be material if it is aggregated with other items.

(5) **Property Material to the Issuer**

An actively trading mining issuer, in most circumstances, will have at least one material property. We will generally assess an issuer's view of the materiality of a property based on the issuer's disclosure record, its deployment of resources, and other indicators. For example, we will likely conclude that a property is material if

(a) the issuer's disclosure record is focused on the property;

(b) the issuer's disclosure indicates or suggests the results are significant or important;

(c) the cumulative and projected acquisition costs or proposed exploration expenditures are significant compared to the issuer's other material properties; or

(d) the issuer is raising significant money or devoting significant resources to the exploration and development of the property.

In determining if a property is material, the issuer should consider how important or significant the property is to the issuer's overall business and in comparison to its other properties. For example

(e) more advanced stage properties will, in most cases, be more material than earlier stage properties;

(f) historical expenditures or book value might not be a good indicator of materiality for an inactive property if the issuer is focussing its resources on new properties;

(g) a small interest in a sizeable property might, in the circumstances, not be material to the issuer;

(h) a royalty or similar interest in an advanced property could be material to the issuer in comparison to its active projects; or

(i) several non-material properties in an area or region, when taken as a whole, could be material to the issuer.

(6) **Industry Best Practices Guidelines**

While the Regulation sets standards for disclosure of scientific and technical information about a mineral project, the standards and methodologies for collecting, analysing, and verifying this information are the responsibility of the qualified person. The Canadian Institute of Mining, Metallurgy and Petroleum ("CIM") has published and adopted several industry best practice guidelines to assist qualified persons and other industry practitioners. These guidelines, as amended and supplemented, are posted on **www.cim.org**, and include

(a) Exploration Best Practice Guidelines – adopted August 20, 2000;

(b) Guidelines for Reporting of Diamond Exploration Results – adopted March 9, 2003; and

(c) Estimation of Mineral Resources and Mineral Reserves Best Practice Guidelines – adopted November 23, 2003, and related commodity- specific appendices.

The Regulation does not specifically require the qualified person to follow the CIM best practices guidelines. However, we think that a qualified person, acting in compliance with the professional standards of competence and ethics established by their professional association, will generally use procedures and methodologies that are consistent with industry standard practices, as established by CIM or similar organizations in other jurisdictions. Issuers that disclose scientific and technical information that does not conform to industry standard practices could be making misleading disclosure, which is an offence under securities legislation.

(7) **Objective Standard of Reasonableness**

Where a determination about the definitions or application of a requirement in the Regulation turns on reasonableness, the test is objective, not subjective. It is not sufficient for an officer of an issuer or a qualified person to determine that they personally believe the matter under consideration. The individual must form an opinion as to what a reasonable person would believe in the circumstances.

(8) **Improper Use of Terms in the French Language**

For an issuer preparing its disclosure using the French language, the words "gisement" and "gîte" have different meanings and using them interchangeably or in the wrong context may be misleading. The word "gisement" means a mineral deposit that is a continuous, well-defined mass of material containing a sufficient volume of mineralized material that can be or has been mined legally and economically. The word "gîte" means a mineral deposit that is a continuous, defined mass of material, containing a volume of mineralized material that has had no demonstration of economic viability.

PART 1 DEFINITIONS AND INTERPRETATION

1.1. Definitions

(1) **"acceptable foreign code"**

The definition of "acceptable foreign code" in the Regulation lists five internationally recognized foreign codes that govern the estimation and disclosure of mineral resources and mineral reserves. The JORC Code, PERC Code, SAMREC Code, and Certification Code use mineral resource and mineral reserve definitions and categories that are substantially the same as the CIM definitions mandated in the Regulation. These codes also use mineral resource and mineral reserve categories that are based on or consistent with the International Reporting Template, published by the Committee for Mineral Reserves International Reporting Standards ("the CRIRSCO Template"), as amended.

We think other foreign codes will generally meet the test in the definition if they

(a) have been adopted or recognized by appropriate government authorities or professional organizations in the foreign jurisdiction; and

(b) use mineral resource and mineral reserve categories that are based on the CRIRSCO Template, and are substantially the same as the CIM definitions mandated in the Regulation, the JORC Code, the PERC Code, the SAMREC Code, and the Certification Code, as amended and supplemented.

We will publish CSA Staff Notices periodically listing the codes that CSA members' staff think satisfy the definition of "acceptable foreign code". We will also consider submissions from market participants regarding the proposed addition of foreign codes to the list. Submissions should explain the basis for concluding that the proposed foreign code meets the test in the definition and include appropriate supporting documentation.

(2) **"effective date"**

This is the cut-off date for the scientific and technical information included in the technical report. Under section 8.1 of the Regulation, the qualified person must provide their certificate as at the effective date of the technical report and specify this date in their certificate. The effective date can precede the date of signing the technical report but if there is too long a period between these dates, the issuer is exposed to the risk that new material information could become available and the technical report would then not be current.

(3) **“mineral project”**

The definition of “mineral project” in the Regulation includes a royalty or similar interest. Scientific and technical disclosure regarding all types of royalty interests in a mineral project is subject to the Regulation.

(4) **“preliminary economic assessment”**

The term “preliminary economic assessment”, which can include a study commonly referred to as a scoping study, is defined in the Regulation. A preliminary economic assessment might be based on measured, indicated, or inferred mineral resources, or a combination of any of these. We consider these types of economic analyses to include disclosure of forecast mine production rates that might contain capital costs to develop and sustain the mining operation, operating costs, and projected cash flows.

(5) **“professional association”**

Paragraph (a)(ii) of the definition of “professional association” in the Regulation includes a test for determining what constitutes an acceptable foreign association. In assessing whether we think a foreign professional association meets this test, we will consider the reputation of the association and whether it is substantially similar to a professional association in a jurisdiction of Canada.

Appendix A to the Policy provides a list of the foreign associations that we think meet all the tests in the definition as of the effective date of the Regulation. We will publish updates to the list periodically. An issuer that wishes to rely on a qualified person that is a member of a professional association not included in Appendix A but which the issuer believes meets the tests in the Regulation, may make submissions to have the association added to Appendix A. Submissions should include appropriate supporting documentation. The issuer should allow sufficient time for its submissions to be considered before naming the qualified person in connection with its disclosure or filing any technical report signed by the qualified person.

The listing of a professional association on Appendix A is only for purposes of the Regulation and does not supersede or alter local requirements where geoscience or engineering is a regulated profession.

(6) **definitions that include “property”**

The Regulation defines two different types of properties (early stage exploration, advanced) and requires a technical report to summarize material information about the subject property. We consider a property, in the context of the Regulation, to include multiple mineral claims or other documents of title that are contiguous or in such close proximity that any underlying mineral deposits would likely be developed using common infrastructure.

(7) **“qualified person”**

The definition of “qualified person” in the Regulation does not include engineering and geoscience technicians, engineers and geoscientists in training, and equivalent designations that restrict the individual’s scope of practice or require the individual to practise under the supervision of another professional engineer, professional geoscientist, or equivalent**.**

Paragraph (d) of the definition requires a qualified person to be “in good standing with a professional association”. We interpret this to include satisfying any related registration, licensing, or similar requirements. Canadian provincial and territorial legislation requires a qualified person to be registered if practising in a jurisdiction of Canada. It is the responsibility of the qualified person, in compliance with their

professional association's code of ethics, to comply with laws requiring licensure of geoscientists and engineers.

Paragraph (e) of the definition includes a test for what constitutes an acceptable membership designation in a foreign professional association. Appendix A to the Policy provides a list of the membership designations that we think meet this test as of the effective date of the Regulation. We will update the list periodically. In assessing whether we think a membership designation meets the test, we will consider whether it is substantially similar to a membership designation in a professional association in a jurisdiction of Canada.

Subparagraph (e)(ii)(B) includes the concept of "demonstrated expertise in the field of mineral exploration or mining". We generally interpret this to mean having at least five years of professional experience and satisfying an additional entrance requirement relating to level of responsibility. Some examples of such a requirement are:

(a) at least three years in a position of responsibility where the person was depended on for significant participation and decision-making;

(b) experience of a responsible nature and involving the exercise of independent judgment in at least three of those years;

(c) at least five years in a position of major responsibility, or a senior technical position of responsibility.

(8) **"technical report"**

A report may constitute a "technical report" as defined in the Regulation, even if prepared considerably before the date the technical report is required to be filed, provided the information in the technical report remains accurate and complete as at the required filing date. However, a report that an issuer files that is not required under the Regulation will not be considered a technical report until the Regulation requires the issuer to file it and the issuer has filed the required certificates and consents of qualified persons.

The definition requires the technical report to include a summary of all material information about the subject property. The qualified person is responsible for preparing the technical report. Therefore, it is the qualified person, not the issuer, who has the responsibility of determining the materiality of the scientific or technical information to be included in the technical report.

1.5. Independence

(1) **Guidance on Independence**

Section 1.5 of the Regulation provides the test an issuer and a qualified person must apply to determine whether a qualified person is independent of the issuer. When an independent qualified person is required, an issuer must always apply the test in section 1.5 to confirm that the requirement is met.

Applying this test, the following are examples of when we would consider that a qualified person is not independent. These examples are not a complete list of non-independence situations.

We consider a qualified person is not independent when the qualified person

(a) is an employee, insider, or director of the issuer;

(b) is an employee, insider, or director of a related party of the issuer;

(c) is a partner of any person in paragraph (a) or (b);

(d) holds or expects to hold securities, either directly or indirectly, of the issuer or a related party of the issuer;

(e) holds or expects to hold securities, either directly or indirectly, in another issuer that has a direct or indirect interest in the property that is the subject of the technical report or in an adjacent property;

(f) is an employee, insider, or director of another issuer that has a direct or indirect interest in the property that is the subject of the technical report or in an adjacent property;

(g) has or expects to have, directly or indirectly, an ownership, royalty, or other interest in the property that is the subject of the technical report or an adjacent property; or

(h) has received the majority of their income, either directly or indirectly, in the three years preceding the date of the technical report from the issuer or a related party of the issuer.

For the purposes of (d) above, a related party of the issuer means an affiliate, associate, subsidiary, or control person of the issuer as those terms are defined in securities legislation.

(2) **Independence Not Compromised**

In some cases, it might be reasonable to consider the qualified person's independence is not compromised even though the qualified person holds an interest in the issuer's securities, the securities of another issuer with an interest in the subject property, or in an adjacent property. The issuer needs to determine whether a reasonable person would consider such interest would interfere with the qualified person's judgement regarding the preparation of the technical report.

PART 2 REQUIREMENTS APPLICABLE TO ALL DISCLOSURE

2.1. Requirements Applicable to All Disclosure

(1) **Disclosure is the Responsibility of the Issuer**

Primary responsibility for public disclosure remains with the issuer and its directors and officers. The qualified person is responsible for preparing or supervising the preparation of the technical report and providing scientific and technical advice in accordance with applicable professional standards. The proper use, by or on behalf of the issuer, of the technical report and other scientific and technical information provided by the qualified person is the responsibility of the issuer and its directors and officers.

The onus is on the issuer and its directors and officers and, in the case of a document filed with a securities regulatory authority, each signatory to the document, to ensure that disclosure in the document is consistent with the related technical report or advice. An issuer should consider having the qualified person review disclosure that summarizes or restates the technical report or the technical advice or opinion to ensure that the disclosure is accurate.

(2) **Material Information not yet Confirmed by a Qualified Person**

Securities legislation requires an issuer to disclose material facts and to make timely disclosure of material changes. We recognize that there can be circumstances in which an issuer expects that certain information concerning a mineral project may be material notwithstanding the fact that a qualified person has not prepared or supervised the preparation of the information. In this situation, the issuer may file a confidential material change report concerning this information while a qualified person reviews the information.

Once a qualified person has confirmed the information, the issuer can issue a news release and the basis of confidentiality will end.

During the period of confidentiality, persons in a special relationship to the issuer are prohibited from tipping or trading until the information is disclosed to the public. National Policy 51-201 *Disclosure Standards* provides further guidance about materiality and timely disclosure obligations.

(3) **Use of Plain Language**

An issuer should apply plain language principles when preparing disclosure regarding mineral projects on its material properties, keeping in mind that the investing public are often not mining experts. An issuer should present written disclosure in an easy to read format using clear and unambiguous language and, wherever possible, should present data in table format. This includes information in the technical report, to the extent possible. We recognize that the technical report does not always lend itself well to plain language and therefore the issuer might want to consult the responsible qualified person when restating the data and conclusions from a technical report in its public disclosure.

2.2. All Disclosure of Mineral Resources or Mineral Reserves – Use of GSC Paper 88-21

A qualified person estimating mineral resources or mineral reserves for coal may follow the guidelines of Paper 88-21 of the Geological Survey of Canada: A Standardized Coal Resource/Reserve Reporting System for Canada, as amended ("Paper 88-21"). However, for all disclosure of mineral resources or mineral reserves for coal, section 2.2 of the Regulation requires an issuer to use the equivalent mineral resource or mineral reserve categories set out in the CIM Definition Standards and not the categories set out in Paper 88-21.

2.3. Restricted Disclosure

(1) **Economic Analysis**

Subject to subsection 2.3(3) of the Regulation, paragraph 2.3(1)(b) of the Regulation prohibits the disclosure of the results of an economic analysis that includes or is based on inferred mineral resources, an historical estimate, or an exploration target.

CIM considers the confidence in inferred mineral resources is insufficient to allow the meaningful application of technical and economic parameters or to enable an evaluation of economic viability worthy of public disclosure. The Regulation extends this prohibition to exploration targets because such targets are conceptual and have even less confidence than inferred mineral resources. The Regulation also extends the prohibition to historical estimates because they have not been demonstrated or verified to the standards required for mineral resources or mineral reserves and, therefore, cannot be used in an economic analysis suitable for public disclosure.

(2) **Use of Term "Ore"**

We consider the use of the word "ore" in the context of mineral resource estimates to be potentially misleading because "ore" implies technical feasibility and economic viability that should only be attributed to mineral reserves.

(3) **Exceptions**

The Regulation permits an issuer to disclose the results of an economic analysis that uses inferred mineral resources, provided the issuer complies with the requirements of subsection 2.3(3). The issuer must also include the cautionary statement under paragraph 3.4(e) of the Regulation, which applies to disclosure of all economic analyses of mineral resources, to further alert investors to the limitations of the information. The exception

under subsection 2.3(3) does not allow an issuer to disclose the results of an economic analysis using an exploration target or an historical estimate.

(4) Impact of Preliminary Economic Assessment on Previous Feasibility or Pre-Feasibility Studies

An issuer may disclose the results of a preliminary economic assessment that includes inferred mineral resources, after it has completed a feasibility study or pre-feasibility study that establishes mineral reserves, if the disclosure complies with subsection 2.3(3) of the Regulation. Under paragraph 2.3(3)(c), the issuer must discuss the impact of the preliminary economic assessment on the mineral reserves and feasibility study or pre-feasibility study. This means considering and disclosing whether the existing mineral reserves and feasibility study or pre-feasibility study are still current and valid in light of the key assumptions and parameters used in the preliminary economic assessment.

For example, if the preliminary economic assessment considers the potential economic viability of developing a satellite deposit in conjunction with the main development project, then the existing mineral reserves, feasibility study, and production scenario could still be current. However, if the preliminary economic assessment significantly modifies the key variables in the feasibility study, including metal prices, mine plan, and costs, the feasibility study and mineral reserves might no longer be current.

(5) Gross Value of Metal or Mineral

We interpret gross metal value or gross mineral value to include any representation of the potential monetary value of the metal or mineral in the ground that does not take into consideration the costs, recoveries, and other relevant factors associated with the extraction and recovery of the metal or mineral. We think this type of disclosure is misleading because it overstates the potential value of the mineral deposit.

(6) Cautionary Language and Explanations

The requirements of subsections 2.3(2), 2.3(3), and 3.4(e) of the Regulation mean the issuer must include the required cautionary statements and explanations each time it makes the disclosure permitted by these exceptions. These subsections also require the cautionary statements to have equal prominence with the rest of the disclosure. We interpret this to mean equal size type and proximate location. The issuer should consider including the cautionary language and explanations in the same paragraph as, or immediately following, the disclosure permitted by these exceptions.

2.4. Disclosure of Historical Estimates

(1) Required Disclosure

An issuer may disclose an estimate of resources or reserves made before it entered into an agreement to acquire an interest in the property, provided the issuer complies with the conditions set out in section 2.4 of the Regulation. Under this requirement, the issuer must provide the required disclosure each time it discloses the historical estimate, until the issuer has verified the historical estimate as a current mineral resource or mineral reserve. The required cautionary statements must also have equal prominence (see the discussion in subsection 2.3(6) of the Policy).

(2) Source and Date

Under paragraph 2.4(a) of the Regulation, the issuer must disclose the source and date of the historical estimate. This means the original source and date of the estimate, not third party documents, databases or other sources, including government databases, which may also report the historical estimate.

(3) **Suitability for Public Disclosure**

Under paragraph 2.4(b) of the Regulation, an issuer that discloses an historical estimate must comment on its relevance and reliability. In determining whether to disclose an historical estimate, an issuer should consider whether the historical estimate is suitable for public disclosure.

(4) **Historical Estimate Categories**

Under paragraph 2.4(d) of the Regulation, an issuer must explain any differences between the categories used in the historical estimate and those set out in sections 1.2 and 1.3 of the Regulation. If the historical estimate was prepared using an acceptable foreign code, the issuer may satisfy this requirement by identifying the acceptable foreign code.

(5) **Technical Report Trigger**

The disclosure of an historical estimate will not trigger the requirement to file a technical report under paragraph 4.2(1)(j) of the Regulation if the issuer discloses the historical estimate in accordance with section 2.4 of the Regulation, including the cautionary statements required under paragraph 2.4(g).

An issuer could trigger the filing of a technical report under paragraph 4.2(1)(j) if it discloses the historical estimate in a manner that suggests or treats the historical estimate as a current mineral resource or mineral reserve. We will consider an issuer is treating the historical estimate as a current mineral resource or mineral reserve in its disclosure if, for example, it

(a) uses the historical estimate in an economic analysis or as the basis for a production decision;

(b) states it will be adding on or building on the historical estimate; or

(c) adds the historical estimate to current mineral resource or mineral reserve estimates.

PART 3 ADDITIONAL REQUIREMENTS FOR WRITTEN DISCLOSURE

3.3. Requirements Applicable to Written Disclosure of Exploration Information – Adjacent Property Information

It is an offence under securities legislation to make misleading disclosure. An issuer may disclose in writing scientific and technical information about an adjacent property. However, in order for the disclosure not to be misleading, the issuer should clearly distinguish between the information from the adjacent property and its own property and not state or imply the issuer will obtain similar information from its own property.

3.5. Exception for Written Disclosure Already Filed

Section 3.5 of the Regulation provides that the disclosure requirements of sections 3.2 and 3.3 and paragraphs 3.4(a), (c) and (d) of the Regulation may be satisfied by referring to a previously filed document that includes the required disclosure. However, the disclosure as a whole must be factual, complete, and balanced and not present or omit information in a manner that is misleading.

PART 4 OBLIGATION TO FILE A TECHNICAL REPORT

4.2. Obligation to File a Technical Report in Connection with Certain Written Disclosure about Mineral Projects on Material Properties

(1) **Information Circular Trigger (4.2(1)(c))**

(a) The requirement for "prospectus-level disclosure" in an information circular does not make this document a "prospectus" such that the prospectus trigger applies. The information circular is a separate trigger that applies only in certain situations specified in the Regulation.

(b) Paragraph 4.2(1)(c) of the Regulation requires the issuer to file technical reports for properties that will be material to the resulting issuer. Often the resulting issuer is not the issuer filing the information circular. In determining if it must file a technical report on a particular property, the issuer should consider if the property will be material to the resulting issuer after the completion of the proposed transaction.

(c) Our view is that the issuer filing the information circular does not need to file a technical report on its SEDAR profile if

(i) the other party to the transaction has filed the technical report;

(ii) the information circular refers to the other party's SEDAR profile; and

(iii) on completion of the transaction, technical reports for all material properties are filed on the resulting issuer's SEDAR profile or the SEDAR profile of a wholly-owned subsidiary.

(2) **Take-Over Bid Circular Trigger (4.2(1)(i))**

For purposes of the take-over bid circular, the issuer referred to in the introductory language of subsection 4.2(1) of the Regulation and the offeror referred to in paragraph (i) of this subsection are the same entity. Since the offeror is the issuer that files the circular, the technical report trigger applies to properties that are material to the offeror.

(3) **First Time Disclosure Trigger (4.2(1)(j)(i))**

In most cases, we think that first time disclosure of mineral resources, mineral reserves, or the results of a preliminary economic assessment, on a property material to the issuer will constitute a material change in the affairs of the issuer.

(4) **Property Acquisitions – 45-Day Filing Requirement**

Subsection 4.2(5) of the Regulation requires an issuer in certain cases to file a technical report within 45 days to support first time disclosure of mineral resources, mineral reserves, or the results of a preliminary economic assessment, on a property material to the issuer. Property materiality is not contingent on the issuer having acquired an actual interest in the property or having formal agreements in place. In many cases, the property will become material at the letter of intent stage, even if subject to conditions such as the approval of a third party or completion of a due diligence review. In such cases, the 45-day period will begin to run from the time the issuer first discloses the mineral resources, mineral reserves, or results of a preliminary economic assessment.

(5) **Property Acquisitions – Other Alternatives for Disclosure of Previous Estimates**

If an issuer options or agrees to buy a property material to the issuer, any previous estimates of mineral resources or mineral reserves on the property will be in many cases material information that the issuer must disclose.

The issuer has a number of options available for disclosing the previous estimate without triggering a technical report within 45 days. If the previous estimate is not well-documented, the issuer may choose to disclose this information as an exploration target, in compliance with subsection 2.3(2) of the Regulation. Alternatively, the issuer may be able to disclose the previous estimate as an historical estimate, in compliance with section 2.4 of the Regulation. Both these options require the issuer to include certain cautionary language and prohibit the issuer from using the previous estimates in an economic analysis.

In circumstances where the previous estimate is supported by a technical report prepared for another issuer, the issuer may be able to disclose the previous estimate as a mineral resource or mineral reserve, in compliance with subsection 4.2(7) of the Regulation. In this case, the issuer will still be required to file a technical report. However, it will have up to 180 days to do so.

(6) **Production Decision**

The Regulation does not require an issuer to file a technical report to support a production decision because the decision to put a mineral project into production is the responsibility of the issuer, based on information provided by qualified persons. The development of a mining operation typically involves large capital expenditures and a high degree of risk and uncertainty. To reduce this risk and uncertainty, the issuer typically makes its production decision based on a comprehensive feasibility study of established mineral reserves.

We recognize that there might be situations where the issuer decides to put a mineral project into production without first establishing mineral reserves supported by a technical report and completing a feasibility study. Historically, such projects have a much higher risk of economic or technical failure. To avoid making misleading disclosure, the issuer should disclose that it is not basing its production decision on a feasibility study of mineral reserves demonstrating economic and technical viability and should provide adequate disclosure of the increased uncertainty and the specific economic and technical risks of failure associated with its production decision.

Under paragraph 1.4(e) of Form 51-102F1, an issuer must also disclose in its MD&A whether a production decision or other significant development is based on a technical report.

(7) **Shelf Life of Technical Reports**

Economic analyses in technical reports are based on commodity prices, costs, sales, revenue, and other assumptions and projections that can change significantly over short periods of time. As a result, economic information in a technical report can quickly become outdated. Continued reference to outdated technical reports or economic projections without appropriate context and cautionary language could result in misleading disclosure. Where an issuer has triggered the requirement to file a technical report under subsection 4.2(1), it should consider the current validity of economic assumptions in its existing technical report to determine if the technical report is still current. An issuer might be able to extend the life of a technical report by having a qualified person include appropriate sensitivity analyses of the key economic variables.

(8) **Technical Reports Must be Current and Complete**

A "technical report" as defined in the Regulation must include in summary form all material scientific and technical information about the property. Any time an issuer is required to file a technical report, that report must be complete and current. There should only be one current technical report on a property at any point in time. When an issuer files a new technical report, it will replace any previously filed technical report as the current technical report on that property. This means the new technical report must include any material information documented in a previously filed technical report, to the extent that this information is still current and relevant.

If an issuer gets a new qualified person to update a previously filed technical report prepared by a different qualified person, the new qualified person must take responsibility for the entire technical report, including any information referenced or summarized from a previous technical report.

(9) **Limited Provision for Addendums**

The only exception to the requirement to file a complete technical report is under subsection 4.2(3) of the Regulation. An issuer may file an addendum if it is for a technical report that it originally filed with a preliminary short form prospectus or preliminary long form prospectus and new material scientific or technical information becomes available before the issuance of the final receipt.

(10) **Exception from Requirement to File Technical Report if Information Included in a Previously Filed Technical Report**

Subsection 4.2(8) of the Regulation provides an exemption from the technical report filing requirement if the disclosure document does not contain any new material scientific or technical information about a property that is the subject of a previously filed technical report.

In our view, a change to mineral resources or reserves due to mining depletion from a producing property generally will not constitute new material scientific or technical information as the change should be reasonably predictable based on an issuer's continuous disclosure record.

(11) **Filing on SEDAR**

If an issuer is required under *Regulation 13-101 respecting the System for Electronic Document Analysis and Retrieval (SEDAR)* to be an electronic filer, then all technical reports must be prepared so that the issuer can file them on SEDAR. Figures required in the technical report must be included in the technical report filed on SEDAR and therefore should be prepared in electronic format.

(12) **Reports Not Required by the Regulation**

The securities regulatory authorities in most Canadian jurisdictions require an issuer to file, if not already filed with them, any record or disclosure material that the issuer files with any other securities regulator, including geological reports filed with stock exchanges. In other cases, an issuer might wish to file voluntarily a report in the form of a technical report. The Regulation does not prohibit an issuer from filing such reports in these situations. However, any document purporting to be a technical report must comply with the Regulation.

When an issuer files a report in the form of a technical report that is not required to be filed by the Regulation, the issuer is not required to file a consent of qualified person that complies with subsection 8.3(1) of the Regulation. The issuer should consider filing a cover letter with the report explaining why the issuer is filing the report and indicating that

it is not filing the report as a requirement of the Regulation. Alternatively, the issuer should consider filing a modified consent with the report that provides the same information.

(13) **Preliminary Short Form Prospectus**

Under paragraph 4.2(1)(b) of the Regulation, an issuer that is not a venture issuer must file a technical report with a preliminary short form prospectus if the prospectus discloses for the first time mineral resources, mineral reserves, or the results of a preliminary economic assessment that constitute a material change in relation to the issuer, or a change in this information, if the change constitutes a material change in relation to the issuer.

If this information is not disclosed for the first time in the preliminary short form prospectus itself, but is repeated or incorporated by reference into the preliminary short form prospectus, the technical report must still be filed at the same time as the preliminary short form prospectus. Subsections 4.2(5) and (7) of the Regulation, in certain limited circumstances, permit the delayed filing of a technical report. For example, an issuer normally has 45 days, or in some cases 180 days, to file a technical report supporting the first time disclosure of a mineral resource. However, if a preliminary short form prospectus that includes the prescribed disclosure is filed during the period of the delay, subparagraphs 4.2(5)(a)(i) and 4.2(7)(c)(i) require the technical report to be filed on the date of filing the preliminary short form prospectus.

Under paragraph 4.2(1)(b.1) of the Regulation, an issuer that is a venture issuer must file a technical report with a preliminary short form prospectus. We have re-introduced this requirement for venture issuers because they will not be required to file a technical report with their annual report under Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers.

(14) **Triggers with Thresholds**

The technical report triggers in paragraphs 4.2(1)(b), (i) and (j) only apply if the relevant disclosure meets certain thresholds. In these cases, the technical report filing requirement is triggered only for the material property or properties that meet the thresholds.

(15) **Triggers with Permitted Filing Delays**

Subsections 4.2(5), (6) and (7) allow technical reports in certain circumstances to be filed later than the disclosure documents they support. In these cases, once the requirement to file the technical report has been triggered, the issuer remains subject to the requirement irrespective of subsequent developments relating to the property, including, for example, the sale or abandonment of the property.

4.3. Required Form of Technical Report

(1) **Review**

Disclosure and technical reports filed under the Regulation may be subject to review by the securities regulatory authorities. If an issuer that is required to file a technical report under the Regulation files a technical report that does not meet the requirements of the Regulation, the issuer has not complied with securities legislation. This includes filing certificates and consents that do not comply with subsections 8.1(2) and 8.3(1) of the Regulation.

(2) **Filing Other Scientific and Technical Reports**

An issuer might have other reports or documents containing scientific or technical information, prepared by or under the supervision of a qualified person, which are not in the form of a technical report. We consider that filing such information on SEDAR as a

technical report could be misleading. An issuer wishing to provide public access to these documents should consider posting them on its website.

(3) **Preparation in English or French**

Section 4.3 of the Regulation requires a technical report to be prepared in English or French. Reports prepared in a different language and translated into English or French are not acceptable due to the highly technical nature of the disclosure and the difficulties of ensuring accurate and reliable translations.

PART 5 AUTHOR OF THE TECHNICAL REPORT

5.1. Prepared by a Qualified Person

(1) **Selection of Qualified Person**

It is the responsibility of the issuer and its directors and officers to retain a qualified person who meets the criteria listed under the definition of qualified person in the Regulation, including having the relevant experience and competence for the subject matter of the technical report.

(2) **Assistance of Non-Qualified Persons**

A person who is not a qualified person may work on a project. If a qualified person relies on the work of a non-qualified person to prepare a technical report or to provide information or advice to the issuer, the qualified person must take responsibility for that work, information, or advice. The qualified person must take whatever steps are appropriate, in their professional judgement, to ensure that the work, information, or advice that they rely on is sound.

(3) **Exemption from Qualified Person Requirement**

The securities regulatory authorities will rarely grant requests for exemption from the requirement that the qualified person belong to a professional association.

(4) **More than One Qualified Person**

Section 5.1 of the Regulation provides that one or more qualified persons must prepare or supervise the preparation of a technical report. Some technical reports, particularly for advanced properties, could require the involvement of several qualified persons with different areas of expertise. In that case, each qualified person taking responsibility for a part of the technical report must sign the technical report and provide a certificate and consent under Part 8 of the Regulation.

However, section 5.2 and Part 8 of the Regulation allow qualified persons who supervised the preparation of all or part of the technical report to take overall responsibility for the work conducted under their supervision by other qualified persons. While supervising qualified persons do not need to be experts in all aspects of the work they supervise, they should be sufficiently knowledgeable about the subject matter to understand the information and opinions for which they are accepting responsibility. Where there are supervising qualified persons, only the supervising qualified persons must sign the technical report and provide their certificates and consents.

(5) **A Qualified Person Must Be Responsible for All Items of Technical Report**

Section 5.1 of the Regulation requires a technical report to be prepared by or under the supervision of one or more qualified persons. By implication, this means that at least one qualified person must take responsibility for each section or item of the technical report, including any information incorporated from previously filed technical reports. If the qualified person, in response to a particular item, refers to the equivalent item in a

previously filed technical report, the qualified person is implicitly saying that the information is still reliable and current and there have been no material changes. This would normally involve the qualified person doing a certain amount of background work and validation.

(6) Previous Mineral Resources or Mineral Reserves

When a technical report includes a mineral resource or mineral reserve estimate prepared by another qualified person for a previously filed technical report, under section 5.2 and Part 8 of the Regulation, one of the qualified persons preparing the new technical report must take responsibility for those estimates. In doing this, that qualified person should make whatever investigations are necessary to reasonably rely on the estimates.

5.2. Execution of Technical Report

Section 5.2 and subsection 8.1(1) of the Regulation require the qualified person to date, sign, and if the qualified person has a seal, seal the technical report and certificate. Section 8.3 of the Regulation requires the qualified person to date and sign the consent. If a person's name appears in an electronic document with (signed by) or (sealed) next to the person's name or there is a similar indication in the document, the securities regulatory authorities will consider that the person has signed and sealed the document. Although not required, the qualified person may sign or seal maps and drawings in the same manner.

5.3. Independent Technical Report

(1) Independent Qualified Persons

Subsection 5.3(1) of the Regulation requires that one or more independent qualified persons prepare or supervise the preparation of the independent technical report. This subsection does not preclude non-independent qualified persons from co-authoring or assisting in the preparation of the technical report. However, to meet the independence requirement, the independent qualified persons must assume overall responsibility for all items of the technical report.

(2) Hundred Percent or Greater Change

Subparagraph 5.3(1)(c)(ii) of the Regulation requires the issuer to file an independent technical report to support its disclosure of a 100 percent or greater change in total mineral resources or total mineral reserves. We interpret this to mean a 100 percent or greater change in either the total tonnage or volume, or total contained metal or mineral content, of the mineral resource or mineral reserve. We also interpret the 100 percent or greater change to apply to mineral resources and mineral reserves separately. Therefore, a 100 percent or greater change in mineral resources on a material property will require the issuer to file an independent technical report regardless of any changes to mineral reserves, and vice versa.

(3) Objectivity of Author

We could question the objectivity of the author based on our review of a technical report. In order to preserve the requirement for independence of the qualified person, we could ask the issuer to provide further information, additional disclosure, or the opinion or involvement of another qualified person to address concerns about possible bias or partiality on the part of the author of a technical report.

PART 6 PREPARATION OF TECHNICAL REPORT

6.1. The Technical Report - Summary of Material Information

Section 1.1 of the Regulation defines a technical report as a report that provides a summary of all material scientific and technical information about a property. Instruction

(1) to Form 43-101F1 includes similar language. The target audience for technical reports are members of the investing public, many of whom have limited geological and mining expertise. To avoid misleading disclosure, technical reports must provide sufficient detail for a reasonably knowledgeable person to understand the nature and significance of the results, interpretation, conclusions, and recommendations presented in the technical report. However, we do not think that technical reports need to be a repository of all technical data and information about a property or include extensive geostatistical analysis, charts, data tables, assay certificate, drill logs, appendices, and other supporting technical information.

