CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

Notice of publication

Regulation to amend Regulation 41-101 respecting General Prospectus Requirements,
Regulation to amend Regulation 44-101 respecting Short Form Prospectus Distributions,
Regulation to amend Regulation 44-102 respecting Shelf Distributions
and
Regulation to amend Regulation 44-103 respecting Post-Receipt Pricing

and

Changes to
Policy Statement to Regulation 41-101 respecting General Prospectus Requirements,
Policy Statement 41-201 respecting Income Trusts and Other Indirect Offerings,
Policy Statement to Regulation 44-101 respecting Short Form Prospectus Distributions,
Policy Statement to Regulation 44-102 respecting Shelf Distributions,
Policy Statement to Regulation 44-103 respecting Post-Receipt Pricing
and
Notice 47-201 relating to Trading Securities Using the Internet and Other Electronic Means

May 30, 2013

Introduction

We, the Canadian Securities Administrators (CSA or we), are implementing amendments to:

- *Regulation 41-101 respecting General Prospectus Requirements* (Regulation 41-101),
- *Regulation 44-101 respecting Short Form Prospectus Distributions* (Regulation 44-101),
- *Regulation 44-102 respecting Shelf Distributions* (Regulation 44-102), and

- *Regulation 44-103 respecting Post-Receipt Pricing* (Regulation 44-103).

We are also implementing changes to:

- *Policy Statement to Regulation 41-101 respecting General Prospectus Requirements* (Policy Statement 41-101),
- *Policy Statement 41-201 respecting Income Trusts and Other Indirect Offerings* (Policy Statement 41-201),
- *Policy Statement to Regulation 44-101 respecting Short Form Prospectus Distributions* (Policy Statement 44-101),
- *Policy Statement to Regulation 44-102 respecting Shelf Distributions* (Policy Statement 44-102),
- *Policy Statement to Regulation 44-103 respecting Post-Receipt Pricing* (Policy Statement 44-103), and
- *Notice 47-201 relating to Trading Securities Using the Internet and Other Electronic Means* (Notice 47-201).

The regulation amendments and policy statement changes have been made by each member of the CSA. In some jurisdictions, Ministerial approvals are required for these changes. Provided all necessary ministerial approvals are obtained, the regulation amendments and policy statement changes will come into force on August 13, 2013.

Substance and Purpose of the Regulation Amendments and Policy Statement Changes

The regulation amendments and policy statement changes set out modifications to the prospectus pre-marketing and marketing regime in Canada for issuers other than mutual funds and investment funds filing a prospectus on Form 41-101F2 *Information Required in an Investment Fund Prospectus* or Form 41-101F3 *Information Required in a Scholarship Plan Prospectus*. These changes will increase the range of permissible pre-marketing and marketing activities in connection with prospectus offerings. The current regulatory regime limits those activities.

Pre-marketing

"Pre-marketing" occurs when a party communicates with potential investors before a public offering and includes other promotional activity that occurs before a preliminary prospectus is filed. Unless the issuer is relying on the bought deal exemption in Part 7 of Regulation 44-101, pre-marketing has been prohibited in Canada. Specifically,

- securities legislation has prohibited any form of marketing for a public offering unless a preliminary prospectus has been filed and receipted, and
- investment dealers have not been permitted to solicit expressions of interest from investors until a preliminary prospectus has been filed and receipted.

The bought deal exemption provides a limited accommodation for issuers seeking certainty of

financing. Generally, the bought deal exemption allows solicitations of expressions of interest before the filing of a preliminary short form prospectus if, among other things:

- the issuer has entered into an enforceable agreement with an underwriter who has agreed to purchase the full amount of the offering,
- the issuer has issued a news release announcing the agreement, and
- the issuer files a preliminary prospectus within four business days of entering into the agreement.

Marketing

"Marketing" includes oral or written communications after the filing of a preliminary prospectus. During the "waiting period" between the filing of a preliminary prospectus and a final prospectus, certain limited marketing activities have been permitted under securities legislation.

Policy rationales for existing regulations

The policy rationales for the existing regulations include:

- *Equal access to information*
    - Generally, material information given to investors in connection with a public offering should be in the prospectus.
    - The prospectus should be available to all investors.

- *Deterring conditioning of the market*
    - Issuers and investment dealers should not condition or prime the market before the preliminary prospectus is filed.

- *Deterring insider and tippee trading*
    - The pre-marketing restrictions reinforce the requirement that insiders and "tippees" (as described in section 3.2 of *National Policy 51-201:Disclosure Standards*) should not trade on the basis of information about a potential offering that has not been generally disclosed.

- *Investor protection through adequate disclosure of proposed offering*
    - A prospectus provides "full, true and plain disclosure" of all material facts.
    - The issuer and the underwriters are potentially liable for any misrepresentations in the prospectus.
    - The issuer and the underwriters should use the prospectus as the main disclosure document for investors.

We believe that the policy rationales set out above are still valid and we have attempted to address them in the regulation amendments and policy statement changes. The purposes of the regulation amendments and policy statement changes are to:

- ease certain regulatory burdens and restrictions that issuers and investment dealers face in trying to successfully complete a prospectus offering, while at the same time providing protection to investors, and
- clarify certain matters in order to provide clear rules and a "level playing field" for

market participants involved in a prospectus offering.

In particular, the regulation amendments will, subject to certain conditions:

- expressly allow non-reporting issuers, through an investment dealer, to determine interest in a potential initial public offering by communicating with accredited investors, and
- expressly allow investment dealers to use marketing materials and conduct road shows after the announcement of a bought deal, during the "waiting period", and following the receipt of a final prospectus (subject to appropriate limitations designed to address investor protection concerns).

The regulation amendments and policy statement changes also specify when bought deals and bought deal syndicates can be enlarged, and provide greater clarity regarding certain practices used in connection with bought deals.

The amendments to Regulation 41-101 and to Policy Statement 41-101, to Policy Statement 41-201, to Regulation 44-101 and to Policy Statement 44-101, to Regulation 44-102 and to Policy Statement 44-102, to Regulation 44-103 and to Policy Statement 44-103 and to Notice 47-201 are published with this notice.

Background

The CSA previously requested comment on proposals reflected in the regulation amendments and policy statement changes. On November 25, 2011, we published a Notice and Request for Comment relating to the regulation amendments and policy statement changes (the November 2011 Materials).

In developing the regulation amendments and policy statement changes, we conducted:

- research on prospectus marketing regimes in the United States (including recent changes as a result of the *Jumpstart Our Business Startups Act*) and other foreign jurisdictions, and
- informal consultations in 2008, 2010 and 2012 with certain issuers, investment dealers, institutional investors, other market participants and advisory committees in various CSA jurisdictions.

Summary of Written Comments Received by the CSA

The comment period for the November 2011 Materials ended on February 23, 2012. We received written submissions from 16 commenters. We have considered the comments received and thank all of the commenters for their input. The names of the commenters are contained in Schedule B and a summary of their comments, together with our responses, is contained in Schedule C. The comment letters can be viewed on the Ontario Securities Commission website at www.osc.gov.on.ca.

Summary of Changes to the Regulations and Policy Statements

After considering the comments received on the November 2011 Materials, as well as information on foreign prospectus marketing regimes and the comments we received during our informal consultations, we have made some revisions to the November 2011 Materials. Those

revisions are reflected in the regulation amendments and policy statement changes we are publishing concurrently with this notice. As these changes are not material, we are not republishing the regulation amendments and policy statement changes for a further comment period.

Schedule A contains a summary of notable changes between the regulation amendments and policy statement changes and the November 2011 Materials.

Upcoming changes to SEDAR

Before the regulation amendments and policy statement changes come into force, we will create new "document types" for prospectus filings on the System for Electronic Document Analysis and Retrieval (SEDAR). In particular, we will create new document types for "marketing materials" and "confidential marketing materials".

These new document types will allow issuers to accurately file, or deliver, on SEDAR the materials contemplated by the regulation amendments. In particular,

- "marketing materials" would be used for the documents required to be filed under paragraphs 13.7(1)(e), 13.7(7)(a), 13.8(1)(e) and 13.8(7)(b) of Regulation 41-101, paragraphs 7.6(1)(e) and 7.6(7)(a) of Regulation 44-101, paragraph 9A.3(1)(e) and subparagraph 9A.3(7)(b)(ii) of Regulation 44-102, and paragraphs 4A.3(1)(e) and 4A.3(8)(b) of Regulation 44-103, and
- "confidential marketing materials" would be used for the documents required to be delivered under paragraphs 13.7(4)(c), 13.8(4)(c) and 13.12(2)(c) of Regulation 41-101, paragraphs 7.6(4)(c) and 7.8(2)(c) of Regulation 44-101, paragraphs 9A.3(4)(c) and 9A.5(2)(c) of Regulation 44-102 and paragraphs 4A.3(5)(c) and 4A.6(2)(c) of Regulation 44-103.

In connection with the existing filing type for "short form prospectus (Regulation 44-101)", we will create a new filing subtype for "marketing materials for bought deal" in order to allow issuers to file marketing materials for a bought deal under Part 7 of Regulation 44-101 before the filing of the preliminary short form prospectus. However, CSA staff will not make those marketing materials public until after the preliminary short form prospectus is filed and receipted.

Withdrawal of Staff Notice

As a result of the amendments to Regulation 44-101, CSA Staff Notice 47-302 *Pre-Marketing of Underwriters' Options on Bought Deals* (the Staff Notice) is no longer required. In particular, the new definition of "bought deal agreement" in subsection 7.1(1) of Regulation 44-101 provides that a bought deal agreement may not have an option, other than an over-allotment option, for any party to increase the number of securities to be purchased. Consequently, the Staff Notice will be withdrawn effective August 13, 2013.

Questions

Please refer your questions to any of:

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Schedule A

Summary of Changes to the November 2011 Materials

Application

The November 2011 Materials provided that the regulation amendments and policy statement changes would apply to issuers other than mutual funds. The revised regulation amendments and policy statement changes also do not apply to investment funds filing a prospectus in the form of Form 41-101F2 *Information Required in an Investment Fund Prospectus* or Form 41-101F3 *Information Required in a Scholarship Plan Prospectus*. This would maintain the status quo for these investment funds.

We have revised the regulation amendments and policy statement changes so that Regulation 41-101 and Policy Statement 41-101 contain separate sections for investment funds and issuers other than investment funds. CSA staff are considering potential disclosure reforms for these investment funds as part of a future stage of the CSA's point of sale project.

Testing of the Waters Exemption for IPO Issuers

Private company with public control person

The November 2011 Materials provided that due to insider/tippee trading concerns, the testing of the waters exemption for issuers planning to conduct an initial public offering (IPO issuers) would not be available to IPO issuers that are already public companies in a foreign jurisdiction. In response to the November 2011 Materials, comments were raised regarding insider and tippee trading concerns in relation to the use of the testing of the waters exemption by an IPO issuer that is the subsidiary of a public company. We have revised the amendments to Regulation 41-101 to specify that the testing of the waters exemption for IPO issuers cannot be used for an issuer if:

- any of the issuer's securities are held by a control person that is a public issuer, and
- the initial public offering would be a material fact or material change with respect to the control person.

Who may be solicited

The November 2011 Materials limited the class of persons who may be solicited under the testing of the waters exemption to "permitted institutional investors". We received comments recommending that:

- the definition of "permitted institutional investor" be revised to be more consistent with the definition of "accredited investor" in National Instrument 45-106 *Prospectus and Registration Exemptions*, and
- the exemption should be available for soliciting any accredited investor.

After considering the comments, we have revised the amendments to Regulation 41-101 to broaden the class of persons who may be solicited under the testing of the waters exemption to include all accredited investors. We note that:

- certain issuers, particularly venture issuers, may have difficulty attracting institutional investors, and therefore need a broader base of investors in order to benefit from the exemption, and

- existing securities legislation permits accredited investors to purchase securities without a prospectus on the basis that they are sophisticated investors or otherwise do not need the protection of a prospectus.

Period of testing
We have revised the amendments to Regulation 41-101 to prohibit solicitation under the testing of the waters exemption for a period of 15 days before the filing of the preliminary prospectus for the initial public offering. We believe that this prohibition supports the policy rationale underlying the exemption (i.e., to assess interest in a potential initial public offering before incurring costs relating to the offering).

Approval of materials
We have revised the amendments to Regulation 41-101 to clarify that any materials used by a dealer to solicit an expression of interest from an investor under the exemption must be approved in writing by the issuer.

Confidentiality
The November 2011 Materials provided that an investment dealer soliciting an expression of interest from an investor under the testing of the waters exemption was required to ask the investor to confirm in writing that the investor would keep any such information confidential. We have revised the amendments to Regulation 41-101 to require that the investor confirm in writing that it will keep information about the proposed offering confidential until the earlier of:

- the time the information has been generally disclosed in a preliminary long form prospectus or otherwise, or
- the time the issuer has confirmed in writing that it will not be pursuing the potential offering.

Use of information
We have revised the amendments to Regulation 41-101 to provide greater clarity regarding the use of information obtained pursuant to the testing of the waters exemption. The amendments require that an investment dealer soliciting an expression of interest from an investor under the testing of the waters exemption must ensure that the investor confirms in writing that it will not use information about the proposed offering for any purpose other than assessing the investor's interest in the offering, until the earlier of:

- the time the information has been generally disclosed in a preliminary long form prospectus or otherwise, or
- the time the issuer has confirmed in writing that it will not be pursuing the potential offering.

We have also included guidance in Policy Statement 41-101 to remind investment dealers and accredited investors that they should not use information obtained under the testing of the waters exemption in a way that may be considered abusive.

Policy statement guidance
We have added further guidance to Policy Statement 41-101 in order to clarify certain matters relating to the testing of the waters exemption for IPO issuers. Specifically, the guidance:

- clarifies that the exemption may be used at the same time by more than one investment dealer in respect of the same issuer, provided that the issuer has authorized each dealer in accordance with the conditions of the exemption,
- reminds issuers, dealers and accredited investors that selective disclosure concerns would arise if accredited investors were provided with material facts that are not disclosed in the subsequent preliminary prospectus for the initial public offering, and
- reminds issuers and dealers that the purpose of the exemption is to see if there is enough interest before initiating the initial public offering process and incurring costs, rather than to pre-sell the deal.

Bought Deals

Enlarging bought deals

The November 2011 Materials provided for the enlargement of bought deals up to a specified percentage. We requested comments on what that percentage should be. After considering the comments received, we have revised the amendments to Regulation 44-101 to allow bought deals to be enlarged up to 100% of the size of the original deal.

We have not retained the provision in the proposed regulations that would prohibit a bought deal from being enlarged if doing so "is the culmination of a formal or informal plan to offer a larger number of securities under the short form prospectus devised before the execution of the original agreement". Instead, the amendments to Regulation 44-101 now specify that a bought deal agreement may not contain an upsizing option.

We believe that these revisions will prevent abuse of the bought deal exemption, but will still enable issuers to benefit from increased demand for the offering.

Enlarging or reducing bought deal syndicates

The November 2011 Materials contained a prohibition against adding a new underwriter to a bought deal syndicate if doing so was "the culmination of a formal or informal plan to add that underwriter devised before the execution of the original agreement".

We have revised the amendments to Regulation 44-101 to:

- remove the prohibition noted above, and
- specify that a bought deal agreement must not be *conditional* on syndication (except for confirmation clauses, discussed below), although the parties can add or remove an underwriter or adjust the number of securities to be purchased by each underwriter on a proportionate basis, provided that certain conditions are met.

Confirmation clauses

We understand that some bought deal agreements include "confirmation clauses". The purpose of these clauses is to allow the lead underwriter to contact potential syndicate members before confirming the bought deal. The regulation amendments now define "confirmation clause" for the purpose of Part 7 of Regulation 44-101 to mean a provision in a bought deal agreement that provides that the agreement is conditional on the lead underwriter confirming that one or more additional underwriters has agreed to purchase certain of the securities being offered.

We have revised Regulation 44-101 to provide that confirmation clauses are only acceptable in certain circumstances, and have included guidance in Policy Statement 41-101 regarding confirmation clauses. Under the amendments to Regulation 44-101, confirmation clauses are only acceptable if, among other things:

- The lead underwriter provides a signed bought deal agreement to the issuer and the issuer signs it on the same day.
- On the following day, the lead underwriter provides a notice to the issuer either confirming the bought deal or advising that the bought deal has been terminated. If the bought deal is confirmed, the issuer must file a news release announcing the bought deal.

Timing for receipt of preliminary prospectus
We have maintained the requirement in Regulation 44-101 that the preliminary prospectus for a bought deal must be filed within four business days after the date a bought deal agreement is entered into. However, the revised amendments to Regulation 44-101 do not require the issuer to obtain a receipt for the prospectus on the fourth day.

Amending bought deal agreements to provide for different or additional classes of securities
We have revised the amendments to Regulation 44-101 to allow bought deal agreements to be amended to provide for different classes of securities or additional classes of securities and a different price for the securities, provided that certain conditions are met.

Bought deal agreement replaced by a more extended form of underwriting agreement
We have revised the amendments to Regulation 44-101 to indicate that an original bought deal agreement can be replaced by a more extended form of underwriting agreement, provided that the more extended form of underwriting agreement complies with the bought deal requirements in Regulation 44-101.

Withdrawing bought deals or amending bought deals to provide for a lower price per share or a smaller offering
We have become aware of a number of cases where bought deals have been either withdrawn or amended to provide for a lower price per share or a smaller offering. We have revised the amendments to Regulation 44-101 to prohibit such an amendment to a bought deal agreement until the fourth business day after the bought deal was entered into.

We have also added guidance to Policy Statement 41-101 that provides further details on this issue, and discusses our regulatory concerns.

Similar to the regulation amendments published with the November 2011 Materials, the revised regulation amendments provide that the parties to a bought deal agreement may agree to terminate the agreement if they decide not to proceed with the distribution. The revised changes to Policy Statement 41-101 also clarify that the bought deal rules do not prevent a party to a bought deal agreement from exercising a termination right set out in the agreement if:

- another party or person performs, or fails to perform, certain actions, or
- certain events occur or fail to occur.

Regulatory outs

We are aware that a practice has developed in which underwriters will require in a bought deal agreement or a more extended form of underwriting agreement that the issuer obtain a receipt for the final prospectus within a short period of time after the first comment letter relating to the preliminary prospectus is issued by staff of the principal regulator. This creates tension when staff identify significant issues that cannot be resolved within the time period specified in the agreement.

We have included guidance in Policy Statement 41-101 regarding the use of regulatory outs in bought deal agreements and more extended forms of underwriting agreements, and our concerns around this practice.

Engagement letters
We have included guidance in Policy Statement 41-101 indicating that if an issuer enters into an engagement letter with underwriters solely for the purpose of conducting due diligence before a potential prospectus offering, that event will not, in and of itself, indicate that "sufficient specificity" (as discussed in subsection 6.4(4) of Policy Statement 41-101) has been achieved, provided the engagement letter does not contain any other information which indicates that it is reasonable to expect that the dealer will propose to the issuer an underwriting of securities.

Due diligence outs
We have included guidance in Policy Statement 41-101 regarding the use of due diligence outs in bought deal agreements and more extended forms of underwriting agreements, and our concerns around this practice.

Providing marketing materials to investors
We have revised the amendments to Regulation 44-101 to broaden the class of persons who may receive bought deal marketing materials before the receipt of a preliminary prospectus to include any investor. The November 2011 Materials indicated that these materials could only be given to permitted institutional investors (as defined in the November 2011 Materials).

We have also revised the amendments to Regulation 44-101 to provide that an investor who received marketing materials in relation to a bought deal need only to receive a copy of the preliminary prospectus if, in response to the solicitation, the investor expressed an interest in acquiring the securities.

Bought deal road shows
We have revised the amendments to Regulation 44-101 to include provisions for road shows after the announcement of a bought deal but before the filing of a preliminary prospectus. In this regard, the amendments to Regulation 44-101 relating to marketing materials for bought deals generally apply to marketing materials used in connection with road shows for bought deals.

Overnight marketed deals
We are aware of the practice of entering into "overnight marketed deals" as an alternative to bought deals. We have included guidance in Policy Statement 41-101 which sets out the process that is typically followed in an overnight marketed deal.

Prospectus Notices, Standard Term Sheets and Marketing Materials

Prospectus notices

We have revised the amendments to Regulation 41-101 to include definitions of "preliminary prospectus notice" and "final prospectus notice". These definitions describe short notices relating to a prospectus that are currently permitted under securities legislation in certain jurisdictions.

Standard term sheets

We have revised the regulation amendments and policy statement changes to distinguish between "standard term sheets" and "marketing materials".

With respect to standard term sheets, the regulation amendments provide for the following:

- Standard term sheets can only contain limited information in respect of an issuer, securities or an offering, as prescribed by the regulation amendments.
- Standard term sheets must contain a prescribed legend (or words to the same effect) with cautionary language.
- Generally, other than contact information for the investment dealer or underwriters, any information in a standard term sheet concerning an issuer, securities or an offering must be disclosed in, or derived from, the relevant prospectus. However, if the offering is a bought deal, the information must be disclosed in, or derived from, the bought deal news release or the issuer's continuous disclosure record on SEDAR, or the subsequent preliminary prospectus.
- Standard term sheets will not have to be filed on SEDAR or included or incorporated by reference in the relevant prospectus. As a result, they will not be subject to civil liability. However, they will be subject to the existing statutory prohibitions on misleading or untrue statements.

We have defined "standard term sheet" in Regulation 41-101 to include a written communication intended for potential investors regarding a distribution of securities under a prospectus that only contains prescribed information.

The definition of standard term sheet excludes a preliminary prospectus notice and a final prospectus notice.

Marketing materials

The regulation amendments relating to marketing materials are intended to apply to situations where issuers and investment dealers would like to provide investors with information that is more detailed than the limited information that can be contained in a standard term sheet. Marketing materials are generally subject to the same conditions in the proposed regulation amendments published with the November 2011 Materials relating to "term sheets", with certain revisions as discussed below.

We have replaced the proposed definition of "term sheet" in Regulation 41-101 with a definition of "marketing materials", which are defined as a written communication intended for potential investors regarding a distribution of securities under a prospectus that contains material facts relating to an issuer, securities or an offering. The definition of marketing materials excludes a prospectus or any amendment, a standard term sheet, a preliminary prospectus notice and a final

prospectus notice.

We have also added guidance to Policy Statement 41-101 to clarify that marketing materials would not include a cover letter or email that merely encloses a copy of a document such as a prospectus, a standard term sheet or marketing materials.

Comparables
"Comparables" are information that compares an issuer to other issuers. The November 2011 Materials provided that comparables could only be given to permitted institutional investors (as defined in the November 2011 Materials) in the absence of civil liability. We noted that comparables can be "cherry picked" by investment dealers and misunderstood by retail investors. We specifically requested comment on the circumstances in which comparables should be permitted to be given to retail investors.

Based on the comments that we received, we have made the following revisions:

- We have defined comparables to include information that compares an issuer to other issuers.
- Comparables can be provided to any investor (i.e., institutional, accredited or retail) in marketing materials (including marketing materials provided in connection with a road show).
- Comparables will not be subject to civil liability, if certain conditions are met. Specifically, the regulation amendments provide that:
    - comparables can be removed from any version of marketing materials that is filed on SEDAR, and
    - the relevant prospectus need only include, or incorporate by reference, the version of the marketing materials with the comparables removed.