In addition, SEDAR might not be able to accommodate large technical report files. An issuer could have difficulty filing, and more importantly, the public could have difficulty accessing and downloading, large technical reports. An issuer should consider limiting the size of its technical reports to facilitate filing and public access to the reports.

6.2. Current Personal Inspection

(1) Meaning

The current personal inspection referred to in subsection 6.2(1) of the Regulation is the most recent personal inspection of the property, provided there is no new material scientific or technical information about the property since that personal inspection. A personal inspection may constitute a current personal inspection even if the qualified person conducted the personal inspection considerably before the filing date of the technical report, if there is no new material scientific or technical information about the property at the filing date. However, since the qualified person is certifying that the technical report contains all material information about the property, the qualified person should consider taking the necessary steps to verify independently that there has been no material work done on the property since their last site visit.

(2) Importance of Personal Inspection

We consider current personal inspections under section 6.2 of the Regulation to be particularly important because they enable qualified persons to become familiar with conditions on the property. Qualified persons can observe the geology and mineralization, verify the work done and, on that basis, design or review and recommend to the issuer an appropriate exploration or development program. A current personal inspection is required even for properties with poor exposure. In such cases, it could be relevant for a qualified person to observe the depth and type of the overburden and cultural effects that could interfere with the results of the geophysics.

It is the responsibility of the issuer to arrange its affairs so that a qualified person can carry out a current personal inspection. A qualified person, or where required, an independent qualified person, must visit the site and cannot delegate the personal inspection requirement.

(3) More than One Qualified Person

Subsection 6.2(1) of the Regulation requires at least one qualified person who is responsible for preparing or supervising the preparation of the technical report to inspect the property. This is the minimum standard for a current personal inspection. There could be cases in advanced mineral projects where the qualified persons consider it necessary for more than one qualified person to conduct current personal inspections of the property, taking into account the nature of the work on the property and the different expertise required to prepare the technical report.

6.3. Maintenance of Records

Section 6.3 of the Regulation requires an issuer to keep copies of underlying or supporting exploration information for at least 7 years. In our view, the issuer could satisfy

this requirement by keeping records in any accessible format, not necessarily in hard copies.

6.4. Limitation on Disclaimers

Paragraph 6.4(1)(a) of the Regulation prohibits certain disclaimers in technical reports.

These disclaimers are also potentially misleading disclosure because, in certain circumstances, securities legislation provides investors with a statutory right of action against a qualified person for a misrepresentation in disclosure that is based upon the qualified person's technical report. That right of action exists despite any disclaimer to the contrary that appears in the technical report. The securities regulatory authorities will generally require the issuer to have its qualified person remove any blanket disclaimers in a technical report that the issuer uses to support its public offering document.

Item 3 of Form 43-101F1 permits a qualified person to insert a limited disclaimer of responsibility in certain specified circumstances.

PART 7 USE OF FOREIGN CODE

7.1. Use of Foreign Code – Use of Foreign Codes other than Acceptable Foreign Codes

Section 2.2 and Part 7 of the Regulation require an issuer to disclose mineral resources or mineral reserves using either the CIM Definition Standards or an "acceptable foreign code" as defined in the Regulation. If an issuer wishes to announce an acquisition or proposed acquisition of a property that contains estimates of quantity and grade that are not in accordance with the CIM Definition Standards or an acceptable foreign code, the issuer might be able to disclose the estimate as an historical estimate, in compliance with section 2.4 of the Regulation. However, it might be more appropriate for the issuer to disclose the estimate as an exploration target, in compliance with subsection 2.3(2) of the Regulation, if the supporting information for the estimate is not well-documented or if the estimate is not comparable to a category in the CIM Definition Standards or an acceptable foreign code.

PART 8 CERTIFICATES AND CONSENTS OF QUALIFIED PERSONS FOR TECHNICAL REPORTS

8.1. Certificates of Qualified Persons

(1) Certificates Apply to the Entire Technical Report

Section 8.1 of the Regulation requires certificates that apply to the entire technical report, including any sections that refer to information in a previously filed technical report. At least one qualified person must take responsibility for each Item required by Form 43-101F1.

(2) Deficient Certificates

Certificates must include all the statements required by subsection 8.1(2) of the Regulation. An issuer that files certificates with required statements that are missing or altered to change the intended meaning has not complied with the Regulation.

8.2. Addressed to Issuer

We consider that the technical report is addressed to the issuer if the issuer's name appears on the title page as the party for which the qualified person prepared the technical report. We also consider that the technical report is addressed to the issuer filing the

technical report if it is addressed to an issuer that is or will become a wholly-owned subsidiary of the issuer filing the technical report.

8.3. Consents of Qualified Persons

(1) Consent of Experts

If the technical report supports disclosure in a prospectus, the qualified person will likely have to provide an expert consent under the prospectus rules (section 8.1 of *Regulation 41-101 respecting General Prospectus Requirements* and section 4.1 of *Regulation 44-101 respecting Short Form Prospectus Distributions*), in addition to any consent of qualified person required under the Regulation.

(2) Deficient Consents

Consents must include all the statements required by subsection 8.3(1) of the Regulation. An issuer that files consents with required statements that are missing or altered to change the intended meaning has not complied with the Regulation. Appendix B to the Policy provides an example of an acceptable consent of a qualified person.

(3) Modified Consents under Subsection 8.3(2)

Subsection 8.3(1) of the Regulation requires the qualified person to identify and read the disclosure that the technical report supports and certify that the disclosure accurately represents the information in the technical report. We recognize that an issuer can become a reporting issuer in a jurisdiction of Canada without the requirement to file a disclosure document listed in subsection 4.2(1) of the Regulation. In these cases, the issuer has the option of filing a modified consent under subsection 8.3(2) of the Regulation that excludes the statements in paragraphs 8.3(1)(b), (c) and (d).

(4) Filing of Full Consent Required

If an issuer files a modified consent under subsection 8.3(2) of the Regulation, it must still file a full consent the next time it files a disclosure document that would normally trigger the filing of a technical report under subsection 4.2(1) of the Regulation. This requirement is set out in subsection 8.3(3) of the Regulation.

(5) Filing of Consent for Technical Reports Not Required by the Regulation

Where an issuer files a technical report voluntarily or as a requirement of a Canadian stock exchange, and the filing is not also required under the Regulation, the report is not a “technical report” subject to the consent requirements under subsection 8.3(1) of the Regulation. Therefore, when the issuer subsequently files a disclosure document that would normally trigger the filing of a technical report under subsection 4.2(1) of the Regulation, the issuer must file the consents of qualified persons in accordance with subsection 8.3(1).

If an issuer files a Filing Statement or other prospectus-level disclosure document with a Canadian stock exchange, and the filing is not also required under the Regulation, the issuer may choose or be required by the stock exchange to file a full consent that includes paragraphs 8.3(1)(b), (c) and (d) of the Regulation as they relate to the Filing Statement or other disclosure document.

PART 9 EXEMPTIONS

9.2. Exemptions for Royalty or Similar Interests

(1) Royalty or Similar Interest

We consider a “royalty or similar interest” to include a gross overriding royalty, net smelter return, net profit interest, free carried interest, and a product tonnage royalty. We also consider a “royalty or similar interest” to include an interest in a revenue or commodity stream from a proposed or current mining operation, such as the right to purchase certain commodities produced from the operation.

(2) Limitation on Exemptions

The term “royalty or similar interest” does not include a participating or carried interest. Therefore, these exemptions do not apply where the issuer also has a participating or carried interest in the property or the mining operation, either direct or indirect.

(3) Non-Reporting Subsidiaries Included

Properties indirectly owned by an owner or operator that is a reporting issuer in a jurisdiction of Canada, through a subsidiary that is not a reporting issuer, would satisfy the condition of subparagraph 9.2(1)(a)(i) of the Regulation.

(4) Consideration of Liability

Holders of royalty or similar interests relying on the exemption in subsection 9.2(1) of the Regulation should consider, in the absence of a technical report of the royalty holder, who will be liable under applicable securities legislation for any misrepresentations in the royalty holder’s scientific or technical information.

Appendix A

Accepted Foreign Associations and Membership Designations

Foreign Association	Membership Designation
American Institute of Professional Geologists (AIPG)	Certified Professional Geologist (CPG)
The Society for Mining, Metallurgy and Exploration, Inc. (SME)	Registered Member
Mining and Metallurgical Society of America (MMSA)	Qualified Professional (QP)
Any state in the United States of America	Licensed or certified as a professional engineer
European Federation of Geologists (EFG)	European Geologist (EurGeol)
Institute of Geologists of Ireland (IGI)	Professional Member (PGeo)
Institute of Materials, Minerals and Mining (IMMM)	Professional Member (MIMMM), Fellow (FIMMM), Chartered Scientist (CSi MIMMM), or Chartered Engineer (CEng MIMMM)
Geological Society of London (GSL)	Chartered Geologist (CGeol)
Australasian Institute of Mining and Metallurgy (AusIMM)	Fellow (FAusIMM) or Chartered Professional Member or Fellow [MAusIMM (CP), FAusIMM (CP)]
Australian Institute of Geoscientists (AIG)	Member (MAIG), Fellow (FAIG) or Registered Professional Geoscientist Member or Fellow (MAIG RPGeo, FAIG RPGeo)
Southern African Institute of Mining and Metallurgy (SAIMM)	Fellow (FSAIMM)
South African Council for Natural Scientific Professions (SACNASP)	Professional Natural Scientist (Pr.Sci.Nat.)
Engineering Council of South Africa (ECSA)	Professional Engineer (Pr.Eng.) or Professional Certificated Engineer (Pr.Cert.Eng.)
Comisión Calificadora de Competencias en Recursos y Reservas Mineras (Chilean Mining Commission)	Registered Member

Appendix B

Example of Consent of Qualified Person

[QP's Letterhead] or
[Insert name of QP]
[Insert name of QP's company]
[Insert address of QP or QP's company]

CONSENT of QUALIFIED PERSON

I, [name of QP], consent to the public filing of the technical report titled [insert title of report] and dated [insert date of report] (the "Technical Report") by [insert name of issuer filing the report].

I also consent to any extracts from or a summary of the Technical Report in the [insert date and type of disclosure document (i.e. news release, prospectus, AIF, etc.)] of [insert name of issuer making disclosure].

I certify that I have read [date and type of document (i.e. news release, prospectus, AIF, etc.) that the report supports] being filed by [insert name of issuer] and that it fairly and accurately represents the information in the sections of the technical report for which I am responsible.

Dated this [insert date].

_____[Seal or Stamp]
Signature of Qualified Person

_____
Print name of Qualified Person

POLICY STATEMENT TO REGULATION 44-102 RESPECTING SHELF DISTRIBUTIONS

PART 1 GENERAL

1.1 Relationship of the Regulation to Securities Legislation

(1) Issuers are reminded that the rules and procedures contained in Regulation 44-102 for distributions made under the shelf procedures should be read in conjunction with other provisions of securities legislation in each jurisdiction in which a distribution is being made.

(2) A distribution under a short form prospectus using the shelf procedures is subject to all the requirements of *Regulation 44-101 respecting Short Form Prospectus Distributions*, some of the requirements of R*egulation 41-101 respecting General Prospectus Requirements*, and other provisions of securities legislation, as supplemented or varied by Regulation 44-102 and the implementing law of the jurisdiction. Reference is made to section 1.5 of the Policy Statement to Regulation 44-101 for a discussion of the relationship between Regulation 44-101 and Regulation 44-102, and to subsection 1.2(5) of the Policy Statement to Regulation 41-101 for a discussion of the relationship among Regulation 41-101, Regulation 44-101 and Regulation 44-102.

1.2 Liability

(1) The securities regulatory authorities are of the view that an issuer's prospectus certificate contained in an amendment to a base shelf prospectus filed under the shelf procedures supersedes and replaces the issuer's certificate contained in the base shelf prospectus. Accordingly, an officer who signed the later dated certificate and the directors at the time the amendment was filed would be subject to statutory civil liability to purchasers of securities under the amended base shelf prospectus.

(2) The securities regulatory authorities are of the view that an issuer's prospectus certificate contained in a shelf prospectus supplement filed under the shelf procedures supersedes and replaces the issuer's certificate contained in the base shelf prospectus for purposes of the distribution of securities under the shelf prospectus supplement. Accordingly, an officer who signed the later dated certificate and the directors at the time the supplement was filed would be subject to statutory civil liability to purchasers of securities under the shelf prospectus supplement.

1.3 Draft Supplements

A preliminary form of shelf prospectus supplement describing a tranche of securities may be used in marketing the securities before the public offering price is determined. Issuers are reminded that the ability to use a preliminary form of shelf prospectus supplement in this manner for a distribution of equity securities under an unallocated base shelf prospectus is subject to the requirement contained in section 3.2 of Regulation 44-102 to issue a news release once the issuer or the selling securityholder has formed a reasonable expectation that the distribution will proceed.

PART 2 SHELF PROCEDURES

2.1 Shelf Qualification

(1) The principle guiding the qualification provisions of Regulation 44-102 is that any distribution under a short form prospectus, other than rights offerings, may be effected using the shelf procedures.

(2) A distribution using the shelf procedures is necessarily a distribution under a short form prospectus. Therefore, issuers must be qualified to file a prospectus in the form of a

short form prospectus under Regulation 44-101 and must satisfy the additional qualification criteria under Part 2 of Regulation 44-102.

2.2 Period of Receipt Effectiveness

(1) Regulation 44-102 provides that a receipt for a base shelf prospectus is effective until the earliest of the following three events: (i) the date 25 months from the date of the issuance of a receipt for the base shelf prospectus, (ii), the time immediately before selling the securities, if certain prescribed conditions relating to the issuer's qualification to file a prospectus in the form of a short form prospectus are not satisfied, and (iii) in Ontarion, the lapse date of the receipt prescribed by securities legislation, if no relief has been granted to the issuer through a blanket ruling or upon application by the issuer. This receipt expiry mechanism is designed to impose a limit of, essentially, two years on shelf distributions under the same base shelf prospectus and to prevent distributions of securities under a base shelf prospectus if the issuer would no longer be qualified under Regulation 44-101.

(2) The securities legislation in some jurisdictions provides that a prospectus receipt does not continue to be effective for more than one year absent relief granted by the securities regulatory authority in that jurisdiction. Some of these jurisdictions have provided blanket relief for receipts issued for base shelf prospectuses.

(3) (paragraph deleted).

2.3 Unallocated Shelf

(1) Section 3.1 of Regulation 44-102 provides that a base shelf prospectus may pertain to different types of securities. This allows a base shelf prospectus to be used to distribute any combination of debt securities, preferred shares, derivatives, asset-backed securities and equity securities, for which the issuer is eligible to participate in the short form prospectus distributions system.

(2) In the case of an unallocated base shelf prospectus, section 3.2 of Regulation 44-102 requires an issuer or a selling securityholder to issue a news release immediately upon having formed a reasonable expectation that a distribution of equity securities under the unallocated shelf prospectus will proceed. An issuer or selling securityholder will generally only have formed such a reasonable expectation upon having discussions with an underwriter concerning the distribution of some specificity and certainty.

2.4 Distributions of Novel Derivatives and Asset-Backed Securities using the Shelf Procedures

(1) The securities regulatory authorities recognize the utility of the shelf procedures for distributions of derivatives and asset-backed securities in order to permit tranches of these products to be priced and distributed expeditiously to take advantage of market opportunities, without the need for regulatory approval.

(2) However, the securities regulatory authorities are also aware of the complexities that may be associated with distributions of specified derivatives and asset-backed securities. All material attributes of the products, and the risks associated with them, should be disclosed in either the base shelf prospectus or the shelf prospectus supplement. The securities regulatory authorities also want to ensure that prospectus investors of such products are entitled to the appropriate rights at the time of their investment as contemplated by applicable securities laws. Reference is made to section 4.8 of Policy Statement to Regulation 44-101 for a discussion of these issues. The securities regulatory authorities have attempted to balance these objectives in formulating Regulation 44-102.

(3) The requirements relating to the clearance of distributions of derivatives or asset-backed securities make a distinction between "novel" and "non-novel" products. If a base shelf prospectus pertains to specified derivatives or asset-backed securities, the issuer or selling securityholder, as the case may be, must file an undertaking under section 4.1 of

Regulation 44-102 with its base shelf prospectus. This includes any circumstances where a base shelf prospectus, including, if applicable, an unallocated shelf prospectus, may be used together with a prospectus supplement to qualify novel products. The undertaking must state that the issuer or the selling securityholder, as the case may be, will not distribute under the base shelf prospectus specified derivatives or asset-backed securities that at the time of distribution are novel without pre-clearing the disclosure in shelf prospectus supplements with the regulator.

(4) The term “novel” has a different meaning depending on whether it pertains to specified derivatives or asset-backed securities. In the case of asset-backed securities, the term is intended to apply to a distribution of asset-backed securities that is structured in a manner that differs materially from the manner in which any public distribution that has previously taken place in a jurisdiction was structured. In the case of specified derivatives, an issuer or selling securityholder must pre-clear any distribution of derivative securities that are of a type that have not previously been distributed to the public by the issuer.

(5) The securities regulatory authorities are of the view that the definition of the term "novel" should be read relatively restrictively. A security would not be novel merely because a new underlying interest was used. For example, where the underlying interest is a market index, the use of a different market index would not be considered “novel”, provided that information about the index methodology, the constituents that make up the index, as well as the daily index level, are available to the public. However, in circumstances where an issuer or its advisor is uncertain if a product is novel, the securities regulatory authorities encourage the issuer to either treat products as novel or to seek input from staff prior to filing a base shelf prospectus or prospectus supplement, as the case may be.

(6) If the product is not novel, then the shelf prospectus supplements concerning the product need not be reviewed by the securities regulatory authorities. The securities regulatory authorities are of the view that the disclosure in shelf prospectus supplements in such circumstances should be no less comprehensive than the disclosure that has previously been reviewed by a securities regulatory authority in a jurisdiction. The securities regulatory authorities also believe that the rights provided to investors in such products should be no less comprehensive than the rights provided in offerings previously reviewed by a securities regulatory authority in a jurisdiction.

(7) The securities regulatory authorities have a particular interest in reviewing novel specified derivatives that are functionally similar to investment fund products. These products have generally taken the form of linked notes issued under a medium term note program. These derivatives provide returns that are similar to investment fund products but are not necessarily subject to the investment funds regulatory regime. As a result, the securities regulatory authorities will review such offerings while keeping investment fund conflicts and disclosure concerns in mind.

(8) In circumstances where it is apparent to the issuer or selling securityholder that a specified derivative that is subject to the pre-clearance process is similar to a specified derivative that has already been subject to the pre-clearance process, the issuer or selling securityholder is encouraged, for the purpose of expediting the preclearance process, to file along with the shelf prospectus supplement a blackline to the relevant precedent shelf prospectus supplement. The issuer or selling securityholder is also encouraged to provide a cover letter setting out the material attributes of the specified derivative that differ from the securities offered under the precedent shelf prospectus.

2.5 Information that may be Omitted from a Base Shelf Prospectus

(1) Paragraph 1 of section 5.6 of Regulation 44-102 provides that a base shelf prospectus may omit the variable terms, if not known, of the securities that may be distributed under it. The types of variable information that may be omitted from the base shelf prospectus include

(a) the designation of the tranche;

(b) maturities;

(c) denominations;

(d) interest or dividend provisions;

(e) purchase, redemption and retraction provisions;

(f) conversion or exchange provisions;

(g) the terms for extension or early repayment;

(h) the currencies in which the securities are issued or payable;

(i) sinking fund provisions; and

(j) any special covenants or other terms applicable to the securities of the tranche.

(2) Paragraph 3 of section 5.6 of Regulation 44-102 provides that a base shelf prospectus may omit information, if not known, relating to the variable terms of the plans of distribution for the securities that may be distributed under the base shelf prospectus. These variable terms may include

(a) if the shelf prospectus sets forth alternative methods of distribution, the method that will be applicable to each tranche of securities distributed under the shelf prospectus; and

(b) for each tranche of securities distributed under the shelf prospectus, the specific terms not included in the description of the applicable method of distribution in the shelf prospectus, including, if applicable

(i) the names of any underwriters, and

(ii) the distribution spread and underwriting fees, discounts and commissions.

(3) Paragraph 7 of section 5.6 of Regulation 44-102 provides that a base shelf prospectus may omit other information, if not known, that pertains only to a specific distribution of securities under the base shelf prospectus. This information may include

(a) the public offering price;

(b) delivery dates;

(c) legal opinions regarding the eligibility for investment of the securities and tax matters;

(d) statements regarding listing of the securities;

(e) actual amount of proceeds on the distribution; and

(f) information about the use of proceeds.

2.6 Shelf Prospectus Supplements

(1) The ability to file a shelf prospectus supplement does not prevent the filing of a shelf prospectus amendment to supply some or all of the information that is permitted to be included in a prospectus supplement.

(2) Under subsection 6.3(2) of Regulation 44-102, the shelf prospectus supplements used in a distribution must contain all omitted shelf information as well as all information necessary for the base shelf prospectus to comply with the disclosure requirements for a short form prospectus. For example, if the securities being distributed using the shelf procedures are rated, that rating must be disclosed in a shelf prospectus supplement because Regulation 44-101 requires all ratings, including provisional ratings, received from one or more approved rating organizations for the securities to be distributed and continuing in effect, to be disclosed in a short form prospectus.

(3) Section 6.7 of Regulation 44-102 provides that all shelf prospectus supplements pertaining to the securities being distributed under a base shelf prospectus shall be sent by prepaid mail or delivered to purchasers of the securities concurrently with the base shelf prospectus. A shelf prospectus supplement may take the form of a "sticker", a "wrap-around" or a one or more page supplement to a base shelf prospectus.

2.6.1 Expert's Consent

Section 7.2 of Regulation 44-102 provides that if a document (the "Document") containing an expert's report, valuation, statement or opinion is incorporated by reference into a base shelf prospectus and filed after the filing of the base shelf prospectus, the issuer must file the written consent of the expert in accordance with deadlines that vary with the circumstances. For example, issuers are reminded that separate auditor's consents are required at the filing of the base shelf prospectus and in each subsequent shelf prospectus supplement for each set of audited financial statements incorporated by reference. The following is intended to illustrate the required timing for the filing of the expert's consents:

Type of Prospectus Filed	**Timing of inclusion of expert's report**	**Timing of filing of expert's consent**
MTN or non-MTN base shelf prospectus	Expert's report included in the base shelf prospectus at the date the base shelf prospectus is filed.	Expert's consent is filed at the date the prospectus is filed.
MTN base shelf prospectus	Expert's report included in a Document, filed after the base shelf prospectus is filed, that is incorporated by reference into the prospectus.	Expert's consent is filed at the date the Document is filed.
Non-MTN base shelf prospectus	Expert's report included in a Document, filed after the base shelf prospectus is filed, that is incorporated by reference into the prospectus.	Expert's consent is filed no later than the date of filing of the next prospectus supplement corresponding to the base shelf prospectus or the date the Document is filed.

2.7 Firm Commitment Distributions

Paragraph 5 of section 5.6 of Regulation 44-102 provides that a base shelf prospectus for securities to be distributed by one or more underwriters that have agreed to purchase the securities at a specified price may omit the statement that the securities are to be taken up by the underwriters, if at all, on or before a specified date. This paragraph provides an exemption from the requirement of securities legislation that this disclosure be

contained in a prospectus. Issuers are reminded that paragraph 1 of subsection 6.3(2) of Regulation 44-102 requires all information that was omitted from the base shelf prospectus to be included in a shelf prospectus supplement. Therefore, it is necessary to include in a shelf prospectus supplement the disclosure required under securities legislation relating to specific distributions that are being effected on a firm commitment basis.

2.8 Best Efforts Distributions

Paragraph 6 of section 5.6 of Regulation 44-102 similarly provides that a base shelf prospectus for a distribution of securities underwritten on a best efforts basis for which a minimum amount of funds are required by an issuer may omit disclosure required under securities legislation concerning the maximum length of time for which the distribution can continue and concerning the disposition of subscription funds. Issuers are reminded that paragraph 1 of subsection 6.3(2) of Regulation 44-102 requires all information that was omitted from the base shelf prospectus to be included in a shelf prospectus supplement. Therefore, it is necessary to include in a shelf prospectus supplement the disclosure required under securities legislation relating to specific distributions that are being effected on a best efforts basis.

2.9 Delivery Obligations

The securities regulatory authorities are of the view that statutory rights of rescission or withdrawal commence from the time of the purchaser's receipt of all relevant shelf prospectus supplements. It is only at this time that the entire prospectus has been delivered.

PART 3 SHELF PROSPECTUS AMENDMENTS

3.1 Shelf Prospectus Amendments

(1) Part 6 of Regulation 41-101 or other securities legislation requires that an amendment to a prospectus be filed if a material change occurs after the receipt for the prospectus is obtained but before the completion of the distribution under that prospectus. These requirements apply to base shelf prospectuses.

(2) Section 5.8 of Regulation 44-102 permits, in limited circumstances, the requirement in Part 6 of Regulation 41-101 or other securities legislation to file an amendment to be satisfied by the incorporation by reference of material change reports or reports of material change, material related entity transaction or major acquisition, as applicable, filed after the base shelf prospectus has been receipted. This is an exception to the general principle set out in section 3.6 of Policy Statement to Regulation 44-101. That section provides that the requirement in Regulation 41-101 or other securities legislation to file an amendment is not satisfied by the incorporation by reference of material change reports or reports of material change, material related entity transaction or major acquisition, as applicable, filed after the short form prospectus has been receipted. The exception in section 5.8 of the Regulation 44-102 is limited to periods in which no securities are being distributed under the base shelf prospectus.

(3) If securities are being distributed under a base shelf prospectus, the general principle referred in subsection (2) applies. The requirement of Regulation 41-101 or other securities legislation to file an amendment to a prospectus if a material change occurs may be satisfied by filing an amendment which is also a material change report or report of material change, material related entity transaction or major acquisition, as applicable. In these circumstances, the material change report or report of material change, material related entity transaction or major acquisition, as applicable, would:

(a) state that the base shelf prospectus is amended and supplemented by the contents of the material change report or reports of material change, material related entity transaction or major acquisition, as applicable; and

(b) contain the certificates required to be contained in an amendment.

(4) If an issuer wishes to add securities to its base shelf prospectus it may do so prior to issuing all of the securities qualified by the base shelf prospectus by filing an amendment to the base shelf prospectus. This will not extend the life of the base shelf prospectus.

PART 4 PROSPECTUS CERTIFICATES

4.1 Prospectus Certificates

(1) Appendix A and Appendix B of Regulation 44-102 provide for two alternate methods of preparing forms of prospectus certificates. Unless a particular method is prescribed, the choice of method may be changed between the date of filing of the preliminary base shelf prospectus and the date of filing of the base shelf prospectus. Furthermore, the method elected need not be the same.

(2) Method 1 requires that forward-looking forms of prospectus certificates be included in a base shelf prospectus. Doing so allows the use of shelf prospectus supplements that do not contain prospectus certificates as set out in section 6.8 of Regulation 44-102. Method 2 requires forms of prospectus certificates that speak only to the present to be included in both the base shelf prospectus and each shelf prospectus supplement.

(3) Method 1 is mandatory for a base shelf prospectus that establishes an MTN program. If an MTN program is established in a shelf prospectus supplement, method 1 is mandatory and prescribes that forward-looking forms of certificates be included, unless they were already included in the base shelf prospectus.

POLICY STATEMENT TO REGULATION 51-101 RESPECTING STANDARDS OF DISCLOSURE FOR OIL AND GAS ACTIVITIES

This Policy Statement sets out the views of the Canadian Securities Administrators (CSA) as to the interpretation and application of *Regulation 51-101 respecting Standards of Disclosure for Oil and Gas Activities* (Regulation 51-101) and related forms.

Regulation 51-1011 supplements other continuous disclosure requirements of securities legislation that apply to reporting issuers in all business sectors.

The requirements under Regulation 51-101 for the filing with securities regulatory authorities of information relating to oil and gas activities are designed in part to assist the public and analysts in making investment decisions and recommendations.

The CSA encourage registrants2 and other persons and companies that wish to make use of information concerning oil and gas activities of a reporting issuer, including reserves data, to review the information filed on SEDAR under Regulation 51-101 by the reporting issuer and, if they are summarizing or referring to this information, to use the applicable terminology consistent with Regulation 51-101 and the COGE Handbook.

Part 1 APPLICATION AND TERMINOLOGY

1.1. Definitions

(1) **General** – Several terms relating to oil and gas activities are defined in section 1.1 of Regulation 51-101. If a term is not defined in Regulation 51-101, NI 14-101 or the securities statute in the jurisdiction, it will have the meaning or interpretation given to it in the COGE Handbook if it is defined or interpreted there, pursuant to section 1.2 of Regulation 51-101.

For the convenience of readers, CSA Staff Notice 51-324 *Glossary to Regulation 51-101 Standards of Disclosure for Oil and Gas Activities* (the Regulation 51-101 Glossary) sets out the meaning of terms, including those defined in Regulation 51-101 and several terms which are derived from the COGE Handbook.

(2) **Forecast Prices and Costs** – The term forecast prices and costs is defined in paragraph 1.1(j) of Regulation 51-101 and discussed in the COGE Handbook. Except to the extent that the reporting issuer is legally bound by fixed or presently determinable future prices or costs3, forecast prices and costs are future prices and costs "generally accepted as being a reasonable outlook of the future".

The CSA do not consider that future prices or costs would satisfy this requirement if they fall outside the range of forecasts of comparable prices or costs used, as at the same date, for the same future period, by major independent qualified reserves evaluators or auditors or by other reputable sources appropriate to the evaluation.

(3) **Independent** – The term independent is defined in paragraph 1.1(o) of Regulation 51-101. Applying this definition, the following are examples of circumstances in which the CSA would consider that a qualified reserves evaluator or auditor (or other expert) is not independent. We consider a qualified reserves evaluator or auditor is not independent when the qualified reserves evaluator or auditor:

(a) is an employee, insider, or director of the reporting issuer;

(b) is an employee, insider, or director of a related party of the reporting issuer;

(c) is a partner of any person or company in paragraph (a) or (b);

(d) holds or expects to hold securities, either directly or indirectly, of the reporting issuer or a related party of the reporting issuer;

(e) holds or expects to hold securities, either directly or indirectly, in another reporting issuer that has a direct or indirect interest in the property that is the subject of the technical report or an adjacent property;

(f) has or expects to have, directly or indirectly, an ownership, royalty, or other interest in the property that is the subject of the technical report or an adjacent property; or

(g) has received the majority of their income, either directly or indirectly, in the three years preceding the date of the technical report from the reporting issuer or a related party of the reporting issuer.

For the purpose of paragraph (d) above, "related party of the reporting issuer" means an affiliate, associate, subsidiary, or control person of the reporting issuer as those terms are defined under securities legislation.

There may be instances in which it would be reasonable to consider that the independence of a qualified reserves evaluator or auditor would not be compromised even though the qualified reserves evaluator or auditor holds an interest in the reporting issuer's securities. The reporting issuer needs to determine whether a reasonable person would consider that such interest would interfere with the qualified reserves evaluator's or auditor's judgement regarding the preparation of the technical report.

There may be circumstances in which the securities regulatory authorities question the objectivity of the qualified reserves evaluator or auditor. In order to ensure the requirement for independence of the qualified reserves evaluator or auditor has been preserved, the reporting issuer may be asked to provide further information, additional disclosure or the opinion of another qualified reserves evaluator or auditor to address concerns about possible bias or partiality on the part of the qualified reserves evaluator or auditor.

(4) **Product Types Arising From Oil Sands and Other Non-Conventional Activities** The definition of product type in paragraph 1.1(v) includes products arising from non-conventional oil and gas activities. Regulation 51-101 therefore applies not only to conventional oil and gas activities, but also to non-conventional activities such as the extraction of bitumen from oil sands with a view to the production of synthetic oil, the in situ production of bitumen, the extraction of methane from coal beds and the extraction of shale gas, shale oil and hydrates.

Although Regulation 51-101 and Form 51-101F1 make few specific references to non-conventional oil and gas activities, the requirements of Regulation 51-101 for the preparation and disclosure of reserves data and for the disclosure of resources other thant reserves apply to oil and gas reserves and resources other than reserves relating to oil sands, shale, coal or other non-conventional sources of hydrocarbons.

The CSA encourage reporting issuers that are engaged in non-conventional oil and gas activities to supplement the disclosure prescribed in Regulation 51-101 and Form 51-101F1 with information specific to those activities that can assist investors and others in understanding the business and results of the reporting issuer.

(5) **Professional Organization**

(a) Recognized Professional Organizations

For the purposes of the Regulation, a qualified reserves evaluator or auditor must also be a member in good standing with a self-regulatory professional organization of engineers, geologists, geoscientists or other professionals.

The definition of "professional organization" (in paragraph 1.1(w) of Regulation 51-101 and in the Regulation 51-101 Glossary) has four elements, three of which deal with the basis on which the organization accepts members and its powers and requirements for continuing membership. The fourth element requires either authority or recognition given to the organization by a statute in Canada, or acceptance of the organization by the securities regulatory authority or regulator.

As at October 12, 2010, each of the following organizations in Canada is a professional organization:

- Association of Professional Engineers, Geologists and Geophysicists of Alberta (APEGGA)
- Association of Professional Engineers and Geoscientists of the Province of British Columbia (APEGBC)
- Association of Professional Engineers and Geoscientists of Saskatchewan (APEGS)
- Association of Professional Engineers and Geoscientists of Manitoba (APEGM)
- Association of Professional Geoscientists of Ontario (APGO)
- Professional Engineers of Ontario (PEO)
- Ordre des ingénieurs du Québec (OIQ)
- Ordre des Géologues du Québec (OGQ)
- Association of Professional Engineers of Prince Edward Island (APEPEI)
- Association of Professional Engineers and Geoscientists of New Brunswick (APEGNB)
- Association of Professional Engineers of Nova Scotia (APENS)
- Association of Professional Engineers and Geoscientists of Newfoundland (APEGN)
- Association of Professional Engineers of Yukon (APEY)
- Association of Professional Engineers, Geologists & Geophysicists of the Northwest Territories (NAPEGG) (representing the Northwest Territories and Nunavut Territory)

(b) Other Professional Organizations

The CSA are willing to consider whether particular foreign professional bodies should be accepted as "professional organizations" for the purposes of Regulation 51-101. A reporting issuer, foreign professional body or other interested person can apply to have a self-regulatory organization that satisfies the first three elements of the definition of "professional organization" accepted for the purposes of Regulation 51-101.

In considering any such application for acceptance, the securities regulatory authority or regulator is likely to take into account the degree to which a foreign professional body's authority or recognition, admission criteria, standards and disciplinary powers and practices are similar to, or differ from, those of organizations listed above.

The list of foreign professional organizations is updated periodically in CSA Staff Notice 51-309 *Acceptance of Certain Foreign Professional Boards as a "Professional Organization"*. As at October 12, 2010, each of the following foreign organizations has been recognized as a professional organization for the purposes of Regulation 51-101:

- California Board for Professional Engineers and Land Surveyors,
- State of Colorado Board of Registration for Professional Engineers and Professional Land Surveyors
- Louisiana State Board of Registration for Professional Engineers and Land Surveyors,
- Oklahoma State Board of Registration for Professional Engineers and Land Surveyors
- Texas Board of Professional Engineers
- American Association of Petroleum Geologists (AAPG) but only in respect of Certified Petroleum Geologists who are members of the AAPG's Division of Professional Affairs
- American Institute of Professional Geologists (AIPG), in respect of the AIPG's Certified Professional Geologists
- Energy Institute but only for those members of the Energy Institute who are Members and Fellows

(c) No Professional Organization

A reporting issuer or other person may apply for an exemption under Part 8 of Regulation 51-101 to enable a reporting issuer to appoint, in satisfaction of its obligation under section 3.2 of Regulation 51-101, an individual who is not a member of a professional organization, but who has other satisfactory qualifications and experience. Such an application might refer to a particular individual or generally to members and employees of a particular foreign reserves evaluation firm. In considering any such application, the securities regulatory authority or regulator is likely to take into account the individual's professional education and experience or, in the case of an application relating to a firm, to the education and experience of the firm's members and employees, evidence concerning the opinion of a qualified reserves evaluator or auditor as to the quality of past work of the individual or firm, and any prior relief granted or denied in respect of the same individual or firm.

(d) Renewal Applications Unnecessary

A successful applicant would likely have to make an application contemplated in this subsection 1.1(5) only once, and not renew it annually.

(6) **Qualified Reserves Evaluator or Auditor** – The definitions of qualified reserves evaluator and qualified reserves auditor are set out in paragraphs 1.1(y) and 1.1(x) of Regulation 51-101, respectively, and again in the Regulation 51-101 Glossary.

The defined terms “qualified reserves evaluator” and “qualified reserves auditor” have a number of elements. A qualified reserves evaluator or qualified reserves auditor must

- possess professional qualifications and experience appropriate for the tasks contemplated in the Regulation, and
- be a member in good standing of a professional organization.

Reporting issuers should satisfy themselves that any person they appoint to perform the tasks of a qualified reserves evaluator or auditor for the purpose of the Regulation satisfies each of the elements of the appropriate definition.

In addition to having the relevant professional qualifications, a qualified reserves evaluator or auditor must also have sufficient practical experience relevant to the reserves data to be reported on. In assessing the adequacy of practical experience, reference should be made to section 3 of volume 1 of the COGE Handbook – “Qualifications of Evaluators and Auditors, Enforcement and Discipline”.

1.2. COGE Handbook

Pursuant to section 1.2 of Regulation 51-101, definitions and interpretations in the COGE Handbook apply for the purposes of Regulation 51-101 if they are not defined in Regulation 51-101, NI 14-101 or the securities statute in the jurisdiction (except to the extent of any conflict or inconsistency with Regulation 51-101, NI 14-101 or the securities statute).

Section 1.1 of Regulation 51-101 and the Regulation 51-101 Glossary set out definitions and interpretations, many of which are derived from the COGE Handbook. Reserves and resources definitions and categories are incorporated in the COGE Handbook and are also set out, in part, in the Regulation 51-101 Glossary.

Subparagraph 5.2(a)(iii) of Regulation 51-101 requires that all estimates of reserves or future net revenue have been prepared or audited in accordance with the COGE Handbook. Under sections 5.2, 5.3 and 5.9 of Regulation 51-101, all types of public oil and gas disclosure, including disclosure of reserves and of resources other than reserves must be prepared in accordance with the COGE Handbook.

1.3. Applies to Reporting Issuers Only

Regulation 51-101 applies to reporting issuers engaged in oil and gas activities. The definition of oil and gas activities is broad. For example, a reporting issuer with no reserves, but a few prospects, unproved properties or resources, could still be engaged in oil and gas activities because such activities include exploration and development of unproved properties.

Regulation 51-101 will also apply to an issuer that is not yet a reporting issuer if it files a prospectus or other disclosure document that incorporates prospectus requirements. Pursuant to the long-form prospectus requirements, the issuer must disclose the information contained in Form 51-101F1, as well as the reports set out in Form 51-101F2 and Form 51-101F3.

1.4. Materiality Standard

Section 1.4 of Regulation 51-101 states that Regulation 51-101 applies only in respect of information that is material.

Regulation 51-101 does not require disclosure or filing of information that is not material. If information is not required to be disclosed because it is not material, it is unnecessary to disclose that fact.

Materiality for the purposes of Regulation 51-101 is a matter of judgement to be made in light of the circumstances, taking into account both qualitative and quantitative factors, assessed in respect of the reporting issuer as a whole.

The reference in subsection 1.4(2) of Regulation 51-101 to a "reasonable investor" denotes an objective test: would a notional investor, broadly representative of investors generally and guided by reason, be likely to be influenced, in making an investment decision to buy, sell or hold a security of a reporting issuer, by an item of information or an aggregate of items of information? If so, then that item of information, or aggregate of items, is "material" in respect of that reporting issuer. An item that is immaterial alone may be material in the context of other information, or may be necessary to give context to other information. For example, a large number of small interests in oil and gas properties may be material in aggregate to a reporting issuer. Alternatively, a small interest in an oil and gas property may be material to a reporting issuer, depending on the size of the reporting issuer and its particular circumstances.

PART 2 ANNUAL FILING REQUIREMENTS

2.1. Annual Filings on SEDAR

The information required under section 2.1 of Regulation 51-101 must be filed electronically on SEDAR. Consult *Regulation 13-101 respecting System for Electronic Document Analysis and Retrieval* (SEDAR) and the current CSA "SEDAR Filer Manual" for information about filing documents electronically. The information required to be filed under item 1 of section 2.1 of Regulation 51-101 is usually derived from a much longer and more detailed oil and gas report prepared by a qualified reserves evaluator. These long and detailed reports cannot be filed electronically on SEDAR. The filing of an oil and gas report, or a summary of an oil and gas report, does not satisfy the requirements of the annual filing under Regulation 51-101.

2.2. Inapplicable or Immaterial Information

Section 2.1 of Regulation 51-101 does not require the filing of any information, even if specified in Regulation 51-101 or in a form referred to in Regulation 51-101, if that information is inapplicable or not material in respect of the reporting issuer. See section1.4 of this Policy Statement for a discussion of materiality.

If an item of prescribed information is not disclosed because it is inapplicable or immaterial, it is unnecessary to state that fact or to make reference to the disclosure requirement.

2.3. Use of Forms

Section 2.1 of Regulation 51-101 requires the annual filing of information set out in Form 51-101F1 and reports in accordance with Form 51-101F2 and Form 51-101F3. Appendix 1 to this Policy Statement provides an example of how certain of the reserves data might be presented. While the format presented in Appendix 1 in respect of reserves data is not mandatory, we encourage issuers to use this format.

The information specified in all three forms, or any two of the forms, can be combined in a single document. A reporting issuer may wish to include statements indicating the relationship between documents or parts of one document. For example, the reporting issuer may wish to accompany the report of the independent qualified reserves evaluator or auditor (Form 51-101F2) with a reference to the reporting issuer's disclosure of the reserves data (Form 51-101F1), and vice versa.

A reporting issuer may supplement the annual disclosure required under Regulation 51-101 with additional information corresponding to that prescribed in Form 51-101F1, Form 51-101F2 and Form 51-101F3, but as at dates, or for periods, subsequent to those for

which annual disclosure is required. However, to avoid confusion, such supplementary disclosure should be clearly identified as being interim disclosure and distinguished from the annual disclosure (for example, if appropriate, by reference to a particular interim period). Supplementary interim disclosure does not satisfy the annual disclosure requirements of section 2.1 of Regulation 51-101.

2.4. Annual Information Form or Annual Report

Section 2.3 of Regulation 51-101 permits reporting issuers to satisfy the requirements of section 2.1 of Regulation 51-101 by presenting the information required under section 2.1 in an annual information form or, for venture issuers, in an annual report.

(1) **Meaning of "Annual Information Form"** – Annual information form has the same meaning as "AIF" in *Regulation 51-102 respecting Continuous Disclosure Obligations*. Therefore, as set out in that definition, an annual information form can be a completed Form 51-102F2 Annual Information Form or, in the case of an SEC issuer (as defined in Regulation 51-102), a completed Form 51-102F2 or an annual report or transition report under the 1934 Act on Form 10-K, Form 10-KSB or Form 20-F.

(2) ~~Option to Set Out~~ **Information in Annual Information Form or Annual Report** – Form 51-102F2 Annual Information Form ~~requires~~and Form 51 103F1 Annual and Mid-Year Reports require the information required by section 2.1 of Regulation 51-101 to be included in the annual information form~~. However, a reporting issuer that elects to follow this approach must file, at the same time and on SEDAR, in the appropriate SEDAR category, a notice in accordance with Form 51-101F4 (see subsection 2.3(2) of Regulation 51-101)~~ or annual report, as applicable. That information may be included either by setting out the text of the information in the annual information form or by incorporating it, by reference from separately filed documents. Venture issuers are not permitted to incorporate this information by reference so must include it in the annual report. The option offered by section 2.3 of Regulation 51-101 enables a reporting issuer to satisfy its obligations under section 2.1 of Regulation 51-101, as well as its obligations in respect of annual information form or annual report disclosure, as applicable, by setting out the information required under section 2.1 only once, in the annual information form or annual report. If the annual information form or annual report is on Form 10-K, this can be accomplished by including the information in a supplement (often referred to as a "wrapper") to the Form 10-K.

A reporting issuer that ~~elects to set~~sets out in full in its annual information form or annual report, as applicable, the information required by section 2.1 of Regulation 51-101 need not also file that information again for the purpose of section 2.1 in one or more separate documents. ~~A~~However, a reporting issuer that ~~elects to follow this approach should file its annual information form in accordance with usual requirements of securities legislation, and at the same time file on SEDAR, in the category for Regulation 51-101 oil and gas disclosure, a notification that the information required under section 2.1 of Regulation 51-101 is included in the reporting issuer's filed annual information form. More specifically, the notification should be filed under SEDAR Filing Type: "Oil and Gas Annual Disclosure (Regulation 51-101)" and Filing Subtype/Document Type: "Oil and Gas Annual Disclosure Filing (Forms 51-101F1, F2 & F3)". Alternatively, the notification could be a copy of the news release mandated by section 2.2 of Regulation 51-101. If this is the case, the news release should be filed under SEDAR Filing Type: "Oil and Gas Annual Disclosure (Regulation 51-101)" and Filing Subtype/Document Type: "News Release (section 2.2 of Regulation 51-101)".~~ follows this approach must file, at the same time and on SEDAR, in the appropriate SEDAR category, a notice in accordance with Form 51-101F4 (see subsection 2.3(2) of Regulation 51-101). This notification will assist other SEDAR users in finding that information. It is not necessary to make a duplicate filing of the annual information form or annual report, as applicable, itself under the SEDAR Regulation 51- 101 oil and gas disclosure category.

2.5. Reporting Issuer With No Reserves

The requirement to make annual Regulation 51-101 filings is not limited to only those issuers that have reserves and related future net revenue. A reporting issuer with no reserves but with prospects, unproved properties or resources may be engaged in oil and gas activities (see section 1.3 above) and therefore subject to Regulation 51-101. That means the issuer must still make annual Regulation 51-101 filings and ensure that it complies with other Regulation 51-101 requirements. The following is guidance on the preparation of Form 51-101F1, Form 51-101F2, Form 51-101F3 and other oil and gas disclosure if the reporting issuer has no reserves.

(1) Form 51-101F1 - Section 1.4 of Regulation 51-101 states that the Regulation applies only in respect of information that is material in respect of a reporting issuer. If indeed the reporting issuer has no reserves, we would consider that fact alone material. The reporting issuer's disclosure, under Part 2 of Form 51-101F1, should make clear that it has no reserves and hence no related future net revenue.

Supporting information regarding reserves data required under Part 2 (e.g., price estimates) that are not material to the issuer may be omitted. However, if the issuer had disclosed reserves and related future net revenue in the previous year, and has no reserves as at the end of its current financial year, the reporting issuer is still required to present a reconcilation to the prior-year's estimates of reserves, as required by Part 4 of Form 51-101F1.

The reporting issuer is also required to disclose information required under Part 6 of Form 51-101F1. Those requirements apply irrespective of the quantum of reserves, if any. This would include information about properties (items 6.1 and 6.2), costs (item 6.6), and exploration and development activities (item 6.7). The disclosure should make clear that the issuer had no production, as that fact would be material.

(2) **Form 51-101F2** – Regulation 51-101 requires reporting issuers to retain an independent qualified reserves evaluator or auditor to evaluate or audit the company's reserves data and report to the board of directors. If the reporting issuer had no reserves during the year and hence did not retain an evaluator or auditor, then it would not need to retain one just to file a (nil) report of the independent evaluators on the reserves data in the form of Form 51-101F2 and the reporting issuer would therefore not be required to file a Form 51-101F2. If, however, the issuer did retain an evaluator or auditor to evaluate reserves, and the evaluator or auditor concluded that they could not be so categorized, or reclassified those reserves to resources, the issuer would have to file a report of the qualified reserves evaluator because the evaluator has, in fact, evaluated the reserves and expressed an opinion.

(3) **Form 51-101F3** – Irrespective of whether the reporting issuer has reserves, the requirement to file a report of management and directors in the form of Form 51-101F3 applies.

(4) **Other Regulation 51-101 Requirements** – Regulation 51-101 does not require reporting issuers to disclose anticipated results from their resources. However, if a reporting issuer chooses to disclose that type of information, section 5.9 of Regulation 51-101 applies to that disclosure.

2.6. Reservation in Report of Independent Qualified Reserves Evaluator or Auditor

A report of an independent qualified reserves evaluator or auditor on reserves data will not satisfy the requirements of item 2 of section 2.1 of Regulation 51-101 if the report contains a reservation, the cause of which can be removed by the reporting issuer (subsection 2.4(2) of Regulation 51-101).

The CSA do not generally consider time and cost considerations to be causes of a reservation that cannot be removed by the reporting issuer.

A report containing a reservation may be acceptable if the reservation is caused by a limitation in the scope of the evaluation or audit resulting from an event that clearly limits the availability of necessary records and which is beyond the control of the reporting issuer. This could be the case if, for example, necessary records have been inadvertently destroyed and cannot be recreated or if necessary records are in a country at war and access is not practicable.

One potential source of reservations, which the CSA consider can and should be addressed in a different way, could be reliance by a qualified reserves evaluator or auditor on information derived or obtained from a reporting issuer's independent financial auditors or reflecting their report. The CSA recommend that qualified reserves evaluators or auditors follow the procedures and guidance set out in both sections 4 and 12 of volume 1 of the COGE Handbook in respect of dealings with independent financial auditors. In so doing, the CSA expect that the quality of reserves data can be enhanced and a potential source of reservations can be eliminated.

2.7. Disclosure in Form 51-101F1

(1) **Royalty Interest in Reserves** – Net reserves (or "company net reserves") of a reporting issuer include its royalty interest in reserves.

If a reporting issuer cannot obtain the information it requires to enable it to include a royalty interest in reserves in its disclosure of net reserves, it should, proximate to its disclosure of net reserves, disclose that fact and its corresponding royalty interest share of oil and gas production for the year ended on the effective date.

Form 51-101F1 requires that certain reserves data be provided on both a "gross" and "net" basis, the latter being adjusted for both royalty entitlements and royalty obligations. However, if a royalty is granted by a trust's subsidiary to the trust, this would not affect the computation of "net reserves". The typical oil and gas income trust structure involves the grant of a royalty by an operating subsidiary of the trust to the trust itself, the royalty being the source of the distributions to trust investors. In this case, the royalty is wholly within the combined or consolidated trust entity (the trust and its operating subsidiary). This is not the type of external entitlement or obligation for which adjustment is made in determining, for example, "net reserves". Viewing the trust and its consolidated entities together, the relevant reserves and other oil and gas information is that of the operating subsidiary without deduction of the internal royalty to the trust.

(2) **Government Restriction on Disclosure** – If, because of a restriction imposed by a government or governmental authority having jurisdiction over a property, a reporting issuer excludes reserves information from its reserves data disclosed under Regulation 51-101, the disclosure should include a statement that identifies the property or country for which the information is excluded and explains the exclusion.

(3) **Computation of Future Net Revenue**

(a) Tax

Form 51-101F1 requires future net revenue to be estimated and disclosed both before and after deduction of income taxes. However, a reporting issuer may not be subject to income taxes because of its royalty or income trust structure. In this instance, the issuer should use the tax rate that most appropriately reflects the income tax it reasonably expects to pay on the future net revenue. If the issuer is not subject to income tax because of its royalty trust structure, then the most appropriate income tax rate would be zero. In this case, the issuer could present the estimates of future net revenue in only one column and explain, in a note to the table, why the estimates of before-tax and after-tax future net revenue are the same.

Also, tax pools should be taken into account when computing future net revenue after income taxes. The definition of "future income tax expense" is set out in the Regulation 51-101 Glossary. Essentially, future income tax expenses represent estimated cash income taxes payable on the reporting issuer's future pre-tax cash flows. These cash income taxes payable should be computed by applying the appropriate year-end statutory tax rates, taking into account future tax rates already legislated, to future pre-tax net cash flows reduced by appropriate deductions of estimated unclaimed costs and losses carried forward for tax purposes and relating to oil and gas activities (i.e., tax pools). Such tax pools may include Canadian oil and gas property expense (COGPE), Canadian development expense (CDE), Canadian exploration expense (CEE), undepreciated capital cost (UCC) and unused prior year's tax losses. (Issuers should be aware of limitations on the use of certain tax pools resulting from acquisitions of properties in situations where provisions of the Income Tax Act concerning successor corporations apply.)

(b) Other Fiscal Regimes

Other fiscal regimes, such as those involving production sharing contracts, should be adequately explained with appropriate allocations made to various classes of proved reserves and to probable reserves.

(4) **Supplementary Disclosure of Future Net Revenue Using Constant Prices and Costs** – Form 51-101F1 gives reporting issuers the option of disclosing future net revenue, together with associated estimates of reserves or resources other than reserves, determined using constant prices and costs. Constant prices and costs are assumed not to change throughout the life of a property, except to the extent of certain fixed or presently determinable future prices or costs to which the reporting issuer is legally bound by a contractual or other obligation to supply a physical product (including those for an extension period of a contract that is likely to be extended).

(5) (paragraph deleted).

(6) **Reserves Reconciliation**

(a) If the reporting issuer reports reserves, but had no reserves at the start of the reconciliation period, a reconciliation of reserves must be carried out if any reserves added during the previous year are material. Such a reconciliation will have an opening balance of zero.

(b) The reserves reconciliation is prepared on a gross reserves, not net reserves, basis. For some reporting issuers with significant royalty interests, such as royalty trusts, the net reserves may exceed the gross reserves. In order to provide adequate disclosure given the distinctive nature of its business, the reporting issuer may also disclose its reserves reconciliation on a net reserves basis. The issuer is not precluded from providing this additional information with its disclosure prescribed in Form 51-101F1 provided that the net reserves basis for the reconciliation is clearly identified in the additional disclosure to avoid confusion.

(c) Clause 2(c)(ii) of item 4.1 of Form 51-101F1 requires reconciliations of reserves to separately identify and explain technical revisions. Technical revisions show changes in existing reserves estimates, in respect of carried-forward properties, over the period of the reconciliation (i.e., between estimates as at the effective date and the prior year's estimate) and are the result of new technical information, not the result of capital expenditure. With respect to making technical revisions, the following should be noted:

- Infill Drilling: It would not be acceptable to include infill drilling results as a technical revision. Reserves additions derived from infill drilling during the year are not attributable to revisions to the previous year's reserves estimates. Infill drilling reserves must either be included in the "extensions and improved recovery" category or in an additional stand-alone category in the reserves reconciliation labelled "infill drilling".

- Acquisitions: If an acquisition is made during the year, (i.e., in the period between the effective date and the prior year's estimate), the reserves estimate to be used in the reconciliation is the estimate of reserves at the effective date, not at the acquisition date, plus any production since the acquisition date. This production must be included as production in the reconciliation. If there has been a change in the reserves estimate between the acquisition date and the effective date other than that due to production, the issuer may wish to explain this as part of the reconciliation in a footnote to the reconciliation table.

(7) **Significant Factors or Uncertainties** – Item 5.2 of Form 51-101F1 requires an issuer to identify and discuss important economic factors or significant uncertainties that affect particular components of the reserves data.

For example, if events subsequent to the effective date have resulted in significant changes in expected future prices, such that the forecast prices reflected in the reserves data differ materially from those that would be considered to be a reasonable outlook on the future around the date of the company's "statement of reserves data and other information", then the issuer's statement might include, pursuant to item 5.2, a discussion of that change and its effect on the disclosed future net revenue estimates. It may be misleading to omit this information.

(8) **Additional Information** – As discussed in section 2.3 above and in the instructions to Form 51-101F1, Regulation 51-101 offers flexibility in the use of the prescribed forms and the presentation of required information.

The disclosure prescribed in Form 51-101F1 is the minimum disclosure required, subject to the materiality standard. Reporting issuers may provide additional disclosure that is not inconsistent with Regulation 51-101 and not misleading.

To the extent that additional, or more detailed, disclosure can be expected to assist readers in understanding and assessing the mandatory disclosure, it is encouraged. Indeed, to the extent that additional disclosure of material facts is necessary in order to make mandated disclosure not misleading, a failure to provide that additional disclosure would amount to a misrepresentation.

(9) **Sample Reserves Data Disclosure** – Appendix 1 to this Policy Statement sets out an example of how certain of the reserves data might be presented in a manner which the CSA consider to be consistent with Regulation 51-101 and Form 51-101F1. The CSA encourages reporting issuers to use the format presented in Appendix 1.

The sample presentation in Appendix 1 also illustrates how certain additional information not mandated under Form 51-101F1 might be incorporated in an annual filing.

2.8. Form 51-101F2

(1) **Negative Assurance by Qualified Reserves Evaluator or Auditor** – A qualified reserves evaluator or auditor conducting a review may wish to express only negative assurance -- for example, in a statement such as "Nothing has come to my attention which would indicate that the reserves data have not been prepared in accordance with principles and definitions presented in the Canadian Oil and Gas Evaluation Handbook". This can be contrasted with a positive statement such as an opinion that "The reserves data have, in all material respects, been determined and presented in accordance with the Canadian Oil and Gas Evaluation Handbook and are, therefore, free of material misstatement".

The CSA are of the view that statements of negative assurance can be misinterpreted as providing a higher degree of assurance than is intended or warranted.

The CSA believe that a statement of negative assurance would constitute so material a departure from the report prescribed in Form 51-101F2 as to fail to satisfy the requirements of item 2 of section 2.1 of Regulation 51-101.

In the rare case, if any, in which there are compelling reasons for making such disclosure (e.g., a prohibition on disclosure to external parties), the CSA believe that, to avoid providing information that could be misleading, the reporting issuer should include in such disclosure useful explanatory and cautionary statements. Such statements should explain the limited nature of the work undertaken by the qualified reserves evaluator or auditor and the limited scope of the assurance expressed, noting that it does not amount to a positive opinion.

(2) **Variations in Estimates** – The report prescribed by Form 51-101F2 contains statements to the effect that variations between reserves data and actual results may be material but reserves have been determined in accordance with the COGE Handbook, consistently applied.

Reserves estimates are made at a point in time, being the effective date. A reconciliation of a reserves estimate to actual results is likely to show variations and the variations may be material. This variation may arise from factors such as exploration discoveries, acquisitions, divestments and economic factors that were not considered in the initial reserves estimate. Variations that occur with respect to properties that were included in both the reserves estimate and the actual results may be due to technical or economic factors. Any variations arising due to technical factors must be consistent with the fact that reserves are categorized according to the probability of their recovery. For example, the requirement that reported proved reserves "must have at least a 90 percent probability that the quantities actually recovered will equal or exceed the estimated proved reserves" (section 5 of volume 1 of the COGE Handbook) implies that as more technical data becomes available, a positive, or upward, revision is significantly more likely than a negative, or downward, revision. Similarly, it should be equally likely that revisions to an estimate of proved plus probable reserves will be positive or negative.

Reporting issuers must assess the magnitude of such variation according to their own circumstances. A reporting issuer with a limited number of properties is more likely to be affected by a change in one of these properties than a reporting issuer with a greater number of properties. Consequently, reporting issuers with few properties are more likely to show larger variations, both positive and negative, than those with many properties.

Variations may result from factors that cannot be reasonably anticipated, such as the fall in the price of bitumen at the end of 2004 that resulted in significant negative revisions in proved reserves, or the unanticipated activities of a foreign government. If such variations occur, the reasons will usually be obvious. However, the assignment of a proved reserve, for instance, should reflect a degree of confidence in all of the relevant factors, at the effective date, such that the likelihood of a negative revision is low, especially for a reporting issuer with many properties. Examples of some of the factors that could have been reasonably anticipated, that have led to negative revisions of proved or of proved plus probable reserves are:

- Over-optimistic activity plans, for instance, booking reserves for proved or probable undeveloped reserves that have no reasonable likelihood of being drilled.

- Reserves estimates that are based on a forecast of production that is inconsistent with historic performance, without solid technical justification.

- Assignment of drainage areas that are larger than can be reasonably expected.

- The use of inappropriate analogs.

(3) **Effective date of Evaluation** – A qualified reserves evaluator or auditor cannot prepare an evaluation using information that relates to events that occurred after the effective date, being the financial year-end. Information that relates to events that occurred after the year-end should not be incorporated into the forecasts. For example, information about drilling results from wells drilled in January or February, or changes in production that occurred after year-end date of December 31, should not be used. Even though this more recent information is available, the evaluator or auditor should not go back and change the forecast information. The forecast is to be based on the evaluator's or auditor's perception of the future as of December 31, the effective date of the report.

Similarly, the evaluator or auditor should not use price forecasts for a date subsequent to the year-end date of, in this example, December 31. The evaluator or auditor should use the prices that he or she forecasted on or around December 31. The evaluator or auditor should also use the December forecasts for exchange rates and inflation. Revisions to price, exchange rate or inflation rate forecasts after December 31 would have resulted from events that occurred after December 31.

2.9. Chief Executive Officer

Paragraph 2.1(3)(e) of Regulation 51-101 requires a reporting issuer to file a report in accordance with Form 51-101F3 that is executed by the chief executive officer. The term "chief executive officer" should be read to include the individual who has the responsibilities normally associated with this position or the person who acts in a similar capacity. This determination should be made irrespective of an individual's corporate title and whether that individual is employed directly or acts pursuant to an agreement or understanding.

2.10. Reporting Issuer Not a Corporation

If a reporting issuer is not a corporation, a report in accordance with Form 51-101F3 must be executed by the persons who, in relation to the reporting issuer, are in a similar position or perform similar functions to the persons required to execute under paragraph 2.1(3)(e) of Regulation 51-101.

PART 3 RESPONSIBILITIES OF REPORTING ISSUERS AND DIRECTORS

3.1. Reserves Committee

Section 3.4 of Regulation 51-101 enumerates certain responsibilities of the board of directors of a reporting issuer in connection with the preparation of oil and gas disclosure.

The CSA believe that certain of these responsibilities can in many cases more appropriately be fulfilled by a smaller group of directors who bring particular experience or abilities and an independent perspective to the task.

Subsection 3.5(1) of Regulation 51-101 permits a board of directors to delegate responsibilities (other than the responsibility to approve the content or filing of certain documents) to a committee of directors, a majority of whose members are independent of management. Although subsection 3.5(1) is not mandatory, the CSA encourage reporting issuers and their directors to adopt this approach.

3.2. Responsibility for Disclosure

Regulation 51-101 requires the involvement of an independent qualified reserves evaluator or auditor in preparing or reporting on certain oil and gas information disclosed by a reporting issuer, and in section 3.2 mandates the appointment of an independent qualified reserves evaluator or auditor to report on reserves data.

The CSA do not intend or believe that the involvement of an independent qualified reserves evaluator or auditor relieves the reporting issuer of responsibility for information disclosed by it for the purposes of Regulation 51-101.

PART 4 MEASUREMENT

4.1. Consistency in Dates

Section 4.2 of Regulation 51-101 requires consistency in the timing of recording the effects of events or transactions for the purposes of both annual financial statements and annual reserves data disclosure.

To ensure that the effects of events or transactions are recorded, disclosed or otherwise reflected consistently (in respect of timing) in all public disclosure, a reporting issuer will wish to ensure that both its financial auditors and its qualified reserves evaluators or auditors, as well as its directors, are kept apprised of relevant events and transactions, and to facilitate communication between its financial auditors and its qualified reserves evaluators or auditors.

Sections 4 and 12 of volume 1 of the COGE Handbook set out procedures and guidance for the conduct of reserves evaluations and reserves audits, respectively. Section 12 deals with the relationship between a reserves auditor and the client's financial auditor. Section 4, in connection with reserves evaluations, deals somewhat differently with the relationship between the qualified reserves evaluator or auditor and the client's financial auditor. The CSA recommend that qualified reserves evaluators or auditors carry out the procedures discussed in both sections 4 and 12 of volume 1 of the COGE Handbook, whether conducting a reserves evaluation or a reserves audit.

PART 5 REQUIREMENTS APPLICABLE TO ALL DISCLOSURE

5.1. Application of Part 5

Part 5 of Regulation 51-101 imposes requirements and restrictions that apply to all "disclosure" (or, in some cases, all written disclosure) of a type described in section 5.1 of Regulation 51-101. Section 5.1 refers to disclosure that is either

- filed by a reporting issuer with the securities regulatory authority, or

- if not filed, otherwise made to the public or made in circumstances in which, at the time of making the disclosure, the reporting issuer expects, or ought reasonably to expect, the disclosure to become available to the public.

- As such, Part 5 applies to a broad range of disclosure including

- the annual filings required under Part 2 of Regulation 51-101,

- other continuous disclosure filings, including material change reports (which themselves may also be subject to Part 6 of Regulation 51-101),

- public disclosure documents, whether or not filed, including news releases,

- public disclosure made in connection with a distribution of securities, including a prospectus, and

- except in respect of provisions of Part 5 that apply only to written disclosure, public speeches and presentations made by representatives of the reporting issuer on behalf of the reporting issuer.

For these purposes, the CSA consider written disclosure to include any writing, map, plot or other printed representation whether produced, stored or disseminated on paper or electronically. For example, if material distributed at a company presentation refers to BOEs, the material should include, near the reference to BOEs, the cautionary statement required by paragraph 5.14(d) of Regulation 51-101.

To ensure compliance with the requirements of Part 5, the CSA encourage reporting issuers to involve a qualified reserves evaluator or auditor, or other person who is familiar with Regulation 51-101 and the COGE Handbook, in the preparation, review or approval of all such oil and gas disclosure.

5.2. Disclosure of Reserves and Other Information

(1) **General** – A reporting issuer must comply with the requirements of section 5.2 in its disclosure, to the public, of reserves estimates and other information of a type specified in Form 51-101F1. This would include, for example, disclosure of such information in a news release.

(2) **Reserves** – Regulation 51-101 does not prescribe any particular methods of estimation but it does require that a reserve estimate be prepared in accordance with the COGE Handbook. For example, section 5 of volume 1 of the COGE Handbook specifies that, in respect of an issuer's reported proved reserves, there is to be at least a 90 percent probability that the total remaining quantities of oil and gas to be recovered will equal or exceed the estimated total proved reserves.

Additional guidance on particular topics is provided below.

(3) **Possible Reserves** – A possible reserves estimate – either alone or as part of a sum – is often a relatively large number that, by definition, has a low probability of actually being produced. For this reason, the cautionary language prescribed in subparagraph 5.2(a)(v) of Regulation 51-101 must accompany the written disclosure of a possible reserves estimate.

(4) **Probabilistic and Deterministic Evaluation Methods** – Section 5 of volume 1 of the COGE Handbook states that "In principle, there should be no difference between estimates prepared using probabilistic or deterministic methods".

When deterministic methods are used, in the absence of a "mathematically derived quantitative measure of probability", the classification of reserves is based on professional judgment as to the quantitative measure of certainty attained.

When probabilistic methods are used in conjunction with good engineering and geological practice, they will provide more statistical information than the conventional deterministic method. The following are a few critical criteria that an evaluator must satisfy when applying probabilistic methods:

- The evaluator must still estimate the reserves applying the definitions and using the guidelines set out in the COGE Handbook.

- Entity level probabilistic reserves estimates should be aggregated arithmetically to provide reported level reserves.

- If the evaluator also prepares aggregate reserves estimates using probabilistic methods, the evaluator should explain in the evaluation report the method used. In particular, the evaluator should specify what confidence levels were used at the entity, property, and reported (i.e., total) levels for each of proved, proved + probable and proved + probable + possible (if reported) reserves.

- If the reporting issuer discloses the aggregate reserves that the evaluator prepared using probabilistic methods, the issuer should provide a brief

explanation, near its disclosure, about the reserves definitions used for estimating the reserves, about the method that the evaluator used, and the underlying confidence levels that the evaluator applied.