While not subject to statutory civil liability in these circumstances, comparables will be subject to statutory prohibitions on misleading or untrue statements. We have also made certain revisions that are intended to mitigate potential investor protection concerns around the use of comparables in the absence of civil liability. These include the following:

- issuers must confidentially deliver on SEDAR a complete template version of the marketing materials that contains the comparables, and
- additional disclosure (including risk disclosure) proximate to the comparables must be provided.

Guidance has also been added to Policy Statement 41-101 regarding the use of comparables to provide greater clarity around this practice.

Approval of marketing materials
The revised regulation amendments:

- require that before they are used, marketing materials must be approved in writing by the issuer and the lead underwriter, rather than all of the underwriters,
- allow for the approval and use of a template form for marketing materials that would permit the addition of certain non-substantive information, without requiring subsequent approvals, into a limited-use version of the marketing materials, and

- provide that where a template version of marketing materials that has been approved by the issuer and lead underwriter and filed is divided into separate sections, an investment dealer may provide a limited-use version of the marketing materials that includes only one or more of those sections.

The term "limited-use version" is defined in Regulation 41-101 to mean a template version of a document in which the spaces for information have been completed in accordance with certain requirements.

Filing of marketing materials
The revised regulation amendments:

- require that marketing materials (with comparables removed) be filed on SEDAR on the same day they are first used, rather than before they are used, and
- indicate that if a template form of marketing materials is filed, an investment dealer may make non-substantive changes to the template in a limited-use version of the marketing materials without filing the revised document. As noted above, we have defined the term "limited-use version" in Regulation 41-101.

Requirement to send marketing materials
We have not retained the requirement in the November 2011 Materials for revised marketing materials to be sent to investors who received the original marketing materials in certain circumstances. Instead, if a subsequent prospectus document modifies a statement of a material fact that appeared in the original marketing materials:

- a revised blacklined copy of the marketing materials must be filed with securities regulators and made public, and
- the subsequent prospectus document must contain a statement at the beginning of the document to:
    - disclose the particular statement of material fact that has been modified, and
    - indicate that a blacklined copy of the marketing materials reflecting the modification is available for viewing on SEDAR.

Fair, true and plain requirement
We have not retained the "fair, true and plain" requirement for marketing materials that was included in the November 2011 Materials. While marketing materials will not be subject to an express standard, we have included guidance in Policy Statement 41-101 indicating that marketing materials are subject to provisions in securities legislation which prohibit misleading or untrue statements.

Additionally, we note that the template version of the marketing materials must be included or incorporated by reference in the relevant prospectus and, accordingly, will form part of the prospectus document that is subject to the full, true and plain standard.

Scope
We have revised the regulation amendments to clarify that the rules relating to marketing materials apply to situations where an investor was shown marketing materials but not permitted to retain a copy.

Permitted information
We have revised the regulation amendments to clarify that, other than contact information for the investment dealer or underwriters and any comparables, all information in marketing materials used in connection with an offering other than a bought deal must be either:

- disclosed in the relevant prospectus, or
- derived from the relevant prospectus.

Where the offering is a bought deal, the amendments to Regulation 44-101 provide that, other than contact information for the investment dealer or underwriters and any comparables, all information in the marketing materials must be disclosed in, or derived from:

- the bought deal news release,
- the issuer's continuous disclosure record on SEDAR, or
- the subsequent preliminary prospectus that is filed on SEDAR.

Road Shows
General provisions for road shows
The November 2011 Materials contained separate requirements for:

- road shows for permitted institutional investors, and
- road shows for retail investors.

We have revised the regulation amendments and policy statement changes to include provisions that apply to all road shows, rather than distinguishing between the requirements applicable to road shows based on who can attend.

Bought deal road shows
The November 2011 Materials contained requirements for road shows during the waiting period and after filing of the final prospectus. The revised amendments to Regulation 44-101 also include road show provisions for bought deals. Marketing materials provided in connection with a road show for a bought deal are subject to the same conditions as other marketing materials for bought deals.

Materials provided at a road show
The revised regulation amendments and policy statement changes:

- refer to "marketing materials" rather than "written material" provided at a road show. Accordingly, the regulation amendments and policy statement changes relating to marketing materials generally apply to marketing materials used in connection with a road show,
- remove the requirement for investment dealers to restrict copying of materials provided at a road show,
- clarify that the road show provisions will generally only apply to written marketing materials used in connection with a road show, rather than oral statements, and
- include guidance in Policy Statement 41-101 regarding oral statements made at a road show.

Requirements for investment dealers

The November 2011 Materials provided that an investment dealer conducting a road show must establish and follow reasonable procedures to:

- verify the identity and keep a written record of any investor attending the road show in person, by telephone conference call, on the internet or by other electronic means, and
- ensure that the investor receives a copy of the relevant prospectus.

The revised regulation amendments provide that an investment dealer conducting a road show must establish and follow reasonable procedures to:

- ask any investor attending the road show in person, by telephone conference call, on the internet or by other electronic means to provide their name and contact information,
- keep a record of any information provided by the investor, and
- provide the investor with a copy of the relevant prospectus.

We believe that this is a more reasonable requirement to impose on investment dealers, who may not be able to "verify" the identity of all road show attendees, particularly when attendance is not in person. Additionally, as it may not always be possible to "ensure" that an investor has actually received a copy of the prospectus, we believe that it is more reasonable to require that the investment dealer "provide" the investor with the prospectus.

Cautionary language

The November 2011 Materials required that a road show commence with the oral reading of a cautionary statement. We have revised the regulation amendments to only require that the cautionary statement be read at the beginning of a road show if the investment dealer conducting the road show permits investors, other than accredited investors, to attend the presentation. We have also shortened the prescribed language and indicated that the statement made at the road show can be a statement that is to the same effect as the prescribed language.

Permitted attendees

The November 2011 Materials contained restrictions on who could attend a road show. The revised regulation amendments do not have these restrictions.

We have also revised the regulation amendments and policy statement changes to clarify that members of the media can attend road shows in their capacity as members of the media, rather than only as potential investors. We have added guidance to Policy Statement 41-101 on certain matters relating to media attendance at road shows. In particular, the guidance states that:

- Although members of the media may attend a road show, they should not be specifically invited by the issuer or an investment dealer.
- Road shows are intended to be presentations for potential investors, not press conferences for members of the media.
- Issuers and investment dealers should not market a prospectus offering in the media.

Road shows for certain U.S. cross-border prospectus offerings

Due to existing Canadian waiting period restrictions, issuers in U.S. cross-border initial public offerings currently apply for exemptive relief in order to conduct internet road shows. In the notice that was published as part of the November 2011 Materials, we indicated that issuers in U.S. cross-border initial public offerings would no longer have to apply for relief when our

proposals on road shows were implemented.

We received comments indicating that issuers in U.S. cross-border offerings may not want to file marketing materials provided in connection with a road show on SEDAR due to concerns regarding potential class action lawsuits in the U.S. In order to prevent U.S. underwriters from avoiding Canadian tranches in cross-border prospectus offerings, we have revised the regulation amendments to provide an exception for issuers in certain U.S. cross-border prospectus offerings from the requirements to:

- file the marketing materials on SEDAR, and
- include or incorporate the marketing materials in the final prospectus.

This is intended to be a limited exception and is subject to the following conditions:

- The U.S. cross-border prospectus offering must be primarily intended to be sold in the U.S.
- The issuer and underwriters must provide a contractual right of action to any investor who viewed the marketing materials, in the event that the marketing materials contain a misrepresentation. The contractual right of action must be disclosed in the prospectus.
- A copy of the marketing materials must be confidentially delivered to securities regulators on SEDAR.

We have also provided guidance in Policy Statement 41-101 clarifying that the exception does not apply to marketing materials relating to the U.S. cross-border offering other than the marketing materials provided in connection with the road show.

Marketing after a Receipt for a Final Prospectus

The November 2011 Materials contained provisions prescribing when investment dealers could provide term sheets (now marketing materials) and conduct road shows after a receipt for a final prospectus and a final base shelf prospectus. Where we have made changes to the conditions for marketing materials and road shows during the waiting period, we have generally made the same changes for marketing materials and road shows after the receipt of a final prospectus, with certain accommodations for offerings pursuant to a draw-down under a final base shelf prospectus or an offering under the PREP procedures.

Shelf prospectuses

All information in standard term sheets (other than contact information for the investment dealer or underwriters) and marketing materials (other than contact information for the investment dealer or underwriters and comparables) for a draw-down under a final base shelf prospectus must:

- currently be disclosed in, or derived from, the final base shelf prospectus, any amendment to the final base shelf prospectus or an applicable shelf prospectus supplement that has been filed, or
- later be disclosed in, or derived from, an applicable shelf prospectus supplement that is filed.

We have moved the regulation amendments relating to final base shelf prospectuses, including provisions relating to standard term sheets, marketing materials and road shows in the context of

a draw-down under a final base shelf prospectus, from Regulation 41-101 to Regulation 44-102. However, guidance with respect to these provisions will still be contained in Policy Statement 41-101.

Base PREP prospectuses
All information in standard term sheets (other than contact information for the investment dealer or underwriters) and marketing materials (other than contact information for the investment dealer or underwriters and comparables) after the receipt for a final base PREP prospectus must:

- currently be disclosed in, or derived from, the final base PREP prospectus, the supplemented PREP prospectus or any amendment that has been filed, or
- later be disclosed in, or derived from, the supplemented PREP prospectus that is filed.

We have included regulation amendments relating to final base PREP prospectuses, including provisions relating to standard term sheets, marketing materials and road shows in the context of a final base PREP prospectus in Regulation 44-103. However, guidance with respect to these provisions is contained in Policy Statement 41-101.

Other
We have also:

- included new definitions in the regulations to reflect the above changes (e.g., a definition of “lead underwriter”),
- revised the policy statements to the regulations to reflect the above changes, and
- made certain drafting changes to the provisions.

Schedule B
List of Commenters

1. BMO Capital Markets
2. Borden Ladner Gervais LLP
3. Burnet, Duckworth & Palmer LLP
4. Business Law Section of the Ontario Bar Association
5. Caisse de dépôt et placement du Québec
6. Canada Pension Plan Investment Board
7. Cassels Brock & Blackwell LLP
8. CIBC
9. Davies Ward Phillips & Vineberg LLP
10. Fiore Financial Corporation
11. Investment Industry Association of Canada
12. Kenmar Associates
13. Norton Rose Canada LLP
14. Osler, Hoskin & Harcourt LLP
15. RBC Global Asset Management Inc.
16. Siskinds LLP

Schedule C

Summary of Comments and CSA Responses

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
General Comments			
1	General support for the proposals	Nine commenters expressed general support for the proposals, subject to their comments on specific aspects of the proposals. One commenter expressed general support for some of the proposals. Particular comments include the following: • The proposed regulations are useful insofar as they clarify and codify existing practices. • One commenter was supportive of the CSA's efforts to provide greater clarity with respect to the permissible pre-marketing and marketing activities in connection with prospectus offerings. For securities law practitioners, advising on these activities has traditionally required a significant amount of judgment, given the nature of existing regulations and policies in this area. This has sometimes led to different views among market participants with respect to certain practices. • The existing regulatory framework surrounding the prospectus pre-marketing	We thank the commenters for their input.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		and marketing regime does not appear to be sufficiently clear or well understood by investment dealers or prospective investors. The proposed regulation amendments and policy changes would be beneficial to the Canadian capital markets as issuers and investment dealers would be provided with further guidance on the appropriate practices and procedures for communicating these matters with prospective investors. • The proposed changes will increase the range of permissible pre-marketing and marketing activities in connection with prospectus offerings. • Overall, the proposals are a significant improvement over the current regulation of pre-marketing and marketing and are much more consistent with current market practice. While not expressly supporting the proposals, one commenter indicated that it supports any measure that would help stimulate capital raising activities while preserving the efficiency and integrity of the markets.	
2	General concerns with the proposals in relation to investors	Two commenters had investor protection concerns with the proposed regulation amendments and policy changes. One commenter submitted that:	The regulation amendments are intended to ease certain regulatory burdens and restrictions that issuers and investment dealers face in trying to successfully complete a prospectus offering, while at the same time addressing investor protection concerns.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		• Since disclosure is one of the pillars of investor protection, any attempt to water down aspects of disclosure was suspect. • Even with regulator-approved disclosure, the content, jargon and legalese are of limited use to the average retail investor. • The proposals would ease regulatory restrictions faced by issuers and investment dealers when marketing prospectus offerings. The commenter did not see how changes that increase the range of permissible pre-marketing and marketing activities in connection with prospectus offerings are in the best interests of retail investors. • The proposals will add risks for retail investors without much or any corresponding benefits or safeguards. Another commenter cautioned against any changes to the existing regulatory framework that would impose additional and unduly onerous restrictions on institutional or other investors in order to provide more opportunities for investment dealers to engage in pre-marketing activities.	While the regulation amendments increase the range of permissible pre-marketing and marketing activities available in connection with prospectus offerings, certain restrictions and conditions placed upon these activities are intended to protect investors. For instance: • Only accredited investors may be solicited under the testing of the waters exemption for IPO issuers. • Marketing materials are subject to a number of restrictions and conditions to further investor protection, including the requirements that o the marketing materials (other than any comparables in these materials) be included or incorporated by reference into the relevant prospectus and therefore subject to civil liability for misrepresentations. o the marketing materials be provided with a copy of the relevant prospectus. o the marketing materials contain a prescribed legend with cautionary language. We do not believe that the regulation amendments will result in additional and unduly onerous restrictions being placed on institutional and other investors.
3	General support for existing regulations on pre-marketing and marketing	Although expressing general support for some of the proposed regulation amendments and policy statement changes, one commenter believes that, in general, the existing statutory	While the regulation amendments and policy statement changes reflect the same policy rationales that underlie the current requirements, we believe that there is a lack of clarity around existing practices which has led, in some

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		regime governing pre-marketing communications adequately addresses the marketing needs of underwriters, and serves the dual purpose of protecting investors yet allowing for access to, and the efficient functioning of, the Canadian capital markets.	instances, to an unlevel playing field. One intent of the regulation amendments and policy statement changes is to provide greater certainty around some practices, and to ensure that a level playing field exists throughout the pre-marketing and marketing process.
4	Policy rationale for existing regulations	One commenter agrees with the policy rationales for the existing regulations and with the CSA's belief that they are still valid.	We thank the commenter for their input.
5	Application to investment funds	One commenter was glad to see that the proposals did not apply to mutual funds. However, the commenter was concerned that the proposals would apply to exchange traded funds (ETFs) and closed end funds. The commenter noted that leveraged and reverse ETF disclosures have caused confusion in the past for retail investors and their advisors.	We have revised the regulation amendments and policy statement changes so that, in addition to mutual funds, they will not apply to investment funds filing a prospectus on Form 41-101F2 or Form 41-101F3. This change was made since CSA staff are considering potential disclosure reforms for investment funds filing a prospectus on Form 41-101F2 or Form 41-101F3 as part of a future stage of the CSA's point of sale project.
6	General concerns with the proposals in relation to compliance	One commenter believes there should be a requirement for dealers to establish, maintain and apply policies and procedures that establish a system of controls and supervision to ensure compliance with securities legislation and the proposed marketing regulations. The commenter noted that CSA Staff Notice 31-325 *Marketing Practices of Portfolio Managers* gives numerous examples of misleading marketing practices that seem to recur year after year, despite repeated cautions and warnings from securities regulators. The commenter believes that these	This is a matter of internal compliance for dealers, who are responsible for ensuring that they comply with securities legislation, both prescriptive and principles based. Securities legislation requires dealers to deal fairly, honestly and in good faith with their clients. Securities legislation also prohibits any person or company from making statements that are misleading or untrue or omitting information that is necessary to prevent the statement from being misleading.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		practices are not limited to portfolio managers.	
7	General concerns relating to interaction with U.S. prospectus marketing rules	One commenter had general concerns about how the proposed regulations amendments and policy statement changes would work in a cross-border context. The commenter submitted that: • Divergences between Canadian and U.S. rules have the potential to drive transactions and capital raising to the larger U.S. market. • It was not proposing that the CSA merely duplicate the U.S. regime in the Canadian context. There are clear distinctions between the prospectus regimes in Canada and the U.S. • However, the marketing related rules adopted in the U.S. (as part of their securities offering reform in 2005) highlight the abundance of nuances that must be addressed when attempting to specifically regulate marketing initiatives in respect of a prospectus offering. • The U.S. reforms demonstrated that significant consultation of all affected market participants is essential to establish a tailored approach that avoids impractical requirements or other unintended adverse consequences to the efficiency of one's capital markets. • Since there are instances where the proposed regulation amendments may conflict with the equivalent U.S. rules, further	We have considered U.S. rules, including recent changes that have been proposed as a result of the *Jumpstart Our Business Startups Act*. While we appreciate that there are differences between the Canadian and U.S. regimes, we do not believe that the regulation amendments will result in significant impediments to cross-border offerings, or a movement of capital-raising transactions from Canada to the U.S. In response to specific comments, we have revised the regulation amendments to provide an exception from the road show provisions so that certain issuers in a U.S. cross-border prospectus offering would not be required to: • file marketing materials used in connection with a road show on SEDAR, and • include or incorporate by reference the marketing materials in the final prospectus. We note that this is intended to be a limited accommodation, which would be subject to the following conditions: • The exception could only be used if the U.S. cross-border prospectus offering was primarily intended to be sold in the U.S. • The issuers and underwriters would be required to provide a contractual right to any investor who viewed marketing materials used in connection with the road show, in the event the materials contain a misrepresentation.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		consultation in respect of the proposed regulation amendments is important to ensure that the final regulations are workable, both from a Canadian and a cross-border context.	• The contractual right noted above would be required to be disclosed in the prospectus. • A copy of the marketing materials would be required to be confidentially delivered on SEDAR to Canadian securities regulators. We provided this exception in response to comments that: • Many U.S. issuers in U.S. cross-border prospectus offerings will not want to file marketing materials used in connection with an internet road show on SEDAR for fear of lawsuits from U.S. class action law firms. • Unless the CSA provided an exception for these U.S. issuers, U.S. underwriters may avoid Canadian tranches in cross-border offerings. Although we provided the above-noted exception in response to these concerns, we don't believe that a requirement to file marketing materials in connection with road shows on SEDAR will create an undue burden for U.S. cross-border prospectus offerings for the following reasons: • The road show materials will only have to be filed on SEDAR in Canada if the underwriters want to provide the materials to Canadians. The issuer and the underwriters would still be able to rely on any U.S. exemption from having to file the materials on EDGAR. • If the issuer and the underwriters conducted appropriate diligence and care, they should not be worried about the road show materials containing a misrepresentation.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
			• If the road show materials for a cross-border prospectus offering contained a misrepresentation, we understand that the issuer and the underwriters would, in any event, be subject to civil liability for misrepresentations under Section 12(a)(2) of the United States *Securities Act of 1933* (the 1933 Act) and other provisions. • Any liability concerns would be mitigated by the requirement that the road show materials contain a legend warning investors that the road show materials do not provide full disclosure of all material facts relating to the securities offered and that investors should read the relevant prospectus before making an investment decision. We have also revised the regulation amendments to provide an exception from certain road show procedures for certain U.S. cross-border initial public offerings where the issuer is relying on the exemption from U.S. filing requirements in Rule 433(d)(8)(ii) under the 1933 Act in respect of the road show.
8	Further consultations and publication for comment	Four commenters wanted the CSA to engage in further consultations with market participants before implementing the proposed regulation amendments. Furthermore, two commenters believed that a revised version of the proposed regulation amendments should be published for additional comment.	***Consultation*** Before the proposed regulations were published for comment on November 25, 2011, we conducted informal consultations with market participants in Fall 2008 and Fall 2010. Since the publication of the original regulation amendments and policy changes on November 25, 2011, we have engaged in targeted consultations on specific issues relevant to certain market participants.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		Comments received include the following: • Citing investor protection concerns, one commenter urged that the proposals be referred to the OSC's Investor Advisory Panel for deeper consideration. • While appreciating that the CSA previously solicited feedback on the proposed regulation amendments from investment dealers, another commenter does not feel that it would be appropriate to implement the proposed regulation amendments without the completion of a thorough, consultative discussion between the CSA and all market participants. • One commenter was concerned that many market participants may not fully appreciate the impact that the proposals will have on their activities. As a result, the commenter believes the CSA should not implement the proposed regulations without at least publishing for comment a further revised version of the regulations and obtaining comments from a sufficiently representative group of participants in the capital markets (particularly the investment dealers, institutional investors and retail investors who would be most directly affected by these changes). • Similarly, another commenter believes that the CSA should further consult with a	***Publication*** Market participants had an opportunity to comment during the comment process. We considered the comments that were received, and have responded to concerns that were raised by revising the regulation amendments and policy statement changes. We do not believe that a second comment period is necessary as there have not been material changes made to the regulation amendments and policy statement changes that were published for comment in November 2011.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		sufficiently representative sample of market participants and securities law practitioners in Canada, the U.S. and other relevant jurisdictions, and based on such consultation publish for comment a revised draft of the regulation amendments. The commenter believes that since the proposed regulation amendments raise many commercial, administrative and other elements, market participants who are directly involved in the marketing of prospectus offerings need to assess them. The commenter believes the considered perspectives of investment dealers and other direct market participants are critical to ensure the final version of the regulation amendments does not unnecessarily impede the efficient operation of the Canadian capital markets.	
Regulation 41-101 respecting General Prospectus Requirements			
9	Definition – permitted institutional investor	***Scope of the definition*** Six commenters believe that the definition of "permitted institutional investor" should be more consistent with the current definition of "accredited investor" in *Regulation 45-106 respecting Prospectus and Registration Exemptions*. One of these commenters submitted that: • The definition of permitted institutional investor in the proposed regulations is	We have removed the definition of "permitted institutional investor" from the regulation amendments. Marketing materials, including comparables, can now be provided to any investor (i.e., institutional, accredited or retail). Additionally, the regulation amendments now permit an investment dealer to solicit expressions of interest from accredited investors under the testing of the waters exemption for IPO issuers, if the conditions of the exemption are met.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		narrower than the definition of accredited investor under Canadian securities laws, and notably excludes registered advisers and dealers and high net worth individuals. • The narrower definition of permitted institutional investor is not warranted in light of the manner in which the definition is used throughout the proposed regulations. • The CSA previously issued a consultation note inviting public comment on the accredited investor definition, among other matters. Accordingly, the commenter would support the use of the accredited investor definition instead of the proposed permitted institutional investor definition throughout the proposed regulations until there are further developments in response to the consultation note. In proposing the narrower definition of permitted institutional investor, it appears to the commenter that the CSA has taken a view on some of the matters that it has asked for comments on in the consultation note without the benefit of input on the consultation note. ***Use of the definition – differentiating between retail investors and institutional investors*** One commenter disagreed with the proposed regulations which differentiate between retail investors and permitted institutional investors in	