(5) **Availability of Funding** – In assigning reserves to an undeveloped property, the reporting issuer is not required to have the funding available to develop the reserves, since they may be developed by means other than the expenditure of the reporting issuer's funds (for example by a farm-out or sale). Reserves must be estimated assuming that development of the properties will occur without regard to the likely availability of funding required for that property. The reporting issuer's evaluator is not required to consider whether the reporting issuer will have the capital necessary to develop the reserves. (See section 7 of COGE Handbook and subparagraph 5.2(a)(iv) of Regulation 51-101.)

However, item 5.3 of Form 51-101F1 requires a reporting issuer to discuss its expectations as to the sources and costs of funding for estimated future development costs. If the issuer expects that the costs of funding would make development of a property unlikely, then even if reserves were assigned, it must also discuss that expectation and its plans for the property.

Disclosure of an estimate of reserves, contingent resources or prospective resources in respect of which timely availability of funding for development is not assured may be misleading if that disclosure is not accompanied, proximate to it, by a discussion (or a cross-reference to such a discussion in other disclosure filed by the reporting issuer on SEDAR) of funding uncertainties and their anticipated effect on the timing or completion of such development (or on any particular stage of multi-stage development such as often observed in oilsands developments).

(6) **Proved or Probable Undeveloped Reserves** – Proved or probable undeveloped reserves must be reported in the year in which they are recognized. If the reporting issuer does not disclose the proved or probable undeveloped reserves just because it has not yet spent the capital to develop these reserves, it may be omitting material information, thereby causing the reserves disclosure to be misleading. If the proved or probable undeveloped reserves are not disclosed to the public, then those who have a special relationship with the issuer and know about the existence of these reserves would not be permitted to purchase or sell the securities of the issuer until that information has been disclosed. If the issuer has a prospectus, the prospectus might not contain full true and plain disclosure of all material facts if it does not contain information about these proved or probable undeveloped reserves.

(7) **Mechanical Updates** – So-called “mechanical updates” of reserves reports are sometimes created, often by rerunning previous evaluations with a new price deck. This is problematic since there may have been material changes other than price that may lead to the report being misleading. If a reporting issuer discloses the results of the mechanical update it should ensure that all relevant material changes are also disclosed to ensure that the information is not misleading.

5.3. Classification of Reserves and of Resources Other than Reserves

Section 5.3 of Regulation 51-101 requires that any disclosure of reserves or of resources other than reserves must apply the applicable categories and terminology set out in the COGE Handbook. The definitions of various resource categories, derived from the COGE Handbook, are provided in the Regulation 51-101 Glossary. In addition, section 5.3 of Regulation 51-101 requires that disclosure of reserves or of resources other than reserves must relate to the most specific category of reserves or of resources other than reserves in which the reserves or resources other than reserves can be classified. For instance, there are several subcategories of discovered resources including reserves, contingent resources and discovered unrecoverable resources.

Reserves can be characterized as proved, probable or possible reserves, according to the probability that such quantities will actually be produced. As described in the COGE

Handbook, proved, probable and possible reserves represent conservative, realistic and optimistic estimates of reserves, respectively. Therefore, any disclosure of reserves must indicate whether they are proved, probable or possible reserves.

Reporting issuers that disclose resources other than reserves must identify those resources as discovered or undiscovered resources except in exceptional circumstances where the most specific category is total petroleum initially-in-place, discovered petroleum initially-in-place or undiscovered petroleum initially-in-place, in which case the reporting issuer must comply with subsection 5.16(3) of Regulation 51-101.

For further guidance on disclosure of reserves and of resources other than reserves, see sections 5.2 and 5.5 of this Policy Statement.

5.4. Written Consents

Section 5.7 of Regulation 51-101 restricts a reporting issuer's use of a report of a qualified reserves evaluator or auditor without written consent. The consent requirement does not apply to the direct use of the report for the purposes of Regulation 51-101 (filing Form 51-101F1 or making direct or indirect reference to the conclusions of that report in the filed Form 51-101F1 and Form 51-101F3). The qualified reserves evaluator or auditor retained to report to a reporting issuer for the purposes of Regulation 51-101 is expected to anticipate these uses of the report. However, further use of the report (for example, in a securities offering document or in other news releases) would require written consent.

5.5. Disclosure of Resources Other than Reserves

(1) Disclosure of Resources Generally - The disclosure of resources, excluding proved and probable reserves, is not mandatory under Regulation 51-101, except that a reporting issuer must make disclosure concerning its unproved properties and resource activities in its annual filings as described in Part 6 of Form 51-101F1. Additional disclosure beyond this is voluntary and must comply with section 5.9 of Regulation 51-101 if anticipated results from the resources other than reserves are voluntarily disclosed.

For prospectuses, the general securities disclosure obligation of "full, true and plain" disclosure of all material facts would require the disclosure of reserves or of resources other than reserves that are material to the issuer, even if the disclosure is not mandated by Regulation 51-101. Any such disclosure should be based on supportable analysis.

Disclosure of resources other than reserves may involve the use of statistical measures that may be unfamiliar to a user. It is the responsibility of the evaluator and the reporting issuer to be familiar with these measures and for the reporting issuer to be able to explain them to investors. Information on statistical measures may be found in the COGE Handbook (section 9 of volume 1 and section 4 of volume 2) and in the extensive technical literature4 on the subject.

(2) **Disclosure of Anticipated Results under Subsection 5.9(1) of Regulation 51-101** If a reporting issuer voluntarily discloses anticipated results from resources that are not classified as reserves, it must disclose certain basic information concerning the resources, which is set out in subsection 5.9(1) of Regulation 51-101. Additional disclosure requirements arise if the anticipated results disclosed by the issuer include an estimate of a resource quantity or associated value, as set out below in subsection 5.5(3).

If a reporting issuer discloses anticipated results relating to numerous aggregated properties, prospects or resources, the issuer may, depending on the circumstances, satisfy the requirements of subsection 5.9(1) by providing summarized information in respect of each prescribed requirement. The reporting issuer must ensure that its disclosure is reasonable, meaningful and at a level appropriate to its size. For a reporting issuer with only few properties, it may be appropriate to make the disclosure for each property. Such disclosure may be unreasonably onerous for a reporting issuer with many properties, and it may be more appropriate to summarize the information by major areas or for major

projects. However, the convenience of aggregating properties will not justify disclosure of resources in a category or subcategory less specific than would otherwise be possible, and required to be disclosed by subsection 5.3(1) of Regulation 51-101.

In respect of the requirement to disclose the risk and level of uncertainty associated with the anticipated result under paragraph 5.9(1)(d) of Regulation 51-101, risk and uncertainty are related concepts. Section 9 of volume 1 of the COGE Handbook provides the following definition of risk:

"Risk refers to a likelihood of loss and … It is less appropriate to reserves evaluation because economic viability is a prerequisite for defining reserves."

The concept of risk may have some limited relevance in disclosure related to reserves, for instance, for incremental reserves that depend on the installation of a compressor, the likelihood that the compressor will be installed. Risk is often relevant to the disclosure of resource categories other than reserves, in particular the likelihood that an exploration well will, or will not, be successful.

Section 9 of volume 1 of the COGE Handbook provides the following definition of uncertainty:

"Uncertainty is used to describe the range of possible outcomes of a reserves estimate."

However, the concept of uncertainty is generally applicable to any estimate, including not only reserves, but also to all other categories of resource.

In satisfying the requirement of paragraph 5.9(1)(d) of Regulation 51-101, a reporting issuer should ensure that their disclosure includes the risks and uncertainties that are appropriate and meaningful for their activities. This may be expressed quantitatively as probabilities or qualitatively by appropriate description. If the reporting issuer chooses to express the risks and level of uncertainty qualitatively, the disclosure must be meaningful and not in the nature of a general disclaimer.

If the reporting issuer discloses the estimated value of an unproved property other than a value attributable to an estimated resource quantity, then the issuer must disclose the basis of the calculation of the value, in accordance with paragraph 5.9(1)(e). This type of value is typically based on petroleum land management practices that consider activities and land prices in nearby areas. If done independently, it would be done by a valuator with petroleum land management expertise who would generally be a member of a professional organization such as the Canadian Association of Petroleum Landmen. This is distinguishable from the determination of a value attributable to an estimated resource quantity, as contemplated in subsection 5.9(2). This latter type of value estimate must be prepared by a qualified reserves evaluator or auditor.

The calculation of an estimated value described in paragraph 5.9(1)(e) may be based on one or more of the following factors:

- the acquisition cost of the unproved property to the reporting issuer, provided there have been no material changes in the unproved property, the surrounding properties, or the general oil and gas economic climate since acquisition;

- recent sales by others of interests in the same unproved property;

- terms and conditions, expressed in monetary terms, of recent farm-in agreements related to the unproved property;

- terms and conditions, expressed in monetary terms, of recent work commitments related to the unproved property;

- recent sales of similar properties in the same general area;
- recent exploration and discovery activity in the general area;
- the remaining term of the unproved property; or
- burdens (such as overriding royalties) that impact on the value of the property.

The reporting issuer must disclose the basis of the calculation of the value of the unproved property, which may include one or more of the above-noted factors.

The reporting issuer must also disclose whether the value was prepared by an independent party. In circumstances in which paragraph 5.9(1)(e) applies and where the value is prepared by an independent party, in order to ensure that the reporting issuer is not making public disclosure of misleading information, the CSA expect the reporting issuer to provide all relevant information to the valuator to enable the valuator to prepare the estimate.

(3) **Disclosure of an Estimate of Quantity or Associated Value of a Resource under Subsection 5.9(2) of Regulation 51-101**

(a) Overview of Subsection 5.9(2) of Regulation 51-101

Pursuant to subsection 5.9(2) of Regulation 51-101, if a reporting issuer discloses an estimate of a resource quantity or an associated value, the estimate must have been prepared by a qualified reserves evaluator or auditor. If a reporting issuer obtains or carries out an evaluation of resources and wishes to file or disseminate a report in a format comparable to that prescribed in Form 51-101F2, it may do so. However, the title of such a form must not contain the term "Form 51-101 F2" as this form is specific to the evaluation of reserves data. Reporting issuers must modify the report on resources to reflect that reserves data is not being reported. A heading such as "Report on Resource Estimate by Independent Qualified Reserves Evaluator or Auditor" may be appropriate. Although such an evaluation is required to be carried out by a qualified reserves evaluator or auditor, there is no requirement that it be independent. If an independent party does not prepare the report, reporting issuers should consider amending the title or content of the report to make it clear that the report has not been prepared by an independent party and the resource estimate is not an independent resource estimate.

The COGE Handbook recommends the use of probabilistic evaluation methods for making resource estimates, and although it does not provide detailed guidance there is a considerable amount of technical literature on the subject.

Pursuant to section 5.3 of Regulation 51-101, the reporting issuer must ensure that the estimated resource relates to the most specific category of resources in which the resource can be classified. As discussed above in subsection 5.5(2) of this Policy Statement, if a reporting issuer wishes to disclose an aggregate resource estimate which involves the aggregation of numerous properties, prospects or resources, it must ensure that the disclosure does not result in a contravention of the requirement in subsection 5.3(1) of Regulation 51-101.

Subsection 5.9(2) requires the reporting issuer to disclose certain information in addition to that prescribed in subsection 5.9(1) of Regulation 51-101 to assist recipients of the disclosure in understanding the nature of risks associated with the estimate. This information includes a definition of the resource category used for the estimate, disclosure of factors relevant to the estimate and cautionary language.

(b) Definitions of Resource Categories

For the purpose of complying with the requirement of defining the resource category, the reporting issuer must ensure that disclosure of the definition is consistent with the resource categories and terminology set out in the COGE Handbook, pursuant to section 5.3 of Regulation 51-101. Section 5 of volume 1 of the COGE Handbook and the Regulation 51-101 Glossary identify and define the various resource categories.

A reporting issuer may wish to report reserves or resources other than reserves as "in-place volumes". By definition, reserves of any type, contingent resources and prospective resources are estimates of volumes that are recoverable or potentially recoverable and, as such, cannot be described as being "in-place". Terms such as "potential reserves", "undiscovered reserves", "reserves in place", "in-place reserves" or similar terms must not be used because they are incorrect and misleading. The disclosure of reserves or of resources other than reserves must be consistent with the terminology and categories set out in the COGE Handbook, pursuant to section 5.3 of Regulation 51-101.

In addition to disclosing the most specific category of resource, the reporting issuer may disclose total petroleum initially-in-place, discovered petroleum initially-in-place or undiscovered petroleum initially-in-place estimates provided that the additional disclosure required by subsection 5.16(3) of Regulation 51-101 is included.

(c) Application of Subsection 5.9(2) of Regulation 51-101

If the reporting issuer discloses an estimate of a resource quantity or associated value, the reporting issuer must additionally disclose the following:

(i) a definition of the resource category used for the estimate;

(ii) the effective date of the estimate;

(ii) significant positive and negative factors relevant to the estimate;

(iv) the contingencies which prevent the classification of a contingent resource as a reserve; and

(v) cautionary language as prescribed by subparagraph 5.9(2)(d)(v) of Regulation 51-101.

The resource estimate may be disclosed as a single quantity such as a median or mean, representing the best estimate. Frequently, however, the estimate consists of three values that reflect a range of reasonable likelihoods (the low value reflecting a conservative estimate, the middle value being the best estimate, and the high value being an optimistic estimate).

Guidance concerning defining the resource category is provided above in section 5.3 and paragraph 5.5(3)(b) of this Policy Statement.

Reporting issuers are required to disclose significant positive and negative factors relevant to the estimate pursuant to subparagraph 5.9(2)(d)(iii). For example, if there is no infrastructure in the region to transport the resource, this may constitute a significant negative factor relevant to the estimate. Other examples would include a significant lease expiry or any legal, capital, political, technological, business or other factor that is highly relevant to the estimate. To the extent that the reporting issuer discloses an estimate for numerous properties that are aggregated, it may disclose significant positive and negative factors relevant to the aggregate estimate, unless discussion of a particular material resource or property is warranted in order to provide adequate disclosure to investors.

The cautionary language in subparagraph 5.9(2)(d)(v) includes a prescribed disclosure that there is no certainty that it will be commercially viable to produce any

portion of the resources. The concept of commercial viability would incorporate the meaning of the word “commercial” provided in the Regulation 51-101 Glossary.

The general disclosure requirements of paragraph 5.9(2)(d) of Regulation 51-101 may be illustrated by an example. If a reporting issuer discloses, for example, an estimate of a volume of its bitumen which is a contingent resource to the issuer, the disclosure would include information of the following nature:

The reporting issuer holds a [?] interest in [provide description and location of interest]. As of [?] date, it estimates that, in respect of this interest, it has [?] bbls of bitumen, which would be classified as a contingent resource. A contingent resource is defined as [cite current definition in the COGE Handbook]. There is no certainty that it will be commercially viable to produce any portion of the resource. The contingencies which currently prevent the classification of the resource as a reserve are [state specific capital costs required to render production economic, applicable regulatory considerations, pricing, specific supply costs, technological considerations, and/or other relevant factors]. A significant factor relevant to the estimate is [e.g.] an existing legal dispute concerning title to the interest.

To the extent that this information is provided in a previously filed document, and it relates to the same interest in resources, the issuer can omit disclosure of significant positive and negative factors relevant to the estimate and the contingencies which prevent the classification of the resource as a reserve. However, the issuer must make reference in the current disclosure to the title and date of the previously filed document.

5.6. Analogous Information

A reporting issuer may wish to base an estimate on, or include comparative analogous information for their area of interest, such as reserves, resources, and production, from fields or wells, in nearby or geologically similar areas. Particular care must be taken in using and presenting this type of information. Using only the best wells or fields in an area, or ignoring dry holes, for instance, may be particularly misleading. It is important to present a factual and balanced view of the information being provided.

The reporting issuer must comply with the disclosure requirements of section 5.10 of Regulation 51-101, when it discloses analogous information, as that term is broadly defined in Regulation 51-101, for an area which includes an area of the reporting issuer’s area of interest. Pursuant to subsection 5.10(2) of Regulation 51-101, if the issuer discloses an estimate of its own reserves or resources based on an extrapolation from the analogous information, or if the analogous information itself is an estimate of its own reserves or resources, the issuer must ensure the estimate is prepared in accordance with the COGE Handbook and disclosed in accordance with Regulation 51-101 generally. For example, in respect of a reserves estimate, the estimate must be classified and prepared in accordance with the COGE Handbook by a qualified reserves evaluator or auditor and must otherwise comply with the requirements of section 5.2 of Regulation 51-101.

5.7. Consistent Use of Units of Measurement

Reporting issuers should be consistent in their use of units of measurement within and between disclosure documents, to facilitate understanding and comparison of the disclosure. For example, reporting issuers should not, without compelling reason, switch between imperial units of measure (such as barrels) and Système International (SI) units of measurement (such as tonnes) within or between disclosure documents. Issuers should refer to Appendices B and C of volume 1 of the COGE Handbook for the proper reporting of units of measurement.

In all cases, in accordance with subparagraph 5.2(a)(iii) and section 5.3 of Regulation 51-101, reporting issuers should apply the relevant terminology and unit prefixes set out in the COGE Handbook.

5.8. BOEs and McfGEs

Section 5.14 of Regulation 51-101 sets out requirements that apply if a reporting issuer chooses to make disclosure using units of equivalency such as BOEs or McfGEs. The requirements include prescribed methods of calculation and cautionary disclosure as to the possible limitations of those calculations. Section 13 of the COGE Handbook, under the heading "Barrels of Oil Equivalent", provides additional guidance.

5.9. Finding and Development costs

Section 5.15 of Regulation 51-101 sets out requirements that apply if a reporting issuer chooses to make disclosure of finding and development costs.

Because the prescribed methods of calculation under section 5.15 involve the use of BOEs, section 5.14 of Regulation 51-101 necessarily applies to disclosure of finding and development costs under section 5.15. As such, the finding and development cost calculations must apply a conversion ratio as specified in section 5.14 and the cautionary disclosure prescribed in section 5.14 will also be required.

BOEs are based on imperial units of measurement. If the reporting issuer uses other units of measurements (such as SI or "metric" measures), any corresponding departure from the requirements of section 5.15 should reflect the use of units other than BOEs.

5.9.1. Summation of Resource Categories

An estimate of quantity or an estimate of value constitutes a summation, disclosure of which is prohibited by subsection 5.16(1) of Regulation 51-101, if that estimate reflects a combination of estimates, known or available to the reporting issuer, for two or more of the subcategories enumerated in that provision. There may be circumstances in which a disclosed estimate was arrived at in accordance with the COGE Handbook without combining, and without the reporting issuer knowing or having access to, estimates in two or more of those enumerated categories. Disclosure of such an estimate would not generally be considered to constitute a summation for purposes of that provision.

5.10 Prospectus Disclosure

In addition to the general disclosure requirements in Regulation 51-101 which apply to prospectuses, the following commentary provides additional guidance on topics of frequent enquiry.

(1) **Significant Acquisitions or Major Acquisitions** – To the extent that an issuer engaged in oil and gas activities discloses a significant acquisition or major acquisition in its prospectus, it must disclose sufficient information for a reader to determine how the acquisition affected the reserves data and other information previously disclosed in the issuer's Form 51-101F1. This requirement stems from Part 6 of Regulation 51-101 with respect to material changes. This is in addition to specific prospectus requirements for financial information satisfying significant acquisitions or major acquisitions.

(2) **Disclosure of Resources** – The disclosure of resources, excluding proved and probable reserves, is generally not mandatory under Regulation 51-101, except for certain disclosure concerning the issuer's unproved properties and resource activities as described in Part 6 of Form 51-101F1, which information would be incorporated into the prospectus. Additional disclosure beyond this is voluntary and must comply with sections 5.9, 5.10 and 5.16 of Regulation 51-101, as applicable. However, the general securities disclosure obligation of "full, true, and plain" disclosure of all material facts in a prospectus would require the disclosure of resources that are material to the issuer, even if the disclosure is not mandated by Regulation 51-101. Any such disclosure should be based on supportable analysis.

(3) **Proved or Probable Undeveloped reserves** – Further to the guidance provided in subsection 5.2(4) of this Policy Statement, proved or probable undeveloped reserves must be reported in the year in which they are recognized. If the reporting issuer does not disclose the proved or probable undeveloped reserves just because it has not yet spent the capital to develop these reserves, it may be omitting material information, thereby causing the reserves disclosure to be misleading. If the issuer has a prospectus, the prospectus might not contain full, true and plain disclosure of all material facts if it does not contain information about these proved undeveloped reserves.

(4) **Reserves Reconciliation in an Initial Public Offering** – In an initial public offering, if the issuer does not have a reserves report as at its prior year-end, or if this report does not provide the information required to carry out a reserves reconciliation pursuant to item 4.1 of Form 51-101F1, the CSA may consider granting relief from the requirement to provide the reserves reconciliation. A condition of the relief may include a description in the prospectus of relevant changes in any of the categories of the reserves reconciliation.

(5) **Relief to Provide More Recent Form 51-101F1 Information in a Prospectus** – If an issuer is filing a preliminary prospectus and wishes to disclose reserves data and other oil and gas information as at a more recent date than its applicable year-end date, the CSA may consider relieving the issuer of the requirement to disclose the reserves data and other information as at year-end.

An issuer may determine that its obligation to provide full, true and plain disclosure obliges it to include in its prospectus reserves data and other oil and gas information as at a date more recent than specified in the prospectus requirements. The prospectus requirements state that the information must be as at the issuer's most recent financial year-end in respect of which the prospectus includes financial statements. The prospectus requirements, while certainly not presenting an obstacle to such more current disclosure, would nonetheless require that the corresponding information also be provided as at that financial year-end.

We would consider granting relief on a case-by-case basis to permit an issuer in these circumstances to include in its prospectus the oil and gas information prepared with an effective date more recent than the financial year-end date, without also including the corresponding information effective as at the year-end date. A consideration for granting this relief may include disclosure of Form 51-101F1 information with an effective date that coincides with the date of interim financial statements. The issuer should request such relief in the covering letter accompanying its preliminary prospectus. The grant of the relief would be evidenced by the prospectus receipt.

PART 6 MATERIAL CHANGE DISCLOSURE

6.1. Changes from Filed Information

Part 6 of Regulation 51-101 requires the inclusion of specified information in disclosure of certain material changes.

The information to be filed each year under Part 2 of Regulation 51-101 is prepared as at, or for a period ended on, the reporting issuer's most recent financial year-end. That date is the effective date referred to in subsection 6.1(1) of Regulation 51-101. When a material change occurs after that date, the filed information may no longer, as a result of the material change, convey meaningful information, or the original information may have become misleading in the absence of updated information.

Part 6 of Regulation 51-101 requires that the disclosure of the material change include a discussion of the reporting issuer's reasonable expectation of how the material change has affected the issuer's reserves data and other information contained in its filed disclosure. This would not necessarily require that an evaluation be carried out. However, the reporting issuer should ensure it complies with the general disclosure requirements set out in Part 5, as applicable. For example, if the material change report discloses an updated

reserves estimate, this should be prepared in accordance with the COGE Handbook and by a qualified reserves evaluator or auditor.

This material change disclosure can reduce the likelihood of investors being misled, and maintain the usefulness of the original filed oil and gas information when the two are read together.

APPENDIX 1
SAMPLE RESERVES DATA DISCLOSURE

Format of Disclosure

Regulation 51-101 and Form 51-101F1 do not mandate the format of the disclosure of reserves data and related information by reporting issuers. However, the CSA encourages reporting issuers to use the format presented in this Appendix.

Whatever format and level of detail a reporting issuer chooses to use in satisfying the requirements of Regulation 51-101, the objective should be to enable reasonable investors to understand and assess the information, and compare it to corresponding information presented by the reporting issuer for other reporting periods or to similar information presented by other reporting issuers, in order to be in a position to make informed investment decisions concerning securities of the reporting issuer.

A logical and legible layout of information, use of descriptive headings, and consistency in terminology and presentation from document to document and from period to period, are all likely to further that objective.

Reporting issuers and their advisers are reminded of the materiality standard under section 1.4 of Regulation 51-101, and of the instructions in Form 51-101F1.

See also sections 1.4, 2.2 and 2.3 and subsections 2.7(8) and 2.7(9) of Policy Statement 51-101CP.

Sample Tables

The following sample tables provide an example of how certain of the reserves data might be presented in a manner consistent with Regulation 51-101.

These sample tables do not reflect all of the information required by Form 51-101F1, and they have been simplified to reflect reserves in one country only. For the purpose of illustration, the sample tables also incorporate information not mandated by Regulation 51-101 but which reporting issuers might wish to include in their disclosure; shading indicates this non-mandatory information.

NATIONAL POLICY 51-201: DISCLOSURE STANDARDS

PART I INTRODUCTION

1.1 Purpose

(1) It is fundamental that everyone investing in securities have equal access to information that may affect their investment decisions. The Canadian Securities Administrators ("the CSA" or "We") are concerned about the selective disclosure of material corporate information by companies to analysts, institutional investors, investment dealers and other market professionals. Selective disclosure occurs when a company discloses material nonpublic information to one or more individuals or companies and not broadly to the investing public. Selective disclosure can create opportunities for insider trading and also undermines retail investors' confidence in the marketplace as a level playing field.

(2) This policy provides guidance on "best disclosure" practices in a difficult area involving competing business pressures and legislative requirements. Our recommendations are not intended to be prescriptive. We encourage companies to adopt the suggested measures, but they should be implemented flexibly and sensibly to fit the situation of individual companies.

(3) The timely disclosure requirements and prohibitions against selective disclosure are substantially similar everywhere in Canada, but there are differences among the provinces and territories, so companies should carefully review the legislation which is applicable to them for the details.

PART II TIMELY DISCLOSURE

2.1 Timely Disclosure

(1) Companies are required by law to immediately disclose a "material change" in their business. For changes that a company initiates, the change occurs once the decision has been made to implement it. This may happen even before a company's directors approve it, if the company thinks it is probable they will do so. A company discloses a material change by issuing and filing a press release describing the change. A company must also file a material change report or Report of Material Change, Material Related Entity Transaction or Major Acquisition, as applicable, as soon as practicable, and no later than 10 days after the change occurs. This policy statement does not alter in any way the timely disclosure obligations of companies.

(2) Announcements of material changes should be factual and balanced. Unfavourable news must be disclosed just as promptly and completely as favourable news. Companies that disclose positive news but withhold negative news could find their disclosure practices subject to scrutiny by securities regulators. A company's press release should contain enough detail to enable the media and investors to understand the substance and importance of the change it is disclosing. Avoid including unnecessary details, exaggerated reports or promotional commentary.

2.2 Confidentiality

(1) Securities legislation permits a company to delay disclosure of a material change and to keep it confidential temporarily where immediate release of the information would be unduly detrimental to the company's interests. For example, immediate disclosure might interfere with a company's pursuit of a specific objective or strategy, with ongoing negotiations, or with its ability to complete a transaction. If the harm to a company's business from disclosing outweighs the general benefit to the market of immediate disclosure, withholding disclosure is justified. In such cases a company may withhold public disclosure, but it must make a confidential filing with the securities commission. Certain jurisdictions also require companies to renew the confidential filing every 10 days should they want to continue to keep the information confidential.

(2) We discourage companies from delaying disclosure for a lengthy period of time as it becomes less likely that confidentiality can be maintained beyond the short term.

2.3 Maintaining Confidentiality

(1) Where disclosure of a material change is delayed, a company must maintain complete confidentiality. During the period before a material change is disclosed, market activity in the company's securities should be carefully monitored. Any unusual market activity may mean that news of the matter has been leaked and that certain persons are taking advantage of it. If the confidential material change, or rumours about it, have leaked or appear to be impacting the share price, a company should take immediate steps to ensure that a full public announcement is made. This would include contacting the relevant exchange and asking that trading be halted pending the issuance of a news release.

(2) Where a material change is being kept confidential, the company is under a duty to make sure that persons with knowledge of the material change have not made use of such information in purchasing or selling its securities. Such information should not be disclosed to any person or company, except in the necessary course of business.

PART III OVERVIEW OF THE STATUTORY PROHIBITIONS AGAINST SELECTIVE DISCLOSURE

3.1 Tipping and Insider Trading

(1) Securities legislation prohibits a reporting issuer and any person or company in a special relationship with a reporting issuer from informing, other than in the necessary course of business, anyone of a "material fact" or a "material change" (or "privileged information" in the case of Québec) before that material information has been generally disclosed. This prohibited activity is commonly known as "tipping".

(2) Securities legislation also prohibits anyone in a special relationship with a reporting issuer from purchasing or selling securities of the reporting issue with knowledge of a material fact or material change about the issuer that has not been generally disclosed. This prohibited activity is commonly known as "insider trading".

(3) Securities legislation prohibits any person or company who is proposing:

- to make a take-over bid;
- to become a party to a reorganization, amalgamation, merger, arrangement or similar business combination; or
- to acquire a substantial portion of a company's property

from informing anyone of material information that has not been generally disclosed. An exception to this disclosure prohibition is provided where the material

information is given in the "necessary course of business" to effect the take-over bid, business combination or acquisition.

(4) It is important to remember that the tipping and insider trading provisions apply to both material facts and material changes. A company's timely disclosure obligations generally only apply to material changes. This means that a company does not have to disclose all material facts on a continuous basis. However, if a company chooses to selectively disclose a material fact, other than in the necessary course of business, this would be in breach of securities legislation.

3.2 Persons Subject to Tipping Provisions

(1) The tipping provisions generally apply to anyone in a "special relationship" with a reporting issuer. Persons in a special relationship include, but are not limited to:

(a) insiders as defined under securities legislation;

(b) directors, officers and employees;

(c) persons engaging in professional or business activities for or on behalf of the company; and

(d) anyone (a "tippee") who learns of material information from someone that the tippee knows or should know is a person in a special relationship with the company.

(2) The "special relationship" definition is broad. The tipping prohibition is not limited to communications made by senior management, investor relations professionals and others who regularly communicate with analysts, institutional investors and market professionals. The tipping prohibition applies, for example, to unauthorized disclosures by non-management employees.

(3) There is a potentially infinite chain of tippees who are caught by the prohibitions against tipping and insider trading. Because tippees are themselves considered to be in a special relationship with a reporting issuer, material information may be third or fourth hand and still be subject to the prohibitions.

(4) Because the "special relationship" definition is so broad, it is important that companies establish corporate disclosure policies and clearly define who within the company has responsibility for corporate communications.

3.3 Necessary Course of Business

(1) The "tipping" provision allows a company to make a selective disclosure if doing so is in the "necessary course of business". The question of whether a particular disclosure is being made in the necessary course of business is a mixed question of law and fact that must be determined in each case and in light of the policy reasons for the tipping provisions. Tipping is prohibited so that everyone in the market has equal access to, and opportunity to act upon, material information. Insider trading and tipping prohibitions are designed to ensure that anyone who has access to material undisclosed information does not trade or assist others in trading to the disadvantage of investors generally.

(2) Different interpretations are being applied, in practice, to the phrase "necessary course of business". As a result, we believe interpretive guidance in this regard is necessary. The "necessary course of business" exception exists so as not to unduly interfere with a company's ordinary business activities. For example, the "necessary course of business" exception would generally cover communications with:

(a) vendors, suppliers, or strategic partners on issues such as research and development, sales and marketing, and supply contracts;

(b) employees, officers, and board members;

(c) lenders, legal counsel, auditors, underwriters, and financial and other professional advisors to the company;

(d) parties to negotiations;

(e) labour unions and industry associations;

(f) government agencies and non-governmental regulators; and

(g) credit rating agencies (provided that the information is disclosed for the purpose of assisting the agency to formulate a credit rating and the agency's ratings generally are or will be publicly available).

(3) Securities legislation prohibits any person or company that is proposing to make a take-over bid, become a party to a reorganization, amalgamation, merger, arrangement or similar business combination or acquire a substantial portion of a company's property from informing anyone of material information that has not been generally disclosed. An exception to this prohibition is provided where the material information is given in the "necessary course of business" to effect the take-over bid, business combination or acquisition.

(4) Disclosures by a company in connection with a private placement may be in the "necessary course of business" for companies to raise financing. The ability to raise financing is important. We recognize that select communications between the parties to a private placement of material information may be necessary to effect the private placement. Communications to controlling shareholders may also, in certain circumstances, be considered in the "necessary course of business." Nevertheless, we believe that in these situations, material information that is provided to private placees and controlling shareholders should be generally disclosed at the earliest opportunity.

(5) The "necessary course of business" exception would not generally permit a company to make a selective disclosure of material corporate information to an analyst, institutional investor or other market professional.

(6) There may be situations where an analyst will be "brought over the wall" to act as an advisor in a specific transaction involving a reporting issuer they would normally issue research about. In these situations, the analyst becomes a "person in a special relationship" with the reporting issuer and is subject to the prohibitions against tipping and insider trading. This means that the analyst is prohibited from further informing anyone of material undisclosed information they learn in this advisory capacity, including issuing any research recommendations or reports.

(7) We draw a distinction between disclosures to credit rating agencies, which would generally be regarded as being in the "necessary course of business," and disclosures to analysts, which would not be. This distinction is based on differences in the nature of the business they are engaged in and in how they use the information. The credit ratings generated by rating agencies are either confidential (disclosed only to the company seeking the rating) or directed at a wide public audience. Generally, the objective of the rating process is a widely available publication of the rating.

The reports generated by analysts are targeted, first and foremost, to an analyst's firm's clients. Also, rating agencies are not in the business of trading in the securities they rate. Sell-side analysts are typically employed by investment dealers that are in the business of buying and selling, underwriting, and advising with respect to securities. Further, securities legislation requires specified ratings from approved rating agencies in certain circumstances. Consequently, ratings form part of the statutory framework of provincial securities legislation in a way that analysts' reports do not.

(8) When companies communicate with the media, they should be mindful not to selectively disclose material information that has not been generally disclosed. The "necessary course of business" exception would not generally permit a company to make a selective disclosure of material undisclosed information to the media. However, we are not suggesting that companies should stop speaking to the media. We recognize that the media can play an important role in informing and educating the marketplace.

3.4 Necessary Course of Business Disclosures and Confidentiality

(1) If a company discloses material information under the "necessary course of business" exception, it should make sure those receiving the information understand that they cannot pass the information onto anyone else (other than in the necessary course of business), or trade on the information, until it has been generally disclosed.

(2) We understand that companies sometimes disclose material information pursuant to a confidentiality agreement with the recipient, so that the recipient is prevented from further informing anyone of the material information. Obtaining a confidentiality agreement in these circumstances can be a good practice and may help to safeguard the confidentiality of the information. However, there is no exception to the prohibition against "tipping" for disclosures made pursuant to a confidentiality agreement. The only exception is for disclosures made in the "necessary course of business." Consequently, there must still be a determination, prior to disclosure supported by a confidentiality agreement, that such disclosure is in the "necessary course of business."

3.5 Generally Disclosed

(1) The tipping prohibition does not require a company to release all material information to the marketplace. Instead, it prohibits a company from disclosing nonpublic material information to anyone (other than in the "necessary course of business") before the company generally discloses the information to the marketplace.

(2) Securities legislation does not define the term "generally disclosed". Insider trading court decisions state that information has been generally disclosed if:

(a) the information has been disseminated in a manner calculated to effectively reach the marketplace; and

(b) public investors have been given a reasonable amount of time to analyze the information.

(3) Except for "material changes," which must be disclosed by news release, securities legislation does not generally require a particular method of disclosure to satisfy the "generally disclosed" requirement. In determining whether material information has been generally disclosed, we will consider all of the relevant facts and circumstances, including the company's traditional practices for publicly disclosing information and how broadly investors and the investment community follow the company. We recognize that the effectiveness of disclosure methods varies between companies. Whatever disclosure method is used to release information, we encourage consistency in a company's disclosure practices.

(4) Companies may satisfy the "generally disclosed" requirement by using one or a combination of the following disclosure methods:

(a) News releases distributed through a widely circulated news or wire service.

(b) Announcements made through press conferences or conference calls that interested members of the public may attend or listen to either in person, by telephone, or by other electronic transmission (including the Internet). A company needs to provide the public with appropriate notice of the conference or call by news release. The notice should include the date and time of the conference or call, a general description of what is to be

discussed, and the means of accessing the conference or call. The notice should also indicate for how long the company will make a transcript or replay of the call available over its Web site.

(5) We recognize that many companies prefer news release disclosure as the safest means of satisfying the "generally disclosed" requirement. In section 6.6 of the Policy, we recommend as a "best practice" a disclosure model centred around news release disclosure of material information, followed by an open and accessible conference call to discuss the information contained in the news release. However, we believe that alternative methods may also be appropriate. We believe it is important to preserve for companies the flexibility to develop a disclosure model that suits their circumstances and disseminates material information in the manner best calculated to effectively reach the marketplace.

(6) Posting information to a company's Web site will not, by itself, be likely to satisfy the "generally disclosed" requirement. Investors' access to the Internet is not yet sufficiently widespread such that a Web site posting alone would be a means of dissemination "calculated to effectively reach the marketplace." Further, effective dissemination involves the "pushing out" of information into the marketplace. Notwithstanding the ability of some issuers' Web sites to alert interested parties to new postings, Web sites by and large do not push information out into the marketplace. Instead, investors would be required to seek out this information from a company's Web site. Active and effective dissemination of information is central to satisfying the "generally disclosed" requirement.

(7) We support the use of technology in the disclosure process and believe that companies' Web sites can be an important and useful tool in improving communications to the marketplace. As technology evolves and as more investors gain access to the Internet, it may be that postings to certain companies' Web sites alone could satisfy the "generally disclosed" requirement. At such time, we will revisit this policy statement and reconsider the guidance provided on this issue. In the meantime, we strongly encourage companies to utilize their Web sites to improve investor access to corporate information.

3.6 Unintentional Disclosure

Securities legislation does not provide a safe harbour which allows companies to correct an unintentional selective disclosure of material information. If a company makes an unintentional selective disclosure it should take immediate steps to ensure that a full public announcement is made. This includes contacting the relevant stock exchange and requesting that trading be halted pending the issuance of a news release. Pending the public release of the material information, the company should also tell those parties who have knowledge of the information that the information is material and that it has not been generally disclosed.

3.7 Administrative Proceedings:

(1) We may consider any number of mitigating factors in a selective disclosure enforcement proceeding including:

(a) whether and to what extent a company has implemented, maintained and followed reasonable policies and procedures to prevent contraventions of the tipping provisions;

(b) whether any selective disclosure was unintentional; and

(c) what steps were taken to disseminate information that had been unintentionally disclosed (including how quickly the information was disclosed).

If a company's disclosure record shows a pattern of "unintentional selective disclosures", it will be harder to show that a particular selective disclosure was truly unintentional.

(2) Nothing in this policy statement limits our discretion to request information relating to a possible selective disclosure violation or to take enforcement proceedings within our jurisdiction where there has been a breach of the tipping provisions.

PART IV MATERIALITY

4.1 Materiality Standard

(1) The definitions of "material fact" and "material change" under securities legislation are based on a market impact test. The definition of "privileged information" contained in the "tipping" provision of the securities legislation of Québec is based on a reasonable investor test. Despite these differences, the two materiality standards are likely to converge, for practical purposes, in most cases.

(2) The definition of a "material fact" includes a two part materiality test. A fact is material when it (i) significantly affects the market price or value of a security; or (ii) would reasonably be expected to have a significant effect on the market price or value of a security.

4.2 Materiality Determinations

(1) In making materiality judgements, it is necessary to take into account a number of factors that cannot be captured in a simple bright-line standard or test. These include the nature of the information itself, the volatility of the company's securities and prevailing market conditions. The materiality of a particular event or piece of information may vary between companies according to their size, the nature of their operations and many other factors. An event that is "significant" or "major" for a smaller company may not be material to a larger company. Companies should avoid taking an overly technical approach to determining materiality. Under volatile market conditions, apparently insignificant variances between earnings projections and actual results can have a significant impact on share price once released. For example, information regarding a company's ability to meet consensus earnings published by securities analysts should not be selectively disclosed before general public release.

(2) We encourage companies to monitor the market's reaction to information that is publicly disclosed. Ongoing monitoring and assessment of market reaction to different disclosure will be helpful when making materiality judgements in the future. As a guiding principle, if there is any doubt about whether particular information is material, we encourage companies to err on the side of materiality and release information publicly.

4.3 Examples of Potentially Material Information

The following are examples of the types of events or information which may be material. This list is not exhaustive and is not a substitute for companies exercising their own judgement in making materiality determinations.

Changes in Corporate Structure

- changes in share ownership that may affect control of the company
- major reorganizations, amalgamations, or mergers
- take-over bids, issuer bids, or insider bids

Changes in Capital Structure

- the public or private sale of additional securities
- planned repurchases or redemptions of securities

- ———planned splits of common shares or offerings of warrants or rights to buy shares
- ———any share consolidation, share exchange, or stock dividend
- ———changes in a company's dividend payments or policies
- ———the possible initiation of a proxy fight
- ———material modifications to rights of security holders

Changes in Financial Results

- ———a significant increase or decrease in near-term earnings prospects
- ———unexpected changes in the financial results for any periods
- ———shifts in financial circumstances, such as cash flow reductions, major asset write-offs or write-downs
- ———changes in the value or composition of the company's assets
- ———any material change in the company's accounting policy

Changes in Business and Operations

- ———any development that affects the company's resources, technology, products or markets
- ———a significant change in capital investment plans or corporate objectives
- ———major labour disputes or disputes with major contractors or suppliers
- ———significant new contracts, products, patents, or services or significant losses of contracts or business
- ———significant discoveries by resource companies
- ———changes to the board of directors or executive management, including the departure of the company's CEO, CFO, COO or president (or persons in equivalent positions)
- ———the commencement of, or developments in, material legal proceedings or regulatory matters
- ———waivers of corporate ethics and conduct rules for officers, directors, and other key employees
- ———any notice that reliance on a prior audit is no longer permissible
- ———de-listing of the company's securities or their movement from one quotation system or exchange to another

Acquisitions and Dispositions

- ———significant acquisitions or dispositions of assets, property or joint venture interests

- acquisitions of other companies, including a take-over bid for, or merger with, another company

Changes in Credit Arrangements

- the borrowing or lending of a significant amount of money
- any mortgaging or encumbering of the company's assets
- defaults under debt obligations, agreements to restructure debt, or planned enforcement procedures by a bank or any other creditors
- changes in rating agency decisions
- significant new credit arrangements

4.4 External Political, Economic and Social Developments

Companies are not generally required to interpret the impact of external political, economic and social developments on their affairs. However, if an external development will have or has had a direct effect on the business and affairs of a company that is both material and uncharacteristic of the effect generally experienced by other companies engaged in the same business or industry, the company is urged to explain, where practical, the particular impact on them. For example, a change in government policy that affects most companies in a particular industry does not require an announcement, but if it affects only one or a few companies in a material way, such companies should make an announcement.

4.5 Exchange Policies

(1) The Toronto Stock Exchange Inc. (the "TSX") and the TSX Venture Exchange Inc. ("TSX Venture") each have adopted timely disclosure policy statements which include many examples of the types of events or information which may be material. Companies should also refer to the guidance provided in these policies when trying to assess the materiality of a particular fact, change or piece of information.

(2) The TSX and TSX Venture policies require the timely disclosure of "material information". Material information includes both material facts and material changes relating to the business and affairs of a company. The timely disclosure obligations in the exchanges' policies exceed those found in securities legislation. It is not uncommon, or inappropriate, for exchanges to impose requirements on their listed companies which go beyond those imposed by securities legislation. We expect listed companies to comply with the requirements of the exchange they are listed on. Companies who do not comply with an exchange's requirements could find themselves subject to an administrative proceeding before a provincial securities regulator.

PART V RISKS ASSOCIATED WITH CERTAIN DISCLOSURES

5.1 Private Briefings with Analysts, Institutional Investors and other Market Professionals

(1) The role that analysts play in seeking out information, analyzing and interpreting it and making recommendations can contribute to a more efficient marketplace. Companies should be sensitive though to the risks involved in private meetings with analysts. We are not suggesting that companies should stop having private briefings with analysts or that these private meetings are somehow illegal. Companies should have a firm policy of providing only non-material information and publicly disclosed information to analysts.

(2) Companies should not disclose significant data, and in particular financial information such as sales and profit figures, to analysts, institutional investors and other market professionals selectively rather than to the market as a whole. Earnings forecasts are in the same category. Even within these constraints there is plenty of scope to hold a useful dialogue with analysts and other interested parties about a company's prospects, business environment, management philosophy and long term strategy.

(3) Another way to avoid selective disclosure is to include, in the company's regular periodic disclosures, details about topics of interest to analysts. For example, companies should expand the scope of their interim management's discussion and analysis disclosure ("MD&A"). More comprehensive MD&A can have practical benefits including: greater analyst following; more accurate forecasts with fewer revisions; a narrower range between analysts' forecasts; and increased investor interest.

(4) A company cannot make material information immaterial simply by breaking the information into seemingly non-material pieces. At the same time, a company is not prohibited from disclosing non-material information to analysts, even if these pieces help the analyst complete a "mosaic" of information that, taken together, is material undisclosed information about the company.

5.2 Analyst Reports

(1) It is not unusual for analysts to ask corporate officers to review earnings estimates that they are preparing. A company takes on a high degree of risk of violating securities legislation if it selectively confirms that an analyst's estimate is "on target" or that an analyst's estimate is "too high" or "too low", whether directly or indirectly through implied "guidance".

(2) Even when confirming information previously made public, a company needs to consider whether the selective confirmation itself communicates information above and beyond the initial forecast and whether the additional information is material. This will depend in large part on how much time has passed between the original statement and the company's confirmation, as well as the timing of the two statements relative to the end of the company's fiscal period. For example, a selective confirmation of expected earnings near the end of a quarter is likely to represent guidance (as it may well be based on how the company actually performed). Materiality of a confirmation may also depend on intervening events.

(3) One way companies can try to ensure that analysts' estimates are in line with their own expectations is through the regular and timely public dissemination of qualitative and quantitative information. The better the marketplace is informed, the less likely it is that analysts' estimates will deviate significantly from a company's own expectations.

(4) A company that redistributes an analyst's report to people outside the company risks being seen as endorsing that report. Companies should avoid redistributing analysts' reports to their employees or to people outside the company. If a company elects to post to its Web site or otherwise publish the names of analysts who cover the company and/or their recommendations, the names and/or recommendations of all analysts who cover the company should be similarly posted or published.

5.3 Confidentiality Agreements with Analysts

While we recognize that relying on a confidentiality agreement to safeguard the continued confidentiality of material information can be a prudent practice, there is no exception to the tipping prohibition for disclosures made to an analyst under a confidentiality agreement. If a company discloses material undisclosed information to an analyst, it has violated the prohibition, with or without a confidentiality agreement (unless the disclosure is made in the necessary course of business). Analysts who get an advance private briefing have an advantage. They have more time to prepare and can therefore brief

their firm members and clients sooner than those who did not have access to the information.

5.4 Analysts as "Tippees"

(1) Analysts, institutional investors, investment dealers and other market professionals who receive material undisclosed information from a company are "tippees". It is against the law for a tippee to trade or further inform anyone about such information, other than in the necessary course of business.

(2) We recommend that analysts, institutional investors and other market professionals adopt internal review procedures to help them identify situations where they may have received nonpublic material information and set up guidelines for dealing with such situations.

5.5 Selective Disclosure Violations Can Occur in a Variety of Settings

Selective disclosure most often occurs in one-on-one discussions (like analyst meetings) and in industry conferences and other types of private meetings and break-out sessions. But it can occur elsewhere. For example, a company should not disclose material nonpublic information at its annual shareholders meeting unless all interested members of the public may attend the meeting and the company has given adequate public notice of the meeting (including a description of what will be discussed at the meeting). Alternatively, a company can issue a news release at or before the time of the meeting.

PART VI BEST DISCLOSURE PRACTICES

6.1 General

(1) There are some practical measures that companies can adopt to help ensure good disclosure practices. The consistent application of "best practices" in the disclosure of material information will enhance a company's credibility with analysts and investors, contribute to the fairness and efficiency of the capital markets and investor confidence in those markets, and minimize the risk of non-compliance with securities legislation.

(2) The measures recommended in this policy statement are not intended to be prescriptive. We recognize that many large listed companies have specialist investor relations staff and devote considerable resources to disclosure, while in smaller companies this is often just one of the many roles of senior officers. We encourage companies to adopt the measures suggested in this policy statement, but they should be implemented flexibly and sensibly to fit the situation of each individual company.

6.2 Establishing a Corporate Disclosure Policy

(1) Establish a written corporate disclosure policy. A disclosure policy gives you a process for disclosure and promotes an understanding of legal requirements among your directors, officers and employees. The process of creating it is itself a benefit, because it forces a critical examination of your current disclosure practices.

(2) You should design a policy that is practical to implement. Your policy should be reviewed and approved by your board of directors and widely distributed to your officers and employees. Directors, officers and those employees who are, or may be, involved in making disclosure decisions should also be trained so that they understand and can apply the disclosure policy. Your policy should be periodically reviewed and updated, as necessary, and responsibility for these functions (i.e., review and update of the policy and education of appropriate employees and company officials) should be clearly assigned within your company.

(3) The focus of your disclosure policy should be on promoting consistent disclosure practices aimed at informative, timely and broadly disseminated disclosure of material information to the market. Every disclosure policy should generally include the following:

(a) how to decide what information is material;

(b) policy on reviewing analyst reports;

(c) how to release earnings announcements and conduct related analyst calls and meetings;

(d) how to conduct meetings with investors and the media;

(e) what to say or not to say at industry conferences;

(f) how to use electronic media and the corporate Web site;

(g) policy on the use of forecasts and other forward-looking information (including a policy regarding issuing updates);

(h) procedures for reviewing briefings and discussions with analysts, institutional investors and other market professionals;

(i) how to deal with unintentional selective disclosures;

(j) how to respond to market rumours;

(k) policy on trading restrictions; and

(l) policy on "quiet periods".

6.3 Overseeing and Coordinating Disclosure

Establish a committee of company personnel or assign a senior officer to be responsible for:

(a) developing and implementing your disclosure policy;

(b) monitoring the effectiveness of and compliance with your disclosure policy;

(c) educating your directors, officers and certain employees about disclosure issues and your disclosure policy;

(d) reviewing and authorizing disclosure (including electronic, written and oral disclosure) in advance of its public release; and

(e) monitoring your Web site.

6.4 Board and Audit Committee Review of Certain Disclosure

(1) Have your board of directors or audit committee review the following disclosures in advance of their public release by the company:

- financial outlooks and FOFI, as defined in *Regulation 51-102 respecting Continuous Disclosure Obligations* or *Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers, as applicable*; and

- news releases containing financial information based on a company's financial statements prior to the release of such statements.

You should also indicate at the time such information is publicly released whether your board or audit committee has reviewed the disclosure. Having your board or audit committee review such disclosure in advance of its public release acts as a good discipline on management and helps to increase the quality, credibility and objectivity of such disclosures. This review process also helps to force a critical examination of all issues related to the disclosure and reduces the risk of having to make subsequent adjustments or amendments to the information it contains.

(2) Where feasible, issue your earnings news release concurrently with the filing of your quarterly or annual financial statements. This will help to ensure that a complete financial picture is available to analysts and investors at the time the earnings release is provided. Coordinating the release of a company's earnings information with the filing of its quarterly or annual financial statements will also facilitate review of these disclosures by the board or audit committee of the company.

6.5 Authorizing Company Spokespersons

Limit the number of people who are authorized to speak on behalf of your company to analysts, the media and investors. Ideally, your spokesperson should be a member(s) of senior management. Spokespersons should be knowledgeable about your disclosure record and aware of analysts' reports relating to your company. Everyone in your company should know who the company spokespersons are and refer all inquiries from analysts, investors and the media to them. Having a limited number of company spokespersons helps to reduce the risk of:

(a) unauthorized disclosures;

(b) inconsistent statements by different people in the company; and

(c) statements that are inconsistent with the public disclosure record of the company.

6.6 Recommended Disclosure Model

(1) You should consider using the following disclosure model when making a planned disclosure of material corporate information, such as a scheduled earnings release:

(a) issue a news release containing the information (for example, your quarterly financial results) through a widely circulated news or wire service;

(b) provide advance public notice by news release of the date and time of a conference call to discuss the information, the subject matter of the call and the means for accessing it;

(c) hold the conference call in an open manner, permitting investors and others to listen either by telephone or through Internet webcasting; and

(d) provide dial-in and/or web replay or make transcripts of the call available for a reasonable period of time after the analyst conference call.

(2) The combination of news release disclosure of the material information and an open and accessible conference call to subsequently discuss the information should help to ensure that the information is disseminated in a manner calculated to effectively reach the marketplace and minimize the risk of an inadvertent selective disclosure during the follow-up call.

6.7 Analyst Conference Calls and Industry Conferences

(1) Hold analyst conference calls and industry conferences in an open manner, allowing any interested party to listen either by telephone and/or through a webcast. This helps to reduce the risk of selective disclosure.

(2) Company officials should meet before an analyst conference call, private analyst meeting or industry conference. Where practical, statements and responses to anticipated questions should be scripted in advance and reviewed by the appropriate people within your company. Scripting will help to identify any material corporate information that may need to be publicly disclosed through a news release.

(3) Keep detailed records and/or transcripts of any conference call, meeting or industry conference. These should be reviewed to determine whether any unintentional selective disclosure has occurred. If so, you should take immediate steps to ensure that a full public announcement is made, including contacting the relevant stock exchange and asking that trading be halted pending the issuance of a news release.

6.8 Analyst Reports

Establish a policy for reviewing analyst reports. As noted in section 5.2 of the Policy, there is a serious risk of violating the tipping prohibition if you express comfort with or provide guidance on an analyst's report, earnings model or earnings estimates. There is also a risk of selectively disclosing material non-financial information in the course of reviewing an analyst's report. If your policy allows for the review of analyst reports, your review should be limited to identifying publicly disclosed factual information that may affect an analyst's model or to pointing out inaccuracies or omissions with reference to publicly available information about your company.

6.9 Quiet Periods

Observe a quarterly quiet period, during which no earnings guidance or comments with respect to the current quarter's operations or expected results will be provided to analysts, investors or other market professionals. The quiet period should run between the end of the quarter and the release of a quarterly earnings announcement although, in practice, quiet periods vary by company. Companies need not stop all communications with analysts or investors during the quiet period. However, communications should be limited to responding to inquiries concerning publicly available or non-material information.

6.10 Insider Trading Policies and Blackout Periods

Adopt an insider trading policy that provides for a senior officer to approve and monitor the trading activity of all your insiders, officers, and senior employees. Your insider trading policy should prohibit purchases and sales at any time by insiders and employees who are in possession of material nonpublic information. Your policy should also provide for trading "blackout periods" when trading by insiders, officers and employees may typically not take place (for example a blackout period which surrounds regularly scheduled earnings announcements). However, insiders, officers and employees should have the opportunity to apply to the company's trading officer for approval to trade the company's securities during the blackout period. A company's blackout period may mirror the quiet period described above.

6.11 Electronic Communications

(1) Establish a team responsible for creating and maintaining the company Web site. The Web site should be up to date and accurate. You should date all material information when it is posted or modified. You should also move outdated information to an archive. Archiving allows the public to continue accessing information that may have historical or other value even though it is no longer current. You should establish minimum retention

periods for information that is posted to and archived on your Web site. Retention periods may vary depending on the kind of information posted. You should also explain how your Web site is set up and maintained. You should remember that posting material information on your Web site is not acceptable as the sole means of satisfying legal requirements to "generally disclose" information.

(2) Use current technology to improve investor access to your information. You should concurrently post to your Web site, if you have one, all documents that you file on SEDAR. You should also post on the investor relations part of your Web site all supplemental information that you give to analysts, institutional investors and other market professionals. This would include data books, fact sheets, slides of investor presentations and other materials distributed at analyst or industry presentations. When you make a presentation at an industry sponsored conference try to have your presentation and "question and answer" session webcast.

6.12 Chat Rooms, Bulletin Boards and e-mails

Do not participate in, host or link to chat rooms or bulletin boards. Your disclosure policy should prohibit your employees from discussing corporate matters in these forums. This will help to protect your company from the liability that could arise from the well-intentioned, but sporadic, efforts of employees to correct rumours or defend the company. You should consider requiring employees to report to a designated company official any discussion pertaining to your company which they find on the Internet. If your Web site allows viewers to send you e-mail messages, remember the risk of selective disclosure when responding.

6.13 Handling Rumours

Adopt a "no comment" policy with respect to market rumours and make sure that the policy is applied consistently. Otherwise, an inconsistent response may be interpreted as "tipping". You may be required by your exchange to make a clarifying statement where trading in your company's securities appears to be heavily influenced by rumours. If material information has been leaked and appears to be affecting trading activity in your company's securities, you should take immediate steps to ensure that a full public announcement is made. This includes contacting your exchange and asking that trading be halted pending the issuance of a news release.

POLICY STATEMENT TO REGULATION 52-107 RESPECTING ACCEPTABLE ACCOUNTING PRINCIPLES AND AUDITING STANDARDS

PART I INTRODUCTION AND DEFINITIONS

1.1. Introduction and Purpose

This Policy Statement provides information about how the securities regulatory authorities interpret or apply *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* (the Regulation). The Regulation is linked closely with the application of other regulations, including *Regulation 51-102 respecting Continuous Disclosure Obligations* (Regulation 51-102), *Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers* (Regulation 51-103) and *Regulation 71-102 respecting Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (Regulation 71-102). These and other regulations also contain a number of references to International Financial Reporting Standards (IFRS) and the requirements in the Handbook of the Canadian Institute of Chartered Accountants (the Handbook). Full definitions of IFRS and the Handbook are provided in *Regulation 14-101 respecting Definitions*.

The Regulation does not apply to investment funds. *Regulation 81-106 respecting Investment Fund Continuous Disclosure* applies to investment funds.

1.2. Multijurisdictional Disclosure System

Regulation 71-101 respecting The Multijurisdictional Disclosure System (Regulation 71-101) permits certain U.S. incorporated issuers to satisfy Canadian disclosure filing obligations, including financial statements, by using disclosure documents prepared in accordance with U.S. federal securities laws. The Regulation does not replace or alter Regulation 71-101. There are instances in which Regulation 71-101 and the Regulation offer similar relief to a reporting issuer. There are other instances in which the relief differs. If both Regulation 71-101 and the Regulation are available to a reporting issuer, the issuer should consider both regulations. It may choose to rely on the less onerous regulation in a given situation.

1.3. Calculation of Voting Securities Owned by Residents of Canada

The definition of "foreign issuer" is based upon the definition of foreign private issuer in Rule 405 of the 1933 Act and Rule 3b-4 of the 1934 Act. For the purposes of the definition of "foreign issuer", in determining the outstanding voting securities that are beneficially owned by residents of Canada, an issuer should

(a) use reasonable efforts to identify securities held by a broker, dealer, bank, trust company or nominee or any of them for the accounts of customers resident in Canada,

(b) count securities beneficially owned by residents of Canada as reported on reports of beneficial ownership, including insider reports and early warning reports, and

(c) assume that a customer is a resident of the jurisdiction or foreign jurisdiction in which the nominee has its principal place of business if, after reasonable inquiry, information regarding the jurisdiction or foreign jurisdiction of residence of the customer is unavailable.

This method of calculation differs from that in Regulation 71-101 which only requires a calculation based on the address of record. Some SEC foreign issuers may therefore qualify for exemptive relief under Regulation 71-101 but not under the Regulation.

1.4. Exemptions Evidenced by the Issuance of a Receipt

Section 5.2 of the Regulation states that an exemption from any of the requirements of the Regulation pertaining to financial statements or auditor's reports included in a prospectus may be evidenced by the issuance of a receipt for that prospectus. Issuers should not assume that the relief evidenced by the receipt will also apply to financial statements or auditors' reports filed in satisfaction of continuous disclosure obligations or included in any other filing.

1.5. Filed or Delivered

Financial statements that are filed in a jurisdiction will be made available for public inspection in that jurisdiction, subject to the provisions of securities legislation in the local jurisdiction regarding confidentiality of filed material. Material that is delivered to a regulator, but not filed, is not required under securities legislation to be made available for public inspection. However, the regulator may choose to make such material available for inspection by the public.

1.6. Other Legal Requirements

Issuers and auditors should refer to *Regulation 52-108 respecting Auditor Oversight* for requirements relating to auditor oversight by the Canadian Public Accountability Board. In addition, issuers and registrants are reminded that they and their auditors may be subject to requirements under the laws and professional standards of a jurisdiction that address matters similar to those addressed by the Regulation, and which may impose additional or more onerous requirements. For example, applicable corporate law may prescribe the accounting principles or auditing standards required for financial statements. Similarly, applicable federal, provincial or state law may impose licensing requirements on an auditor practising public accounting in certain jurisdictions.

PART 2 APPLICATION - ACCOUNTING PRINCIPLES

2.1. Application of Part 3

Part 3 of the Regulation generally applies to periods relating to financial years beginning on or after January 1, 2011. Part 3 refers to Canadian GAAP applicable to publicly accountable enterprises, which is IFRS incorporated into the Handbook, contained in Part I of the Handbook.

2.2. Application of Part 4

Part 4 of the Regulation generally applies to periods relating to financial years beginning before January 1, 2011. Part 4 refers to Canadian GAAP-Part V, which is generally accepted accounting principles determined with reference to Part V of the Handbook applicable to public enterprises. These are the pre-changeover accounting standards for public companies. Part V of the Handbook has differing requirements for public enterprises and non-public enterprises. The following are some of the significant differences in Canadian GAAP applicable to public enterprises compared to those applicable to non-public enterprises:

(a) financial statements for public enterprises cannot be prepared using the differential reporting options as set out in Part V of the Handbook;

(b) transition provisions applicable to enterprises other than public enterprises are not available; and

(c) financial statements must include any additional disclosure requirements applicable to public enterprises.

2.3. IFRS in English and French

The Handbook provides IFRS in English and French. Both versions have equal status and effect under Canadian GAAP. Issuers, auditors, and other market participants may use either version to comply with the requirements in the Regulation.

2.4. Reference to accounting principles

Section 3.2 of the Regulation requires certain financial statements to be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises. This section includes requirements for an unreserved statement of compliance with IFRS in annual financial statements, and an unreserved statement of compliance with International Accounting Standard 34 Interim Financial Reporting in interim financial reports. These provisions distinguish between the basis of preparation and disclosure requirements.

There are two options for referring to accounting principles in the applicable financial statements and, in the case of annual financial statements, accompanying auditor's reports referred to in section 3.3 of the Regulation:

(a) refer only to IFRS in the notes to the financial statements and in the auditor's report, or

(b) refer to both IFRS and Canadian GAAP in the notes to the financial statements and in the auditor's report.

2.5. IFRS as adopted by the IASB

The definition of IFRS in *Regulation 14-101 respecting Definitions* refers to standards and interpretations adopted by the International Accounting Standards Board. The definition does not extend to national accounting standards that are modified or adapted from IFRS, sometimes referred to as a "jurisdictional" version of IFRS.

2.6. Presentation and functional currencies

If financial statements comply with requirements contained in IFRS in International Accounting Standard 1 Presentation of Financial Statements and International Accounting Standard 21 The Effects of Changes in Foreign Exchange Rates relating to the disclosure of presentation currency and functional currency, then they will comply with section 3.5 of the Regulation.

2.7. Registrants' financial statements and interim financial information

Subsections 3.2(3) and (4) and paragraphs 3.15(a) and (b) of the Regulation mandate accounting for any investments in subsidiaries, jointly controlled entities and associates as specified for separate financial statements in International Accounting Standard 27 Consolidated and Separate Financial Statements (IAS 27). Separate financial statements are sometimes referred to as non-consolidated financial statements. These requirements apply regardless of whether a registrant meets the criteria set out in IAS 27 for not presenting consolidated financial statements. Paragraph 3.2(3)(b) also requires a registrant's annual financial statements to describe the financial reporting framework used to prepare the financial statements. The description should refer to the requirement to account for any investments in subsidiaries, jointly controlled entities and associates as specified for separate financial statements in IAS 27, even if the registrant does not have these types of investments. In addition, if annual financial statements for a year beginning in 2011 are prepared using the financial reporting framework permitted by subsection 3.2(4), the description of the framework should explain the lack of comparatives and the date of transition, as specified in paragraphs 3.2(4)(b) and (c).

The financial reporting frameworks prescribed by subsections 3.2(3) and (4) are Canadian GAAP applicable to publicly accountable enterprises with specified differences.

Although these frameworks differ in specified ways from IFRS, the exceptions and exemptions included as Appendices in IFRS 1 First-time Adoption of International Financial Reporting Standards (IFRS 1) would be relevant for determining an opening statement of financial position at the date of transition to the financial reporting framework prescribed in subsection 3.2(3) or (4).

Subparagraph 3.3(1)(a)(iii) requires an auditor's report in the form specified by Canadian GAAS for an audit of financial statements prepared in accordance with a fair presentation framework. The financial reporting frameworks prescribed by subsections 3.2(3) and (4) are fair presentation frameworks.

Subsection 3.2(4) of the Regulation allows a registrant to file financial statements and interim financial information for periods relating to a financial year beginning in 2011 that exclude comparative information relating to the preceding year and to use a date of transition to the financial reporting framework that is the first day of the financial year beginning in 2011. When such a registrant prepares the comparative information for financial statements and interim financial information for periods relating to a financial year beginning in 2012, the registrant should consider whether it must adjust the comparative information in order to comply with subsection 3.2(3). Adjustments may be necessary if a registrant changes one or more accounting policies for its year beginning in 2012 compared to its year beginning in 2011.

2.8. Use of different accounting principles

Subsection 3.2(5) of the Regulation requires financial statements to be prepared in accordance with the same accounting principles for all periods presented in the financial statements.

An issuer that is required to file, or include in a document that is filed, financial statements for three years can, except in the situation discussed in section 2.9 of this Policy Statement, choose to present two sets of financial statements. For example, if the earliest of the three financial years relates to a financial year beginning before January 1, 2010, the issuer should provide one set of financial statements that presents information for the most recent two years using the accounting principles in Part 3 of the Regulation and one set of financial statements that either:

(a) presents information for a third and fourth year using the accounting principles in Part 4, or

(b) presents information for a second and third year using the accounting principles in Part 4.

Note that under option (a), a fourth year not otherwise required would be included to satisfy the requirement in the issuer's GAAP for comparative financial statements. Under option (b), information for a second year would be presented in both sets of financial statements. This second year would be included in the most recent set of financial statements using accounting principles in Part 3 of the Regulation and also in the earliest set of financial statements using accounting principles in Part 4 of the Regulation.

If the accounting principles used for the earliest of the three financial years and the most recent two years differ, but both are acceptable in Part 3 of the Regulation, presentation of information for the earliest year would be similar to the example described above.

2.9. Date of transition to IFRS if financial statements include a transition year of less than nine months

Subsection 4.8(6) of Regulation 51-102 ~~states~~and subsection 38(4) of Regulation 51-103 state that if a transition year is less ~~then~~than nine months in length, the reporting issuer must include comparative financial information for the transition year and old

financial year in its financial statements for its new financial year. Similarly, subsection 32.2(4) in Form 41-~~-~~101F1 and Form 41-101F4 states that if an issuer changed its financial year end during any of the financial years referred to in section 32.2 and the transition year is less than nine months, the transition year is deemed not to be a financial year for purposes of the requirement to provide financial statements for a specified number of financial years in section 32.2.

If an issuer's first set of annual financial statements with an unreserved statement of compliance with IFRS includes comparatives for both a transition year of less than nine months and the old financial year, the date of transition to IFRS should be the first day of the old financial year. Since subsection 3.2(5) of the Regulation requires financial statements to be prepared in accordance with the same accounting principles for all periods presented in the financial statements, a date of transition to IFRS using the first day of the transition year would not be appropriate.

2.10. Acceptable Accounting Principles

Readers are likely to assume that financial information disclosed in a news release is prepared on a basis consistent with the accounting principles used to prepare the issuer's most recently filed financial statements. To avoid misleading readers, an issuer should alert readers if financial information in a news release is prepared using accounting principles that differ from those used to prepare an issuer's most recently filed financial statements or includes non-GAAP financial measures discussed in CSA Staff Notice 52-306 *Non-GAAP Financial Measures*.