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		respect of the information that may be provided to them concerning a prospectus offering. ***Use of the definition – differentiating between institutional investors and other accredited investors*** To the extent the proposed regulation amendments and policy statement changes provide for a distinction between the types of investors that may, among other things, be solicited under the testing of the waters exemption or receive comparables information in a road show, six commenters submitted that the definition of "permitted institutional investor" is too narrow. Comments received include the following: • If the concept of a "permitted institutional investor" is retained, the definition should be expanded to include a broader class of investors. • If the intention is to exclude retail investors, the definition of "permitted institutional investor" should be more consistent with the definition of "accredited investor" in *Regulation 45-106 respecting Prospectus and Registration Exemptions*. • Under the proposed regulations, permitted institutional investors would be permitted	

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		access to term sheets at an earlier stage than retail investors and access to road shows that excluded retail investors. However, "non-investment fund" funds, sophisticated corporate investors and foreign analogues to Canadian investment funds would also be denied access to earlier term sheets and to certain road shows. • Excluding foreign investment funds would be problematic for any transaction with a cross-border component. • There should be no reason to exclude any potential investor that meets the definition of "accredited investor" in Canada or the U.S. To the extent that distinctions are made, this is one that has already been made from a policy perspective (for private placements) and one that would not impose substantial additional compliance costs that would come from applying an additional classification scheme to an investment dealer's clients. • The definition of permitted institutional investor is quite narrow, and excludes investors that would be expected to be canvassed under the testing of the waters exemption.	
10	Definition – road show	One commenter noted that the proposed definition of "road show" requires that one or more executive officers of the issuer be in attendance at the road show for it to be a "road	We have revised the definition of "road show" to mean a presentation to potential investors, regarding a distribution of securities under a prospectus, conducted by one or more investment dealers on behalf of an issuer in which one or

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		show". The commenter submitted that: • This may result in certain road shows not qualifying. • For example, some structures involve a new entity being incorporated to acquire an operating business. There may only be a limited number of executive officers at the issuer level, with additional executive officers at the operating business. A road show that involved only the latter would not qualify. • Similarly, a director is not an "executive officer". A road show that involved only a director of the issuer would not qualify. • The definition should contemplate alternative arrangements such as these, and others that might arise if the person attending the particular road show does not fall within a definition that has been crafted for other uses. • This could be accomplished by adding the phrase "or other representative of the issuer" in the definition.	more executive officers, ***or other representatives***, of the issuer participate.
11	Definition – term sheet	One commenter was concerned that the proposed definition of "term sheet" in Regulation 41-101 is overly broad, in that it only excludes a prospectus, notice, circular advertisement, letter or other communication expressly permitted by securities legislation. The commenter submitted that:	We have made certain changes to clarify the scope of the regulation amendments and policy changes. We have revised the regulation amendments and policy statement changes to distinguish between "standard term sheets" and "marketing materials". We have also defined "preliminary prospectus notice" and "final prospectus

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		• This may have unintended consequences in respect of certain email or other communication with investors that references the distribution, but is not of the same character or does not contain the type of information that would be conveyed in communication with the intention of soliciting interest. • The definition should be refined so that it applies to a written communication regarding a distribution of securities under a prospectus that contains material information about the distribution and legal terms of the offering that is available under the prospectus.	notice" to include the notices, circulars, advertisements, letters or other communications currently permitted by securities legislation. ***Standard term sheets*** The regulation amendments allow standard term sheets to include specified information, as set out in Regulation 41-101, relating to the basic factual terms of a prospectus offering, provided that such information is contained in the applicable prospectus (or, in the case of a bought deal, the bought deal news release, the issuer's continuous disclosure record on SEDAR, or the subsequent preliminary prospectus). The definition of standard term sheet in Regulation 41-101 excludes a preliminary prospectus notice and a final prospectus notice. Standard term sheets will not have to be filed on SEDAR or included or incorporated by reference into the issuer's prospectus. As a result, they will not be subject to civil liability, but will still be subject to existing statutory prohibitions for misleading or untrue statements. ***Marketing materials*** To better draw a distinction between standard term sheets and more detailed materials, we have replaced "term sheet" with "marketing materials" throughout the regulation amendments and policy statement changes. With some exceptions, marketing materials are generally subject to the same conditions as term sheets were in our November 2011 proposals.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
			We have defined "marketing materials" in Regulation 41-101 to mean a written communication intended for potential investors regarding a distribution of securities under a prospectus that contains material facts relating to an issuer, securities or an offering. The definition of marketing materials excludes: • a prospectus or any amendment, • a standard term sheet, • a preliminary prospectus notice, and • a final prospectus notice. In addition, we have included policy statement guidance in Policy Statement 41-101 explaining that the definition is not intended to include certain communications from an investment dealer to an investor, such as a cover letter or email that merely encloses a copy of a document such as a prospectus, a standard term sheet or marketing materials, but does not include any material facts about an issuer, securities or an offering. Marketing materials must be filed on SEDAR and included or incorporated by reference into the relevant prospectus. Accordingly, they will be subject to civil liability for misrepresentations, in addition to statutory prohibitions for misleading or untrue statements.
12	Meaning of "provide"	One commenter noted that it was unclear whether the term "provide" in the proposed regulations would capture situations where	For reasons of investor protection, we have revised the regulation amendments and policy statement changes relating to standard term sheets, marketing materials and

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		investors were: • Shown a term sheet but not permitted to retain a copy. • Shown a PowerPoint presentation during a road show, but not provided with a paper copy. • Shown written materials during a road show but not permitted to retain a copy. The commenter submitted that: • Issuers should not be permitted to avoid liability where written materials are misleading through the simple expediency of refusing to provide a hard copy of the materials to investors. • Accordingly, the language in the proposed regulations should be broadened to encompass situations where written materials are shown to investors.	road shows to clarify that they apply to situations where an investor is shown a copy of such materials but not permitted to retain a copy. For example, see new subsection 13.0(3) of Regulation 41-101. We agree with the commenter that issuers should not be permitted to avoid liability where written materials are misleading by refusing to provide a hard copy of the materials. We note that investors may make investment decisions on the basis of materials that are shown to them.
13	Materials relating to prospectus offering – distinction between investors	One commenter disagrees with the proposed regulations which differentiate between retail and institutional investors in respect of the information that may be provided to them concerning a prospectus offering. The commenter submitted that: • This distinction is inconsistent with the principle that the prospectus must contain full, true and plain disclosure of all of the material facts relating to the securities offering.	We have revised certain proposed regulation amendments that distinguished between the material that can be provided to different investors in a prospectus offering. ***Testing of the waters exemption for IPO issuers*** We have revised the regulation amendments to provide that the testing of the waters exemption for IPO issuers can be used to solicit any accredited investor (rather than only permitted institutional investors). We believe that this will allow issuers to solicit a broader base of investors under the exemption. Additionally, existing securities legislation

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		• Any investor that is eligible to participate in an offering should have an equal opportunity to receive any disclosure provided.	permits accredited investors to purchase securities without a prospectus based on the view that they are sophisticated investors or other investors that do not need the protection of a prospectus. However, due to investor protection concerns, we have not broadened the class of persons who can be solicited under the exemption to include all retail investors. ***Comparables*** The original proposals provided that comparables could only be given to permitted institutional investors in the absence of civil liability. We have revised the regulation amendments to provide that comparables can be provided to any investor (i.e., institutional, accredited or retail) in marketing materials in the absence of civil liability. To address investor protection concerns, the regulations require that comparables be provided with certain disclosure. ***Road shows*** We have revised the regulation amendments and policy changes to include standard provisions that apply to road shows which may be attended by any investor (i.e., institutional, accredited or retail).
14	Testing of the waters exemption for IPO issuers – general support	Four commenters were particularly supportive of the proposed testing of the waters exemption for IPO issuers.	We thank the commenters for their input.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		One commenter agreed that the conditions set forth in the exemption appropriately address the issues of ensuring confidentiality and preventing a conditioning of the market.	
15	Testing of the waters exemption for IPO issuers – definition of permitted institutional investor	One commenter recommended using the "accredited investor" definition in *Regulation 45-106 respecting Prospectus and Registration Exemptions* rather than the proposed definition of "permitted institutional investor" to describe those investors that could be canvassed under the testing of the waters exemption. The commenter submitted that: • The current accredited investor definition more closely reflects the types of investors that would be interested and appropriately qualified to receive and assess information. • The definition of permitted institutional investor is quite narrow, and excludes investors that would expect to be canvassed in the process of testing the waters such as foreign hedge funds or U.S. accredited investors. The commenter believes that inclusion of these entities should not raise any public policy concerns. • The CSA may wish to consider allowing the "testing of the waters" exemption to apply to sophisticated retail investors who may be most likely to participate in certain types of structured product offerings. The commenter submitted that from an investor protection	We have revised the regulation amendments to provide that the testing of the waters exemption for IPO issuers can be used to solicit any accredited investor. See response to item 13. However, due to investor protection concerns, we have not broadened the class of persons who can be solicited under the exemption to include all retail investors.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		perspective, it may be appropriate to restrict retail exposure to only accredited investors.	
16	Testing of the waters exemption for IPO issuers – permitted information	Four commenters were in favour of rules and restrictions on what information could be given to investors under the proposed testing of the waters exemption for IPO issuers. One commenter expressed concern about multiple "term sheets" being used to test the waters, resulting in potential abuses through differential disclosure. The commenter submitted that: • Some dealers may use a document containing overly promotional content that the issuer has not approved in an attempt to get a more positive response than other dealers competing for the same work. • The regulations should provide that any document used to test the waters that identifies or contains sufficient information to identify the issuer be approved in writing by the issuer and that the issuer provide that same document to any dealer that is testing the waters at approximately the same time. Two commenters were of the view that confidential information provided to permitted institutional investors under the proposed testing of the waters exemption for IPO issuers should be limited to the information that would be	We have revised the amendments to Regulation 41-101 to provide that while materials used by a dealer to solicit investors under the testing of the waters exemption for IPO issuers must be approved by the issuer, each dealer will not be required to use the same materials. We have also included policy statement guidance in Policy Statement 41-101 explaining that the testing of the waters exemption may be used by more than one dealer at the same time, provided the issuer has authorized each dealer in accordance with the conditions of the exemption. We believe that the risk of abuse of the nature specified by the commenter will be mitigated by the requirements that the issuer: • authorize each dealer, and • approve all materials that are used under the exemption. Information distributed to investors under the testing of the waters exemption will not be limited to information that would be disclosed in the prospectus. However, we have

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		disclosed in the prospectus. One commenter noted that one of the proposed conditions of relying on the exemption is that any written material must bear a legend indicating that the material is not subject to liability for misrepresentations under securities law. The commenter submitted that: • In the interests of investor protection, a reference should also be made to the fact that the information is subject to the disclosure contained in the prospectus. • The rationale for such an additional legend requirement is that: (a) investors should make their investment decision based on the prospectus, which is the principal disclosure document; and (b) the information may change due to the length of time that may elapse between the initial contact with a potential IPO investor and the date the IPO prospectus is receipted.	included policy statement guidance in Policy Statement 41-101 to remind issuers that: • the preliminary prospectus must contain full, true and plain disclosure of all material facts, and • selective disclosure concerns would arise if an investor was provided with material facts that are not disclosed in any subsequent prospectus. We have not prescribed any additional legend requirements if materials are given to investors solicited under the exemption. If a dealer or an issuer wishes to include additional disclaimers, they may do so.
17	Testing of the waters exemption for IPO issuers – confidentiality requirement	One commenter made reference to the proposed requirement that before an investment dealer could provide a permitted institutional investor with confidential information about a proposed IPO, the investor must confirm in writing that it will keep the information confidential. The commenter submitted that: • In practice, should an investor choose to receive confidential information after being	We have revised the amendments to Regulation 41-101 to require any investor solicited under the testing of the waters exemption for IPO issuers to confirm in writing that it will keep information about the proposed offering confidential and not use it for any purpose other than assessing the investor's interest in the offering until the earlier of: • the information being generally disclosed, or • the issuer confirming in writing that it will not be proceeding with the offering.

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		approached by an investment dealer, it may be difficult to ascertain whether inside information has been made available by the investment dealer to the investor. • Additional guidance on what the CSA considers material, undisclosed information would be helpful so investors' trading activities are not unduly impacted. • The CSA should specify, or outline the factors in determining, the time period within which an investor would be expected to continue to treat the information as confidential.	
18	Testing of the waters exemption for IPO issuers – liability for permitted information	One commenter supported keeping any "term sheets" used in testing the waters for IPO issuers out of the prospectus liability regime as the disclosures in such documents would, due to their preliminary nature, not necessarily have been subject to adequate or significant due diligence.	Confidential materials used in connection with the testing of the waters exemption for IPO issuers are not subject to the statutory civil liability regime for prospectuses.
19	Testing of the waters exemption for IPO issuers – record keeping	Two commenters believe that there should not be any additional record keeping involved with the proposed testing of the waters exemption for IPO issuers. In particular, two commenters were concerned that the proposed documentation requirements will add unnecessary costs and/or administrative burdens without corresponding significant benefit.	We have retained the record keeping requirements in the amendments to Regulation 41-101. We believe that these requirements are an important safeguard that should be in place if investors are provided with confidential information prior to an initial public offering. We note that the regulation amendments do not prescribe the manner in which records must be kept. This provides investment dealers with flexibility to develop mechanisms that fit within their existing record keeping practices.

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		One commenter was concerned that the proposed regulations would require dealers to develop and maintain separate systems to meet the specific requirements of the proposal. The commenter submitted that: • Currently, dealers maintain comprehensive record keeping systems suited to their particular operational and compliance processes and system configuration. • If the regulatory objective is to ensure that no information is disclosed that will not be included in the prospectus, this can be achieved by permitting the dealers to develop processes that are consistent with their existing record keeping systems to achieve this objective, rather than prescribing specific procedures.	
20	Testing of the waters exemption for IPO issuers - timing	For dealers relying on the testing of the waters exemption for IPO issuers, one commenter was of the view that there should not be any time limitations when marketing to permitted institutional investors prior to the filing of the preliminary prospectus for an IPO.	We have revised the amendments to Regulation 41-101 to limit the testing of the waters exemption for IPO issuers to solicitations of expressions of interest that take place outside of the 15 day period prior to filing of the preliminary prospectus. The testing of the waters exemption is intended to help investment dealers and issuers assess interest in a potential IPO in advance of the IPO process and, in particular, before incurring costs in preparing a preliminary prospectus. We do not believe that the exemption should be used in order to "pre-sell" the IPO on the eve of filing a preliminary

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			prospectus. We believe that the 15 day restricted period is in line with the policy intent behind the exemption, and also helps to mitigate regulatory concerns around leaks of information before the preliminary prospectus is filed.
21	Testing of the waters exemption for IPO issuers – request for additional guidance	One commenter requested that the CSA provide further guidance regarding the applicability of the testing of the waters exemption to a situation where a subsidiary of a public company is undertaking an IPO, and this transaction is deemed material to the parent company. The commenter also felt that guidance in respect of "wall crossing" would be instructive to the market.	In order to address insider and tippee trading concerns, we have revised the amendments to Regulation 41-101 to provide that the testing of the waters exemption for IPO issuers may not be used for an issuer contemplating an initial public offering if: • any of the issuer's securities are held by a control person that is a "public issuer" (as defined in Regulation 41-101), and • the initial public offering would be a material fact or a material change with respect to the control person.
22	Testing of the waters exemption for IPO issuers – drafting comments	One commenter had a drafting comment on the opening language in proposed subsection 13.4(1) of Regulation 41-101. The commenter suggested removing the phrase "offering of securities of an issuer" and replacing it with "offering by an issuer". The commenter submitted that: • This change may not be absolutely necessary given that the issuer must not be a reporting issuer in any jurisdiction in any event, but may more properly reflect the intent. • In other words, it is an initial public offering by the issuer, not of a specific class or kind	We have made the suggested change.

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		of securities of the issuer.	
23	Term sheets - general	Two commenters expressed general support for the proposed regulations that would permit term sheets to be provided at the time of the preliminary prospectus and final prospectus to all investors, both retail and institutional (subject to their comments on specific aspects of the proposals). Comments received include the following: • The proposed regulations would allow an investor to quickly identify the relevant facts of the offering. • While the prospectus is the cornerstone disclosure document for any offering, communication methods have developed over time and there is more information available electronically to investors than ever before in making an investment decision. • The proposed regulation amendments and policy statement changes are an important step in modernizing the marketing regime for Canadian prospectus offerings and bringing that regime in line with the regimes of other jurisdictions to facilitate multi-jurisdictional offerings.	We thank the commenters for their input.
24	Term sheets – distinction between “term sheets” and	One commenter submitted that: • The majority of public offerings make use of	See response to item 11.

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	"written marketing materials"	a term sheet (a "standard term sheet") that simply states the basic factual terms of the transaction such as price, total deal size, over-allotment terms, use of proceeds, jurisdictions of sale, commission, closing date, etc. • If upon review of the standard term sheet, a potential investor expresses an interest in participating in the transaction, then, in accordance with applicable securities legislation, a prospectus is delivered to that potential purchaser. • Any new regulations should differentiate between a standard term sheet and the type of term sheet that would be permitted under the proposals, both in terminology and in regulation. The former is correctly called a "term sheet", while the latter should be given another name, such as "written marketing materials".	
25	Term sheets – approval and filing on SEDAR	Two commenters had concerns with the proposed requirement that a term sheet be approved in writing by the issuer and underwriters and filed on SEDAR before solicitation activities commence. One commenter submitted that: • The requirement of written approval could lead to difficulties in timing, which often is crucial for such transactions.	***Approval of marketing materials*** We have revised the regulation amendments to provide that only a template version of marketing materials must be pre-approved in writing by the issuer before use. Furthermore, the regulation amendments only require that the template version of the marketing materials be pre-approved in writing by the lead underwriter, rather than all underwriters. For civil liability and investor protection reasons, we believe the template version of the marketing materials should be subject to these approval requirements.

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		• The provision could be modified to allow for a 24-48 hour filing requirement without creating public policy concerns. Another commenter submitted that: • It is unclear what policy rationale is served by requiring that term sheets be approved and filed in advance of their first use, particularly where the content must be included (or incorporated, as applicable) in the preliminary and final prospectus of an offering. • Canadian investors may withdraw from their purchase within the two days following the receipt of the final prospectus. • Any limited benefit served by the requirement for the advance approval and filing of a term sheet is outweighed by the associated costs and administrative burden. • In addition to extra costs and administrative burden associated with the approval and filing requirement, this requirement may also, in certain circumstances, significantly impede the efficient operation of the markets. • For example, it would force the prior formal approval and filing of a term sheet that simply contains a description of the final terms of the securities in an offering. • In a U.S. context, it is vital that this pricing	In order to minimize potential compliance burdens, the regulation amendments provide that: • if a template version of the marketing materials is approved and filed, an investment dealer or the lead underwriter may prepare and provide a limited-use version of the marketing materials that contains certain additional or alternative information (as described below), and • if the template version of marketing materials is divided into separate sections, an investment dealer may provide a limited-use version of the marketing materials that includes only one or more of those separate sections. ***Filing of marketing materials*** We have also revised the regulation amendments to require that the template version of the marketing materials be filed on SEDAR on the same day that they are first shown or provided to potential investors (rather than filed before use). We believe that selective disclosure concerns that may arise with this approach (i.e., same day filing rather than filing before use) are mitigated by the fact that the information in the marketing materials will be disclosed in, or derived from, the relevant prospectus. ***Definition of limited-use version*** We have defined the term “limited-use version” in

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		term sheet be available for transmission to accounts immediately after pricing in order to confirm sales as it forms part of the "disclosure package" at the time of sale. A delay to permit the review, approval and filing of such a term sheet can create risk that investors who had informally committed to a particular offering may reconsider their decision as a result of that delay. • To address this risk, the U.S. rules permit the filing of the pricing supplement as late as two days following this transmission.	Regulation 41-101 to mean a template version of a document in which the spaces for information have been completed in accordance with certain specified provisions. ***Standard term sheets*** As noted above, the new provisions for standard term sheets are not subject to approval and filing requirements.
26	Term sheets – distribution of term sheets with the prospectus	One commenter had the following comments on the proposed regulations that require an investment dealer to provide a copy of the prospectus with a term sheet when the term sheet is provided to a potential investor: • This requirement may not reflect current investment dealer practice and may be difficult for investment dealers to comply with. • Term sheets are typically emailed to investors by members of an investment dealer's sales force, while prospectus delivery is typically handled by a separate distribution centre of an investment dealer (usually located at separate premises from the sales force, depending on the size of the dealer), or may in some cases be outsourced by the dealer to a service provider.	We have considered the comments, and have retained the requirement that, other than marketing materials provided before the filing of a preliminary prospectus for a bought deal, marketing materials must be provided to investors with a copy of the relevant prospectus. Since the marketing materials will not provide full, true and plain disclosure of all material facts, they should generally be provided with a copy of the relevant prospectus. ***PREP and shelf offerings*** We have also provided for some accommodations to the general requirement to provide marketing materials where the post-receipt pricing process is used, and in relation to shelf prospectus supplements. In particular, an investment dealer can provide marketing materials before a shelf prospectus supplement has been filed. We believe that these accommodations will address some of the concerns raised by the commenters.

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		• The prevailing dealer practice remains to deliver paper copies of prospectuses in order to fulfil a dealer's statutory obligation to deliver a prospectus. As a result, term sheets are typically delivered by email by personnel within an investment dealer who are usually different than the group responsible for delivery of prospectuses in paper form. • As a result of the foregoing, it would be difficult to comply with the requirement in the proposed regulations to provide a copy of the preliminary prospectus, final prospectus or amendment (as applicable) with the term sheet, since these documents are typically delivered separately and in different formats (the prospectus in paper form and the term sheet in electronic form). • Where an offering of securities is to be made pursuant to an issuer's shelf prospectus, the proposed regulations appear to require an investment dealer to provide a copy of the base shelf prospectus with the term sheet where the prospectus supplement is not yet available (i.e., after launch of an offering but before the end of the two business day period for delivery). • Under current practice for an offering of securities made pursuant to an issuer's shelf prospectus, the term sheet would be sent on	***Electronic delivery*** We also note that *Notice 11-201 Related to the Delivery of Documents by Electronic Means* sets out the circumstances in which a prospectus can be delivered by electronic means. ***Compliance*** We do not believe it is onerous for a member of the sales force at an investment dealer to comply with the requirements and send a copy of the marketing materials and the relevant prospectus to an investor by email or paper delivery. Furthermore, an investment dealer may choose to retain its current procedures for paper delivery of the prospectus notwithstanding that the investor may already have received an electronic copy of the prospectus with an earlier email from a registered representative enclosing marketing materials. We do not think this raises any undue administrative burdens. ***Standard term sheets*** As noted above, the new provisions for standard term sheets do not require that standard term sheets be provided to investors with a copy of the relevant prospectus.

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		its own after launch of the offering, while both the base shelf prospectus and the shelf prospectus supplement would be sent together to investors within the allowable two business day period. The commenter believes that there is little added benefit to be gained by requiring a base shelf prospectus on its own to be delivered to investors with a term sheet, and this additional delivery requirement will impose an additional compliance burden on investment dealers.	
27	Term sheets – requirement to send a revised term sheet	Two commenters had concerns with the proposed regulations requiring that a revised term sheet be sent to investors who received the original term sheet in certain circumstances, namely when the subsequent preliminary short form prospectus, final prospectus, shelf prospectus supplement or amendment (as the case may be) modifies a statement of a material fact that appeared in the original term sheet. One commenter submitted that: • There should be an exception to these requirements where the modified information is simply to identify final terms of the offering. There will always be such a modification in marketed offerings where a term sheet with preliminary terms is provided and there is no utility in requiring	We have removed this delivery requirement. Instead, we have revised the regulation amendments to provide that if a prospectus or an amendment to a prospectus modifies a statement of material fact that appeared in earlier marketing materials, the issuer must: • post a revised, blacklined version of the marketing materials on SEDAR at the time the prospectus (or amendment) is filed, and • disclose, in the prospectus (or amendment), how the statement in the previous marketing materials has been modified by a statement in the prospectus (or amendment), and state that a revised, blacklined copy of the marketing materials has been filed on SEDAR. Since a retail investor may have made an investment decision on the basis of a statement of material fact in the marketing materials, we think any changes to that statement should be highlighted in the above manner.

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		delivery of a revised term sheet and disclosure to identify this type of modification. • More generally, it seems duplicative to require delivery of a revised term sheet to highlight any modification where the final prospectus will highlight the change. If the CSA is concerned with the prominence of the disclosure, this concern should instead be addressed in the prospectus disclosure requirement. Another commenter submitted that: • The requirement is unnecessary given that the language of the proposed regulations contains the standard "modifying or superseding" language that allows the subsequent preliminary prospectus, final prospectus, shelf prospectus supplement or amendment (as the case may be) to modify or supersede the contents of the earlier term sheet. • One of the hallmarks of the Canadian prospectus offering regime is that investors are considered to make their investment decision on the basis of the disclosure in the final prospectus (notwithstanding that there may have been changes in disclosure since the preliminary prospectus). Investors are then given a two day right to withdraw from their purchase of securities after having	

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		received the final prospectus. Accordingly, even if certain statements of a material fact in the original term sheet are modified or superseded by the subsequent version of the prospectus document, a purchaser is ultimately making its investment decision on the basis of the disclosure in the final prospectus. • The requirement to send a revised term sheet highlighting modified statements of a material fact together with the subsequent version of the prospectus document would be difficult to comply with since the responsibility within a dealer for delivery of term sheets and prospectuses may reside in separate groups, or in some cases separate firms if the dealer has outsourced the prospectus delivery function. • There is limited substantive disclosure about the issuer in a term sheet for a prospectus offering, and so it may be less likely that a subsequent version of the prospectus document would modify a statement of a material fact that appeared in the original term sheet. • The one exception is information regarding offering price and offering size, as term sheets for a marketed offering will refer to the pricing and sizing range. In the event that the pricing and sizing range for a	

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		marketed offering were to change from that indicated in the original term sheet, investment dealers would typically send a revised term sheet to potential investors with the modified information. However, this revised term sheet is sent independently of the final prospectus.	
28	Term sheets – French translation	Given the requirement in the proposed regulations to include or incorporate by reference a term sheet in an issuer's preliminary prospectus or final prospectus (as the case may be), one commenter assumed that a term sheet would need to be translated into French in order to comply with French language requirements in the province of Québec. The commenter believes that this would be a change to current practice.	Under the regulation amendments: • a template version of the marketing materials must be filed on or before the day that the marketing materials are first provided to a potential investor (guidance on the meaning of "provide" is set out in subsections 6.5(B)(3) and 6.12(4) of Policy Statement 41-101), and • if marketing materials are provided, the issuer must include, or incorporate by reference, the template version of the marketing materials in its final prospectus. Under applicable legislation in Québec, a French template version of the marketing materials would have to be prepared and filed at the time the template version is included or incorporated by reference in the final prospectus (if the issuer files the final prospectus in Québec).
29	Term sheet – "fair, true and plain" requirement	Two commenters had concerns on how the proposed regulations would impose a new standard of disclosure for term sheets, that of "fair, true and plain" disclosure. One commenter submitted that:	We have revised the regulation amendments to remove the "fair, true and plain" standard for marketing materials. However, while marketing materials are not subject to an express standard, we have included policy statement guidance in Policy Statement 41-101 indicating that marketing materials are subject to the provisions in

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		• It understands that liability for the information in a term sheet will arise from its inclusion (or incorporation) in the final prospectus. • The misrepresentation standard applicable to the contents of the prospectus does not take into account the balanced requirement that the proposed regulation amendments impose on a term sheet. • Accordingly, it appears that enforcement of this requirement of the term sheet will fall on members of the CSA in the prospectus review process. The commenter anticipates that the additional interaction with the members of the CSA (and any attendant revisions to the term sheet thereby required) may impose delay on the prospectus review and approval process. • Further, in the context of a take-down from a shelf prospectus, there is effectively no mechanism by which to enforce a balanced component of the fair, true and plain standard, as prospectus supplements are not subject to regulatory review. Another commenter submitted that: • Given that the proposed regulations require the term sheet to be contained or incorporated by reference in the prospectus which is subject to its own standard of	securities legislation that prohibit misleading or untrue statements. The template version of the marketing materials must be filed on SEDAR and incorporated by reference or included in the relevant prospectus. Accordingly, they will also be subject to civil liability. • We believe that subjecting marketing materials to civil liability enhances investor protection. • We expect issuers and investment dealers to be accountable to investors if they provide investors with marketing materials that contain a misrepresentation. • In a prospectus offering, an investor may make an investment decision based on information in marketing materials. • An investor who receives marketing materials may decide not to participate in the prospectus offering, but may instead proceed to buy securities of the issuer in the secondary market on the basis of information in the marketing materials. Accordingly, these materials should be subject to the secondary market civil liability provisions in securities legislation. Because marketing materials will be included or incorporated by reference in the relevant prospectus, they will become part of the prospectus document which is subject to a full, true and plain standard. However: • comparables can be removed from the template version

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		disclosure ("full, true and plain") and given that the prospectus must be delivered and will attract liability for misrepresentations to investors purchasing pursuant to the prospectus, is there a need for a separate standard of disclosure for a term sheet and should the term sheet attract liability as a stand-alone document? • The term sheet will be required to be filed on SEDAR and will attract liability to secondary market investors for any misrepresentation. This includes liability for any omission. As the disclosure is not "full" disclosure, it is difficult to see how this standard will be interpreted. • The term sheet and the prospectus should be seen as a single document for the purposes of assessing statutory liabilities. • Unlike other documents incorporated by reference in prospectuses (e.g., financial statements), term sheets do not have their own specific purpose outside the context of an offering. • Amendments to the secondary market regime would be necessary to ensure term sheets are not considered "documents" attracting liability by themselves. • Information contained in term sheets incorporated by reference in a prospectus will be subject to review by regulators.	of marketing materials that is filed on SEDAR, and • the relevant prospectus need only include, or incorporate by reference, the template version of the marketing materials with the comparables removed. Accordingly, comparables will not be subject to civil liability. Issuers will, however, be required to confidentially deliver the complete template version of the marketing materials on SEDAR (the delivered materials will not be made public). The marketing provisions require that any marketing materials contain a prescribed legend noting that: • The marketing materials do not provide full disclosure of all material facts relating to the securities offered. • Investors should read the relevant prospectus for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision. This legend will address some of the commenters' concerns about liability.

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		Accordingly, this review should discourage the publication of overly promotional term sheets.	
30	Term sheets – liability	One commenter strongly endorsed the approach of attaching civil liability to term sheets and written road show materials. The commenter submitted that: • These materials can and do play a critical role in the marketing of securities to the public. • Because such materials do influence investor decisions, civil consequences should attach to misrepresentations that are contained in such materials. • The risk of civil liability will incentivize issuers and underwriters to ensure that the disclosures in such documents are not materially misleading.	***Civil liability*** We agree with the commenter that marketing materials should generally be subject to statutory civil liability. We believe that this enhances investor protection. Comparables included in marketing materials will not be subject to civil liability (see response to item 29). However, the regulations will require that any comparables in marketing materials be accompanied by cautionary language.
31	Term sheets during the waiting period – drafting comments	One commenter had drafting comments on the language in proposed subsections 13.5(3), (4), (5) and (6) of Regulation 41-101. The commenter submitted that: • These provisions are somewhat confusing given that any term sheet and revised term sheet either have to be specifically incorporated by reference or will be deemed to be incorporated by reference into the prospectus. • For example, in paragraph 13.5(3)(b), it	This language has been removed from the amendments to Regulation 41-101. The relevant language now appears in Item 36A of Form 41-101F1 and Item 11.6 of Form 44-101F1. Although we have not adopted the commenter's suggested drafting changes, we believe the language in these items provides adequate instructions to filers.

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		states that one must indicate that the term sheet is not part of the final prospectus to the extent that the term sheet's contents have been modified or superseded by a statement contained in the final prospectus. • The provision would be clearer if it simply stated that any statement in the term sheet that is modified or superseded is deemed also to be modified or superseded by the statement in the final prospectus.	
32	Term sheets after the receipt of a final prospectus	One commenter had concerns about aspects of the proposals relating to term sheets after the receipt of a final prospectus. The commenter submitted that: • The proposed regulation amendments would expressly regulate marketing during the period following the issuance of a receipt for a final prospectus. Current law limits distribution of marketing material during the waiting period by virtue of the prospectus requirement. There is, however, no equivalent limitation in the post final receipt period. • Accordingly, the CSA should conduct further consultation of market participants to understand the implications of the proposed regulation amendments and whether a different marketing regime is appropriate during the post-receipt period than is proposed for the waiting period.	Our policy concerns regarding the use of marketing materials during the waiting period also apply to the use of marketing materials after a receipt for a final prospectus. As described in item 11, we have revised the regulation amendments and policy changes to distinguish between "standard term sheets" and "marketing materials". Standard term sheets can be distributed after the receipt of a final prospectus without the same requirements as marketing materials. We have also provided for some accommodations to the general requirement to provide materials where the post-receipt pricing process is used, and in relation to shelf prospectus supplements. In particular, an investment dealer can provide marketing materials before a shelf prospectus supplement has been filed. We believe that these accommodations will address some of the concerns raised by the commenters.

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		• At a minimum, exceptions from the proposed term sheet requirements should be made with respect to term sheets that simply set out the potential or actual terms of an offered security. • It is impractical to require that pricing supplements be approved and filed in advance of their first use. • Accommodation should also be made for marketing a take-down off a shelf prospectus with a term sheet that simply sets out potential terms of the securities. • While filing this term sheet may not be problematic, the proposed regulation amendments would require that a preliminary prospectus supplement also be filed in advance as the information in the term sheet must be disclosed in a prospectus filed on SEDAR and this information would only be available in a preliminary prospectus supplement. • This is at odds with current practice for Canadian shelf offerings (where only a final prospectus supplement is typically filed) and would unnecessarily delay solicitations of interest in a potential shelf take-down by a short form issuer, thereby defeating the efficiency of the shelf procedures.	Regulation 44-102 has been amended to provide that information (with certain exceptions) in a standard term sheet or marketing materials for a draw-down under a final base shelf prospectus: • is disclosed in, or derived from, the final base shelf prospectus, any amendment or an applicable shelf prospectus supplement that has been filed, or • will be disclosed in, or derived from, an applicable shelf prospectus supplement that is subsequently filed. Regulation 44-103 has been amended to provide that information (with certain exceptions) in a standard term sheet or marketing materials after the receipt of a final base PREP prospectus: • is disclosed in, or derived from, the final base PREP prospectus, the supplemented PREP prospectus or any amendment that has been filed, or • will be disclosed in, or derived from, the supplemented PREP prospectus that is subsequently filed.
33	Term sheets – conflicts with market practice and U.S. rules	One commenter was concerned that the proposed term sheet provisions contain potential	The revised regulation amendments require that, other than contact information for the investment dealer and the

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		conflicts with market practice and the U.S. marketing rules. The commenter submitted that: • Some of these conflicts will stem from the requirement that all information in a term sheet be disclosed in both the preliminary and final prospectus. • At a minimum, there should be a materiality threshold such that immaterial term sheet information need not be in the prospectus. • Under U.S. rules, a "free writing prospectus" may contain information that is additional to the registration statement in respect of the securities offering; it simply must not conflict with the information in that registration statement or the issuer's continuous disclosure record. • The CSA should give further consideration to what additional information may typically be included in a free writing prospectus and whether this additional information should be accommodated in the term sheet requirements of the proposed regulation amendments. • Due to the breadth of the definition of term sheet, additional exceptions should be added to avoid the burden of filing every written communication regarding a distribution where there is no utility in each such filing being made. • For example, a term sheet will encompass	underwriters and any comparables, all information in marketing materials must be disclosed in, or derived from, the relevant prospectus. If an investment dealer wants to include information in marketing materials, it should first ensure that the information is included in the relevant prospectus. We do not believe this requirement is onerous. We note, however, that a limited-use version of the marketing materials can contain certain deviations from the template version of the marketing materials that is filed on SEDAR (see response to item 25). ***Interaction with U.S. requirements*** We do not believe that this requirement will create a burden for U.S. cross-border prospectus offerings. In order for an issuer or underwriter in a cross-border prospectus offering to comply with the proposed Canadian regulations, they need to ensure that any marketing materials given to a Canadian investor do not contain information that is not in the relevant prospectus filed on SEDAR (subject to the exceptions discussed above). We do not believe that this is an onerous requirement. We note that, unlike U.S. prospectuses generally, a free writing prospectus is not subject to liability under Section 11 of the *Securities Act of 1933* (the 1933 Act). However, because it is used in connection with the offering of securities, we understand that a free writing prospectus is subject to liability under Section 12(a)(2) of the 1933 Act

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		underwriter generated Bloomberg screens and other underwriter communications that contain additional market or other offering specific information (such as comparisons of yield or other terms or metrics of comparable securities). • This additional information would not generally constitute "issuer information" and, provided it is not distributed in a broad, unrestricted manner, would not require a filing under applicable U.S. rules. • Further, the U.S. rules exempt from the filing requirements any new materials that do not contain substantive changes from or additions to previously filed materials. As a practical matter, similar exceptions should be made in the proposed regulation amendments. • Following further consultation with market participants, the CSA may identify other instances where the term sheet requirements inhibit the efficiency of the capital markets or impose significant administrative burden with no corresponding benefit in investor protection. • The CSA may also identify additional circumstances that are not intended to be caught by these requirements for which clarification would be appropriate.	and the general anti-fraud provisions. If, for U.S. liability reasons, an issuer does not want to include certain information in the U.S. prospectus that forms part of the U.S. registration statement, the issuer can include the information in a "Canadian wrap" to the version of the U.S. prospectus filed on SEDAR. ***Definition of marketing materials*** The definition of marketing materials only applies to certain communications. See response to item 11.
34	Road shows – general	Subject to their comments on specific aspects of	We thank the commenter for their input.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		the road show proposals, one commenter expressed general support for the CSA's efforts to provide clarity to the current marketing regime through regulations that expressly acknowledge road shows are a permissible solicitation of expressions of interest.	
35	Road shows – request for additional guidance	Given the breadth of the proposed definition of "road show", one commenter suggested that the CSA provide guidance regarding how the road show provisions interact with: • conduct that forms part of solicitations of expressions of interest permitted under subsection 65(2) of the *Securities Act* (Ontario) (the Ontario Act) (and the equivalent provisions in other jurisdictions), and • acts in furtherance of trades that form part of the distribution under the extended definition of "trade" in the Ontario Act which may be undertaken in reliance on section 53 of the Ontario Act (and the equivalent provisions in other jurisdictions) following the issuance of a receipt for the final prospectus. In particular, since the road show provisions apply to investment dealers, the commenter felt that clarification regarding the conduct permitted for other participants in the offering, including the issuer, would be helpful.	The commenter has made reference to the prospectus requirement (section 53 of the Ontario Act), and an exception to the prospectus requirement (subsection 65(2) of the Ontario Act, which allows for certain activities during the waiting period that would otherwise be prohibited by the prospectus requirement). The road show provisions serve as additional exceptions to the prospectus requirement in the Ontario Act and in other securities legislation, and supplement provisions such as subsection 65(2). Parties other than investment dealers continue to be regulated by existing marketing and pre-marketing restrictions.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
36	Road shows – adopting model based on U.S. rules	Three commenters expressly advocated a model for regulating road shows similar to the U.S. As noted below, other commenters wanted the CSA to harmonize certain differences in the proposed Canadian regulations on road shows with the U.S. model. For example, one commenter noted that proposed section 6.13 of Policy Statement 41-101 refers to the fact that U.S. rules require the filing of internet road show materials with the SEC or that they be made "available without restriction by means of graphic communication". In order to maintain an approach consistent to that adopted under the U.S. rules, the commenter suggested that issuers be permitted to either file the materials from internet road shows on SEDAR or make them available without restriction through other internet outlets.	See response to item 7.
37	Road shows – definition of retail investor	One commenter submitted that since the proposals draw a distinction between road shows for institutional investors and road shows for retail investors, the term "retail investor" should be defined.	We have revised the regulation amendments and policy statement changes to include standard provisions for road shows that apply to all types of investors (i.e., institutional, accredited or retail). Accordingly, we do not believe that there is a need to define the term "retail investor".
38	Road shows – authorization	One commenter had the following comments on the proposed regulations requiring that an issuer provide written authorization to the investment dealer to conduct a road show:	We have not retained the requirement that an issuer provide written authorization for an investment dealer to conduct a road show. However, a template version of any marketing materials provided in connection with a road show must be

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		• The commenter questioned whether this is necessary given that it is typically senior management (often the CEO, CFO and others) who present at a road show. The issuer's approval is therefore implicit in management's attendance with the lead underwriter(s) at the road show. • The requirement for written authorization does add an additional compliance obligation for the working group on a prospectus offering.	approved in writing by the issuer before those marketing materials are provided to investors.
39	Road shows – liability	One commenter strongly endorsed the approach of attaching civil liability to term sheets and written road show materials. The commenter submitted that: • These materials can and do play a critical role in the marketing of securities to the public. • Because such materials do influence investor decisions, civil consequences should attach to misrepresentations that are contained in such materials. • The risk of civil liability will incentivize issuers and underwriters to ensure that the disclosures in such documents are not materially misleading. Another commenter was concerned that marketing efforts sometimes go beyond what is in a prospectus, but misrepresentations that are	***Civil liability for marketing materials used in connection with a road show*** We agree with the commenter that marketing materials used in connection with a road show should generally be subject to statutory civil liability. To achieve this, the regulations provide that the template version of the marketing materials must be included or incorporated by reference in the final prospectus. We believe that this enhances investor protection. • We expect issuers and investment dealers to be accountable to investors if they provide investors with marketing materials that contain a misrepresentation. • In a prospectus offering, an investor may make an investment decision based on information in marketing materials used in connection with a road show. • An investor who receives such materials may decide not to participate in the prospectus offering but may instead proceed to buy securities of the issuer in the

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		outside of the prospectus do not attract prospectus liability under local securities acts. The commenter submitted that: • It is very hard for investors to sue market participants who make misrepresentations during a road show unless those misrepresentations are also in the prospectus. • By way of example, in a recent prospectus offering by an issuer of income participating securities, a PowerPoint presentation used in the road show employed very aggressive and misleading language that did not appear in the prospectus. • As a result, the issuer and the underwriters were not liable for misrepresentations in that presentation under the prospectus liability provisions in local securities acts. • Consequently, local securities acts should be amended to impose liability for misrepresentations in any material efforts made in connection with a public offering.	secondary market on the basis of information in marketing materials. Accordingly, these materials should generally be subject to the secondary market civil liability provisions in securities legislation. However, comparables can be removed from the template version of the marketing materials that is filed on SEDAR, and the relevant prospectus need only include, or incorporate by reference, the template version of the marketing materials with the comparables removed. Accordingly, comparables will not be subject to civil liability. However, the regulation amendments contain disclosure requirements and additional safeguards relating to comparables. ***Statutory amendments*** Amendments to local securities acts of the nature suggested by the commenter are beyond the scope of this project.
40	Road shows – requirement that all information in a road show must also be included in the applicable prospectus	Two commenters had concerns with the proposed requirement that all information in a road show must also be disclosed in the applicable prospectus, with the exception of comparable company information (which may only be disclosed to permitted institutional investors). Comments received include the following:	***Information disclosed in prospectus*** The revised regulation amendments provide that all information in marketing materials used in connection with a road show (other than contact information for the investment dealer and the underwriters and any comparables) must be disclosed in, or *derived from*, the prospectus. We believe that this furthers the policy objectives of equal access to information and investor

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		Material information • The proposed regulation is very restrictive and requires that "all information" in the road show also be in the preliminary prospectus, rather than focusing only on material information. • The requirement should focus only on material information. ***Verbal communications*** • This requirement would appear to apply not only to the written presentation material (e.g., slide decks) but to all verbal communications made during the presentation. • It would not necessarily be helpful to investors, or aid in their protection, to prevent management from being able to answer questions during a road show simply because the answers go beyond what is contained in the preliminary prospectus. • In general, only material information in written road show materials should be required to be disclosed in the applicable prospectus. Otherwise, there would be a chilling effect on road shows – requiring that the answer to every question be thoroughly scripted in advance and that questions go unanswered if there is any concern that the	protection through adequate disclosure of the proposed offering. However, the regulation amendments contain accommodations for prospectus offerings under the shelf procedures and the post-receipt pricing procedures. See response to item 32. We have also included policy statement guidance in Policy Statement 41-101 which indicates that marketing materials may include information derived from the prospectus and information that is presented in a manner that differs from the manner of presentation in the prospectus (see subsection 6.5B(5) of Policy Statement 41-101). ***Verbal communications*** In response to the comments about verbal communications, we have not retained the requirement that all information provided at a road show must be in the prospectus. However, any marketing materials provided at the road show must comply with the provisions relating to marketing materials. Other than a requirement to verbally read a statement at the beginning of a road show that investors other than accredited investors are permitted to attend, the regulation amendments do not regulate oral statements made at a road show. However, we do have regulatory concerns regarding oral

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		answer is not strictly within the text of the applicable prospectus. In the context of a road show, for which there are significant timing constraints, this would be impractical. ***Nature of information provided*** • The proposed regulations permit a road show to summarize information from the prospectus or to include graphs or charts based on numbers in the prospectus. However, it would be preferable for the CSA to be more general in allowing road show materials to contain information derivable from the prospectus as well as general market information not specific to the issuer. • The CSA should also clarify that immaterial differences in the manner of presentation of the information from the prospectus would be permissible in a road show. • In particular, the requirement should be clarified to confirm it is sufficient that information in a road show is derivable from the information in the prospectus and need not be verbatim. ***Guaranteed securities*** • There are other technical concerns with the requirement that "all information" in a road	statements made at road shows, and have included policy statement guidance in Policy Statement 41-101 that describes these concerns (see subsection 6.12(7) of Policy Statement 41-101). ***General market information and information about parent companies*** We disagree with the comments that general market information (e.g., interest rates, currency exchange rates, stock exchange indices) and information about the ultimate parent corporation of an issuer or a credit supporter contained in marketing materials should not be required to be in the relevant prospectus. We believe that if an issuer or an investment dealer wishes to include information of this nature in marketing materials that are used in connection with a road show or otherwise provided to investors, they should disclose the information in the applicable prospectus. We have made certain accommodations for bought deals (see response to item 11) and offerings under the shelf and PREP procedures (see response to item 26).