2.11. Financial statements for a reverse takeover or capital pool company acquisition

Subsection 8.1(2) of Regulation 51-102 states that Part 8 of that rule does not apply to a transaction that is a reverse takeover and subsection 22(5) of Regulation 51-103 states that section 22 of that rule does not apply to a transaction that is a restructuring transaction. Similarly, subsection 35.1(1) in both Form 41 101F1 and Form 41-101F4 indicates that item 35 of ~~that Form~~those forms does not apply to a completed or proposed transaction that was or will be accounted for as a reverse takeover. Therefore, if a document includes financial statements for a reverse takeover acquirer, as defined in Regulation 51-~~102,~~102 and Regulation 51-103, for a period prior to completion of the reverse takeover, section 3.11 of the Regulation does not apply to the financial statements. Such financial statements must comply with section 3.2, 3.7, 3.9, 4.2, 4.7 or 4.9 of the Regulation as applicable.

Paragraph 32.1(b) of Form 41-101F1 ~~indicates~~and paragraph 32.1(1)(b) of Form 41-101F4 indicate that financial statements of an issuer required under Item 32 of ~~that Form~~those forms include the financial statements of a business acquired or business proposed to be acquired by the issuer if a reasonable investor would regard the primary business of the issuer upon completion of the acquisition to be the acquired business or business proposed to be acquired. Consistent with this provision, if a capital pool company acquires or proposes to acquire a business, regardless of whether or not the transaction will be accounted for as a reverse takeover, financial statements for the acquired business or business proposed to be acquired must comply with section 3.2, 3.7, 3.9, 4.2, 4.7 or 4.9 of the Regulation as applicable.

2.12. Acquisition statements prepared using Canadian GAAP applicable to private enterprises

Paragraph 3.11(1)(f) of the Regulation permits acquisition statements to be prepared using Canadian GAAP applicable to private enterprises, which is Canadian accounting standards for private enterprises in Part II of the Handbook.

2.13. Conditions for acquisition statements prepared using Canadian GAAP applicable to private enterprises

Paragraph 3.11(1)(f) of the Regulation specifies certain conditions for the use of Canadian GAAP applicable to private enterprises. One of these conditions, in subparagraph 3.11(1)(f)(ii), is that financial statements for the business were not previously prepared in accordance with any of the accounting principles specified in paragraphs 3.11(1)(a) through (e) for the periods presented in the acquisition statements. Paragraph 3.11(1)(a) refers to Canadian GAAP applicable to publicly accountable enterprises, which is IFRS incorporated into the Handbook contained in Part I of the Handbook. The condition in subparagraph 3.11(1)(f)(ii) does not preclude Canadian GAAP - Part V, as defined in section 4.1 of the Regulation.

2.14. Acquisition statements prepared using Canadian GAAP applicable to private enterprises that include a reconciliation to the issuer's GAAP

If acquisition statements included in a document filed by an issuer that is not a venture issuer ~~and not~~, an IPO venture issuer, a senior unlisted issuer or an IPO senior unlisted issuer are prepared using Canadian GAAP applicable to private enterprises, the reconciliation requirement in subparagraph 3.11(1)(f)(iv) applies.

For each difference presented in the quantified reconciliation that relates to measurement, clause 3.11(1)(f)(iv)(C) requires disclosure and discussion of the material inputs or assumptions underlying the measurement of the relevant amount computed in accordance with the issuer's GAAP, consistent with the disclosure requirements of the issuer's GAAP. If the relevant amount was measured using a valuation technique, disclose the valuation technique, and disclose and discuss the inputs used. If changing one or more of the inputs to reasonably possible alternative assumptions would change the measurement significantly, a discussion of that fact and the effect of the changes on the measurement would facilitate readers' understanding of the measurement.

Clause 3.11(1)(f)(iv)(C) does not require disclosure and discussion of all the disclosure elements identified in the issuer's GAAP that relate to a difference presented in the reconciliation. As well, the clause does not require disclosure of information not required by the issuer's GAAP.

As an example of the disclosure required by clause 3.11(1)(f)(iv)(C), if the issuer's GAAP is IFRS and the relevant amount is share based payments measured using an option pricing model, disclose the option pricing model used and the inputs used in the model (i.e., weighted average share price, exercise price, expected volatility, option life, expected dividends, risk-free interest rate and any other inputs to the model). Also, discuss how expected volatility was determined and how any other features of the option grant (e.g., market condition) were incorporated into the measurement of the relevant amount.

If acquisition statements are carve-out statements prepared in accordance with Canadian GAAP for private enterprises, as discussed in section 2.18 of this Policy Statement, subparagraph 3.11(6)(d)(iii) requires reconciliation information for ~~non-~~issuers that are not venture issuers or senior unlisted issuers similar to that required by subparagraph 3.11(1)(f)(iv). The above guidance on subparagraph 3.11(1)(f)(iv) also applies to subparagraph 3.11(6)(d)(iii).

2.15. Acquisition statements prepared using Canadian GAAP applicable to private enterprises that include a reconciliation to IFRS

If the reconciliation requirement in subparagraph 3.11(1)(f)(iv) applies, and the issuer's GAAP requires the annual financial statements to include an explicit and unreserved statement of compliance with IFRS, the reconciliation information in annual and interim acquisition statements must address material differences between Canadian GAAP applicable to private enterprises and IFRS that relate to recognition, measurement and presentation.

Consistent with IFRS requirements, for the purpose of preparing the reconciliation information required by subparagraph 3.11(1)(f)(iv), the date of transition to IFRS would be the first day of the earliest period for which comparative information is presented in the annual acquisition statements. For example, if annual acquisition statements present information for the most recently completed financial year and the comparative year, the date of transition to IFRS would be the first day of the comparative year.

Also consistent with IFRS, for the purpose of preparing the reconciliation, IFRS 1 would be applied to determine the opening IFRS statement of financial position at the date of transition to IFRS. The exceptions and exemptions included as Appendices in IFRS 1 would be relevant for determining the entity's statement of financial position at the date of transition to IFRS.

The opening IFRS statement of financial position is the starting point for identifying material differences from Canadian GAAP applicable to private enterprises. Although an opening IFRS statement of financial position must be prepared in order to prepare the information required by subparagraph 3.11(1)(f)(iv), that subparagraph does not require disclosure of the opening IFRS statement of financial position. Similarly, that subparagraph does not require disclosure of differences relating to equity as at the date of transition to IFRS.

As discussed in section 2.14 of this Policy Statement, clause 3.11(1)(f)(iv)(C) does not require disclosure and discussion of all the disclosure elements identified in the issuer's GAAP that relate to a difference presented in the reconciliation. Therefore, it would be inappropriate to include an explicit and unreserved statement of compliance with IFRS in acquisition statements that include reconciliation information for material differences between Canadian GAAP applicable to private enterprises and IFRS.

2.16. Acquisition statements prepared using Canadian GAAP applicable to private enterprises that do not include a reconciliation to the issuer's GAAP

If acquisition statements included in a document filed by a venture issuer ~~or~~, an IPO venture issuer, a senior unlisted issuer or an IPO senior unlisted issuer are prepared using Canadian GAAP applicable to private enterprises, the reconciliation requirements in subparagraph 3.11(1)(f)(iv) do not apply. However, subsection 3.14(1) requires pro forma financial statements to be prepared using accounting policies that are permitted by the issuer's GAAP and would apply to the information presented in the pro forma financial statements if that information were included in the issuer's financial statements for the same time. *Policy Statement to Regulation 51-102 respecting Continuous Disclosure Obligations* provides further guidance on preparation of pro forma financial statements in this circumstance.

2.17. Acquisition statements that are an operating statement

Subsection 3.11(5) requires the line items in an operating statement to be prepared in accordance with accounting policies that comply with the accounting policies permitted by one of Canadian GAAP applicable to publicly accountable enterprises, IFRS, U.S. GAAP, or Canadian GAAP applicable to private enterprises. For the purpose of preparing the operating statement, the exceptions and exemptions included as Appendices in IFRS 1 would be relevant for determining the opening statement of financial position at the date of transition to IFRS.

2.18. Acquisition statements that are carve-out financial statements

Subsection 3.11(6) specifies the financial reporting framework required for acquisition statements that are based on information from the financial records of another entity whose operations included the acquired business or the business to be acquired, and there are no separate financial records for the business. Such financial statements are commonly referred to as "carve-out" financial statements. Subsection 3.11(6) requires

carve-out financial statements to be prepared in accordance with one of Canadian GAAP applicable to publicly accountable enterprises, IFRS, U.S. GAAP, or Canadian GAAP applicable to private enterprises, and in each case include specified line items. For carve-out financial statements prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises or IFRS, the exceptions and exemptions included as Appendices in IFRS 1 would be relevant for determining the opening statement of financial position at the date of transition to IFRS.

2.19. Preparation of pro forma financial statements when there is a change in accounting principles

Subsection 3.14(1) requires pro forma financial statements to be prepared using accounting policies that are permitted by the issuer's GAAP and would apply to the information presented in the pro forma financial statements if that information were included in the issuer's financial statement for the same period as that of the pro forma financial statements. If the accounting principles used to prepare an issuer's most recent annual financial statements differ from the accounting principles used to prepare the issuer's interim financial report for a subsequent period, subsection 3.14(3) provides an issuer the option of preparing its annual pro forma income statement using accounting policies that are permitted by the accounting principles used to prepare the interim financial report and would apply to the information presented in the pro forma income statement if that information were included in the interim financial report. In this case, the annual pro forma income statement should include adjustments to the amounts reported in the issuer's most recent statement of comprehensive income in order to restate the amounts on the basis of the accounting principles used to prepare the issuer's interim financial report. The pro forma income statement should present such adjustments separate from other adjustments relating to significant acquisitions.

If an issuer does not use the option provided by subsection 3.14(3), in order to avoid confusion, it would be appropriate to present the issuer's annual and interim pro forma financial statements as separate sets of pro forma financial statements.

2.20. Reconciliation requirements for an SEC issuer

If financial statements of an SEC issuer, other than acquisition statements, filed with or delivered to a securities regulatory authority or regulator are

(a) for a financial year beginning before January 1, 2011,

(b) prepared in accordance with U.S. GAAP, and

(c) the SEC issuer previously filed or included in a prospectus financial statements prepared in accordance with Canadian GAAP - Part V,

then subsection 4.7(1) applies. Subsection 4.7(1) requires the notes of the first two sets of the SEC issuer's annual financial statements, and interim financial report during those first two years, to provide reconciling information between Canadian GAAP - Part V and U.S. GAAP that complies with subparagraphs 4.7(1)(a)(i) to (iii).

If an SEC issuer's second set of annual financial statements after a change in accounting principles is for a financial year beginning after January 1, 2011, the reconciliation requirements in subsection 4.7(1) no longer apply. Financial statements for a financial year beginning after January 1, 2011 are required to be prepared in accordance with Part 3 of the Regulation, which does not include any reconciliation requirements when an SEC issuer changes its accounting principles.

PART 3 APPLICATION - AUDITING STANDARDS

3.1. Auditor's Expertise

The securities legislation in most jurisdictions prohibits a regulator or securities regulatory authority from issuing a receipt for a prospectus if it appears to the regulator or securities regulatory authority that a person who has prepared any part of the prospectus or is named as having prepared or certified a report used in connection with a prospectus is not acceptable.

3.2. Canadian Auditors for Canadian GAAP and GAAS Financial Statements

A Canadian auditor is a person that is authorized to sign an auditor's report by the laws, and that meets the professional standards, of a jurisdiction of Canada. We would normally expect issuers and registrants incorporated or organized under the laws of Canada or a jurisdiction of Canada, and any other issuer or registrant that is not a foreign issuer nor a foreign registrant, to engage a Canadian auditor to audit the issuer's or registrant's financial statements if those statements are prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises and will be audited in accordance with Canadian GAAS unless a valid business reason exists to use a non-Canadian auditor. A valid business reason would include a situation where the principal operations of the person and the essential books and records required for the audit are located outside of Canada.

3.3. Auditor Oversight

In addition to the requirements in sections 3.4 and 4.4 of the Regulation, *Regulation 52-108 respecting Auditor Oversight* also contains certain requirements related to auditors and auditor reports.

3.4. Modification of opinion

Part 5 of the Regulation permits the regulator or securities regulatory authority to grant exemptive relief from the Regulation, including the requirement that an auditor's report express an unmodified opinion. A modification of opinion includes a qualification of opinion, an adverse opinion, and a disclaimer of opinion. However, staff will generally recommend that relief not be granted if the modification of opinion or other similar communication is:

(a) due to a departure from accounting principles permitted by the Regulation, or

(b) due to a limitation in the scope of the auditor's examination that

(i) results in the auditor being unable to form an opinion on the financial statements as a whole,

(ii) is imposed or could reasonably be eliminated by management, or

(iii) could reasonably be expected to be recurring.

3.5. Identification of the financial reporting framework used to prepare an operating statement or carve-out financial statements

Paragraph 3.12(2)(e) requires an auditor's report to identify the financial reporting framework used to prepare an operating statement or carve-out financial statements as addressed in subsections 3.11(5) and (6). To comply with this requirement, the auditor's report may identify the applicable requirement in the Regulation, and refer the reader's attention to the note in the operating statement or carve-out financial statements that describes the financial reporting framework.

POLICY STATEMENT TO REGULATION 52-109 RESPECTING CERTIFICATION OF DISCLOSURE IN ISSUERS' ANNUAL AND INTERIM FILINGS

PART 1 GENERAL

1.1. Introduction and purpose

Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings (the "Regulation") sets out disclosure and filing requirements for all reporting issuers, other than investment funds. The objective of these requirements is to improve the quality, reliability and transparency of annual filings, interim filings and other materials that issuers file or submit under securities legislation.

This Policy Statement describes how the provincial and territorial securities regulatory authorities intend to interpret and apply the provisions of the Regulation.

1.2. Application to non-corporate entities

The Regulation applies to both corporate and non-corporate entities. Where the Regulation or the Policy Statement refers to a particular corporate characteristic, such as the audit committee of the board of directors, the reference should be read to also include any equivalent characteristic of a non-corporate entity.

1.3. Application to ~~venture~~**senior unlisted** issuers

~~Venture~~Senior unlisted issuers should note that the guidance provided in Parts 5 through 14 of this Policy Statement is intended for issuers filing Form 52-109F1 and Form 52-109F2. Under Parts 4 and 5 of the Regulation ~~venture~~senior unlisted issuers are not required, but may elect, to use those Forms.

1.4. Definitions

For the purposes of the Policy Statement, "DC&P" means disclosure controls and procedures (as defined in the Regulation) and "ICFR" means internal control over financial reporting (as defined in the Regulation).

1.5. Accounting terms

The Regulation uses accounting terms that are defined or used 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* 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 continuous disclosure; or (b) the context otherwise requires.

1.6. 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* 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.

1.7. 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 FORM OF CERTIFICATES

2.1. Prescribed wording

Parts 4 and 5 of the Regulation require the annual and interim certificates to be filed in the exact wording prescribed by the required form (including the form number and form title) without any amendment. Failure to do so will be a breach of the Regulation.

PART 3 CERTIFYING OFFICERS

3.1. One individual acting as chief executive officer and chief financial officer

If only one individual is serving as the chief executive officer and chief financial officer of an issuer, or is performing functions similar to those performed by such officers, that individual may either:

(a) provide two certificates (one in the capacity of the chief executive officer and the other in the capacity of the chief financial officer); or

(b) provide one certificate in the capacity of both the chief executive officer and chief financial officer and file this certificate twice, once in the filing category for certificates of chief executive officers and once in the filing category for certificates of chief financial officers.

3.2. Individuals performing the functions of a chief executive officer or chief financial officer

(1) **No chief executive officer or chief financial officer** – If an issuer does not have a chief executive officer or chief financial officer, each individual who performs functions similar to those performed by a chief executive officer or chief financial officer must certify the annual filings and interim filings. If an issuer does not have a chief executive officer or chief financial officer, in order to comply with the Regulation the issuer will need to identify at least one individual who performs functions similar to those performed by a chief executive officer or chief financial officer, as applicable.

(2) **Management resides at underlying business entity level or external management company** – In the case of a reporting issuer where executive management resides at the underlying business entity level or in an external management company such as for an income trust (as described in *Policy Statement 41-201 respecting Income Trusts and Other Indirect Offerings*), the chief executive officer and chief financial officer of the underlying business entity or the external management company should generally be identified as individuals performing functions for the reporting issuer similar to a chief executive officer and chief financial officer.

(3) **Limited partnership** – In the case of a limited partnership reporting issuer with no chief executive officer and chief financial officer, the chief executive officer and chief financial officer of its general partner should generally be identified as individuals performing functions for the limited partnership reporting issuer similar to a chief executive officer and chief financial officer.

3.3. "New" certifying officers

An individual who is the chief executive officer or chief financial officer at the time that an issuer files annual and interim certificates is the individual who must sign a certificate.

Certain forms included in the Regulation require each certifying officer to certify that he or she has designed, or caused to be designed under his or her supervision, the issuer's DC&P and ICFR. If an issuer's DC&P and ICFR have been designed prior to a certifying officer assuming office, the certifying officer would:

(a) review the design of the existing DC&P and ICFR after assuming office; and

(b) design any modifications to the existing DC&P and ICFR determined to be necessary following his or her review,

prior to certifying the design of the issuer's DC&P and ICFR.

PART 4 FAIR PRESENTATION, FINANCIAL CONDITION AND RELIABILITY OF FINANCIAL REPORTING

4.1. Fair presentation of financial condition, financial performance and cash flows

(1) **Fair presentation not limited to issuer's GAAP** – The forms included in the Regulation require each certifying officer to certify that an issuer's financial statements (including prior period comparative financial information) and other financial information included in the annual or interim filings fairly present in all material respects the financial condition, financial performance and cash flows of the issuer, as of the date and for the periods presented.

This certification is not qualified by the phrase "in accordance with generally accepted accounting principles" which is typically included in audit reports accompanying annual financial statements. The forms specifically exclude this qualification to prevent certifying officers from relying entirely on compliance with the issuer's GAAP in this representation, particularly as the issuer's GAAP financial statements might not fully reflect the financial condition of the issuer. Certification is intended to provide assurance that the financial information disclosed in the annual filings or interim filings, viewed in its entirety, provides a materially accurate and complete picture that may be broader than financial reporting under the issuer's GAAP. As a result, certifying officers cannot limit the fair presentation representation by referring to the issuer's GAAP.

Although the concept of fair presentation as used in the annual and interim certificates is not limited to compliance with the issuer's GAAP, this does not permit an issuer to depart from the issuer's GAAP in preparing its financial statements. If a certifying officer believes that the issuer's financial statements do not fairly present the issuer's financial condition, the certifying officer should ensure that the issuer's MD&A includes any necessary additional disclosure.

(2) **Quantitative and qualitative factors** – The concept of fair presentation encompasses a number of quantitative and qualitative factors, including:

(a) selection of appropriate accounting policies;

(b) proper application of appropriate accounting policies;

(c) disclosure of financial information that is informative and reasonably reflects the underlying transactions; and

(d) additional disclosure necessary to provide investors with a materially accurate and complete picture of financial condition, financial performance and cash flows.

4.2. Financial condition

The Regulation does not formally define financial condition. However, the term "financial condition" in the annual certificates and interim certificates reflects the overall financial health of the issuer and includes the issuer's financial position (as shown on the statement of financial position) and other factors that may affect the issuer's liquidity, capital resources and solvency.

4.3. Reliability of financial reporting

The definition of ICFR refers to the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the issuer's GAAP. In order to have reliable financial reporting and financial statements to be prepared in accordance with the issuer's GAAP, the amounts and disclosures in the financial statements must not contain any material misstatement.

PART 5 CONTROL FRAMEWORKS FOR ICFR

5.1. Requirement to use a control framework

Section 3.4 of the Regulation requires an issuer to use a control framework in order to design the issuer's ICFR. The framework used should be a suitable control framework that is established by a body or group that has followed due-process procedures, including the broad distribution of the framework for public comment.

Examples of suitable frameworks that an issuer could use to design ICFR are:

(a) the Risk Management and Governance: Guidance on Control (COCO Framework), formerly known as Guidance of the Criteria of Control Board, published by The Canadian Institute of Chartered Accountants;

(b) the Internal Control – Integrated Framework (COSO Framework) published by The Committee of Sponsoring Organizations of the Treadway Commission (COSO); and

(c) the Guidance on Internal Control (Turnbull Guidance) published by The Institute of Chartered Accountants in England and Wales.

A smaller issuer can also refer to Internal Control over Financial Reporting – Guidance for Smaller Public Companies published by COSO, which provides guidance to smaller public companies on the implementation of the COSO Framework.

In addition, IT Control Objectives for Sarbanes-Oxley published by the IT Governance Institute, might provide useful guidance for the design and evaluation of information technology controls that form part of an issuer's ICFR.

5.2. Scope of control frameworks

The control frameworks referred to in section 5.1 include in their definition of "internal control" three general categories: effectiveness and efficiency of operations, reliability of financial reporting and compliance with applicable laws and regulations. ICFR is a subset of internal controls relating to financial reporting. ICFR does not encompass the elements of these control frameworks that relate to effectiveness and efficiency of an issuer's operations or an issuer's compliance with applicable laws and regulations, except for compliance with the applicable laws and regulations directly related to the preparation of financial statements.

PART 6 DESIGN OF DC&P AND ICFR

6.1. General

Most sections in this Part apply to the design of both DC&P (DC&P design) and ICFR (ICFR design); however, some sections provide specific guidance relating to DC&P design or ICFR design. The term "design" in this context generally includes both developing and implementing the controls, policies and procedures that comprise DC&P and ICFR. This Policy Statement often refers to such controls, policies and procedures as the "components" of DC&P and ICFR.

A control, policy or procedure is implemented when it has been placed in operation. An evaluation of effectiveness does not need to be performed to assess whether the control, policy or procedure is operating as intended in order for it to be placed in operation.

6.2. Overlap between DC&P and ICFR

There is a substantial overlap between the definitions of DC&P and ICFR. However, some elements of DC&P are not subsumed within the definition of ICFR and some elements of ICFR are not subsumed within the definition of DC&P. For example, an issuer's DC&P should include those elements of ICFR that provide reasonable assurance that transactions are recorded as necessary to permit the preparation of financial statements in accordance with the issuer's GAAP. However, the issuer's DC&P might not include certain elements of ICFR, such as those pertaining to the safeguarding of assets.

6.3. Reasonable assurance

The definition of DC&P includes reference to reasonable assurance that information required to be disclosed by the issuer in its annual filings, interim filings or other reports filed or submitted by it under securities legislation is recorded, processed, summarized and reported within the time periods specified in securities legislation. The definition of ICFR includes the phrase "reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the issuer's GAAP". In this Part the term "reasonable assurance" refers to one or both of the above uses of this term.

Reasonable assurance is a high level of assurance, but does not represent absolute assurance. DC&P and ICFR cannot provide absolute assurance due to their inherent limitations. Each involves diligence and compliance and is subject to lapses in judgment and breakdowns resulting from human error. As a result of these limitations, DC&P and ICFR cannot prevent or detect all errors or intentional misstatements resulting from fraudulent activities.

The terms "reasonable", "reasonably" and "reasonableness" in the context of the Regulation do not imply a single conclusion or methodology, but encompass a range of potential conduct, conclusions or methodologies upon which certifying officers may base their decisions.

6.4. Judgment

The Regulation does not prescribe specific components of DC&P or ICFR or their degree of complexity. Certifying officers should design the components and complexity of DC&P and ICFR using their judgment, acting reasonably, giving consideration to various factors particular to an issuer, including its size, nature of business and complexity of operations.

6.5. Delegation permitted in certain cases

Section 3.1 of the Regulation requires a ~~non-venture~~senior listed issuer to establish and maintain DC&P and ICFR. Employees or third parties, supervised by the certifying

officers, may conduct the design of the issuer's DC&P and ICFR. Such employees should individually and collectively have the necessary knowledge, skills, information and authority to design the DC&P and ICFR for which they have been assigned responsibilities. Nevertheless, certifying officers of the issuer must retain overall responsibility for the design and resulting MD&A disclosure concerning the issuer's DC&P and ICFR.

6.6. Risk considerations for designing DC&P and ICFR

(1) **Approaches to consider for design** – The Regulation does not prescribe the approach certifying officers should use to design the issuer's DC&P or ICFR. However, we believe that a top-down, risk-based approach is an efficient and cost-effective approach that certifying officers should consider. This approach allows certifying officers to avoid unnecessary time and effort designing components of DC&P and ICFR that are not required to obtain reasonable assurance. Alternatively, certifying officers might use some other approach to design, depending on the issuer's size, nature of business and complexity of operations.

(2) Top-down, risk-based approach – Under a top-down, risk-based approach to designing DC&P and ICFR certifying officers first identify and assess risks faced by the issuer in order to determine the scope and necessary complexity of the issuer's DC&P or ICFR. A top-down, risk-based approach helps certifying officers to focus their resources on the areas of greatest risk and avoid expending unnecessary resources on areas with little or no risk.

Under a top-down, risk-based approach, certifying officers initially consider risks without considering any existing controls of the issuer. Using this approach to design DC&P, the certifying officers identify the risks that could, individually or in combination with others, reasonably result in a material misstatement in its annual filings, interim filings or other reports filed or submitted by it under securities legislation. Using this approach to design ICFR, the certifying officers identify those risks that could, individually or in combination with others, reasonably result in a material misstatement of the financial statements (financial reporting risks). A material misstatement includes misstatements due to error, fraud or omission in disclosure.

Identifying risks involves considering the size and nature of the issuer's business and the structure and complexity of business operations. If an issuer has multiple locations or business units, certifying officers initially identify the risks that could reasonably result in a material misstatement and then consider the significance of these risks at individual locations or business units. If the officers identify a risk that could reasonably result in a material misstatement, but the risk is either adequately addressed by controls, policies or procedures that operate centrally or is not present at an individual location or business unit, then certifying officers do not need to focus their resources at that location or business unit to address the risk.

For the design of DC&P, the certifying officers assess risks for various types and methods of disclosure. For the design of ICFR, identifying risks involves identifying significant accounts and disclosures and their relevant assertions. After identifying risks that could reasonably result in a material misstatement, the certifying officers then ensure that the DC&P and ICFR designs include controls, policies and procedures to address each of the identified risks.

(3) **Fraud risk** – When identifying risks, certifying officers should explicitly consider the vulnerability of the entity to fraudulent activity (e.g., fraudulent financial reporting and misappropriation of assets). Certifying officers should consider how incentives (e.g., compensation programs) and pressures (e.g., meeting analysts' expectations) might affect risks, and what areas of the business provide opportunity for an individual to commit fraud. For the purposes of this Regulation, fraud would generally include an intentional act by one or more individuals among management, other employees, those charged with governance or third parties, involving the use of deception to obtain an unjust or illegal advantage. Although fraud is a broad legal concept, for the purposes of this Regulation, the certifying

officers should be concerned with fraud that could cause a material misstatement in the issuer's annual filings, interim filings or other reports filed or submitted under securities legislation.

(4) **Designing controls, policies and procedures** – If the certifying officers choose to use a top-down, risk-based approach, they design specific controls, policies and procedures that, in combination with an issuer's control environment, appropriately address the risks discussed in subsections (2) and (3).

If certifying officers choose to use an approach other than a top-down, risk-based approach, they should still consider whether the combination of the components of DC&P and ICFR that they have designed are a sufficient basis for the representations about reasonable assurance required in paragraph 5 of the certificates.

6.7. Control environment

(1) **Importance of control environment** – An issuer's control environment is the foundation upon which all other components of DC&P and ICFR are based and influences the tone of an organization. An effective control environment contributes to the reliability of all other controls, processes and procedures by creating an atmosphere where errors or fraud are either less likely to occur, or if they occur, more likely to be detected. An effective control environment also supports the flow of information within the issuer, thus promoting compliance with an issuer's disclosure policies.

An effective control environment alone will not provide reasonable assurance that any of the risks identified will be addressed and managed. An ineffective control environment, however, can undermine an issuer's controls, policies and procedures designed to address specific risks.

(2) **Elements of a control environment** – A key element of an issuer's control environment is the attitude towards controls demonstrated by the board of directors, audit committee and senior management through their direction and actions in the organization. An appropriate tone at the top can help to develop a culture of integrity and accountability at all levels of an organization which support other components of DC&P and ICFR. The tone at the top should be reinforced on an ongoing basis by those accountable for the organization's DC&P and ICFR.

In addition to an appropriate tone at the top, certifying officers should consider the following elements of an issuer's control environment:

(a) *organizational structure of the issuer* – a structure which relies on established and documented lines of authority and responsibility may be appropriate for some issuers, whereas a structure which allows employees to communicate informally with each other at all levels may be more appropriate for some issuers;

(b) *management's philosophy and operating style* – a philosophy and style that emphasises managing risks with appropriate diligence and demonstrates receptiveness to negative as well as positive information will foster a stronger control environment;

(c) *integrity, ethics, and competence of personnel* – controls, policies and procedures are more likely to be effective if they are carried out by ethical, competent and adequately supervised employees;

(d) *external influences that affect the issuer's operations and risk management practices* – these could include global business practices, regulatory supervision, insurance coverage and legislative requirements; and

(e) *human resources policies and procedures* – an issuer's hiring, training, supervision, compensation, termination and evaluation practices can affect the quality of the issuer's workforce and its employees' attitudes towards controls.

(3) **Sources of information about the control environment** – The following documentation might provide useful information about an issuer's control environment:

(a) written codes of conduct or ethics policies;

(b) procedure manuals, operating instructions, job descriptions and training materials;

(c) evidence that employees have confirmed their knowledge and understanding of items (a) and (b);

(d) organizational charts that identify approval structures and the flow of information; and

(e) written correspondence provided by an issuer's external auditor regarding the issuer's control environment.

6.8. Controls, policies and procedures to include in DC&P design

In order for DC&P to provide reasonable assurance that information required by securities legislation to be disclosed by an issuer is recorded, processed, summarized and reported within the required time periods, DC&P should generally include the following components:

(a) written communication to an issuer's employees and directors of the issuer's disclosure obligations, including the purpose of disclosure and DC&P and deadlines for specific filings and other disclosure;

(b) assignment of roles, responsibilities and authorizations relating to disclosure;

(c) guidance on how authorized individuals should assess and document the materiality of information or events for disclosure purposes; and

(d) a policy on how the issuer will receive, document, evaluate and respond to complaints or concerns received from internal or external sources regarding financial reporting or other disclosure issues.

An issuer might choose to include these components in a document called a disclosure policy. Part 6 of National Policy 51-201 Disclosure Standards encourages issuers to establish a written disclosure policy and discusses in more detail some of these components. For issuers that are subject to *Regulation 52-110 respecting Audit Committees* ("Regulation 52-110"), compliance with the regulation will also form part of the issuer's DC&P design.

6.9. Controls, policies and procedures to include in ICFR design

In order for ICFR to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the issuer's GAAP, ICFR should generally include the following components:

(a) controls for initiating, authorizing, recording and processing transactions relating to significant accounts and disclosures;

(b) controls for initiating, authorizing, recording and processing non-routine transactions and journal entries, including those requiring judgments and estimates;

(c) procedures for selecting and applying appropriate accounting policies that are in accordance with the issuer's GAAP;

(d) controls to prevent and detect fraud;

(e) controls on which other controls are dependent, such as information technology general controls; and

(f) controls over the period-end financial reporting process, including controls over entering transaction totals in the general ledger, controls over initiating, authorizing, recording and processing journal entries in the general ledger and controls over recording recurring and non-recurring adjustments to the financial statements (e.g., consolidating adjustments and reclassifications).

6.10. Identifying significant accounts and disclosures and their relevant assertions

(1) **Significant accounts and disclosures and their relevant assertions** – As described in subsection 6.6(2) of the Policy Statement, a top-down, risk-based approach to designing ICFR involves identifying significant accounts and disclosures and the relevant assertions that affect each significant account and disclosure. This method assists certifying officers in identifying the risks that could reasonably result in a material misstatement in the issuer's financial statements and not all possible risks the issuer faces.

(2) **Identifying significant accounts and disclosures** – A significant account could be an individual line item on the issuer's financial statements, or part of a line item. For example, an issuer might present "net revenue", which represents a combination of "gross revenue" and "returns", but might identify "gross revenue" as a significant account. By identifying part of a line item as a significant account, certifying officers might be able to focus on balances that are subject to specific risks that can be separately identified.

A significant disclosure relating to the design of ICFR could be any form of disclosure included in the issuer's financial statements, or notes to the financial statements, that is presented in accordance with the issuer's GAAP. The identification of significant disclosures for the design of ICFR does not extend to the preparation of the issuer's MD&A or other similar financial information presented in a continuous disclosure filing other than financial statements.

(3) **Considerations for identifying significant accounts and disclosures** – A minimum threshold expressed as a percentage or a dollar amount could provide a reasonable starting point for evaluating the significance of an account or disclosure. However, certifying officers should use their judgment, taking into account qualitative factors, to assess accounts or disclosures for significance above or below that threshold. The following factors will be relevant when determining whether an account or disclosure is significant:

(a) the size, nature and composition of the account or disclosure;

(b) the risk of overstatement or understatement of the account or disclosure;

(c) the susceptibility to misstatement due to errors or fraud;

(d) the volume of activity, complexity and homogeneity of the individual transactions processed through the account or reflected in the disclosure;

(e) the accounting and reporting complexities associated with the account or disclosure;

(f) the likelihood (or possibility) of conditions that will give rise to significant contingent liabilities in the account or disclosure;

(g) the existence of related party transactions; and

(h) the impact of the account on existing debt covenants.