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		show be disclosed in the prospectus. For example, certain Canadian issuers of guaranteed securities (typically debt securities) prepare a short form prospectus and incorporate by reference in the short form prospectus the U.S. public company filings of the credit supporter of the Canadian issuer. In many cases, the credit supporter is not the ultimate parent company of the Canadian issuer, but rather is the finance subsidiary of the ultimate parent company. • Road show materials used for offerings by these types of issuers may contain information about the ultimate parent company (since this is publicly available information) in addition to information about the credit supporter. This is because the financial performance of the parent company is also seen as relevant with respect to the securities of the Canadian issuer being offered. Under the proposed regulations, this practice would be prohibited unless the information about the ultimate parent company is included or incorporated by reference in the prospectus of the Canadian issuer. This is not current market practice, and the CSA should consider changing the proposed regulations to accommodate the practice of including	

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		parent company information in a road show in these circumstances. ***U.S. law and practice*** • This requirement represents a source of conflict with the U.S. model for road shows, as there is no such requirement under applicable U.S. rules. • This difference may arise by virtue of the liability regimes in Canada and the U.S. • In contrast with the Canadian prospectus regime, where disclosure must be part of the prospectus for statutory liability to attach, there are separate liability provisions under U.S. federal securities laws for disclosure outside of the registration statement that do not impose as strict a standard as the liability provision for misrepresentations in a registration statement. • Liability for road shows (and, more generally, information in free writing prospectuses) arises under these separate liability provisions under U.S. rules. • In a cross-border offering, the proposed regulation amendments will require road show and other disclosures to be part of the Canadian prospectus. As a U.S. version of the prospectus will form part of the U.S. registration statement, the stricter U.S. standard of liability will apply.	***Interaction with U.S. requirements*** See response to item 7.

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		• While the proposed regulation amendments contemplate an exception for "comparables" information, it is unlikely this exception will be broad enough to cover other market information not specific to the issuer that may be included in road shows (and other free writing prospectuses) but excluded from the U.S. registration statement. • It is not appropriate for an issuer to take strict liability for any such non-issuer information, given its nature, under applicable liability provisions for Canadian prospectuses or U.S. registration statements. This is information derived and available from other publicly available sources (including, among others, research reports) and is not material information specific to an issuer such that it should require prospectus level liability or disclosure. • Accordingly, the CSA should reconsider the types of information in road show materials and term sheets that must be included or incorporated, as applicable, in the preliminary and final prospectus for an offering. ***Need for further consultations*** • The CSA should ensure that comments on this aspect of the proposed regulations are received from a sufficiently representative	***Further consultations*** See response to item 8.

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		sample of Canadian investment dealers and institutional investors before the CSA moves forward with implementation.	
41	Road shows – fair, true and plain requirement	One commenter noted the proposed requirement that disclosure in a road show must be fair, true and plain. The commenter was concerned about the potential for disclosure with exaggerated claims, undefined assumptions, controversial back-testing practices, cleverly drawn and misleading charts, unsupported "facts", etc. The commenter asked what would happen if the disclosure was not accurate, true, up-to-date or complete and what kind of enforcement is contemplated or possible. The commenter asked if there would be independent review and approval of marketing materials by individuals at an investment dealer with appropriate authority and proficiency (e.g., chief compliance officer).	***Fair, true and plain standard*** We have removed the fair, true and plain standard for disclosure at a road show. However, we have included policy statement guidance in Policy Statement 41-101 indicating that disclosure at a road show, whether oral or written, is subject to the provisions of securities legislation which prohibit misleading or untrue statements. ***Review and approval of marketing materials*** • We have not prescribed specific requirements regarding independent review and approval of marketing materials by individuals at an investment dealer. • Under the regulations, marketing materials would have to be approved by the issuer and the lead underwriter in a prospectus offering. As a practical matter, we expect that marketing materials will normally be prepared by the lead underwriter and its counsel and vetted by the issuer and its counsel. • A member of the retail sales force at an investment dealer could not prepare marketing materials on their own.
42	Road shows – reading of prescribed cautionary statement	***Commenters favouring less strict requirements*** Two commenters had concerns with the proposed regulation that would require an investment dealer to verbally read a prescribed disclaimer at the commencement of every road show.	We have considered the comments and have revised the regulation amendments to: • shorten the prescribed statement, and • require that the prescribed statement, or a statement to the same effect, be read only when investors other than accredited investors are permitted to attend the road

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		Comments received include the following: • There are often multiple meetings with different investors on each road show date, such that the time for management to present in each meeting is limited (typically 20 to 30 minutes, excluding questions). • The reading of the proposed disclaimer will take valuable time out of each meeting. • In light of these timing constraints, an investment dealer should have the option of including the disclaimer in written road show materials provided to attendees, rather than reading the disclaimer at the start of a road show. • Alternatively, the CSA should consider whether the disclaimer could be placed in the road show materials and referred to by the investment dealer without a full reading. • The regulations should provide that the disclaimer used can be substantially to the effect of the prescribed language, rather than verbatim. Among other things, this would accommodate the use of equivalent language in cross-border offerings. ***Commenters favouring stricter requirements*** In contrast, one commenter felt the oral reading of the disclaimer was not sufficient. He suggested that any documents distributed be	show. ***Cautionary language*** All marketing materials (including marketing materials provided in connection with a road show) must contain a prescribed legend, or words to the same effect, which

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		prominently marked with suitable cautionary language and warnings.	indicates (among other things) that: • The marketing materials do not provide full disclosure of all material facts relating to the securities being offered. • Investors should read the relevant prospectus for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.
43	Road shows – written materials	Five commenters noted that the proposed regulations would prohibit an investment dealer from providing "written material" to an investor attending a road show, other than the preliminary prospectus and any amendment, unless the written material is treated as a term sheet under the proposed regulations. This would mean filing the written material on SEDAR and including or incorporating by reference the written material in the prospectus. ***Commenters seeking to restrict filing and other requirements*** Three commenters sought to restrict filing and other requirements in relation to road show materials. One commenter submitted that: • It is not clear what "written materials" will be subject to the new road show requirements.	***Scope of rule amendments and policy changes*** We have revised the rule amendments and policy changes to: • Remove the references to "written materials" throughout the road show provisions and refer instead to "marketing materials". Marketing materials provided in connection with a road show will be subject to the same requirements as any other marketing materials. • Clarify that the road show provisions apply to situations where an investor was shown marketing materials but not permitted to retain, or make a copy of, the materials. See response to item 12. We have also included policy statement guidance in Policy Statement 41-101 relating to oral statements made at road shows. ***Interaction with U.S. requirements*** See response to item 7.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		• While the U.S. rules exclude any real time communications at a live road show (including slides or other visual aids available only as part of that road show) from what they refer to as "written communications", the CSA's commentary to the proposed regulation amendments suggests the amendments would not provide a similar exclusion. Clarification is required on what constitutes written materials for purposes of these road show requirements. • Further, regardless of how "written materials" are construed, the proposed regulation amendments will nonetheless conflict with equivalent U.S. rules because communications made as part of a road show need not be filed under these U.S. rules, regardless of whether they are written or oral communications. • In contrast, the proposed regulation amendments will require filing all written materials provided in a road show. • While the U.S. rules could require the filing of road show materials for an electronic road show (as this would constitute a "written communication") for an initial public offering of common or convertible equity, no filing is required where the issuer makes at least one version of a *bona fide* electronic road show available without restriction.	

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		• In these circumstances, the typical approach in the U.S. is to make such a *bona fide* electronic road show available rather than file the road show materials. • The restricted access provisions of the proposed regulation amendments would not permit this option in a cross-border IPO. • To be a *bona fide* version under the U.S. rules, a road show must include discussion of the same general areas of information as the other road shows for the same offering (to the extent those other road shows are written communications), but need not address all of the same subjects or provide the same information as those other road shows. • Accordingly, while a *bona fide* version under the U.S. rules could exclude information that compares the issuer to other issuers (with respect to multiples or other valuation metrics), it could also exclude further information provided at other road shows for the same offering. • In light of the above conflicts, the CSA should reconsider the circumstances in which road show materials must be filed and the types of road show materials that must be filed. In particular, instead of the road show requirements in the proposed regulation amendments, the CSA should	

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		adopt a model similar to that of the U.S. • However, if the CSA ultimately determines that road show materials must be filed in certain circumstances (such as in the case of an IPO), the filing requirement should at least maintain some consistency with U.S. practice. Among other things, this might be achieved by requiring that only one *bona fide* version of those road show materials be filed. Similarly, another commenter also believed it is unclear whether a slide deck for a road show would always need to be filed on SEDAR and included or incorporated in the prospectus. The commenter submitted that: • It is not clear whether the filing requirement applies when investors are shown the written material but are not allowed to keep a copy of it. For example, a road show slide deck may be shown on screen during an in-person meeting, or handed out for viewing only during the meeting with all copies collected afterwards, or presented through the internet in a format that does not allow for printing or downloading. • Written road show materials such as a slide deck should be filed on SEDAR and otherwise treated like a term sheet only if they are being provided in a form that can be	

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		retained by investors, and not when they are merely being shown to investors. • The practice in the U.S. is for dealers to take back from investors any hard copies of slide decks distributed during a road show presentation. • It is unclear why written materials such as a road show slide deck should be filed on SEDAR and otherwise treated like a term sheet if they are being provided in a form that cannot be retained by investors. • Road show materials are rarely, if ever, filed on EDGAR in the U.S. In like manner, another commenter noted that the proposed guidance regarding road shows for cross-border IPO offerings suggests that the obligation to file road show materials may extend to road show presentations that are displayed, but not distributed to the attendees. If this is intended, the commenter suggested that: • Further guidance or clarification should be provided. • If no materials are distributed in a form that can be retained by the attendees, it is not clear that there is any rationale for the term sheet provisions to apply. ***Commenters seeking to expand filing and other requirements***	

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		In contrast to the above comments, two commenters sought to expand filing and other requirements in relation to road show materials. In particular, the commenters submitted that "written materials" should include electronic files or slide shows made available to investors on the internet, social media or by other electronic means.	
44	Road shows – French translation of written materials	One commenter assumed that written road show materials would not need to be translated into French in order to comply with French language requirements in the province of Québec (since written road show materials do not constitute a prospectus), unless those materials are provided in a form that can be retained by investors, in which case they would be treated as a term sheet under the proposed regulations and would need to be included or incorporated by reference in the prospectus.	See response to item 28.
45	Road shows – documents to be filed with prospectus	One commenter noted that the proposed changes to the regulation provisions dealing with the documents to be filed with a prospectus (sections 9.1 and 9.2 of Regulation 41-101 and sections 4.1 and 4.2 of Regulation 44-101) only expressly address the filing of term sheets, but not road shows materials. The commenter believes the provisions should expressly address the filing of road show materials.	We have revised the regulation amendments and policy statement changes to remove the term "road show materials". Marketing materials provided during a road show will be subject to the same requirements as any other marketing materials, including the filing requirement.
46	Road shows – comparables –	***Commenters in favour of civil liability for***	We have revised the regulation amendments to allow for

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	civil liability	***comparables*** One commenter was in favour of civil liability for comparables included in road show materials. The commenter did not see a clear justification for not attaching civil liability to information in road show materials provided to permitted institutional investors that compares the issuer to other issuers (comparables). The commenter submitted that: • This distinction unfairly places the burden on such investors to verify the accuracy of the comparables, rather than requiring the issuer to ensure that the disclosure is fair, true and plain, failing which liability will attach. • Under the proposed regulations, to the extent that comparables were disclosed to retail investors, they would attract civil liability. The commenter did not see a clear basis for making the civil liability provisions available to retail investors in respect of comparables, but not to permitted institutional investors. ***Commenters opposed to civil liability for comparables*** In contrast, three commenters were opposed to civil liability for comparables.	comparables to be provided to any investor. However: • comparables can be removed from the version of marketing materials used in connection with a road show that is filed on SEDAR, and • the relevant prospectus need only include, or incorporate by reference, the version of the marketing materials with the comparables removed. Accordingly, comparables will not be subject to statutory civil liability. Issuers will, however, be required to confidentially deliver the complete version of the marketing materials on SEDAR. The regulation amendments also provide additional disclosure requirements and other safeguards relating to comparables. Additionally, we have included policy statement guidance in Policy Statement 41-101 indicating that any comparables included in marketing materials provided to an investor will be subject to the provisions in applicable securities legislation which prohibit misleading or untrue statements.

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		In particular, one commenter disagreed with the proposal that road shows for retail investors should not include comparables in the absence of prospectus liability. The commenter submitted that: • Comparables are not material information about an issuer that should require prospectus disclosure. • Comparables are based on publicly available information for which liability is not appropriate. • Reliance should be placed on the underwriters and the market to select appropriate methods of selection of comparables. In like manner, another commenter believes that dealers should be able to choose to provide comparables in marketing materials to all potential investors and to redact such comparables from the marketing materials prior to filing on SEDAR. The commenter submitted that: • The valuation metrics for other issuers provides context, but are not material facts as regards the securities of the issuer. • This conclusion is supported by the proposed differential treatment of retail investors.	

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		Because the information is derived from publicly available sources, another commenter believes that issuers should not be mandated to include in their prospectus any comparables and other publicly available market information included in written road show materials and other term sheets.	
47	Road shows – attendance	Three commenters noted that the proposed regulations would only allow investors, registered individuals and representatives of the issuer to attend a road show. Comments received include the following: • One commenter acknowledged the CSA's concern with members of the media attending a road show. • It would be appropriate to expand the list of permitted attendees at a road show to include: o other members of the working group for a prospectus offering, such as representatives of the underwriters, legal counsel, any road show consulting firms engaged by the issuer, etc., and o representatives of the portfolio manager or other registrant representing an institutional investor.	***Road show attendees*** We have revised the regulation amendments to remove the restriction on road show attendees. However, we refer to the guidance in subsection 6.12(6) of Policy Statement 41-101. ***Media attendance at road shows*** The revised regulation amendments would allow members of the media to attend road shows in their capacity as members of the media. However, we have included policy statement guidance in Policy Statement 41-101 which sets out our regulatory concerns (see subsection 6.12(2) of Policy Statement 41-101).
48	Road shows – restricted access	One commenter noted the requirement that an	***Minimum retention period***

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		investment dealer must establish and follow reasonable procedures to keep a written record of any investor attending a road show in person, by telephone conference call, on the internet or by other electronic means. The commenter questioned the ability to validate identity for road shows held by conference calls or by webinar or similar web technology. The commenter suggested that the regulations provide for a minimum retention period for attendance records for road shows.	We have not specified a minimum retention period. We expect investment dealers to determine an appropriate retention period for records of the nature referred to by the commenter in accordance with any applicable laws. ***Validation of identity*** The revised regulations now provide that the investment dealer must establish and follow reasonable procedures to ask any investor attending the road show in person, by telephone conference call, on the internet or by other electronic means to provide their name and contact information. For example, see subsection 13.10(3) of Regulation 41-101.
49	Road shows – cross-border offerings	***Comments from commenters worried about litigation*** Three commenters were concerned that the new road show requirements will create a significant impediment for Canada/U.S. cross-border IPOs. One commenter submitted that: • In respect of road shows, the CSA should adopt a model similar to the U.S., which provides equal access to institutional and retail investors. Under this regime, either (a) road shows are open to everyone or (b) the road show presentation must be filed on EDGAR as a free writing prospectus. • Under the U.S. rules, if the materials are not filed on EDGAR (which appears to be the common practice), the road show materials	***Interaction with U.S. requirements*** See response to item 7. As indicated in the revised policy statement guidance in Policy Statement 41-101, due to the road show provisions and exceptions for certain U.S. cross-border offerings set out in the rule amendments, we do not anticipate a further need for relief of the nature referred to by the commenters and instead expect such issuers to comply with the applicable road show provisions.

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		must be "made generally available without restriction" through electronic means. • In U.S. practice, access is limited to viewing only, with no capability to print or download the content or access it after the viewing period expires. • These U.S. rules have led to the need for regulatory relief in Canada on cross-border marketed offerings (e.g., IPOs) because the Canadian regulations currently do not permit an electronic road show to be open to all investors, and there is a preliminary prospectus delivery obligation prior to the road show. • If, under the proposed CSA regulations, road show material is required to be filed on SEDAR in Canada, the result is that the materials would also have to be filed on EDGAR as well for cross-border road shows. This represents a significant change from current U.S. practice, and could create a disincentive for firms to offer cross-border IPOs. • A regime consistent with the U.S. model would adequately protect investors, and avoid the need for regulatory relief on cross-border offerings. Another commenter submitted that: • It is not clear whether the proposed	

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		regulations would require written road show materials to be filed on SEDAR. The proposed policy statement provisions discussing road shows for cross-border IPOs appear to be premised on the assumption that this means that an electronic road show will constitute "road show materials" that must be filed on SEDAR, even if the content cannot be downloaded or printed. • The proposed policy statement guidance suggests that cross-border IPO issuers will no longer be required to apply for the type of exemptive relief previously granted in Canada for cross-border IPOs (and such relief will no longer be granted absent unusual circumstances) because issuers will be able to file on SEDAR the same road show materials that they are permitted to file on EDGAR. • As the proposed policy statement points out, in the case of an internet road show for an IPO, the U.S. requirement is that road show materials either be filed on EDGAR or be "made generally available without restriction" through electronic means. The CSA appears to be under the impression that road show materials are typically filed on EDGAR in the U.S., and that the need for the previously granted exemptive relief stemmed from a concern that the public	

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		availability of the road show materials on EDGAR would violate Canadian marketing restrictions, as the SEC's EDGAR website is available worldwide, including to Canadian investors. • In fact, road show materials are rarely, if ever, filed on EDGAR. U.S. underwriters typically insist on making a *bona fide* version of the road show available to the public without restriction for the express purpose of avoiding the alternative requirement to file the road show on EDGAR. • Although the commenter understands a number of commercial services allow investors in the U.S. (and elsewhere, including Canada) to view the road show, access is always limited to viewing only, with no capability for investors (or others) to print or download the content, or access it after the permitted viewing period expires. Two of these commenters submitted that: • U.S. underwriters are generally concerned that they would be subject to a significantly higher risk of frivolous and ultimately unmeritorious lawsuits being brought against them and the issuer by the active U.S. plaintiff securities litigation bar if a record of the contents of the road show	

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		slides and script is made permanently available on EDGAR. • Any road show materials that are required to be filed on SEDAR in Canada will also be permanently available to the U.S. securities class action bar, and the commenters anticipate that U.S. underwriters would raise the same concerns about that result in the context of a cross-border IPO. Further, because the proposed regulations will still require restricting access to electronic road shows in Canada (even if only for the purpose of verifying the identity of the viewers), the U.S. rules will require that a *bona fide* version of the road show must also be filed on EDGAR. The result will be a significant change from current U.S. IPO practice. • The commenters were concerned that this change from current practice may create a disincentive for IPOs to be conducted on a cross-border basis. The commenters anticipate that U.S. issuers and underwriters will be reluctant to participate in a cross-border IPO unless road show content which is protected from downloading and printing is exempt from any SEDAR filing requirement, and the CSA continues to provide exemptive relief to allow unrestricted access to such road shows in	

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		Canada so that they may continue to be exempt from the SEC's EDGAR filing requirements. One of these commenters was strongly opposed to any measures that would curtail demand for cross-border IPOs and secondary offerings, particularly given the weak environment for Canadian offerings. In order to reflect current U.S. IPO practices, the commenter recommended exempting road show materials from any SEDAR filing requirement and continuing to allow unrestricted access to road show materials in Canada so that they may continue to be exempted from EDGAR filing requirements in the U.S.	
50	Road shows – distinction between institutional investors and retail investors	One commenter disagrees with the proposed regulations which differentiate between retail and institutional investors in respect of the information that may be provided to them concerning a prospectus offering. The commenter submitted that: • This distinction is inconsistent with the principle that the prospectus must contain full, true and plain disclosure of all of the material facts relating to the securities offered. • Any investor that is eligible to participate in an offering should have an equal opportunity to receive any disclosure provided.	We have revised the regulation amendments and policy statement changes to include standard provisions for road shows that apply for all types of investors (i.e., institutional, accredited or retail).

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
51	Road shows – protections for retail investors	One commenter believes that the "know your client" and suitability obligations should apply in respect of any retail investor invited to a road show. In particular, the commenter believes that an investment dealer should only invite a retail investor to a road show if the potential investment is suitable for that investor. The commenter believes that senior citizens are particularly vulnerable to road shows. The commenter was concerned that senior citizens may feel obligated to honour any indications of interest based on disclosures that may subsequently materially change.	We have considered the comment, and believe that this is outside the scope of this project. However, we note that Policy Statement 41-101 provides guidance indicating that unless an exemption from the requirement to register as a dealer is available in the circumstances, an investment dealer would have to be registered as an investment dealer in any jurisdiction where it conducts a road show (see subsection 6.12(6) of Policy Statement 41-101). An investment dealer would be required to ensure that a proposed trade is suitable for a client before making a recommendation in accordance with the relevant securities legislation and rules of the Investment Industry Regulatory Organization of Canada.
52	Road shows during the waiting period – drafting comments	One commenter had the following drafting comments on the following proposed provisions of Regulation 41-101: ***Paragraphs 13.8(1)(c) and 13.9(1)(c)*** • The information in the road show should be limited to "written" information and should relate not only to the securities but also to the issuer. • Accordingly, delete the phrase "all information in the road show concerning the securities is disclosed in the preliminary prospectus" and replace it with "all written information in the road show concerning the securities or the issuer is disclosed in the preliminary prospectus".	Other than a requirement to verbally read a statement at the beginning of the road show that investors other than accredited investors are permitted to attend, the revised regulation amendments do not regulate oral statements made at a road show. See response to item 40. The revised road show provisions require that an investment dealer must establish and follow reasonable procedures to provide the investor with a copy of the relevant prospectus. We do not believe this requirement to be onerous. For a road show held on the internet or other electronic means, recommended procedures are set out in section 2.7 of Notice 47-201.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		Paragraph 13.8(3)(b) • It should be sufficient if the permitted institutional investor has access to a copy of the preliminary prospectus or any amendment, rather than requiring that it actually has received these documents.	
53	Term sheets and road shows – liability of co-managers in an underwriting syndicate	One commenter was concerned about the effect of the proposed regulation amendments and policy statement changes relating to term sheets and road shows on the potential liability of co-managers in an underwriting syndicate. The commenter believes these liability ramifications have the potential to negatively impact underwriting syndicate participation, and ultimately, an issuer's access to the capital markets. ***Background*** By way of background, the commenter noted that: • Under the proposed regulation amendments, investment dealers will, subject to certain conditions, be permitted to provide a term sheet to a permitted institutional investor after announcing a bought deal, but before filing the preliminary prospectus four business days later. • The proposed regulation amendments will contain provisions governing (i) road shows	***Liability of syndicate*** We have considered the comments and have concluded that all underwriters in a syndicate should be liable for misrepresentations in marketing materials. We believe that this furthers investor protection and is consistent with the statutory regime for civil prospectus liability. We recognize that in an underwriting syndicate, the lead underwriter will be primarily responsible for working with the issuer in preparing documents relating to the offering, and that other underwriters may join the syndicate after initial marketing materials have already been prepared and distributed. However, we do not believe that the regulation amendments impose an unfair burden on syndicate members. In particular, we note that: • No underwriter will be liable under the statutory provisions for civil prospectus liability until the time of the final prospectus. • If a prospectus (or amendment) modifies a statement of material fact that appeared in earlier marketing materials, blacklined copies of the materials must be filed on SEDAR at the same time as the prospectus (or

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		carried out during the waiting period following the filing of the preliminary prospectus, and (ii) the related road show materials. • Term sheets and road show materials would be subject to prospectus liability (statutory liability for misrepresentations). The commenter made the following submissions: ***Syndication process*** • The new provisions will increase the administrative burden on the issuer and underwriters in connection with any corporate finance transaction, and more importantly, do not take into consideration some of the practical issues that underwriters face on a day-to-day basis in their equity underwriting business. • The provisions are inconsistent with the realities of the syndication process for any public offering in the Canadian market, in that they fail to take into account the fact that co-managers in an underwriting syndicate have no control or input over the form, substance or dissemination of ancillary documentation. • There are some instances where an investment dealer is the lead bookrunner	amendment). Accordingly, before a final prospectus is filed, members of the underwriting syndicate will have the opportunity to request that the lead underwriter and issuer modify any statements in earlier marketing materials that they have concerns with.