(4) **Assertions** – Using a top-down, risk-based approach, the certifying officers identify those assertions for each significant account and disclosure that presents a risk that could reasonably result in a material misstatement in that significant account or disclosure. For each significant account and disclosure the following assertions could be relevant:

(a) existence or occurrence – whether assets or liabilities exist and whether transactions and events that have been recorded have occurred and pertain to the issuer;

(b) completeness – whether all assets, liabilities and transactions that should have been recorded have been recorded;

(c) valuation or allocation – whether assets, liabilities, equity, revenue and expenses have been included in the financial statements at appropriate amounts and any resulting valuation or allocation adjustments are appropriately recorded;

(d) rights and obligations – whether assets are legally owned by the issuer and liabilities are the obligations of the issuer; and

(e) presentation and disclosure – whether particular components of the financial statements are appropriately presented and described and disclosures are clearly expressed.

The certifying officers might consider assertions that differ from those listed above if the certifying officers determine that they have identified the pertinent risks in each significant account and disclosure that could reasonably result in a material misstatement.

(5) **Identifying relevant assertions for each significant account and disclosure** – To identify relevant assertions for each significant account and disclosure, the certifying officers determine the source of potential misstatements for each significant account or disclosure. When determining whether a particular assertion is relevant, the certifying officers would consider the nature of the assertion, the volume of transactions or data related to the assertion and the complexity of the underlying systems supporting the assertion. If an assertion does not present a risk that could reasonably result in a material misstatement in a significant account, it is likely not a relevant assertion.

For example, valuation might not be relevant to the cash account unless currency translation is involved; however, existence and completeness are always relevant. Similarly, valuation might not be relevant to the gross amount of the accounts receivable balance, but is relevant to the related allowance accounts.

(6) **Identifying controls, policies and procedures for relevant assertions** – Using a top-down, risk-based approach, the certifying officers design components of ICFR to address each relevant assertion. The certifying officers do not need to design all possible components of ICFR to address each relevant assertion, but should identify and design an appropriate combination of controls, policies and procedures to address all relevant assertions.

The certifying officers would consider the efficiency of evaluating an issuer's ICFR design when designing an appropriate combination of ICFR components. If more than one potential control, policy or procedure could address a relevant assertion, certifying officers could select the control, policy or procedure that would be easiest to evaluate (e.g., automated control vs. manual control). Similarly, if a control, policy or procedure can be designed to address more than one relevant assertion, then certifying officers could choose it rather than a control, policy or procedure that addresses only one relevant assertion. For example, the certifying officers would consider whether any entity-wide controls exist that adequately address more than one relevant assertion or improve the efficiency of evaluating operating effectiveness because such entity-wide controls negate the need to design and evaluate other components of ICFR at multiple locations or business units.

When designing a combination of controls, policies and procedures, the certifying officers should also consider how the components in subsection 6.7(2) of the Policy Statement interact with each other. For example, the certifying officers should consider how information technology general controls interact with controls, policies and procedures over initiating, authorizing, recording, processing and reporting transactions.

6.11. ICFR design challenges

Key features of ICFR and related design challenges are described below.

(a) **Segregation of duties** – The term "segregation of duties" refers to one or more employees or procedures acting as a check and balance on the activities of another so that no one individual has control over all steps of processing a transaction or other activity. Assigning different people responsibility for authorizing transactions, recording transactions, reconciling information and maintaining custody of assets reduces the opportunity for any one employee to conceal errors or perpetrate fraud in the normal course of his or her duties. Segregating duties also increases the chance of discovering inadvertent errors early. If an issuer has few employees, a single employee may be authorized to initiate, approve and effect payment for transactions and it might be difficult to re-assign responsibilities to segregate those duties appropriately.

(b) **Board expertise** – An effective board objectively reviews management's judgments and is actively engaged in shaping and monitoring the issuer's control environment. An issuer might find it challenging to attract directors with the appropriate financial reporting expertise, objectivity, time, ability and experience.

(c) **Controls over management override** – An issuer might be dominated by a founder or other strong leader who exercises a great deal of discretion and provides personal direction to other employees. Although this type of individual can help an issuer meet its growth and other objectives, such concentration of knowledge and authority could allow the individual an opportunity to override established policies or procedures or otherwise reduce the likelihood of an effective control environment.

(d) **Qualified personnel** – Sufficient accounting and financial reporting expertise is necessary to ensure reliable financial reporting and the preparation of financial statements in accordance with the issuer's GAAP. Some issuers might be unable to obtain qualified accounting personnel or outsourced expert advice on a cost-effective basis. Even if an issuer obtains outsourced expert advice, the issuer might not have the internal expertise to understand or assess the quality of the outsourced advice. If an issuer consults on technically complex accounting matters, this consultation alone is not indicative of a deficiency relating to the design of ICFR.

An issuer's external auditor might perform certain services (e.g., income tax, valuation or internal audit services), where permitted by auditor independence rules, that provide skills which would otherwise be addressed by hiring qualified personnel or outsourcing expert advice from a party other than the external auditor. This type of arrangement should not be considered to be a component of the issuer's ICFR design.

If an issuer identifies one or more of these ICFR design challenges, additional involvement by the issuer's audit committee or board of directors could be a suitable compensating control or alternatively could mitigate risks that exist as a result of being unable to remediate a material weakness relating to the design challenge. The control framework the certifying officers use to design ICFR could include further information on these design challenges. See section 9.1 of the Policy Statement for a discussion of compensating controls versus mitigating procedures.

6.12. Corporate governance for internal controls

The board of directors of an issuer is encouraged to consider adopting a written mandate to explicitly acknowledge responsibility for the stewardship of the issuer, including responsibility for internal control and management information systems.

6.13. Maintaining design

Following their initial development and implementation of DC&P and ICFR, and prior to certifying design each quarter, certifying officers should consider:

(a) whether the issuer faces any new risks and whether each design continues to provide a sufficient basis for the representations about reasonable assurance required in paragraph 5 of the certificates;

(b) the scope and quality of ongoing monitoring of DC&P and ICFR, including the extent, nature and frequency of reporting the results from the ongoing monitoring of DC&P and ICFR to the appropriate levels of management;

(c) the work of the issuer's internal audit function;

(d) communication, if any, with the issuer's external auditors; and

(e) the incidence of weaknesses in DC&P or material weaknesses in ICFR that have been identified at any time during the financial year.

6.14. Efficiency and effectiveness

In addition to the considerations set out in this Part that will assist certifying officers in appropriately designing DC&P and ICFR, other steps that certifying officers could take to enhance the efficiency and effectiveness of the designs are:

(a) embedding DC&P and ICFR in the issuer's business processes;

(b) implementing consistent policies and procedures and issuer-wide programs at all locations and business units;

(c) including processes to ensure that DC&P and ICFR are modified to adapt to any changes in business environment; and

(d) including procedures for reporting immediately to the appropriate levels of management any identified issues with DC&P and ICFR together with details of any action being undertaken or proposed to be undertaken to address such issues.

6.15. Documenting design

(1) **Extent and form of documentation for design** – The certifying officers should generally maintain documentary evidence sufficient to provide reasonable support for their certification of design of DC&P and ICFR. The extent of documentation supporting the certifying officers' design of DC&P and ICFR for each interim and annual certificate will vary depending on the certifying officers' assessment of risk, as discussed in section 6.6 of the Policy Statement, as well as the size and complexity of the issuer's DC&P and ICFR. The documentation might take many forms (e.g., paper documents, electronic, or other media) and could be presented in a number of different ways (e.g., policy manuals, process models, flowcharts, job descriptions, documents, internal memoranda, forms, etc). Certifying officers should use their judgment, acting reasonably, to determine the extent and form of documentation.

(2) **Documentation of the control environment** – To provide reasonable support for the certifying officers' design of DC&P and ICFR, the certifying officers should generally

document the key elements of an issuer's control environment, including those described in subsection 6.7(2) of the Policy Statement.

(3) **Documentation for design of DC&P** – To provide reasonable support for the certifying officers' design of DC&P, the certifying officers should generally document:

(a) the processes and procedures that ensure information is brought to the attention of management, including the certifying officers, in a timely manner to enable them to determine if disclosure is required; and

(b) the items listed in section 6.8 of the Policy Statement.

(4) **Documentation for design of ICFR** – To provide reasonable support for the certifying officers' design of ICFR, the certifying officers should generally document:

(a) the issuer's ongoing risk-assessment process and those risks which need to be addressed in order to conclude that the certifying officers have designed ICFR;

(b) how significant transactions, and significant classes of transactions, are initiated, authorized, recorded and processed;

(c) the flow of transactions to identify when and how material misstatements or omissions could occur due to error or fraud;

(d) a description of the controls over relevant assertions related to all significant accounts and disclosures in the financial statements;

(e) a description of the controls designed to prevent or detect fraud, including who performs the controls and, if applicable, how duties are segregated;

(f) a description of the controls over period-end financial reporting processes;

(g) a description of the controls over safeguarding of assets; and

(h) the certifying officers' conclusions on whether a material weakness relating to the design of ICFR exists at the end of the period.

PART 7 EVALUATING OPERATING EFFECTIVENESS OF DC&P AND ICFR

7.1. General

Most sections in this Part apply to both an evaluation of the operating effectiveness of DC&P (DC&P evaluation) and an evaluation of the operating effectiveness of ICFR (ICFR evaluation); however, some sections apply specifically to an ICFR evaluation.

7.2. Scope of evaluation of operating effectiveness

The purpose of the DC&P and ICFR evaluations is to determine whether the issuer's DC&P and ICFR designs are operating as intended. To support a conclusion that DC&P or ICFR is effective, certifying officers should obtain sufficient appropriate evidence at the date of their assessment that the components of DC&P and ICFR that they designed, or caused to be designed, are operating as intended. Regardless of the approach the certifying officers use to design DC&P or ICFR, they could use a top-down, risk-based approach to evaluate DC&P or ICFR in order to limit the evaluation to those controls and procedures that are necessary to address the risks that might reasonably result in a material misstatement.

Form 52-109F1 requires disclosure of each material weakness relating to the operation of the issuer's ICFR. Therefore, the scope of the ICFR evaluation must be sufficient to identify any such material weaknesses.

7.3. Judgment

The Regulation does not prescribe how the certifying officers should conduct their DC&P and ICFR evaluations. Certifying officers should exercise their judgment, acting reasonably, and should apply their knowledge and experience in determining the nature and extent of the evaluation.

7.4. Knowledge and supervision

Form 52-109F1 requires the certifying officers to certify that they have evaluated, or supervised the evaluation of, the issuer's DC&P and ICFR. Employees or third parties, supervised by the certifying officers, may conduct the evaluation of the issuer's DC&P and ICFR. Such employees should individually and collectively have the necessary knowledge, skills, information and authority to evaluate the DC&P and ICFR for which they have been assigned responsibilities. Nevertheless, certifying officers must retain overall responsibility for the evaluation and resulting MD&A disclosure concerning the issuer's DC&P and ICFR.

Certifying officers should ensure that the evaluation is performed with the appropriate level of objectivity. Generally, the individuals who evaluate the operating effectiveness of specific controls or procedures should not be the same individuals who perform the specific controls or procedures. See section 7.10 of the Policy for guidance on self-assessments.

7.5. Use of external auditor or other third party

The certifying officers might decide to use a third party to assist with their DC&P or ICFR evaluations. In these circumstances, the certifying officers should assure themselves that the individuals performing the agreed-upon evaluation procedures have the appropriate knowledge and ability to complete the procedures. The certifying officers should be actively involved in determining the procedures to be performed, the findings to be communicated and the manner of communication.

If an issuer chooses to engage its external auditor to assist the certifying officers in the DC&P and ICFR evaluations, the certifying officers should determine the procedures to be performed, the findings to be communicated and the manner of communication. The certifying officers should not rely on ICFR-related procedures performed and findings reported by the issuer's external auditor solely as part of the financial statement audit. However, if the external auditor is separately engaged to perform specified ICFR-related procedures, the certifying officers might use the results of those procedures as part of their evaluation even if the auditor uses those results as part of the financial statement audit.

If the issuer refers, in a continuous disclosure document, to an audit report relating to the issuer's ICFR, prepared by its external auditor, then it would be appropriate for the issuer to file a copy of the internal control audit report with its financial statements.

7.6. Evaluation tools

Certifying officers can use a variety of tools to perform their DC&P and ICFR evaluations. These tools include:

(a) certifying officers' daily interaction with the control systems;

(b) walkthroughs;

(c) interviews of individuals who are involved with the relevant controls;

(d) observation of procedures and processes, including adherence to corporate policies;

(e) reperformance; and

(f) review of documentation that provides evidence that controls, policies or procedures have been performed.

Certifying officers should use a combination of tools for the DC&P and ICFR evaluations. Although inquiry and observation alone might provide an adequate basis for an evaluation of an individual control with a lower risk, they will not provide an adequate basis for the evaluation as a whole.

The nature, timing and extent of evaluation procedures necessary for certifying officers to obtain reasonable support for the effective operation of a component of DC&P or ICFR depends on the level of risk the component of DC&P or ICFR is designed to address. The level of risk for a component of DC&P or ICFR could change each year to reflect management's experience with a control's operation during the year and in prior evaluations.

7.7. Certifying officers' daily interaction

The certifying officers' daily interaction with their control systems provides them with opportunities to evaluate the operating effectiveness of the issuer's DC&P and ICFR during a financial year. This daily interaction could provide an adequate basis for the certifying officers' evaluation of DC&P or ICFR if the operation of controls, policies and procedures is centralized and involves a limited number of personnel. Reasonable support of such daily interaction would include memoranda, e-mails and instructions or directions from the certifying officers to other employees.

7.8. Walkthroughs

A walkthrough is a process of tracing a transaction from origination, through the issuer's information systems, to the issuer's financial reports. A walkthrough can assist certifying officers to confirm that:

(a) they understand the components of ICFR, including those components relating to the prevention or detection of fraud;

(b) they understand how transactions are processed;

(c) they have identified all points in the process at which misstatements related to each relevant financial statement assertion could occur; and

(d) the components of ICFR have been implemented.

7.9. Reperformance

(1) **General** – Reperformance is the independent execution of certain components of the issuer's DC&P or ICFR that were performed previously. Reperformance could include inspecting records whether internal (e.g., a purchase order prepared by the issuer's purchasing department) or external (e.g., a sales invoice prepared by a vendor), in paper form, electronic form or other media. The reliability of records varies depending on their nature, source and the effectiveness of controls over their production. An example of reperformance is inspecting whether the quantity and price information in a sales invoice agree with the quantity and price information in a purchase order, and confirming that an employee previously performed this procedure.

(2) **Extent of reperformance** – The extent of reperformance of a component of DC&P or ICFR is a matter of judgment for the certifying officers, acting reasonably. Components that are performed more frequently (e.g., controls for recording revenue) will generally require more testing than components that are performed less frequently (e.g., controls for monthly bank reconciliations). Components that are manually operated will likely require more rigorous testing than automated controls. Certifying officers could determine that they do not have to test every individual step comprising a control in order to conclude that the overall control is operating effectively.

(3) **Reperformance for each evaluation** – Certifying officers might find it appropriate to adjust the nature, extent and timing of reperformance for each evaluation. For example, in "year 1", certifying officers might test information technology controls extensively, while in "year 2", they could focus on monitoring controls that identify changes made to the information technology controls. Certifying officers should consider the specific risks the controls address when making these types of adjustments. It might also be appropriate to test controls at different interim periods, increase or reduce the number and types of tests performed or change the combination of procedures used in order to introduce unpredictability into the testing and respond to changes in circumstances.

7.10. Self-assessments

A self-assessment is a walk-through or reperformance of a control, or another procedure to analyze the operation of controls, performed by an individual who might or might not be involved in operating the control. A self-assessment could be done by personnel who operate the control or members of management who are not responsible for operating the control. The evidence of operating effectiveness from self-assessment activities depends on the personnel involved and how the activities are conducted.

A self-assessment performed by personnel who operate the control would normally be supplemented with direct testing by individuals who are independent from the operation of the control being tested and who have an equal or higher level of authority. In these situations, direct testing of controls would be needed to corroborate evidence from the self-assessment since the self-assessment alone would not have a reasonable level of objectivity.

In some situations a certifying officer might perform a self-assessment and the certifying officer is involved in operating the control. Even if no other members of management independent from the operation of the control with equal or higher level of authority can perform direct testing, the certifying officer's self-assessment alone would normally provide sufficient evidence since the certifying officer signs the annual certificate. In situations where there are two certifying officers and one is performing a self-assessment, it would be appropriate for the other certifying officer to perform direct testing of the control.

7.11. Timing of evaluation

Form 52-109F1 requires certifying officers to certify that they have evaluated the effectiveness of the issuer's DC&P and ICFR, as at the financial year end. Certifying officers might choose to schedule testing of some DC&P and ICFR components throughout the issuer's financial year. However, since the evaluation is at the financial year end, the certifying officers will have to perform sufficient procedures to evaluate the operation of the components at year end.

Since some year-end procedures occur subsequent to the year end (e.g., financial reporting close process), some testing of DC&P and ICFR components could also occur subsequent to year-end. The timing of evaluation activities will depend on the risk associated with the components being evaluated, the tools used to evaluate the components, and whether the components being evaluated are performed prior to, or subsequent to, year end.

7.12. Extent of examination for each annual evaluation

For each annual evaluation the certifying officers must evaluate those components of ICFR that, in combination, provide reasonable assurance regarding the reliability of financial reporting. For example, the certifying officers cannot decide to exclude components of ICFR for a particular process from the scope of their evaluation simply based on prior-year evaluation results. To have a reasonable basis for their assessment of the operating effectiveness of ICFR, the certifying officers must have sufficient evidence supporting operating effectiveness of all relevant components of ICFR as of the date of their assessment.

7.13. Documenting evaluations

(1) Extent of documentation for evaluation – The certifying officers should generally maintain documentary evidence sufficient to provide reasonable support for their certification of a DC&P and ICFR evaluation. The extent of documentation used to support the certifying officers' evaluations of DC&P and ICFR for each annual certificate will vary depending on the size and complexity of the issuer's DC&P and ICFR. The extent of documentation is a matter of judgment for the certifying officers, acting reasonably.

(2) Documentation for evaluations of DC&P and ICFR – To provide reasonable support for a DC&P or ICFR evaluation the certifying officers should generally document:

(a) a description of the process the certifying officers used to evaluate DC&P or ICFR;

(b) how the certifying officers determined the extent of testing of the components of DC&P or ICFR;

(c) a description of, and results from applying, the evaluation tools discussed in sections 7.6 and 7.7 of the Policy Statement or other evaluation tools; and

(d) the certifying officers' conclusions about:

(i) the operating effectiveness of DC&P or ICFR, as applicable; and

(ii) whether a material weakness relating to the operation of ICFR existed as at the end of the period.

PART 8 USE OF A SERVICE ORGANIZATION OR SPECIALIST FOR AN ISSUER'S ICFR

8.1. Use of a service organization

An issuer might outsource a significant process to a service organization. Examples include payroll, production accounting for oil and gas companies, or other bookkeeping services. Based on their assessment of risks as discussed in subsection 6.6(2) of the Policy Statement, the certifying officers might identify the need for controls, policies and procedures relating to an outsourced process. In considering the design and evaluation of such controls, policies and procedures, the officers should consider whether:

(a) the service organization can provide a service auditor's report on the design and operation of controls placed in operation and tests of the operating effectiveness of controls at the service organization;

(b) the certifying officers have access to the controls in place at the service organization to evaluate the design and effectiveness of such controls; or

(c) the issuer has controls that might eliminate the need for the certifying officers to evaluate the design and effectiveness of the service organization's controls relating to the outsourced process.

8.2. Service auditor's reporting on controls at a service organization

If a service auditor's report on controls placed in operation and tests of the operating effectiveness of controls is available, the certifying officers should evaluate whether the report provides them sufficient evidence to assess the design and effectiveness of controls relating to the outsourced process. The following factors will be relevant in evaluating whether the report provides sufficient evidence:

(a) the time period covered by the tests of controls and its relation to the as-of date of the certifying officers' assessment of the issuer's ICFR;

(b) the scope of the examination and applications covered and the controls tested; and

(c) the results of the tests of controls and the service auditor's opinion on the operating effectiveness of controls.

8.3. Elapsed time between date of a service auditor's report and date of certificate

If a significant period of time has elapsed between the time period covered by the tests of controls in a service auditor's report and the date of the certifying officer's assessment of ICFR, the certifying officers should consider whether the service organization's controls have changed subsequent to the period covered by the service auditor's report. The service organization might communicate certain changes such as changes in its personnel or changes in reports or other data that it provides. Changes might also be indicated by errors identified in the service organization's processing. If the certifying officers identify changes in the service organization's controls, they should evaluate the effect of these changes and consider the need for additional procedures. These might include obtaining further information from the service organization, performing procedures at the service organization, or requesting that a service auditor perform specified procedures.

8.4. Indicators of a material weakness relating to use of a service organization

There could be circumstances in which a service auditor's report is not available, the certifying officers do not have access to controls in place at the service organization and the certifying officers have not identified any compensating controls performed by the issuer. In these circumstances the inability to assess the service organization's controls, policies and procedures might represent a material weakness since the certifying officers might not have sufficient evidence to conclude whether the components of the issuer's ICFR at the service organization have been designed or are operating as intended.

8.5. Use of a specialist

A specialist is a person or firm possessing expertise in specific subject matter. A reporting issuer might arrange for a specialist to provide certain specialized expertise such as actuarial services, taxation services or valuation services. Based on their assessment of risks as discussed in subsection 6.6(2) of the Policy Statement, the certifying officers might identify the need for the services provided by a specialist. The certifying officers should ensure the issuer has controls, policies or procedures in place relating to the source data and the reasonableness of the assumptions used to support the specialist's findings. The certifying officers should also consider whether the specialist has the necessary competence, expertise and integrity.

PART 9 MATERIAL WEAKNESS

9.1. Identifying a deficiency in ICFR

(1) **Deficiency relating to the design of ICFR** – A deficiency relating to the design of ICFR exists when:

(a) necessary components of ICFR are missing from the design;

(b) an existing component of ICFR is designed so that, even if the component operates as designed, the financial reporting risks would not be addressed; or

(c) a component of ICFR has not been implemented and, as a result, the financial reporting risks have not been addressed.

Subsection 6.6(2) of the Policy Statement provides guidance on financial reporting risks.

(2) **Deficiency relating to the operation of ICFR** – A deficiency relating to the operation of ICFR exists when a properly designed component of ICFR does not operate as intended. For example, if an issuer's ICFR design requires two individuals to sign a cheque in order to authorize a cash disbursement and the certifying officers conclude that this process is not being followed consistently, the control may be designed properly but is deficient in its operation.

(3) **Compensating controls versus mitigating procedures** – If the certifying officers identify a component of ICFR that does not operate as intended they should consider whether there is a compensating control that addresses the financial reporting risks that the deficient ICFR component failed to address. If the certifying officers are unable to identify a compensating control, then the issuer would have a deficiency relating to the operation of ICFR.

In the process of determining whether there is a compensating control, the certifying officers might identify mitigating procedures which help to reduce the financial reporting risks that the deficient ICFR component failed to address, but do not meet the threshold of being a compensating control because:

(a) the procedures only partially address the financial reporting risks or

(b) the procedures are not designed by, or under the supervision of, the issuer's certifying officers, and thus may not represent an internal control.

In these circumstances, since the financial reporting risks are not addressed with an appropriate compensating control, the issuer would continue to have a deficiency relating to the operation of ICFR and would have to assess the significance of the deficiency. The issuer may have one or more mitigating procedures that reduce the financial reporting risks that the deficient ICFR component failed to address and may consider disclosure of those procedures, as discussed in section 9.7 of the Policy Statement. In disclosing these mitigating procedures in its MD&A, an issuer should not imply that the procedures eliminate the existence of a material weakness.

9.2. Assessing significance of deficiencies in ICFR

If a deficiency or combination of deficiencies in the design or operation of one or more components of ICFR is identified, certifying officers should assess the significance of the deficiency, or combination of deficiencies, to determine whether a material weakness exists. Their assessment should generally include both qualitative and quantitative analyses.

Certifying officers evaluate the severity of a deficiency, or combination of deficiencies, by considering whether (a) there is a reasonable possibility that the issuer's

ICFR will fail to prevent or detect a material misstatement of a financial statement amount or disclosure; and (b) the magnitude of the potential misstatement resulting from the deficiency or deficiencies. The severity of a deficiency in ICFR does not depend on whether a misstatement has actually occurred but rather on whether there is a reasonable possibility that the issuer's ICFR will fail to prevent or detect a material misstatement on a timely basis.

9.3. Factors to consider when assessing significance of deficiencies in ICFR

(1) **Reasonable possibility of misstatement** – Factors that affect whether there is a reasonable possibility that a deficiency, or combination of deficiencies would result in ICFR not preventing or detecting in a timely manner a misstatement of a financial statement amount or disclosure, include, but are not limited to:

(a) the nature of the financial statement accounts, disclosures and assertions involved (e.g., related-party transactions involve greater risk);

(b) the susceptibility of the related asset or liability to loss or fraud (e.g., greater susceptibility increases risk);

(c) the subjectivity, complexity, or extent of judgment required to determine the amount involved (e.g., greater subjectivity, complexity, or judgment increases risk);

(d) the interaction or relationship of the control with other controls, including whether they are interdependent or address the same financial reporting risks;

(e) the interaction of the deficiencies (e.g., when evaluating a combination of two or more deficiencies, whether the deficiencies could affect the same financial statement amounts or disclosures); and

(f) the possible future consequences of the deficiency.

(2) Magnitude of misstatement – Various factors affect the magnitude of a misstatement that might result from a deficiency or deficiencies in ICFR. These factors include, but are not limited, to the following:

(a) the financial statement amounts or total of transactions relating to the deficiency; and

(b) the volume of activity in the account balance or class of transactions relating to the deficiency that has occurred in the current period or that is expected in future periods.

9.4. Indicators of a material weakness

It is a matter for the certifying officers' judgment whether the following situations indicate that a deficiency in ICFR exists and, if so, whether it represents a material weakness:

(a) identification of fraud, whether or not material, on the part of the certifying officers or other senior management who play a significant role in the issuer's financial reporting process;

(b) restatement of previously issued financial statements to reflect the correction of a material misstatement;

(c) identification by the issuer or its external auditor of a material misstatement in the financial statements in the current period in circumstances that indicate that the misstatement would not have been detected by the issuer's ICFR; and

(d) ineffective oversight of the issuer's external financial reporting and ICFR by the issuer's audit committee.

9.5. Conclusions on effectiveness if a material weakness exists

If the certifying officers identify a material weakness relating to the design or operation of ICFR existing as at the period-end date, the certifying officers could not conclude that the issuer's ICFR is effective. Certifying officers may not qualify their assessment by stating that the issuer's ICFR is effective subject to certain qualifications or exceptions unless the qualification pertains to one of the permitted scope limitations available in section 3.3 of the Regulation. As required by paragraph 6 in Form 52-109F1, the certifying officers must ensure the issuer has disclosed in the annual MD&A the certifying officers' conclusions about the effectiveness of ICFR at the financial year end.

9.6. Disclosure of a material weakness

(1) **Disclosure of a material weakness relating to the design of ICFR** – If the certifying officers become aware of a material weakness relating to the design of ICFR that existed at the end of the annual or interim period, the issuer's annual or interim MD&A must describe each material weakness relating to design, the impact of each material weakness on the issuer's financial reporting and its ICFR, and the issuer's current plans, if any, or any actions already undertaken, for remediating each material weakness as required by paragraph 5.2 of Form 52-109F1 and Form 52-109F2.

(2) **Disclosure of a material weakness relating to the operation of ICFR** – If the certifying officers become aware of a material weakness relating to the operation of ICFR that existed at the financial year end, the issuer's annual MD&A must describe each material weakness relating to operation, the impact of each material weakness on the issuer's financial reporting and its ICFR, and the issuer's current plans, if any, or any actions already undertaken, for remediating each material weakness as required by subparagraphs 6(b)(ii)(A), (B) and (C) of Form 52-109F1.

If a material weakness relating to the operation of ICFR continues to exist, the certifying officers should consider whether the deficiency initially relating to the operation of ICFR has become a material weakness relating to the design of ICFR that must be disclosed in the interim, as well as the annual MD&A under paragraph 5.2 of Form 52-109F1 and Form 52-109F2.

(3) **Description of a material weakness** – Disclosure pertaining to an identified material weakness should provide investors with an accurate and complete picture of the material weakness, including its effect on the issuer's ICFR. Issuers should consider providing disclosure in the annual or interim MD&A that allows investors to understand the cause of the material weakness and assess the potential impact on, and importance to, the financial statements of the identified material weakness. The disclosure will be more useful to investors if it distinguishes between those material weaknesses that may have a pervasive impact on ICFR from those material weaknesses that do not.

9.7. Disclosure of remediation plans and actions undertaken

If an issuer commits to a remediation plan to correct a material weakness relating to the design or operation of ICFR prior to filing a certificate, the annual or interim MD&A would describe the issuer's current plans, or any actions already undertaken, for remediating each material weakness.

Once an issuer has completed its remediation it would disclose information about the resulting change in the issuer's ICFR in its next annual or interim MD&A as required by paragraph 7 of Form 52-109F1 or paragraph 6 of Form 52-109F2.

If an issuer is unable to, or chooses not to, remediate a material weakness, but identifies mitigating procedures that reduce the impact of the material weakness on the

issuer's ICFR, then disclosure about these mitigating procedures could provide investors with an accurate and complete picture of the material weakness, including its effect on the issuer's ICFR. If an issuer does not plan to remediate the material weakness, regardless of whether there are mitigating procedures, the issuer would continue to have a material weakness that the issuer must disclose in the annual or interim MD&A.

PART 10 WEAKNESS IN DC&P THAT IS SIGNIFICANT

10.1. Conclusions on effectiveness of DC&P if a weakness exists that is significant

If the certifying officers identify a weakness relating to the design or operation of DC&P that is significant existing as at the period end date, the certifying officers could not conclude that the issuer's DC&P is effective. Certifying officers may not qualify their assessment by stating that the issuer's DC&P is effective subject to certain qualifications or exceptions unless the qualification pertains to one of the permitted scope limitations available in section 3.3 of the Regulation. A certifying officer could not conclude that the issuer's DC&P is effective if there is a deficiency, or combination of deficiencies, in DC&P such that there is a reasonable possibility that the issuer will not disclose material information required to be disclosed under securities legislation, within the time periods specified in securities legislation.

As required by paragraph 6(a) in Form 52-109F1, the certifying officers must ensure the issuer has disclosed in its annual MD&A the certifying officers' conclusions about the effectiveness of DC&P. The MD&A disclosure about the effectiveness of DC&P will be useful to investors if it discusses any identified weaknesses that are significant, whether the issuer has committed, or will commit, to a plan to remediate the identified weaknesses, and whether there are any mitigating procedures that reduce the risks that have not been addressed as a result of the identified weaknesses.

10.2. Interim certification of DC&P design if a weakness exists that is significant

If the certifying officers identify a weakness in the design of DC&P that is significant at the time of filing an interim certificate, to provide reasonable context for their certifications of the design of DC&P, it would be appropriate for the issuer to disclose in its interim MD&A the identified weakness and any other information necessary to provide an accurate and complete picture of the condition of the design of the issuer's DC&P.

10.3. Certification of DC&P if a material weakness in ICFR exists

As discussed in section 6.2 of the Policy Statement, there is a substantial overlap between the definitions of DC&P and ICFR. If the certifying officers identify a material weakness in the issuer's ICFR, this will almost always represent a weakness that is significant in the issuer's DC&P.

PART 11 REPORTING CHANGES IN ICFR

11.1. Assessing the materiality of a change in ICFR

Paragraph 7 of Form 52-109F1 and paragraph 6 of Form 52-109F2 require an issuer to disclose any change in the issuer's ICFR that has materially affected, or is reasonably likely to materially affect, the issuer's ICFR. A material change in ICFR might occur regardless of whether the change is being made to remediate a material weakness (e.g., a change from a manual payroll system to an automated payroll system). A change in an issuer's ICFR that was made to remediate a material weakness would generally be considered a material change in an issuer's ICFR.

PART 12 ROLE OF BOARD OF DIRECTORS AND AUDIT COMMITTEE

12.1. Board of directors

Form 52-109F1 requires the certifying officers to represent that the issuer has disclosed in its annual MD&A certain information about the certifying officers' evaluation of the effectiveness of DC&P. Form 52-109F1 also requires the certifying officers to represent that the issuer has disclosed in its annual MD&A certain information about the certifying officers' evaluation of the effectiveness of ICFR. Under R*egulation 51-102 respecting Continuous Disclosure Obligations*, the board of directors must approve the issuer's annual MD&A, including the required disclosure concerning DC&P and ICFR, before it is filed. To provide reasonable support for the board of directors' approval of an issuer's MD&A disclosure concerning ICFR, including any material weaknesses, the board of directors should understand the basis upon which the certifying officers concluded that any particular deficiency or combination of deficiencies did or did not constitute a material weakness (see section 9.2 of the Policy Statement).

12.2. Audit committee

Regulation 52-110 requires the audit committee to review an issuer's financial disclosure and to establish procedures for dealing with complaints and concerns about accounting or auditing matters. Issuers subject to Regulation 52-110 should consider its specific requirements in designing and evaluating their DC&P and ICFR.

12.3. Reporting fraud

Paragraph 8 of Form 52-109F1 requires certifying officers to disclose to the issuer's auditors, the board of directors or the audit committee of the board of directors any fraud that involves management or other employees who have a significant role in the issuer's ICFR. Subsection 6.6(3) of the Policy Statement provides guidance on the term "fraud" for purposes of this Regulation.

Two types of intentional misstatements are (i) misstatements resulting from fraudulent financial reporting, which includes omissions of amounts or disclosures in financial statements to deceive financial statement users, and (ii) misstatements resulting from misappropriation of assets.

PART 13 CERTAIN LONG TERM INVESTMENTS

13.1. Underlying entities

An issuer might have a variety of long term investments that affect how the certifying officers design and evaluate the effectiveness of the issuer's DC&P and ICFR. In particular, an issuer could have any of the following interests:

(a) an interest in an entity that is a subsidiary which is consolidated in the issuer's financial statements;

(b) an interest in an entity that is a special purpose entity (a SPE) which is consolidated in the issuer's financial statements;

(c) an interest in an entity that is proportionately consolidated in the issuer's financial statements;

(d) an interest in an entity that is accounted for using the equity method in the issuer's financial statements (an equity investment); or

(e) an interest in an entity that is not accounted for by consolidation, proportionate consolidation or the equity method (a portfolio investment).