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		with respect to a bought deal or marketed offering. In those instances, the lead bookrunner works hand-in-hand with the issuer and has full control over the form, content and dissemination of all disclosure documents from their inception. • Specifically, the lead bookrunner will provide input on the bought deal news release, the preliminary prospectus, and the final prospectus in order to ensure compliance with applicable securities laws. • The situation is very different in the case of offerings where an investment dealer is not a bookrunner (i.e., where the dealer is a "co-manager" in the syndicate). • An underwriter who is a co-manager will commonly receive an invitation to participate in an offering considerably later than when the bookrunners were first involved – in some cases, as late as shortly before the filing of the preliminary prospectus. ***Bought deals*** • In the bought deal context, the bookrunner may have had several days to familiarize itself with the issuer, its intentions, and the details of the offering, while co-managers are required to bring themselves up to speed under extremely tight timing constraints. • In these situations, the only disclosure	

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		document that co-managers are provided with is the preliminary prospectus, and it is a perpetual challenge for the co-managers to review and sign off on even this document before it is disseminated. • More significantly, given the late stage at which co-managers are asked to join a bought deal syndicate, they generally have no input or authorship over the drafting of the issuer's press release announcing the offering. • For this reason, the commenter is partial to the customary form that such news releases take – i.e., very abbreviated and general disclosure regarding the nature of the offering, terms of the securities and use of proceeds. ***Term sheets*** • If the term sheet provisions are adopted, then, in transactions where a dealer is a co-manager, the co-manager will not have (or be granted) the opportunity to review or comment on term sheets before they are distributed. • As a result, co-managers will not have an adequate opportunity to determine whether the disclosure in the term sheet is, in fact, fair, true and plain, as required pursuant to the proposed regulation amendments.	

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		• Ascribing prospectus-level liability to the co-managers for a term sheet that only the bookrunners have drafted and/or reviewed and distributed unfairly penalizes the co-managers in any offering. • The realities of the syndication and distribution process dictate that the co-managers will not have had an opportunity to vet such a term sheet prior to its dissemination. ***Definition of term sheet*** • This issue will be exacerbated by the broad definition of "term sheet" in the proposed regulation amendments, which includes any "written communication regarding a distribution of securities under a prospectus that contains information on the issuer or the securities" other than "a prospectus, or a notice, circular, advertisement, letter or other communication referred to in section 13.1 that is expressly permitted by securities legislation". • Arguably, this could include any email or ancillary communication from the lead bookrunners, none of which the co-managing underwriters will have an opportunity to review, but with respect to which each underwriter will have prospectus-level liability.	***Definition of marketing materials*** See response to item 11. We refer to the revised definition of "marketing materials", which now refers to "a written communication intended for potential investors". This would not capture routine emails between underwriters.

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		• The explicit adoption of the term sheet provisions may tempt bookrunners to provide a more in-depth description of the terms of the offering than one would currently find in a generic bought deal news release. • A detailed description of any securities offering belongs in the prospectus, where it can be properly described and (if necessary) qualified. Explicitly allowing dealers to provide an initial "snapshot" of the offering in term sheet format increases the propensity for errors or omissions in such a description, especially for complex offerings where either the terms of the securities or the use of proceeds are novel or non-conventional. • This disproportionately penalizes the co-managers, who did not draft the term sheet or comment on it before it was issued, yet bear prospectus-level liability along with the syndicate as a whole. ***Road shows*** • The issues regarding co-manager liability are even more pronounced with respect to the road show provisions contained in the proposed regulation amendments. • In those offerings where a dealer is a co-manager, the co-manager has no input over road show materials, and in many cases, is	

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		not even provided with these materials prior to their use in the road show itself. • In actuality, as a co-manager, it would not be customary for a dealer to participate in the bookrunners' road show process. • Based on customary marketing and syndication practices, co-managers will not have (or be granted) the opportunity to determine whether all information contained in the road show is (i) contained in the preliminary prospectus or (ii) fair, true and plain. • Ascribing prospectus-level liability to road show materials penalizes the co-managers of any public offering disproportionately and unjustifiably. • This concern is exacerbated by the use of the generic term "written materials" in proposed sections 13.8 and 13.9 of Regulation 41-101, which could arguably include email or other ancillary communications, none of which the co-managing underwriters will have any input on (or even be aware of). ***Fully marketed offerings*** • Identical arguments to those set forth above hold true with respect to any term sheet that a bookrunner may choose to distribute following the filing of the preliminary prospectus in a fully marketed offering (e.g.,	

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		an IPO). ***Effect on Canadian capital markets*** • The syndication mechanics described above reflect the processes that have traditionally been in place for any Canadian capital markets offering. • If the proposed regulation amendments were to be adopted, it's unlikely that these processes would change in any material respect to address the concerns set forth above. • In the U.S., the much larger number of investment dealers gives issuers flexibility in determining which dealers participate in their offering syndicate. In the Canadian context, the selection is far more limited. • There are fewer investment dealers in Canada, and to complete any mid to large sized offering in the Canadian capital markets, an issuer often requires the majority of dealers in the country to participate in the syndicate. • For the same reasons, investment dealers do not always have the same commercial flexibility to "take a pass" on the limited number of larger offerings that are undertaken in the Canadian market simply because they are not comfortable with the disclosure practices adopted by the lead	

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		bookrunners on that transaction. • Nevertheless, if the term sheet and road show provisions are adopted, underwriters may be dissuaded from participating in a syndicate as co-managers if they are forced to take on prospectus-level liability on ancillary documents with respect to which they customarily have no input or involvement. • The risk of incurring this additional liability may affect an underwriter's willingness to join certain underwriting syndicates, which, in the Canadian context, could ultimately impact the issuer's unbridled access to capital markets financing. ***Bifurcated liability*** • In the event that the CSA chooses to move forward with the proposed regulation amendments, the CSA should consider amending the road show and term sheet provisions so that prospectus-level liability for misrepresentations in these materials is bifurcated – i.e., only those investment dealers that were bookrunners for the transaction in question, and therefore directly involved from the outset of the offering in the drafting, review, and dissemination of term sheets and road show materials, should be subject to statutory	

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		liability for a misrepresentation in such documents. • Such a construct would accurately reflect the syndication realities of the offering process, and involvement (or lack thereof) of underwriters in reviewing ancillary documentation based on their syndicate position.	
Form 41-101F1 *Information Required in a Prospectus* **Form 41-101F2 *Information Required in an Investment Fund Prospectus***			
54	Term sheets incorporated by reference	One commenter noted that the proposed amendments to Form 41-101F1 and Form 41-101F2 expressly address the inclusion in, or incorporation by reference into, the prospectus of term sheets, but not road show materials. The commenter believes the prospectus form should expressly address road show materials.	We have revised the road show provisions to refer only to marketing materials, rather than to distinguish between marketing materials and other materials provided at a road show. Marketing materials provided in connection with a road show are subject to the same requirements as any other marketing materials. Accordingly, the amendments to Form 41-101F1 address the inclusion in, or incorporation by reference into, the prospectus of marketing materials used in connection with a road show. As noted in the response to item 5, we have decided that the pre-marketing and marketing reforms in Regulation 41-101 will not apply to investment funds filing a prospectus in the form of Form 41-101F2. As a result, we have not made the same revisions to Form 41-101F2 that we have made to Form 41-101F1.
Policy Statement 41-101 *General Prospectus Requirements*			
55	Policy Statement guidance – subsection 6.2(9) – interaction with prospectus exemptions	One commenter referred to IIROC Rule 29.13 on pre-marketing and the notice that IIROC issued on May 1, 2007 regarding compliance	We have reviewed IIROC Rule 29.13 on pre-marketing and the notice issued by IIROC on May 1, 2007 regarding compliance with that Rule. We do not believe that there is a

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		with that rule (the IIROC Pre-Marketing Notice). The commenter submitted that: • An issue that has arisen in the past and for which there does not appear to be sufficient clarity is the application of the pre-marketing regulations in a situation where there is an attempt to effect a financing by way of private placement that is abandoned and a public offering is proceeded with. • Section 3 of the IIROC Pre-Marketing Notice contemplates the situation where a *bona fide* intention to affect an exempt distribution is abandoned in favour of a prospectus offering. • In particular, section 3 of the IIROC Pre-Marketing Notice states that it is not until it is reasonable to expect that a *bona fide* exempt distribution will be abandoned, that any subsequent pre-marketing activities will be subject to IIROC Rule 29.13 on pre-marketing activities. • Given the uncertainty that arises in this context, the CSA should consider taking this opportunity to clarify the issue by adopting the principles enunciated in the IIROC Pre-Marketing Notice.	need for additional guidance, as the guidance currently provided in subsection 6.2(10) of Policy Statement 41-101 states that "[f]rom 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."
56	Policy Statement guidance – sufficient specificity	***Opposition to revised guidance*** One commenter was of the view that the changes to subsection 6.4(4) of Policy Statement 41-101 regarding "sufficient specificity" should	We have not revised the changes to Policy Statement 41-101 in response to these comments. We believe that there is a lack of clarity among some market participants regarding when sufficient specificity occurs and the

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		not be made. The commenter believes that the existing guidance in the Policy Statement on when a distribution of securities commences is clear to investment dealers. ***When "sufficient specificity" occurs*** Three commenters referred to the existing guidance in subsection 6.4(4) of Policy Statement 41-101. That provision states: *"We consider that a distribution of securities commences at the time when:* • *a dealer has had discussions with an issuer or a selling securityholder, or with another dealer that has had discussions with an issuer or a selling securityholder about the distribution, and* • *those distribution discussions are of sufficient specificity that it is reasonable to expect that the dealer (alone or together with other dealers) will propose to the issuer or the selling securityholder an underwriting of the securities."* One commenter agreed that guidance on "sufficient specificity" is useful in developing a more consistent and predictable practice. However, the commenter believed the language in the above provision presents some practical difficulties. The commenter submitted that: • In order to establish a mutual intent to	proposed guidance is intended to assist marketing participants in this regard. We are of the view that a mutual intent between an issuer and a dealer is not necessary in order for "sufficient specificity" to occur. Accordingly, we have not revised the existing guidance in subsection 6.4(4) of Policy Statement 41-101 as requested by certain commenters.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		conduct an offering, a dealer may have to make several proposals before it is reasonable to conclude that an issuer will undertake an underwriting. • Until there is a mutual *bona fide* intention on the part of both the issuer and dealer to conduct a public distribution, it would be premature to declare that the distribution has commenced. • The trigger point may occur earlier than the date of the engagement letter or bought deal agreement. However, the guidance should reflect the reality that there are two parties involved in making the determination to conduct a public offering. As such, the trigger for a distribution should hinge on whether it is reasonable that a dealer will undertake a distribution based on discussions with the issuer. One commenter was of the view that the existing and proposed guidance on "sufficient specificity' is not adequately flexible. The commenter noted that the proposed guidance specifically provides that CSA staff do not agree that a distribution does not commence until a later time (e.g., when an engagement letter is delivered to an issuer).The commenter submitted that: • IIROC guidance for compliance with IIROC	

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		Rule 29.13 states that "At the latest, [a distribution] will have commenced at the time the offer to underwrite is made to the issuer". • There should be mutuality of discussions (i.e., an intention of both the dealer and the issuer to proceed). The commenter noted that the proposed guidance gives two examples. While the first example does anticipate issuer approval, the second example refers to a situation where no indication of price range or other terms would have been given by the underwriter to the issuer and therefore there is no intention of the issuer to necessarily proceed. • The guidance should be revised to reflect these concerns. Similarly, although generally opposed to revising this guidance, another commenter indicated that, if a change is made, it would support language that provides that "there must be a *bona fide* intention on the part of both the dealer and the issuer to engage in the public distribution of securities". The commenter's issue with the language is that a distribution may commence if the intention is only with the dealer. ***Specific examples***	

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		One commenter was concerned about the consequences of the statement in the proposed guidance, which discusses situations where an issuer rejects a proposed engagement letter or proposal for an underwriting from a dealer. The proposed guidance states: *"Similarly we do not agree with the interpretations that if an issuer rejects a proposed engagement letter or proposal for an underwriting from a dealer, the "distribution" has ended and the dealer could immediately resume communications with potential investors concerning their interest in purchasing securities <u>of</u> the issuer. In these situations, we expect the dealer not to resume communications with potential investors until after a "cooling off" period."* (emphasis added) The commenter submitted that: • The use of the word "of" as highlighted in the above provision is problematic in that it may be interpreted to apply to securities traded in the secondary market, rather than those to be distributed pursuant to a prospectus distribution. • This would result in significant negative consequences for the issuer as it could curtail secondary market trading by a dealer or group of dealers.	We have revised the guidance as recommended by the commenter.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		• The word "of" in this provision should be changed to "from" to provide clarity of the intention.	
57	Policy Statement guidance – non-deal road shows	One commenter had comments on the guidance on non-deal road shows in the last paragraph of proposed subsection 6.4(b) of Policy Statement 41-101. The commenter submitted that: • The phrase "if such a non-deal road show was undertaken in anticipation of a prospectus offering" may in some cases cause interpretation issues (i.e., exactly what "in anticipation of a prospectus offering" means). • It may be helpful to provide a safe harbour which would provide that a road show would be a "non-deal road show" if a specified period has elapsed since the road show prior to commencement of the prospectus offering.	We have considered the comment. However, we don't propose to proceed, at this time, with a legislative safe harbour for non-deal road shows.
58	Policy Statement guidance – testing of the waters exemption – IPO issuers	One commenter noted that the guidance in proposed subsection 6.4A(5) of Policy Statement 41-101 contained a sample email that an investment dealer could use when soliciting expressions of interest in accordance with the proposed testing of the waters exemption. The commenter suggested that the last bullet of the sample email be modified to read as follows: *"you agree to keep the information confidential until it is otherwise in the public domain"*.	While we have not made the specific change recommended by the commenter, we have revised the amendments to Regulation 41-101 to require that any investor solicited under the testing of the waters exemption for IPO issuers confirm in writing that it will keep information about the proposed offering confidential until: • the information is generally disclosed, or • the issuer confirms that it will not be proceeding with the offering.
59	Policy Statement guidance –	With respect to the proposed regulation that any	***Fair, true and plain standard***

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
	term sheets – fair, true and plain requirement	term sheet be "fair, true and plain", two commenters noted the proposed policy statement guidance that a term sheet would be "fair true and plain" if: • it is honest, impartial, balanced and not misleading, • it does not give undue prominence to a particular fact or statement in the prospectus (or, in the case of a term sheet under subsection 7.5(1) of Regulation 44-101, a document referred to in paragraph 7.5(1)(d) of Regulation 44-101), and • it does not contain promotional language. One commenter submitted that: • This guidance is impractical as currently drafted. • By their nature, marketing materials are for marketing. They are not, as is recognized, full disclosure, but rather would be limited to key selling features, the issuer's purported positive attributes and financial highlights. • In creating this summary, it would be open to question whether the facts in the summary are given undue prominence, if for no other reason than simply because it is a summary only. • Similarly, this guidance assumes that prominence itself can be assessed. Does it relate to its location in the term sheet? Does	See response to item 29, which applies to all marketing materials (including marketing materials provided in connection with a road show). ***Guidance on marketing materials*** We have also revised the guidance in Policy Statement 41-101 to address some of the concerns expressed by the commenters. For instance: • We have removed the statement that marketing materials should not give undue prominence to a particular fact or statement. • We have removed the guidance relating to promotional language. • Instead, we have included guidance in Policy Statement 41-101 indicating that as marketing materials are subject to statutory prohibitions against misleading or untrue statements, issuers and investment dealers should have a reasonable, factual basis for any statement that is included in marketing materials. ***Road shows*** Other than a requirement to verbally read a statement at the beginning of the road show, the revised regulation amendments do not regulate oral statements made at a road show. See response to item 40.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		it relate to the manner in which selected information is summarized in the term sheet? Does it relate to which line items are included in a financial summary in the term sheet? Too much uncertainty results from this guidance. • Further, as each potential investor receives a prospectus from which the information comes, it is uncertain what "undue" prominence means in the context of the complete package of documents being given to the investor (or why it should matter). • The "prohibition" on promotional language is potentially problematic as well. A prospectus for a marketed offering will often contain promotional language – in addition to a liability document, the prospectus is a selling document, as are other marketing materials, used to encourage and facilitate the sale of the securities being offered. • Promotional language should not contain untruths or misrepresentations, but should not otherwise be prohibited. • To suggest that promotional language that is in a prospectus could not be used in written marketing materials is difficult to understand. The commenter suggested that this cannot be the intention. • Written marketing materials do not need this additional guidance given that statutory	

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		liability for misrepresentations attaches to these documents. Investment dealers are familiar with the concept of misrepresentation. The overall prospectus liability regime should meet any investor protection concerns. • The guidance should simply remind issuers of this fact, including the second branch of the definition of "misrepresentation" in applicable securities legislation regarding omissions of material facts necessary to make a statement not misleading in the context in which the statements are made. Another commenter was particularly concerned with the proposed guidance that a term sheet would be "fair, true and plain" if it does not contain promotional language. The commenter submitted that: • Under the proposed regulation amendments, this same standard would apply to road show materials. • While potentially an issue for all term sheets, this is clearly problematic for road show materials which, by their very nature, are to promote interest in the securities being offered. This is true of all marketing materials, including the prospectus. • The CSA should remove this prohibition on promotional language.	

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		• More generally, the proposed paragraph 13.8(1)(b) of Regulation 41-101 and equivalent paragraphs of the regulation amendments would apply the fair, true and plain standard to all "disclosure in the road show", rather than limiting its application to written materials. It is unclear how this could be applied in practice. Accordingly, these paragraphs should be removed.	
60	Policy Statement guidance – news release before filing a preliminary prospectus	One commenter noted the guidance in proposed subsection 6.9(3) of Policy Statement 41-101 which attempts to clarify what may be in a news release or material change report filed before the filing of a preliminary prospectus or the announcement of a bought deal and limits the information to identifying the securities proposed to be issued without a summary of commercial features of the issue. The commenter submitted that: • In certain instances, the bought deal itself may trigger a requirement to disclose certain other facts that may in and of themselves be material facts or material changes. • For example, a prospectus offering of a resource issuer may result in a change to a capital expenditure budget for the coming year which may be material and would need to also be disclosed in the news release and material change report. • Another example is if a significant	We agree that there may be circumstances where additional material facts or material changes must be disclosed in connection with a bought deal. The guidance is not intended to limit the ability of the issuer to disclose material facts or material changes of the nature referred to by the commenter. The guidance refers to news releases *before* the announcement of a bought deal under Part 7 of Regulation 44-101.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		acquisition is announced together with a financing, both of which may constitute material information and require disclosure and possible material change reporting. • It may be more appropriate for this guidance to clarify that the news release and material change report only include the information required to be included to comply with applicable law including disclosure of all material facts and of the material change.	
Regulation 44-101 respecting Short Form Prospectus Distributions			
61	Bought deal – definition – bought deal agreement	One commenter supports the introduction of a definition of bought deal agreement which includes it not having a "market out" clause. The commenter believes this reflects the current market understanding of what constitutes a bought deal. Another commenter did not object to the CSA's proposal that a "bought deal agreement" not contain a market-out clause. The commenter believes that the overwhelming market practice in Canada for a bought deal would be for both the bid letter and the underwriting agreement to exclude a market-out clause.	We thank the commenters for their input.
62	Bought deal exemption – general	One commenter supported the introduction of an expanded bought deal exemption. Three commenters were generally supportive of the proposed regulation amendments on the circumstances in which a bought deal can be	We thank the commenters for their input.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		expanded (subject to their comments on specific aspects of the proposals).	
63	Bought deal exemption – insider trading concerns	As regards insider trading and tipping concerns with the bought deal exemption, one commenter submitted that: • Insider trading and tipping do not often result from testing the waters for a bought deal, given the nature of the institutions who are contacted by dealers. • If insider trading does occur, it is best dealt with by enforcement action rather than restricting the ability of issuers to successfully raise capital. • Insider trading concerns can also be effectively addressed by confidentiality undertakings.	As noted in the November 2011 Materials, the pre-marketing restrictions reinforce the requirement that insiders and tippees should not trade on the basis of information about a potential offering that has not been generally disclosed. When the CSA considered reforms that permit greater pre-marketing before the announcement of a bought deal under Part 7 of Regulation 44-101 or the filing of a preliminary prospectus, the CSA needed to also consider whether those reforms would increase the likelihood of insider and tippee trading.
64	Amendment to bought deal agreement – limits on amount of the upsizing	***Opposition to a cap*** Six commenters did not think an increase in size of a bought deal should be limited. While not expressly opposing a cap, another commenter noted that the current absence of a specific limit affords issuers and dealers with a flexibility that can allow for issuers to raise additional funds if an offering is received with unexpected demand. One commenter did not believe that a cap on upsizing a bought deal is necessary in light of the other proposed requirements for an upsizing,	We have considered the comments, and have revised the amendments to Regulation 44-101 to provide that bought deals may be enlarged to an amount up to 100% of the original deal size. However, a bought deal agreement must not contain an upsizing option (other than an over-allotment option). We believe that imposing a limit on bought deal enlargements will prevent potential abuse, but that a 100% limit will still allow issuers to benefit from increased demand.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		which should adequately guard against any upsizing that is a misuse of the bought deal exemption. Another commenter did not see any reason to limit the amount of enlargement of a bought deal to a specified percentage. The commenter submitted that: • In its experience, issuers and underwriters have not colluded to enter into an initial bought deal letter agreement in respect of a small offering intending to increase its size with the purpose of avoiding the pre-marketing rules. • The general language proposed that the enlargement cannot be the culmination of a formal or informal plan to offer a larger amount devised before the execution of the original agreement should provide sufficient protection if any is necessary. Instead of imposing a cap, another commenter suggested that dealers be reprimanded if they initiate an unreasonable size offering to avail themselves of the bought deal exemption. Another commenter acknowledged that the CSA, through its proposed cap and additional conditions on upsizing, is attempting to address the potential for misuse of the bought deal	

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		exemptions (e.g., underwriters committing to purchase $5 million of securities under a bid letter when the intended offering size is $100 million in an attempt to limit underwriting risk). The commenter submitted that: • Such misuse of the bought deal exemption is extremely rare. • It is unlikely that experienced senior management of an issuer would accept a purchase commitment from an underwriter on a bought deal that is materially below management's intended offering size and price. • The commenter has not observed underwriters engaging in such a practice, which the commenter attributes in part to the competitive environment for underwriting securities offerings in Canada. • As a result, a cap on upsizing a bought deal is not necessary, since the potential for misuse of the bought deal exemption is very limited in practice. • An issuer seeking financing should be allowed to determine whether the size of the underwriting commitment and pricing being offered are acceptable to it. Similarly, another commenter believes it is not necessary to specify a percentage by which a bought deal can be enlarged following its initial	

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		announcement. The commenter submitted that: • Any attempts to limit the ability of an issuer to enlarge the size of a bought deal based on legitimate market demand would hamper the efficiency of Canadian capital markets and the attractiveness of the bought deal regime. • There are no strong policy reasons to justify imposing such restrictions on issuers. While the CSA indicated that the rationale for such a limit is to avoid the possibility of a dealer entering into a commitment with an issuer for a small number of securities in order to avoid the general restrictions on pre-marketing and then increasing it at a later time, the commenter thinks that this risk is overestimated. • Dealer reputation, the issuer not wanting to agree to incur expenses for a small offering and market forces will not result in this behaviour occurring with any regularity. • The market ultimately will determine what the demand for certain securities will be, and there is no policy reason to restrict it to a specified percentage if market demand exists. In setting a percentage cap on the enlargement of a bought deal, one commenter suggested that the CSA should consider the related provisions in the U.S. to ensure consistency.	