In this Part, the term entity is meant to capture a broad range of structures, including, but not limited to, corporations. The terms "consolidated", "subsidiary", "SPE", "proportionately consolidated", and "equity method" have the meaning ascribed to such terms under the issuer's GAAP. In this Part, the term "underlying entity" refers to one of the entities referred to in items (a) through (e) above.

13.2. Fair presentation

As discussed in section 4.1 of the Policy Statement, the concept of fair presentation is not limited to compliance with the issuer's GAAP. If the certifying officers believe that an issuer's financial statements do not fairly present its financial condition insofar as it relates to an underlying entity, the certifying officers should cause the issuer to provide additional disclosure in its MD&A.

13.3. Design and evaluation of DC&P and ICFR

(1) **Access to underlying entity** – The nature of an issuer's interest in an underlying entity will affect the certifying officer's ability to design and evaluate the effectiveness of the controls, policies and procedures carried out by the underlying entity.

Subsidiary – In the case of an issuer with an interest in a subsidiary, as the issuer controls the subsidiary, certifying officers will have sufficient access to the subsidiary to design and evaluate the effectiveness of the controls, policies and procedures carried out by the underlying entity.

Proportionately consolidated entity or SPE – In the case of an issuer with an interest in a proportionately consolidated entity or a SPE, certifying officers might not always have sufficient access to the underlying entity to design and evaluate the effectiveness of the controls, policies and procedures carried out by the underlying entity.

Whether the certifying officers have sufficient access to a proportionately consolidated entity or a SPE to design and evaluate the effectiveness of the controls, policies and procedures carried out by the underlying entity is a question of fact. The sufficiency of their access could depend on, among other things:

(a) the issuer's percentage ownership of the underlying entity;

(b) whether the other underlying entity owners are reporting issuers;

(c) the nature of the relationship between the issuer and the operator of the underlying entity if the issuer is not the operator;

(d) the terms of the agreement(s) governing the underlying entity; and

(e) the date of creation of the underlying entity.

Portfolio investment or equity investment – In the case of an issuer with a portfolio investment or an equity investment, certifying officers will generally not have sufficient access to the underlying entity to design and evaluate the effectiveness of the controls, policies and procedures carried out by the underlying entity.

(2) **Access to an underlying entity in certain indirect offering structures** – In the case of certain indirect offering structures, including certain income trust and limited partnership offering structures, the issuer could have:

(a) a significant equity interest in the underlying entity but not legally control the underlying entity, since legal control is retained by a third party (typically the party involved in establishing the indirect offering structure) or

(b) an equity interest in an underlying entity that represents a significant asset of the issuer and results in the issuer providing the issuer's equity holders with separate audited annual financial statements and interim financial reports prepared in accordance with the same accounting principles as the issuer's financial statements.

In these cases, we generally expect the trust indenture, limited partnership agreement or other constating documents to include appropriate terms ensuring the certifying officers will have sufficient access to the underlying entity to design and evaluate the effectiveness of the controls, policies and procedures carried out by the underlying entity.

(3) **Reasonable steps to design and evaluate** – Certifying officers should take all reasonable steps to design and evaluate the effectiveness of the controls, policies and procedures carried out by the underlying entity that provide the certifying officers with a basis for the representations in the annual and interim certificates. However, it is left to the discretion of the certifying officers, acting reasonably, to determine what constitutes “reasonable steps”.

If the certifying officers have access to the underlying entity to design the controls, policies and procedures discussed in subsection (2) and they are not satisfied with those controls, policies and procedures, the certifying officers should consider whether there exists a material weakness or a weakness in DC&P that is significant.

(4) **Disclosure of a scope limitation relating to a proportionately consolidated entity or SPE** – A scope limitation exists if the certifying officers would not have a reasonable basis for making the representations in the annual or interim certificates because they do not have sufficient access to a proportionately consolidated entity or SPE, as applicable, to design and evaluate the controls, policies and procedures carried out by that underlying entity.

When determining whether a scope limitation exists, certifying officers must initially consider whether one, or a combination of more than one, proportionately consolidated entity or SPE includes risks that could reasonably result in a material misstatement in the issuer’s annual filings, interim filings or other reports. The certifying officers would consider such risks when the certifying officers first identify the risks faced by the issuer in order to determine the scope and necessary complexity of the issuer’s DC&P or ICFR, as discussed in subsection 6.6(2) of the Policy Statement.

The certifying officers would disclose a scope limitation if one, or a combination of more than one, proportionately consolidated entity or SPE includes risks that could reasonably result in a material misstatement and the certifying officers do not have sufficient access to design and evaluate the controls, policies and procedures carried out by each underlying entity.

The certifying officers would not disclose a scope limitation if a proportionately consolidated entity or SPE, individually or in combination with another such entity, does not include risks that could reasonably result in a material misstatement.

The issuer must disclose in its MD&A a scope limitation and summary financial information about each underlying entity in accordance with section 3.3 of the Regulation. The summary financial information may be disclosed in aggregate or individually for each proportionately consolidated entity or SPE.

Meaningful summary financial information about an underlying entity, or combination of underlying entities, that is the subject of a scope limitation would include:

(a) revenue;

(b) profit or loss before discontinued operations;

(c) profit or loss for the period; and

unless (i) the accounting principles used to prepare the financial statements of the underlying entity permit the preparation of its statement of financial position without classifying assets and liabilities between current and non-current, and (ii) the MD&A includes alternative meaningful financial information about the underlying entity, or combination of underlying entities, which is more appropriate to the underlying entity's industry,

(d) current assets;

(e) non-current assets;

(f) current liabilities; and

(g) non-current liabilities.

Meaningful disclosure about an underlying entity that is the subject of a scope limitation would also include any contingent liabilities and commitments for the proportionately consolidated entity or SPE.

(5) **Limited access to the underlying entity of a portfolio investment or equity investment** – Although the certifying officers may not have sufficient access to design and evaluate controls, policies and procedures carried out by the underlying entity of a portfolio investment or equity investment, the issuer's DC&P and ICFR should address the issuer's controls over its disclosure of material information relating to:

(a) the carrying amount of the investment;

(b) any dividends the issuer receives from the investment;

(c) any impairment loss in the investment; and

(d) if applicable, the issuer's share of any profit or loss from the equity investment.

(6) Reliance on financial information of underlying entity – In most cases, certifying officers will have to rely on the financial information reported by a proportionately consolidated entity, SPE or the underlying entity of an equity investment. In order to certify an issuer's annual or interim filings that include information regarding the issuer's investment in these underlying entities, the certifying officers should perform the following minimum procedures:

(a) ensure that the issuer receives the underlying entity's financial information on a timely basis;

(b) review the underlying entity's financial information to determine whether it has been prepared in accordance with the issuer's GAAP; and

(c) review the underlying entity's accounting policies and evaluate whether they conform to the issuer's accounting policies.

PART 14 BUSINESS ACQUISITIONS

14.1. Access to acquired business

In many circumstances it is difficult for certifying officers to design or evaluate controls, policies and procedures carried out by an acquired business shortly after acquiring the business. In order to address these situations, paragraph 3.3(1)(c) of the Regulation permits an issuer to limit the scope of its design of DC&P and ICFR for a business that the

issuer acquired not more than 365 days before the end of the financial period to which the certificate relates. Generally this will result in an issuer limiting the scope of its design for a business acquisition for three interim certificates and one annual certificate.

14.2. Disclosure of scope limitation

When determining whether a scope limitation exists, certifying officers must initially consider whether an acquired business includes risks that could reasonably result in a material misstatement in the issuer's annual filings, interim filings or other reports. The certifying officers would consider such risks when the certifying officers first identify the risks faced by the issuer in order to determine the scope and necessary complexity of the issuer's DC&P or ICFR, as discussed in subsection 6.6(2) of the Policy Statement. If the certifying officers limit the scope of their design of DC&P and ICFR for a recent business acquisition, this scope limitation and summary financial information about the business must be disclosed in the issuer's MD&A in accordance with section 3.3 of the Regulation and paragraph 5.3 in Form 52-109F1, or 52-109F2 as applicable. Meaningful summary financial information about the acquired business would include:

(a) revenue;

(b) profit or loss before discontinued operations;

(c) profit or loss for the period; and

unless (i) the accounting principles used to prepare the financial statements of the acquired business permit the preparation of its statement of financial position without classifying assets and liabilities between current and non-current, and (ii) the MD&A includes alternative meaningful financial information about the acquired business which is more appropriate to the acquired business' industry,

(d) current assets;

(e) non-current assets;

(f) current liabilities; and

(g) non-current liabilities.

Meaningful disclosure about the acquired business would also include the issuer's share of any contingent liabilities and commitments, which arise as a result of the acquisition. In the case of related businesses, as defined in NI 51-102, the issuer may present the summary financial information about the businesses on a combined basis.

PART 15 ~~VENTURE~~SENIOR UNLISTED ISSUER BASIC CERTIFICATES

15.1. ~~Venture~~Senior unlisted issuer basic certificates

Many ~~venture~~senior unlisted issuers have few employees and limited financial resources which make it difficult for them to address the challenges described in section 6.11 of the Policy Statement. As a result, many ~~venture~~senior unlisted issuers are unable to design DC&P and ICFR without (i) incurring significant additional costs, (ii) hiring additional employees, or (iii) restructuring the board of directors and audit committee. Since these inherent limitations exist for many ~~venture~~senior unlisted issuers, the required forms of certificate for ~~venture~~senior unlisted issuers are Forms 52-109~~FV~~SU1 and 52-109~~FV~~SU2. These forms do not include representations relating to the establishment and maintenance of DC&P and ICFR.

Although Forms 52-109~~FV~~SU1 and 52-109~~FV~~SU2 are the required forms for ~~venture~~senior unlisted issuers, a ~~venture~~senior unlisted issuer may elect to file Forms 52-

109F1 or 52-109F2, which include representations regarding the establishment and maintenance of DC&P and ICFR.

Certifying officers of a ~~non-venture~~senior listed issuer are not permitted to use Forms 52-109~~FV~~SU1 and 52-109~~FV~~SU2. Although a ~~non-venture~~senior listed issuer may face similar challenges in designing its ICFR, such as those described in section 6.11 of the Policy Statement, the issuer is still required to file Forms 52-109F1 and 52-109F2 and disclose in the MD&A a description of each material weakness existing at the end of the financial period.

15.2. Note to reader included in ~~venture~~senior unlisted issuer basic certificates

Forms 52-109~~FV~~SU1 and 52-109~~FV~~SU2 include a note to reader that clarifies the responsibility of certifying officers and discloses that inherent limitations on the ability of certifying officers of a ~~venture~~senior unlisted issuer to design and implement on a cost effective basis DC&P and ICFR may result in additional risks to the quality, reliability, transparency and timeliness of interim and annual filings and other reports provided under securities legislation.

15.3. Voluntary disclosure regarding DC&P and ICFR

If a ~~venture~~senior unlisted issuer files Form 52-109~~FV~~SU1 or 52-109~~FV~~SU2, it is not required to discuss in its annual or interim MD&A the design or operating effectiveness of DC&P or ICFR. If a ~~venture~~senior unlisted issuer files Form 52-109~~FV~~SU1 or 52-109~~FV~~SU2 and chooses to discuss in its annual or interim MD&A or other regulatory filings the design or operation of one or more components of its DC&P or ICFR, it should also consider disclosing in the same document that:

(a) the ~~venture~~senior unlisted issuer is not required to certify the design and evaluation of the issuer's DC&P and ICFR and has not completed such an evaluation; and

(b) inherent limitations on the ability of the certifying officers to design and implement on a cost effective basis DC&P and ICFR for the issuer may result in additional risks to the quality, reliability, transparency and timeliness of interim and annual filings and other reports provided under securities legislation.

A selective discussion in a ~~venture~~senior unlisted issuer's MD&A about one or more components of a ~~venture~~senior unlisted issuer's DC&P or ICFR without these accompanying statements will not provide transparent disclosure of the state of the ~~venture~~senior unlisted issuer's DC&P or ICFR.

PART 16 CERTIFICATION REQUIREMENTS FOR A NEW REPORTING ISSUER AND AN ISSUER THAT BECOMES A ~~NON-VENTURE~~SENIOR LISTED ISSUER

16.1. Certification requirements after becoming a ~~non-venture~~senior listed issuer

Sections 4.5 and 5.5 of the Regulation permit an issuer that becomes a ~~non-venture~~senior listed issuer to file Forms 52-109F1 – IPO/RTO and 52-109F2 – IPO/RTO for the first certificate that the issuer is required to file under this Regulation, for a financial period that ends after the issuer becomes a ~~non-venture~~senior listed issuer. If, subsequent to becoming a ~~non-venture~~senior listed issuer, the issuer is required to file an annual or interim certificate for a period that ended while it was a ~~venture~~senior unlisted issuer, the required form of certificate for that annual or interim filing is Form 52-109~~FV~~SU1 or 52-109~~FV~~SU2.

PART 17 EXEMPTIONS

17.1. Issuers that comply with U.S. laws

Some Canadian issuers that comply with U.S. laws might choose to prepare two sets of financial statements and file financial statements in Canada with accounting principles that differ from those that are filed or furnished in the U.S. For example, an issuer may file U.S. GAAP financial statements in the U.S. and financial statements using another acceptable form of accounting principles in Canada. In order to ensure that the financial statements filed in Canada are certified (under either the Regulation or SOX 302 Rules), those issuers will not have recourse to the exemptions in sections 8.1 and 8.2 of the Regulation.

PART 18 LIABILITY FOR CERTIFICATES CONTAINING MISREPRESENTATIONS

18.1. Liability for certificates containing misrepresentations

A certifying officer providing a certificate containing a misrepresentation potentially could be subject to quasi-criminal, administrative or civil proceedings under securities law.

A certifying officer providing a certificate containing a misrepresentation could also potentially be subject to private actions for damages either at common law or, in Québec, under civil law, or under the statutory civil liability regimes in certain jurisdictions.

PART 19 TRANSITION

19.1. Representations regarding DC&P and ICFR following the transition periods

If an issuer files an annual certificate in Form 52-109F1 or an interim certificate in Form 52-109F2 that includes representations regarding DC&P or ICFR, these representations would not extend to the prior period comparative information included in the annual filings or interim filings if:

(a) the prior period comparative information was previously the subject of certificates that did not include these representations; or

(b) no certificate was required for the prior period.

19.2. Application of Amendments

The amendments to the Regulation and this Policy Statement which came into effect on January 1, 2011 only apply to annual filings and interim filings for periods relating to financial years beginning on or after January 1, 2011.

PART 20 CERTIFICATION OF REVISED OR RESTATED ANNUAL OR INTERIM FILINGS

20.1. Certification of revised or restated annual or interim filings

If an issuer files a revised or restated continuous disclosure document that was originally certified as part of its annual or interim filings, the certifying officers would need to file Form 52-109F1R or Form 52-109F2R. These certificates would be dated the same date the certificate is filed and filed on the same date as the revised or restated continuous disclosure document.

20.2. Disclosure considerations if an issuer revises or restates a continuous disclosure document

If an issuer determines that it needs to revise or restate previously issued financial statements, the issuer should consider whether its original disclosures regarding the design or operating effectiveness of ICFR are still appropriate and should modify or supplement its original disclosure to include any other material information that is necessary for such disclosures not to be misleading in light of the revision or restatement.

Similarly, if an issuer determines that it needs to revise or restate a previously issued continuous disclosure document, the issuer should consider whether its original disclosures regarding the design or operating effectiveness of DC&P are still appropriate and should modify or supplement its original disclosure to include any other material information that is necessary for such disclosures not to be misleading in light of the revision or restatement.

POLICY STATEMENT 58-201 TO CORPORATE GOVERNANCE GUIDELINES

PART 1 PURPOSE AND APPLICATION

1.1. Purpose of this Policy

This Policy provides guidance on corporate governance practices which have been formulated to:

- achieve a balance between providing protection to investors and fostering fair and efficient capital markets and confidence in capital markets;
- be sensitive to the realities of the greater numbers of small companies and controlled companies in the Canadian corporate landscape;
- take into account the impact of corporate governance developments in the U.S. and around the world; and
- recognize that corporate governance is evolving.

The guidelines in this Policy are not intended to be prescriptive. We encourage issuers to consider the guidelines in developing their own corporate governance practices.

We do, however, understand that some parties have concerns about how this Policy and *Regulation 58-101 respecting Disclosure of Corporate Governance Practices* affect controlled companies. Accordingly, we intend, over the next year, to carefully consider these concerns in the context of a study to examine the governance of controlled companies. We will consult market participants in conducting the study. After completing the study, we will consider whether to change how this Policy and Regulation 58-101 treat controlled companies.

1.2. Application

This Policy applies to all reporting issuers, other than investment funds and venture issuers. Consequently, it applies to both corporate and non-corporate entities. Reference to a particular corporate characteristic, such as a board of directors (the board), includes any equivalent characteristic of a non-corporate entity. For example, in the case of a limited partnership, we recommend that a majority of the directors of the general partner should be independent of the limited partnership (including the general partner).

Income trust issuers should, in applying these guidelines, recognize that certain functions of a corporate issuer, its board and its management may be performed by any or all of the trustees, the board or management of a subsidiary of the trust, or the board, management or employees of a management company. For this purpose, references to "the issuer" refer to both the trust and any underlying entities, including the operating entity.

PART 2 MEANING OF INDEPENDENCE

2.1. Meaning of Independence

For the purposes of this Policy, a director is independent if he or she would be independent for the purposes of *Regulation 58-101 respecting Disclosure of Corporate Governance Practices*.

PART 3 CORPORATE GOVERNANCE GUIDELINES

Composition of the Board

3.1. The board should have a majority of independent directors.

3.2. The chair of the board should be an independent director. Where this is not appropriate, an independent director should be appointed to act as "lead director". However, either an independent chair or an independent lead director should act as the effective leader of the board and ensure that the board's agenda will enable it to successfully carry out its duties.

Meetings of Independent Directors

3.3. The independent directors should hold regularly scheduled meetings at which non-independent directors and members of management are not in attendance.

Board Mandate

3.4. The board should adopt a written mandate in which it explicitly acknowledges responsibility for the stewardship of the issuer, including responsibility for:

(a) to the extent feasible, satisfying itself as to the integrity of the chief executive officer (the CEO) and other executive officers and that the CEO and other executive officers create a culture of integrity throughout the organization;

(b) adopting a strategic planning process and approving, on at least an annual basis, a strategic plan which takes into account, among other things, the opportunities and risks of the business;

(c) the identification of the principal risks of the issuer's business, and ensuring the implementation of appropriate systems to manage these risks;

(d) succession planning (including appointing, training and monitoring senior management);

(e) adopting a communication policy for the issuer;

(f) the issuer's internal control and management information systems; and

(g) developing the issuer's approach to corporate governance, including developing a set of corporate governance principles and guidelines that are specifically applicable to the issuer. 1

The written mandate of the board should also set out:

(i) measures for receiving feedback from stakeholders (e.g., the board may wish to establish a process to permit stakeholders to directly contact the independent directors), and

(ii) expectations and responsibilities of directors, including basic duties and responsibilities with respect to attendance at board meetings and advance review of meeting materials.

In developing an effective communication policy for the issuer, issuers should refer to the guidance set out in National Policy 51-201, Disclosure Standards.

For purposes of this Policy, "executive officer" has the same meaning as in *Regulation 51-102 respecting Continuous Disclosure Obligations*.

Position Descriptions

3.5. The board should develop clear position descriptions for the chair of the board and the chair of each board committee. In addition, the board, together with the CEO, should develop a clear position description for the CEO, which includes delineating management's

responsibilities. The board should also develop or approve the corporate goals and objectives that the CEO is responsible for meeting.

Orientation and Continuing Education

3.6. The board should ensure that all new directors receive a comprehensive orientation. All new directors should fully understand the role of the board and its committees, as well as the contribution individual directors are expected to make (including, in particular, the commitment of time and resources that the issuer expects from its directors). All new directors should also understand the nature and operation of the issuer's business.

3.7. The board should provide continuing education opportunities for all directors, so that individuals may maintain or enhance their skills and abilities as directors, as well as to ensure their knowledge and understanding of the issuer's business remains current.

Code of Business Conduct and Ethics

3.8. The board should adopt a written code of business conduct and ethics (a code). The code should be applicable to directors, officers and employees of the issuer. The code should constitute written standards that are reasonably designed to promote integrity and to deter wrongdoing. In particular, it should address the following issues:

(a) conflicts of interest, including transactions and agreements in respect of which a director or executive officer has a material interest;

(b) protection and proper use of corporate assets and opportunities;

(c) confidentiality of corporate information;

(d) fair dealing with the issuer's security holders, customers, suppliers, competitors and employees;

(e) compliance with laws, rules and regulations; and

(f) reporting of any illegal or unethical behaviour.

3.9. The board should be responsible for monitoring compliance with the code. Any waivers from the code that are granted for the benefit of the issuer's directors or executive officers should be granted by the board (or a board committee) only.

Although issuers must exercise their own judgement in making materiality determinations, the Canadian securities regulatory authorities consider that conduct by a director or executive officer which constitutes a material departure from the code will likely constitute a "material change" within the meaning of *Regulation 51-102 respecting Continuous Disclosure Obligations*. This Regulation requires every material change report to include a full description of the material change. Where a material departure from the code constitutes a material change to the issuer, we expect that the material change report will disclose, among other things:

- the date of the departure(s),
- the party(ies) involved in the departure(s),
- the reason why the board has or has not sanctioned the departure(s), and
- any measures the board has taken to address or remedy the departure(s).

Nomination of Directors

3.10. The board should appoint a nominating committee composed entirely of independent directors.

3.11. The nominating committee should have a written charter that clearly establishes the committee's purpose, responsibilities, member qualifications, member appointment and removal, structure and operations (including any authority to delegate to individual members and subcommittees), and manner of reporting to the board. In addition, the nominating committee should be given authority to engage and compensate any outside advisor that it determines to be necessary to permit it to carry out its duties. If an issuer is legally required by contract or otherwise to provide third parties with the right to nominate directors, the selection and nomination of those directors need not involve the approval of an independent nominating committee.

3.12. Prior to nominating or appointing individuals as directors, the board should adopt a process involving the following steps:

(A) Consider what competencies and skills the board, as a whole, should possess. In doing so, the board should recognize that the particular competencies and skills required for one issuer may not be the same as those required for another.

(B) Assess what competencies and skills each existing director possesses. It is unlikely that any one director will have all the competencies and skills required by the board. Instead, the board should be considered as a group, with each individual making his or her own contribution. Attention should also be paid to the personality and other qualities of each director, as these may ultimately determine the boardroom dynamic.

The board should also consider the appropriate size of the board, with a view to facilitating effective decision-making.

In carrying out each of these functions, the board should consider the advice and input of the nominating committee.

3.13. The nominating committee should be responsible for identifying individuals qualified to become new board members and recommending to the board the new director nominees for the next annual meeting of shareholders.

3.14. In making its recommendations, the nominating committee should consider:

(a) the competencies and skills that the board considers to be necessary for the board, as a whole, to possess;

(b) the competencies and skills that the board considers each existing director to possess; and

(c) the competencies and skills each new nominee will bring to the boardroom.

The nominating committee should also consider whether or not each new nominee can devote sufficient time and resources to his or her duties as a board member.

Compensation

3.15. The board should appoint a compensation committee composed entirely of independent directors.

3.16. The compensation committee should have a written charter that establishes the committee's purpose, responsibilities, member qualifications, member appointment and removal, structure and operations (including any authority to delegate to individual members or subcommittees), and the manner of reporting to the board. In addition, the

compensation committee should be given authority to engage and compensate any outside advisor that it determines to be necessary to permit it to carry out its duties.

3.17. The compensation committee should be responsible for:

(a) reviewing and approving corporate goals and objectives relevant to CEO compensation, evaluating the CEO's performance in light of those corporate goals and objectives, and determining (or making recommendations to the board with respect to) the CEO's compensation level based on this evaluation;

(b) making recommendations to the board with respect to non-CEO officer and director compensation, incentive-compensation plans and equity-based plans; and

(c) reviewing executive compensation disclosure before the issuer publicly discloses this information.

Regular Board Assessments

3.18. The board, its committees and each individual director should be regularly assessed regarding his, her or its effectiveness and contribution. An assessment should consider

(a) in the case of the board or a board committee, its mandate or charter, and

(b) in the case of an individual director, the applicable position description(s), as well as the competencies and skills each individual director is expected to bring to the board.

POLICY STATEMENT TO REGULATION 71-102 RESPECTING CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS RELATING TO FOREIGN ISSUERS

PART 1 GENERAL

1.1. Introduction and Purpose

(1) *Regulation 71-102 respecting Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (the "Regulation") provides broad relief from most of the requirements of *Regulation 51-102 respecting Continuous Disclosure Obligations* ("Regulation 51-102") and *Regulation 51-103 respecting Ongoing Governance and Disclosure Requirements for Venture Issuers* ("Regulation 51-103") for two sub-categories of foreign reporting issuers – SEC foreign issuers and designated foreign issuers – on the condition that they comply with the continuous disclosure ("CD") requirements of the SEC or a designated foreign jurisdiction. SEC foreign issuers and designated foreign issuers are also exempted from certain other requirements of provincial and territorial securities legislation, including insider reporting and early warning, that are not contained in Regulation 51-~~102.~~102 or Regulation 51-103.

(2) This Policy Statement provides information about how the provincial and territorial securities regulatory authorities interpret the Regulation, and should be read in conjunction with it.

1.2. Other Relevant Legislation

In addition to the Regulation, foreign issuers should consult the following non-exhaustive list of legislation to see how it may apply to them:

(1) implementing legislation (the regulation, rule, ruling, order or other instrument that implements the Regulation in each applicable jurisdiction);

(2) Regulation 51-102;

(2.1) Regulation 51-103;

(3) *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* ("Regulation 52-107"); and

(4) National Instrument 71-101, *The Multijurisdictional Disclosure System* ("NI71-101").

1.3. Multijurisdictional Disclosure System

(1) NI 71-101 permits certain U.S. incorporated issuers to satisfy specified Canadian CD requirements by using disclosure prepared in accordance with U.S. requirements. The Regulation does not replace or alter NI 71-101. There are instances in which NI 71-101 and the Regulation offer similar relief to a reporting issuer, but other instances in which the relief available to a reporting issuer in one instrument differs from the relief available to the reporting issuer under the other instrument. Many issuers that are eligible for an exemption under the Regulation will be ineligible to rely on NI 71-101 and vice versa. For example, the Regulation defines a class of "SEC foreign issuers". Not all U.S. issuers referred to in NI 71-101 are SEC foreign issuers and not all SEC foreign issuers are U.S. issuers.

(2) (paragraph deleted).

1.4. Exemptions May Not Require Disclosure

Most of the exemptions in the Regulation are only available to a person or company that complies with a particular aspect of either U.S. federal securities laws or the laws of a

designated foreign jurisdiction. If those laws do not require the issuer to disclose, file or send any information, for example, because the issuer may rely on an exemption under those laws, then the issuer is not required to disclose, file or send any information to rely on the exemption contained in the Regulation.

PART 2 DEFINITIONS

2.1. Foreign Reporting Issuers

To qualify for any of the exemptions contained in the Regulation the issuer in question must be a "foreign reporting issuer". The definition of foreign reporting issuer is based upon the definition of foreign private issuer in Rule 405 of the 1933 Act and Rule 3b-4 of the 1934 Act. For the purposes of the definition of "foreign reporting issuer", it is the CSA's view that

(a) in calculating the percentage of assets located in Canada, the issuer should use the book value of the assets recorded in its most recent consolidated financial statements, either annual or interim; and

(b) in determining the outstanding voting securities that are owned, directly or indirectly, by residents of Canada, an issuer should

(i) use reasonable efforts to identify securities held by a broker, dealer, bank, trust company or nominee or any of them for the accounts of customers resident in Canada;

(ii) count securities beneficially owned by residents of Canada as reported on reports of beneficial ownership, including insider reports and early warning reports; and

(iii) assume that a customer is a resident of the jurisdiction or foreign jurisdiction in which the nominee has its principal place of business if, after reasonable inquiry, information regarding the jurisdiction or foreign jurisdiction of residence of the customer is unavailable.

The determination of the percentage of securities of the foreign issuer owned by residents of Canada should be made in the same manner for the purposes of paragraph (c) of the definition of "designated foreign issuer". This method of calculation differs from that of NI 71-101, which only requires a calculation based on the address of record. Accordingly, some SEC foreign issuers may qualify for exemptive relief under NI 71-101 but not under the Regulation.

2.2. Investment Funds

Generally, the definition of "investment fund" would not include a trust or other entity that issues securities which entitle the holder to substantially all of the net cash flows generated by: (i) an underlying business owned by the trust or other entity, or (ii) the income-producing properties owned by the trust or other entity. Examples of trusts or other entities that are not included in the definition are business income trusts, real estate investment trusts and royalty trusts.

PART 3 INSIDER REPORTS

3.1. (Repealed)

PART 4 FILING OF DISCLOSURE DOCUMENTS

4.1. Filing of Disclosure Documents on SEDAR

A foreign issuer does not have to file multiple copies of a foreign disclosure document that it is filing to satisfy the conditions of more than one exemption under the Regulation. The issuer need only file the document in one SEDAR category, and under any other applicable SEDAR category may provide an appropriate reference to the location of the filed document. For example, a foreign issuer may wish to file its U.S. Form 20F to satisfy the conditions relating to both the AIF exemption and the MD&A exemption. The foreign issuer could file the Form 20F on SEDAR under either of the AIF category or the MD&A category, and under the other category would file a letter giving the SEDAR project number that the Form 20F is filed under.

PART 5 ELECTRONIC DELIVERY OF DOCUMENTS

5.1. Electronic Delivery of Documents

Any documents required to be sent under the Regulation may be sent by electronic delivery, as long as such delivery is made in compliance with *Notice 11-201 relating to the Delivery of Documents by Electronic Means*, in Québec, and National Policy 11-201 *Delivery of Documents by Electronic Means, in the rest of Canada*.

PART 6 EXEMPTIONS NOT INCLUDED

6.1. Resource Issuers - Standards of Disclosure for Mineral Projects and Oil and Gas Activities

The Regulation does not provide an exemption from *Regulation 43-101 respecting Standards of Disclosure for Mineral Projects* or *Regulation 51-101 respecting Standards of Disclosure for Oil and Gas Activities*. Issuers are reminded that those Regulations apply to SEC foreign issuers and designated foreign issuers.

6.2. SEC Foreign Issuers

Regulation 51-102 ~~contains~~and Regulation 51-103 contain exemptions for SEC issuers from the change in year-end requirements in ~~Regulation 51-102.~~those rules. SEC foreign issuers under the Regulation will also meet the definition of SEC issuers under Regulation 51-~~102,~~102 and Regulation 51-103, and so will be able to rely on the change in year-end exemption in Regulation 51-~~102.~~102 or 51-103, as applicable.

6.3. Foreign Reporting Issuers

The Regulation does not provide an exemption for any foreign reporting issuers from the requirement in section 4.9 of Regulation 51-~~102.~~102 or section 33 of Regulation 51-103. A foreign reporting issuer must deliver a notice if it has been a party to an amalgamation, arrangement, merger, winding-up, reverse takeover, reorganization or other transaction that will have the effect of changing its continuous disclosure obligations under Regulation 51-~~102.~~102 or 51-103, as applicable. The Regulation also does not provide an exemption for any foreign reporting issuers from the requirement to file disclosure materials under section 11.1 of Regulation 51-102 or section 32 of Regulation 51-103, as applicable, or to file a notice of change of status under section 11.2 of Regulation 51-~~102.~~102 or section 33 of NI 51-103, as applicable.

6.4. Auditor Oversight - Canadian Public Accountability Board, Certification and Audit Committees

Section 4.3 of the Regulation provides relief for an SEC foreign issuer relating to annual financial statements and auditors' reports on annual financial statements. Section 5.4 provides similar relief for a designated foreign issuer. Reporting issuers are subject to

section 2.2 of *Regulation 52-108 respecting Auditor Oversight* ("Regulation 52-108") but may rely on the exemptions in sections 4.3 and 5.4 of the Regulation for relief from these obligations.

Sections 4.3 and 5.4, however, do not provide relief from

(a) the requirements in sections 2.1, and Part 3 of Regulation 52-108 imposed directly on a public accounting firm that issues an auditor's report with respect to the financial statements of a reporting issuer;

(b) the certification requirements in *Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings* and in subsections 8(4) and 10(3) of Regulation 51-103; or

(c) the audit committee requirements in *Regulation 52-110 respecting Audit Committees*. and in section 5 of Regulation 51-103.

SEC foreign issuers and designated foreign issuers must look to those instruments for any exemptions that may be available to them.

PART 7 EXEMPTIONS

7.1. Exemptions

(1) The exemptions contained in the Regulation are in addition to any exemptions that may be available to an issuer under any other applicable legislation.

(2) Issuers that have been given an exemption, waiver or approval by a regulator or securities regulatory authority before the Regulation and Regulation 51-102 came into effect, may be entitled to continue to rely on that exemption, waiver or approval. Issuers should refer to section 13.2 of Regulation 51-102 to determine in what circumstances the prior exemption, waiver or approval is available and what the reporting issuer must do to continue to rely on it.

(3) If an issuer wishes to seek exemptive relief from Regulation 51-~~102~~102, Regulation 51-103 or other requirements of provincial and territorial securities legislation on grounds similar but not identical to those permitted under the Regulation, the issuer should apply for this relief under the exemptive provisions of Regulation 51-102, Regulation 51-103 or other provincial and territorial securities legislation, as the case may be.

PART 8 TRANSITION

8.1. Transition

The amendments to the Regulation and this Policy Statement which came into effect on January 1, 2011 only apply to documents required to be prepared, filed, delivered or sent under the Regulation for periods relating to financial years beginning on or after January 1, 2011.