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
65	Amendment to bought deal agreement – other conditions for upsizing a bought deal	***Opposition to other conditions for upsizing a bought deal*** Six commenters had concerns regarding the provision in the proposed regulations that would prohibit a bought deal from being upsized if doing so is "the culmination of a formal or informal plan to offer a larger number of securities under the short form prospectus devised before the execution of the original agreement". One commenter encouraged the CSA to ensure that the restrictions regarding enlarging bought deals are clear to avoid creating uncertainty. In particular, as regards the condition that the upsizing can't be "the culmination of a formal or informal plan", the commenter felt that this involved a subjective element which will create uncertainty. Another commenter also believes the language is vague and the condition will cause unnecessary uncertainty in the marketplace as to when a transaction can be enlarged. The commenter submitted that: • It is highly probable that many dealers and issuers would hope that a bought deal would be well received and that discussions of a possible enlargement based on market demand could occur at the time of the initial	We have considered the comments and have not retained this provision. Instead, we have revised the definition of "bought deal agreement" in Regulation 44-101 to provide that a bought deal agreement must not contain an upsizing option (other than an over-allotment option). We believe that this will prevent potential abuse of the bought deal exemption. The revised regulation amendments will not prevent issuers and underwriters from benefitting from unexpected demand for a bought deal, provided that any upsizing is done in accordance with the regulation amendments (i.e., that the offering not be enlarged by an amount that is greater than 100% of the size of the original offering).

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		agreement. • The determination of the original size of a bought deal is always an estimate of what the market will in fact bear, and the condition seems circular and unnecessary. Another commenter noted that discussions between an issuer and an underwriter will necessarily involve market demand and the possibility of upsizing in the event that the demand is greater than expected at the given price. The commenter submitted that: • It is unclear whether these discussions would constitute a "formal or informal plan". • If an upsizing limit is implemented, there is no need for this provision. Similarly, another commenter stated that: • It is common for issuers and investment dealers to discuss the potential for increasing the size of the transaction prior to entering into a bought deal agreement. • Given the uncertainty regarding market reaction, this is not necessarily inconsistent with the underwriter making a firm commitment for the original offering size. Another commenter submitted that: • It understood the CSA's concern that an	

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		investment dealer not circumvent the pre-marketing restrictions (and consequently the policy behind the bought deal exemption) by entering into the original agreement for a small number of securities in order to solicit investors without a preliminary prospectus, and then, after having obtained expressions of interest, entering into an amended agreement for a much larger amount. • Nevertheless, the commenter was concerned about the broad language currently used in the proposed regulation amendments. • In particular, what constitutes "a formal or informal plan devised before the execution of the original agreement" in practice will be difficult to ascertain and/or prove – both for underwriters when they gauge the issuer's intentions, and for securities regulators. • Initial discussions between an issuer and the underwriters in the planning and formulation stages of any public offering are inherently dynamic – issues such as the potential range and size of the offering are fluid and subject to change. • Given the uncertainty and ambiguity present in ascertaining when a "formal or informal plan" actually existed, this condition may actually introduce more uncertainty into the enforcement of this provision, and thus adversely impact an underwriter's decision	

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		to rely on it. • The CSA should consider revising the language of this condition. Another commenter was of the view that the conditions for upsizing a bought deal could be difficult to comply with and may preclude upsizing in many situations. In particular, the commenter submitted that: • The condition that the upsizing can't be "the culmination of a formal or informal plan" is presumably aimed at making sure that the upsized offering is the result of excess demand or over-subscription, rather than a means of circumventing the spirit of the bought deal rules by permitting solicitations of expressions of interest in securities for which there is no pre-existing purchase commitment by an underwriter. • The wording of this condition, however, is very broad, and it is not clear how market participants will be able to satisfy themselves that the condition is met in any specific situation. • When considering a bought deal, an issuer will typically have in mind an approximate offering size and offering price (expressed as a discount to the current market price) for its securities. As part of the pricing discussions with the issuer, underwriters	

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		may provide the issuer with a range of suggested alternatives for offering size and price. • Depending on market conditions, an underwriter may on occasion recommend that the issuer launch a bought deal at a smaller offering size, with the possibility of upsizing, in order to increase the likelihood of a successful offering (one that will be "all sold", and ideally with excess demand so as to create market conditions that support the offering price), rather than take the risk that the market will not be able to absorb a larger offering at the same price per security. • Such action is not motivated by the underwriters' desire to limit underwriting risk, but rather by a desire to facilitate a successful offering for the issuer. • An issuer may be negatively impacted if its offering were to remain unsold, notwithstanding that the issuer receives the full amount of the net offering proceeds as a result of the underwriters' firm commitment to purchase the issuer's securities at the full offering price. (Among other reasons, an unsold offering may put downward pressure on the market price of the issuer's securities, adversely affect market perception of the issuer and negatively impact the ability of the issuer to raise capital in the future.)	

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		• Discussions of possible upsizing in the event of excess demand are a normal feature of the pricing process on certain bought deals. Such discussions facilitate certainty of financing for an issuer, rather than detract from it. However, the wording of the proposed condition on upsizing is very broad, and may be viewed as applying to the discussions that issuers and underwriters have regarding the interplay of offering price and offering size prior to launch. It is not at all clear when such discussions would amount to a "formal or informal plan" under the proposed regulations and therefore prohibit an upsized offering. • The proposed condition may introduce needless uncertainty regarding the ability to upsize a bought deal, and should not be necessary, particularly if the CSA moves forward with its proposal to cap the amount by which a bought deal can be upsized. Consequently, the commenter encouraged the CSA to remove this condition from the proposed regulations. ***Support for other conditions for upsizing a bought deal*** Given that upsizing a bought deal is a material change, one commenter agreed with the	

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		proposed condition that the enlargement of the offering cannot be the culmination of a formal or informal plan to offer a larger amount devised before the execution of the original agreement. In addition, the commenter suggested that upon upsizing a bought deal, the regulations should require that the order book be reconfirmed in an unambiguous fashion.	
66	Amendment to bought deal agreement – to add underwriters – general support	***General support*** One commenter was generally supportive of the proposed amendments to Part 7 of Regulation 44-101 that allow additional underwriters to join the bought deal syndicate (subject to their comments on specific aspects of the proposals). The commenter believes that the amendments are appropriate in order to provide the issuer and the bought deal underwriting syndicate with marketing and distribution flexibility in responding to investor demand.	We thank the commenter for their input.
67	Amendment to bought deal agreement – to add underwriters - conditions	***Opposition to certain conditions*** Eight commenters had concerns with the proposed regulation provision that would prohibit adding a new underwriter to the bought deal syndicate if, among other things, this was "the culmination of a formal or informal plan to add that underwriter devised before the execution of the original agreement".	We have considered the comments and have not retained this provision. Instead, we have revised the amendments to Regulation 44-101 to provide that an original bought deal agreement must not be conditional on syndication (although it can give the underwriter the ability to syndicate). Otherwise, the original agreement is not a true firm commitment to purchase securities under the bought deal exemption.

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		One commenter encouraged the CSA to ensure that the restrictions regarding enlarging bought deal syndicates are clear to avoid creating uncertainty. In particular, as regards the condition that the addition of an underwriter can't be "the culmination of a formal or informal plan", the commenter felt that this involved a subjective element which will create uncertainty. Another commenter submitted that: • Syndication of a bought deal often occurs after signing the bid letter, and is generally contemplated at the time of signing. • In addition to being in conflict with market practice, it is unclear what benefit is provided by the prohibition as additions to the syndicate do not diminish the commitment to purchase all of the securities that are the subject of the bought deal agreement. • Accordingly, proposed subsection 7.4(3) of Regulation 44-101 should be removed. Another commenter noted that in a bought deal, the underwriter assumes, at the time of entering the agreement, the risk from the issuer that an issuance of securities will not sell. The commenter submitted that: • The fact that a dealer chooses to manage this	If an agreement is conditional on syndication, the policy rationale of the bought deal exemption (i.e., to facilitate issuers seeking certainty of financing) has not been met. The policy rationale of certainty of financing will still be met if the parties later amend the agreement to add additional underwriters. However, we have added provisions to Regulation 44-101 and guidance in Policy Statement 41-101 relating to the practice of including "confirmation clauses" in bought deal agreements. The regulation amendments indicate that confirmation clauses are only permitted in certain circumstances. Specifically, the bought deal agreement must be confirmed on a next day basis.

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		risk by entering into a syndication agreement with other dealers does not affect either the issuer or investors and therefore should not be a concern to securities regulators. • In the interests of efficiency, one or two dealers (the lead underwriters) will enter into the bought deal agreement with the issuer and will in fact contemplate a subsequent syndication. • Any attempt to place restrictions on the ability to syndicate may hamper the efficiency of the capital markets and have a negative effect on the bought deal regime. Another commenter also noted that there are often circumstances where issuers want the ability and flexibility to permit additional dealers to join the syndicate. The commenter submitted that: • For very large transactions, it is Canadian practice to sign and launch with a smaller syndicate and invite other participants in after the initial launch, as it is not practicable to invite and receive confirmations for a large number of participants in a timely and coordinated manner. • The expansion of the syndicate in this manner does not have any negative consequences from an investor protection or	

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		market integrity perspective. • As a result, this restriction should be removed. In like manner, another commenter noted that there are many instances when a lead syndicate member (i.e., a book runner) would like the flexibility to allow additional dealers (i.e., co-managers) to join the syndicate, and would like to afford them sufficient time to seek approval. The commenter believes that the inclusion of these co-managers does not have any negative consequences on the offering or the marketplace as a whole. Similarly, another commenter believes that the practice of adding additional underwriters to the bought deal syndicate after the transaction has been launched is relatively common due to timing constraints. The commenter noted that it is not clear why this is problematic from a policy perspective, even if it was contemplated prior to the execution of the original agreement. Another commenter submitted that: • It was concerned about the broad language currently used in the proposed regulation amendments. • In particular, what constitutes “a formal or informal plan devised before the execution	

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		of the original agreement" in practice will be difficult to ascertain and/or prove - both for underwriters and for securities regulators. • Initial discussions between an issuer and the underwriters in the planning and formulation stages of any public offering are inherently dynamic – issues such as the potential investment dealers that may be interested in participating in the offering, are fluid and subject to change. • Given the uncertainty and ambiguity present in ascertaining when a "formal or informal plan" actually existed, this condition may actually introduce more uncertainty into the enforcement of this provision, and thus adversely impact an underwriter's decision to rely on it. • The CSA should consider revising the language of this condition. Another commenter believes that the proposed restriction may be incompatible with current market practice on bought deal syndication. The commenter noted that: • Most bought deal bid letters are executed by the lead underwriters on behalf of the full syndicate, in the interests of speed in bringing the offering to market, with the full expectation that other underwriters will	

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		subsequently execute the full underwriting agreement. • Given that syndication of a bought deal (i.e., the process of the lead underwriters inviting other underwriters to join the underwriting syndicate) often does not occur until shortly prior to launch (sometimes minutes before launch), it is in most cases impractical to have the bid letter signed by all of the underwriters since there is insufficient time to do so. Yet, in the situation where a bought deal is to be syndicated, there is clearly an intention prior to the time that a bid letter is signed to add additional underwriters and to specify the number of securities to be purchased by the additional underwriters. • This intention is usually evidenced by the listing in the bid letter of all of the underwriters, together with their purchase commitments on a several basis. However, only the lead underwriter(s) will sign the bid letter. The proposed condition in paragraph 7.4(3)(a) of Regulation 44-101 would appear to prohibit this practice, since the intention to add other underwriters would constitute a "formal or informal plan" to do so devised before the execution of the original agreement. • It is also unclear whether the proposed condition in paragraph 7.4(3)(c) of	

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		Regulation 44-101 that the amended agreement (which adds other underwriters) be otherwise on the same terms as the original agreement would preclude the current practice of having the other syndicate members sign the full underwriting agreement, rather than an amended bid letter. This is because the full underwriting agreement will necessarily contain other terms in addition to what was contained in the original bid letter. • The commenter did not understand the regulatory concerns with the current practice, since the underwriters' commitment to purchase all of the offered securities from the issuer, once a bid letter is signed, is unchanged by the addition of underwriters to the syndicate. Consequently, the commenter suggested that the CSA delete proposed subsection 7.4(3) of Regulation 44-101 in its entirety.	
68	Amendment to bought deal agreement – to add clauses	Five commenters were concerned that the proposed restrictions on amending bought deal agreements may be incompatible with the current market practice of parties entering into an underwriting agreement to supersede or supplement a bought deal bid letter. In particular, commenters noted that:	In response to the comments, we have revised the amendments to Regulation 44-101 relating to modifications to bought deal agreements. In particular, we have added a provision to Regulation 44-101 which expressly allows for a bought deal agreement to be replaced by a more extended form of underwriting agreement, provided that the underwriting agreement complies with the terms and conditions that apply to a bought deal agreement.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		• A bought deal is launched on signing of a "bought deal letter", which is typically a short document that contains the underwriter's commitment to purchase, obliges the issuer to file the prospectus within the prescribed timeframe and details the termination provisions. • This document is superceded by a standard underwriting agreement, which is more detailed. One commenter submitted that: • The proposed regulation amendments do permit the addition of representations, warranties, indemnities and conditions. • However, it is not clear if this is an attempt to change current practice or to accommodate the current practice. • The definition of "amend" includes "amend and restate" so this is likely not a change. This should, nonetheless, be clarified. • In addition, it should be permissible to permit additional covenants in an amendment to a bought deal letter. Another commenter submitted that: • The proposed regulations appear to prohibit all terms and conditions of the underwriting from being amended or modified. • It is not clear whether the proposed	

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		regulations will disallow the current practice of issuers and underwriters entering into a relatively short engagement letter or bought deal letter, and then subsequently negotiating a mutually satisfactory underwriting agreement. • The regulatory intent of this provision is unclear, as the commenter does not believe that the current practice raises any investor protection issues. Another commenter submitted that: • It was unclear as to the meaning of the proposed regulation. In particular, the proposed regulation appears to permit the amendment of the original bought deal agreement to add additional representations, warranties, indemnities and conditions if the amended agreement is "otherwise on the same terms as the original agreement". • However, this wording appeared to be circular. • Perhaps proposed paragraph 7.4(4)(a) of Regulation 44-101 could be clarified to provide that the amended agreement be on the same terms as to number of shares and price as the original agreement. Two other commenters expressed similar concerns. Their comments included the	

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		following: • The proposed regulations would not allow a bought deal agreement to be amended in order to add additional representations, warranties, indemnities and conditions, unless the amended agreement is otherwise on the same terms as the original agreement and other restrictions are complied with. • It is not clear what is intended by this requirement in light of the fact that the term "bought deal agreement" may apply to both the bid letter and the full underwriting agreement (the full underwriting agreement, by superseding or supplementing the bid letter, may be considered to constitute an amendment to it). • The CSA should clarify that the current practice of superseding or supplementing a bought deal bid letter with a full underwriting agreement (which will necessarily contain additional representations, warranties, indemnities and conditions beyond what is in the bid letter) would continue to be acceptable. • One of the reasons why the practice of using a bid letter to satisfy the "enforceable agreement" requirement in current subsections 7.1(a) and 7.2(a) of Regulation 44-101 is that there is often not enough time to negotiate a full underwriting agreement	

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		prior to the launch of a bought deal. • In contrast, bid letter terms and conditions have become relatively standardized in Canada, with the result that a form of bid letter may be agreed upon in a relatively short period of time. The four business day period following the launch of a bought deal and ending at the time of filing the preliminary prospectus provides additional time during which the full underwriting agreement may be negotiated, settled and executed by the issuer and all of the underwriters. • The commenters would strongly discourage any changes that would result in underwriters and issuers having to settle on and execute a full underwriting agreement prior to the launch of a bought deal in order to satisfy the proposed condition relating to the addition of representations, warranties, indemnities and conditions to the bought deal agreement. • Consequently, proposed subsection 7.4(4) of Regulation 44-101 should be removed in its entirety.	
69	Amendment to bought deal agreement – to terminate deal	Four commenters expressed concerns with the provisions in the proposed regulation amendments on when a bought deal agreement could be terminated.	We have made certain revisions in response to these comments. ***Definition of bought deal agreement*** The revised definition of "bought deal agreement" in

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		General One commenter was concerned that the proposed regulation amendments appear to prohibit termination of a bought deal agreement unless all parties (the underwriters and the issuer) decide not to proceed with a prospectus offering. ***Termination under an "out" provision*** While supporting the introduction of a definition of bought deal agreement which includes it not having a "market-out" clause, one commenter believes the CSA should clarify that other clauses which may allow termination of a transaction are not prohibited, especially in light of proposed subsection 7.4(5) of Regulation 44-101. In like manner, two other commenters submitted that: • While bought deal "bid letters" do not generally contain "market-out" provisions, it is market practice for a bid letter to contain other conventional termination "outs", such as a "disaster out", a "material adverse effect out" or a "due diligence out". • Consistent with market practice, underwriters need to have the ability to continue to negotiate and rely on customary termination outs with any issuer.	subsection 7.1(1) of Regulation 44-101 provides that a bought deal agreement may not have a market-out clause, an upsizing option (other than an over-allotment option) or be conditional on syndication (other than a confirmation clause that complies with section 7.5 of Regulation 44-101). ***More extended form of underwriting agreement*** As noted in the response to item 67, we have added a provision to Regulation 44-101 which expressly allows for a bought deal agreement to be replaced by a more extended form of underwriting agreement that includes, without limitation, termination rights, provided that the underwriting agreement complies with the terms and conditions that apply to a bought deal agreement. ***Termination of bought deal agreement*** Subsection 7.3(7) of Regulation 44-101 provides that the parties to a bought deal agreement may agree to terminate the agreement if the parties decide not to proceed with the prospectus offering. We have provided companion policy guidance that this provision does not prevent a party from exercising a termination right under a provision in a bought deal agreement, or a more extended form of underwriting agreement, that permits the party to terminate the agreement if another party performs, or fails to perform, certain actions, or certain events fail to occur. ***Bought deal agreement – provisions and practices*** We have revised Policy Statement 41-101 to provide

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		• Under the proposed regulation amendments, it is unclear whether these termination rights could be contained in the bought deal bid letter. • One of these commenters suggested that proposed subsection 7.4(5) of Regulation 44-101 be removed. Another commenter believes the proposed restrictions on terminating bought deal agreements may be incompatible with current market practice. The commenter noted that: • One of the long-existing policy rationales for allowing bought deals in Canada is to provide certainty of financing for an issuer. The commenter therefore acknowledges the purpose behind the provisions in the proposed regulations which seek to restrict when a bought deal agreement can be amended or terminated. However, the commenter believes that the CSA should clarify whether the new term "bought deal agreement" refers only to the bid letter or also to the underwriting agreement itself. • The prevailing market practice in Canada for a bought deal is to use a bid letter to satisfy the requirement in current subsections 7.1(a) and 7.2(a) of Regulation 44-101 that the issuer has entered into an "enforceable agreement" with the underwriters to	guidance on the use of termination "outs" in bought deal agreements and certain practices. We have included policy statement guidance in Policy Statement 41-101 to clarify that where an issuer enters into an engagement letter with underwriters solely for the purpose of conducting due diligence before a potential prospectus offering, that event will not, in and of itself, indicate that "sufficient specificity" has been achieved, provided that the engagement letter does not contain any other information which indicates that "it is reasonable to expect that the dealer will propose to the issuer an underwriting of securities". ***Due diligence outs*** We understand that some bought deal agreements, and more extended forms of underwriting agreements for bought deals, include due diligence "outs". We have included policy statement guidance in Policy Statement 41-101 to indicate that: • If permitted by the issuer, an underwriter may want to conduct sufficient due diligence in advance of proposing a bought deal to the issuer. • Where underwriters are not willing or able to conduct sufficient due diligence in advance of proposing a bought deal to an issuer, they may want to consider proposing a fully marketed offering instead. • Where an issuer is required to file technical reports under Regulation 43-101, the underwriter may want to confirm, as part of its due diligence before proposing

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		purchase the securities that are the subject of the bought deal. The bid letter is typically entered into by the lead underwriters on behalf of the full underwriting syndicate, and is then superseded or supplemented by a full underwriting agreement that is executed by all of the underwriters immediately prior to the time of filing the preliminary prospectus for the bought deal. • The proposed regulations appear to prohibit a "bought deal agreement" from being terminated unless all parties (including the issuer) decide not to proceed with the prospectus offering. The commenter was unclear how this provision would apply. • This provision could be read to mean that there can be no "outs" in the bought deal agreement at all, although the commenter presumed this refers only to the bid letter itself rather than to the full underwriting agreement that typically supersedes or supplements the bid letter. (The underwriting agreement for a bought deal would customarily include "regulatory proceedings out", "disaster out", "material change out" and "compliance with conditions out" clauses. For a REIT or income trust issuer, a "tax change out" clause may also be included.) • Many bought deal bid letters do not	the bought deal, that the issuer's technical reports are compliant with Regulation 43-101. • Due diligence outs in bought deal agreements, or more extended forms of underwriting agreements for bought deals, should not be used in a way that would defeat the policy rationale of the bought deal exemption. ***Confirmation clauses*** We have added provisions to Regulation 44-101 and guidance to Policy Statement 41-101 relating to the practice of including "confirmation clauses" in bought deal agreements. The amendments provide that confirmation clauses are only acceptable in certain circumstances. Specifically, the lead underwriter must confirm the agreement on a next day basis. ***Timing restrictions in bought deal agreements*** We understand that underwriters often specify, in a bought deal agreement or a more extended form of underwriting agreement relating to a bought deal, that the issuer must file and obtain a receipt for the final prospectus within a short period of time of the first comment letter or the receipt for the preliminary prospectus being issued. We have included policy statement guidance in Policy Statement 41-101 to indicate that issuers and underwriters should not expect that all comments can be resolved within a particular period of time. ***Reductions in deal size***

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		themselves contain the customary termination provisions contained in a bought deal underwriting agreement. However, the purchase commitment in the bid letter is usually conditional upon the execution by the issuer and the underwriters of a mutually satisfactory form of underwriting agreement, which would then contain those customary termination provisions. • In addition, it would be typical for a bought deal bid letter to have some form of "due diligence out" clause in the event that undisclosed, materially adverse information about the issuer is revealed during the underwriters' due diligence investigation prior to the time at which the full underwriting agreement is signed (this provision is not typically included in the full underwriting agreement). • If a mutually satisfactory form of underwriting agreement cannot be agreed upon, or if the underwriters' due diligence investigation were to reveal undisclosed, materially adverse information about the issuer, the underwriters would be entitled to withdraw or terminate their underwriting commitment under the bid letter. • Given the wording of proposed subsection 7.4(5) of Regulation 44-101, it is not clear whether these and other customary	We have become aware of several recent instances where bought deals have been amended to provide for a lower price per share or a smaller offering. We have revised the amendments to Regulation 44-101 to prohibit any amendment to the bought deal agreement that would reduce the price or size of the deal, unless the amendment is made on or after the date which is at least four business days after the date the original agreement was entered into. We have also included policy statement guidance that: • Sets out our regulatory concerns on how the bought deal exemption was intended to facilitate issuers seeking certainty of financing. • Indicates that if a bought deal is amended to provide for a lower price per share or a smaller offering, especially within a short time after the original agreement has been signed, the policy rationale has not been met. • Indicates that if an underwriter does not want to assume the risk of a bought deal, the underwriter may want to consider proposing a fully marketed offering, rather than a bought deal.

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		conditions in the bid letter would be prohibited or unenforceable, since the failure to satisfy these conditions could result in the termination of a bought deal agreement without the consent of the issuer. • Not including these conditions in a bought deal bid letter would be a significant departure from current market practice. Accordingly, the commenter suggested that the CSA clarify that both the bid letter and the underwriting agreement for a bought deal may contain the customary termination provisions and conditions for a bought deal, which under the proposed regulations would exclude a "market-out clause". Consequently, the commenter encouraged the CSA to remove proposed subsection 7.4(5) of Regulation 44-101 and instead re-phrase the proposed regulations to clarify that neither the bid letter nor the underwriting agreement for a bought deal may contain a "market out clause". ***Termination if certain conditions are not met*** One commenter submitted that: • The underwriters' bought deal participation is always subject to various conditions that are set forth in the bid letter, including (i) that the issuer and the underwriters execute a mutually acceptable form of underwriting	

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		agreement, (ii) that the issuer file and obtain receipt for a preliminary prospectus within four business days, and (iii) in some cases, certain stock exchange listing and/or rating agency conditions. • Consistent with market practice, underwriters need to have the ability to continue to negotiate and rely on these customary conditions with any issuer. • Under the proposed regulation amendments, it is unclear whether these conditions could be contained in the bought deal bid letter. Another commenter also noted that it is typical for the underwriters' purchase commitment in the bid letter to be subject to other conditions, such as: • The issuer being eligible to file a short form prospectus, the issuer filing the preliminary and final short form prospectuses by certain dates, the issuer complying with securities laws and the securities offered being conditionally listed on a particular stock exchange. • The bid letter being "subject to syndication", meaning that the underwriters' purchase commitment will be withdrawn if the lead underwriters are not able to syndicate the offering among other underwriters. In the event of a failure to syndicate, the bought	

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		deal will not be launched (e.g., there is no public announcement of the bought deal). The commenter noted that the lead underwriters may achieve the same result by delaying the execution of the bid letter until after the full syndicate confirms its participation in the bought deal (in other words, the lead underwriter will not commit to purchase securities without the other underwriters confirming their participation as syndicate members). However, the commenter believes that investment dealers prefer to explicitly state in a bid letter when a bought deal is subject to syndication, in part to highlight for the issuer the fact that its offering will not proceed if the offering cannot be syndicated.	
70	Bought deal term sheets – general support	One commenter generally supported the proposed regulation amendments and policy changes regarding the use of bought deal term sheets, subject to certain comments.	We thank the commenter for their input.
71	Bought deal term sheets – distinction between "term sheets" and "written marketing materials"	One commenter believes that the use of the phrase "term sheet" in the proposed regulation amendments and policy statement changes is potentially problematic as it appears to encompass a wider definition than is typically associated with the phrase. The commenter submitted that: • Nearly every public offering makes use of a term sheet (a standard term sheet) that	We have revised the regulation amendments and policy statement changes to distinguish between "standard term sheets" and "marketing materials". Both can be provided to any investor. See response to item 11.

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		simply states the basic factual terms of the proposed transaction such as price, total deal size, over-allotment terms, use of proceeds, jurisdictions of sale, commission, closing date, etc. • The information contained in the standard term sheet currently used in public offerings would generally be the information that is contained in the launch date news release for a bought deal reformatted into a factual table. • The use of written marketing materials prior to the preliminary prospectus receipt would be uncommon in today's marketplace. The current experience is that written marketing materials other than the standard term sheet (as discussed above) are rarely used by investment dealers in soliciting expressions of interest in connection with a bought deal transaction. • Further, due to the limited amount of time between the execution of a bought deal engagement letter and the filing of a preliminary prospectus, any materials are likely to be limited in scope. • In view of this potential limited scope and the desire to not treat groups of potential investors differentially, any new rule should permit written marketing materials to be provided to any potential investor, not only	

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		permitted institutional investors. • Limiting the permitted audience of the written marketing materials would legislate unequal access to information based on only apparent sophistication. • However, despite the preceding sentiments, the opportunity to use such enhanced marketing materials between the execution of a bought deal engagement letter and the filing of a preliminary prospectus is attractive and would be used in appropriate circumstances. In light of the attempt to conform the marketing rules to market practice as much as is practicable while seeking to pursue the policy goals of the pre-marketing rules, the commenter suggested that standard term sheets be expressly recognized as a document used by investment dealers, and expressly permitted to be used at any time after a public offering has been announced. Further, any standard term sheet should not be required to be included, or incorporated by reference, in the relevant prospectus.	
72	Bought deal term sheet – content	Four commenters questioned the proposed regulation that all information concerning the securities in a bought deal term sheet must be included in the bought deal news release, unless that information has been disclosed by the issuer	***Bought deal marketing materials – content*** We have revised the amendments to Regulation 44-101 to allow bought deal marketing materials to include information that is not in the bought deal news release or the issuer's continuous disclosure record, provided that the

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		in a previously filed document. Two commenters believe the proposed regulations on the content of bought deal term sheets would require more disclosure in the launch news release for a bought deal compared to current practice. The commenters noted that: • Some of the information in a typical bought deal term sheet that would need to be included in the launch news release under the proposed regulations would include the stock exchanges where the issuer's securities are listed, the termination provisions for the underwriting commitment, the eligibility for investment of the securities for RRSPs, TFSAs and other registered plans and the underwriting fee. • Current market practice is to not include this information, and therefore the adoption of these provisions will result in a change in the usual form of launch news release for a bought deal. One commenter did not object to this aspect of the proposed regulations, although it was unclear to the commenter whether there is much added benefit to including all of the information that is in a bought deal term sheet in the launch news release. In contrast, two commenters objected to this	information will be disclosed in, or derived from, the subsequently filed preliminary prospectus. We believe that the requirement to include this information in the preliminary prospectus will mitigate potential investor protection concerns. We have included policy statement guidance in Policy Statement 41-101 that reminds issuers of: • Selective disclosure and insider and tippee trading concerns when including information in bought deal marketing materials that is not in the bought deal news release or the issuer's continuous disclosure record. • Other possible reporting requirements relating to the information (i.e., material change reporting requirements, news release disclosure where the information could affect the market price of the issuer's securities). The amendments to Regulation 44-101 require that all information in marketing materials must be in the bought deal news release, the issuer's continuous disclosure record or the subsequent preliminary prospectus. There is no requirement for all information in the bought deal news release to be in the marketing materials.

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		aspect of the proposed regulations. They noted that investors participating in a bought deal offering will receive the information through the term sheet or in the prospectus. Two commenters believe the proposed requirement which states that "all information concerning securities in the term sheet must be in the bought deal news release or the issuer's continuous disclosure record" should be restricted to material information. One commenter submitted that certain information contained in the news release (e.g., the security identifier) would not be material to investors.	
73	Bought deal term sheets – approval and filing on SEDAR	Two commenters had concerns with the proposed regulation that a bought deal term sheet would need to be filed on SEDAR before use. One commenter had concerns with the proposed regulation that a bought deal term sheet would need to be approved in writing by the issuer and underwriters before use. One commenter submitted that: • Under current bought deal rules, the launch news release must be issued and filed on SEDAR prior to the commencement of solicitation activities. • For timing reasons, this is typically handled	See response to item 25.

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		by the lead underwriter on behalf of the issuer. • Investment dealers will want to ensure that compliance with the proposed regulations will not result in a delay in their ability to send term sheets to investors immediately following launch in accordance with current market practice. • The CSA should consider whether approval in writing of the term sheet by all of the underwriters should be necessary, given that market practice is for the lead underwriters to negotiate and finalize the form of term sheet with the issuer. Obtaining the written approval of all of the underwriters on the term sheet (even by way of return email) could result in unnecessary delays in the context of a bought deal. • As a practical matter, the new requirement to file the term sheet on SEDAR before the term sheet is sent will result in the lead underwriter also filing the term sheet at the same time as the news release in order to be in a position to be able to distribute the term sheet immediately upon launch. Another commenter was of the view that there are no benefits in filing a bought deal term sheet on SEDAR prior to launching a public offering. The commenter submitted that:	

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		• The requirement is impractical given the timing involved in launching a bought deal offering, which involves many parties and documentation. • Any additional filing requirement prior to launching a bought deal offering would delay the process and does not benefit investors.	
74	Bought deal term sheet – incorporation of term sheet in prospectus	Given that all the information in the term sheet must be included in the prospectus, one commenter did not see any benefits to including the actual term sheet in the prospectus since this information would be redundant.	The regulation amendments require marketing materials to be included or incorporated by reference in the prospectus so that they will be subject to statutory civil liability for misrepresentations.
75	Bought deal term sheet – subsequent delivery of preliminary prospectus	Three commenters felt that potential investors who receive a bought deal term sheet do not need to also receive the subsequent preliminary prospectus if those investors do not participate in the offering. The commenters felt this requirement imposes an unnecessary compliance burden for dealers without any clear investor protection benefit. One commenter believes no purpose is served by providing further information about an offering to an investor that has already decided not to participate in the offering. Another commenter submitted that: • In many cases, the mere receipt of a term sheet does not indicate an expression of	We have revised the amendments to Regulation 44-101 to require that a copy of the subsequent preliminary prospectus be sent to any investor that received the bought deal marketing materials and expressed an interest in acquiring the securities. We recognize that an investor that receives bought deal marketing materials may decide not to participate in the prospectus offering, but instead buy securities of the issuer in the secondary market on the basis of information in the marketing materials. However, we believe that our approach still provides for investor protection through the following: • The marketing materials will contain a legend stating that the marketing materials do not provide full disclosure of all material facts relating to the securities offered and that investors should read the subsequent preliminary prospectus before making an investment

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		interest to purchase the securities. • In any case, prospectus and secondary liability for distributions ensures that purchasers are protected.	decision. • The marketing materials must be filed on SEDAR on the day they are first provided to a potential investor. As a result, they are a "document" under the secondary market liability provisions in securities legislation. We note that the revised requirement corresponds to the current delivery requirements in paragraphs 7.1(d) and 7.2(d) of Regulation 44-101.
76	Bought deal – road shows before the filing of a preliminary prospectus	One commenter noted that the proposed regulations do not address road shows conducted in connection with a bought deal after the announcement of the bought deal but before the issuance of a receipt for a preliminary short form prospectus. The commenter submitted that: • The regulations should regulate the conduct of road shows in this phase of the bought deal when expressions of interest are being solicited, including the requirement that any written road show materials be filed and included in, or incorporated by reference into, the prospectus, thereby attracting civil liability. • Otherwise, marketing efforts during this phase of a bought deal would not be on the same footing as marketing efforts during other phases of a prospectus offering.	We have revised the amendments to Regulation 44-101 to allow dealers to conduct road shows for investors after the announcement of a bought deal but before the filing of the preliminary prospectus. We believe that investor protection concerns that may arise when retail investors receive marketing materials used in connection with a road show before a preliminary prospectus is filed are mitigated by requiring that all information in the marketing materials be disclosed in, or derived from, the bought deal news release, the issuer's continuous disclosure record on SEDAR or the subsequent preliminary prospectus. We have included policy statement guidance in Policy Statement 41-101 that reminds issuers of: • Selective disclosure and insider and tippee trading concerns that may arise when information included in bought deal marketing materials is not in the bought deal news release or the issuer's continuous disclosure record.

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			• Other possible reporting requirements relating to the information (i.e., material change reporting requirements, news release disclosure where the information could affect the stock price).
Form 44-101F1 *Short Form Prospectus*			
77	Term sheets incorporated by reference	One commenter noted that the proposed amendments to Form 44-101F1 expressly address the inclusion in, or incorporation by reference into, the prospectus of term sheets, but not road show materials. The commenter believes the prospectus form should expressly address road show materials.	We have revised the regulation amendments to remove the definition of "road show materials". Marketing materials used in connection with a road show will be subject to the same requirements as any other marketing materials. Accordingly, the amendments to Form 44-101F1 address the inclusion in, or incorporation by reference into, the prospectus of marketing materials used in connection with a road show.
Regulation 44-102 respecting Shelf Distributions **Policy Statement 44-102 *Shelf Distributions***			
78	Shelf prospectus regulations	One commenter noted that a number of rules specific to shelf offerings have been included within the proposed amendments to Regulation 41-101. The commenter believes that it would be more appropriate for these provisions to be included within Regulation 44-102.	We have moved the regulation amendments relating to marketing after the receipt of a final base shelf prospectus to Regulation 44-102. However, we have included language in Policy Statement 44-102 which indicates that: • While Regulation 44-102 has provisions on marketing after the receipt of a final base shelf prospectus, Regulation 41-101 has general provisions that apply to marketing during the waiting period. • Issuers and investment dealers should refer to the guidance on marketing activities in Part 6 of Policy Statement 41-101.

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79	Marketing before the filing of a shelf prospectus supplement	One commenter noted the proposed guidance in section 1.3 of Policy Statement 44-102 that states that if an issuer does not issue a news release about a potential drawdown under a shelf prospectus, dealers should consider measures to ensure compliance with applicable securities laws relating to selective disclosure, insider trading and trading by "tippees". The commenter submitted that although this appears to recognize the existing practice of confidentially marketed shelf take-downs, further guidance in respect to what measures are envisioned to ensure compliance with this provision would be helpful. Another commenter believes it would be very helpful if the CSA could explicitly confirm in Policy Statement 44-102 the current industry understanding that the prohibition against pre-marketing under applicable securities laws does not apply in the event that the issuer has filed and received a receipt for a base shelf prospectus.	***Compliance measures*** We note that this is a matter of internal compliance to be addressed by investment dealers. We don't propose to issue additional guidance at this time. ***Marketing after receipt for base shelf prospectus*** We believe this matter is addressed in revised section 1.3 of Policy Statement 44-102.
Specific Questions			
Testing of the waters exemption for IPO issuers			
80	Would the proposed testing of the waters exemption for IPO issuers be of value to those issuers and their investment dealers? Would it allow them to obtain useful feedback from	***Positive comments*** Five commenters believe the proposed exemption would be of value. One commenter believes that the proposed exemption would be very useful to both issuers	We have considered the comments, and have retained the amendments to Regulation 41-101 that provide for a testing of the waters exemption for IPO issuers.

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	permitted institutional investors? Why or why not?	and investment dealers because institutional investors are key market participants in public offerings and this would permit issuers contemplating IPOs to obtain important information regarding potential IPOs. Four commenters believe that: • Given the considerable time, costs and expenses associated with IPOs, the proposed exemption would enable parties involved with the IPO to assess whether there would be sufficient interest for the IPO and the basis of such interest. • To the extent that market interest may be tested prior to incurring some of those expenditures, it would be beneficial to issuers and capital markets. One commenter noted that initial public offerings are not typically launched in the absence of general feedback as to market appetite and a thorough assessment as to the potential success of the initial public offering. The commenter submitted that: • Investment dealers regularly gather general feedback from the marketplace through informal discussions with sophisticated accounts as to interest in certain types of issuers, without needing to provide issuer specific information.	

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		• Typically these conversations involve identifying the industry, potential size of the transaction, geographical territory and commodity (for mining transactions) and market capitalization of the issuer. • Additionally, many private issuers actively raise funds in the private markets and have sophisticated or institutional shareholders who are able to assess the market and provide direct feedback about a going public transaction. • While information is being obtained, the proposed exemption would be of value in those instances where there is some question as to whether the market would sufficiently understand the business of the potential issuer or where the potential issuer is too dissimilar from other public companies in the Canadian market to obtain useful feedback without providing company specifics. • This would be more likely in those instances where the potential issuer is a foreign company with a business or assets that are not familiar to the Canadian marketplace. This would be the case whether the issuer was small or large. ***Negative comments*** One commenter believes the proposed	

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		exemption would not allow IPO issuers to obtain feedback from permitted institutional investors since institutional investors prefer not to be "locked up" in any matter.	We do not believe that the regulation amendments will result in investors solicited under the exemption becoming "locked up". We have revised the amendments to Regulation 41-101 so that the requirement for an investor solicited under the exemption to keep information confidential and not use it for any purpose other than assessing interest in the offering, extends only until: • the information is generally disclosed, or • the issuer confirms that it will not be proceeding with the offering.
81	Do you think the proposed testing of the waters exemption for IPO issuers will be used? If so, who do you think would use the exemption most? Small issuers or large issuers? Or, would it be used equally by both?	***Positive comments*** Three commenters thought the proposed exemption would be used. One commenter expects that the proposed exemption will be used frequently by both small and large issuers on an equal basis. Another commenter submitted that: • One of the most significant deterrents preventing small and medium-sized issuers from accessing the Canadian capital markets is the substantial cost associated with filing a preliminary prospectus. • As such, this exemption would be of particular value to junior and mid-tier issuers in Canada's diverse natural resources industry, as well as in other sectors, since it provides them with an opportunity to	We have considered the comments, and have retained the amendments to Regulation 41-101 that provide for a testing of the waters exemption for IPO issuers.

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		determine institutional interest in a potential public offering without incurring the significant expenses associated with filing a preliminary prospectus. Another commenter believes that: • The exemption will be relied upon mainly by larger private issuers that: o have more information regarding their business and products in the public domain, o already have an institutional shareholder base, or o are able to attract the interest of an investment dealer. • These issuers will likely have more investment interest in their securities such that underwriters may wish, as part of their activities to determine the viability of an IPO, to undertake such discussions. • As the solicitation must be made through an investment dealer, the exemption may not be utilized by smaller issuers that have not generated the same level of interest from registered dealers. • In addition, smaller issuers that do not have a public record may have difficulty relying upon the exemption to obtain any degree of comfort as to whether a subsequent IPO would generate interest in the market and be	

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		successful. ***Negative comments*** One commenter was of the view that the exemption would not likely be used by IPO issuers and their investment dealers, since investment dealers generally do not purchase securities from IPO issuers and are therefore not at market risk prior to selling to investors.	
Bought deal exemption			
82	Our proposals provide for the enlargement of bought deals up to a specified percentage. Should the specified percentage be: • 15% of the original size of the offering (which corresponds to the existing 15% limit on over-allotment options), • 25% of the original size of the offering, or • 50% of the original size of the offering? Or, do you think another limit is appropriate in order to provide flexibility, yet prevent abuse of the bought deal exemption?	***Commenters suggesting a cap of 100% of the original size (or higher)*** Five commenters indicated that any cap should be at the high end of the range (e.g., 100% or higher). In particular, • Although they were opposed to a cap on upsizing bought deals, if a limit were to be imposed, two commenters suggested that it be at least 100% of the original size of the offering and two commenters suggested that it be at the high end of the proposed range. • While not expressly opposing a cap, another commenter suggested that it be at 100% of the original size of the offering. In this regard, • One commenter believes that if a limit is imposed, a higher percentage should apply since it would allow market demand to be	We have considered the comments, and have revised the amendments to Regulation 44-101 to provide that bought deals may be enlarged to an amount up to 100% of the original deal size. We believe that imposing a limit on bought deal enlargements will prevent potential abuse, but that a 100% threshold will still allow issuers to benefit from increased demand.

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		met. • Another commenter thinks the ability to upsize to 100% would be particularly beneficial to smaller issuers. • Furthermore, even with a 100% upsizing, one commenter felt the bought deal should still be able to have the traditional 15% greenshoe. ***Commenter suggesting a cap of 50% of the original size*** Two commenters suggested a cap of 50% of the original size of the offering. One commenter submitted that a 50% cap would provide the issuer with maximum flexibility to increase the offering size where investor demand warrants it without "resetting" the four business day period between signing the bid letter and filing the preliminary prospectus, while at the same time preventing abuses of the bought deal exemption. Another commenter submitted that: • A 50% cap would provide the right balance between flexibility, which is often needed in order to accommodate excess demand or large orders that are difficult to "cut-back" (e.g., a smaller order may not impact a portfolio sufficiently), and continuing to	

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		provide discipline to underwriters in sizing bought deal transactions. • A cap of less than 50% could provide structural discrimination against smaller issuers completing smaller transactions by unnecessarily limiting the absolute dollars that may be raised and eliminating certain institutional accounts who would participate only if allocated a relatively large order. ***Commenters in favour of a cap of 15% of the original size*** Two commenters were in favour of a cap of 15% of the original size of the offering. One commenter felt it is highly likely that investment dealers will take full advantage of any rule that permits bought deals to be upsized. As a result, the commenter believes that any such enlargement should be capped at 15% of the original size of the offering (which corresponds to the existing 15% limit on over-allotment options). Another commenter submitted that: • An issuer must have a clearly defined plan regarding the use of proceeds of an offering. • Increasing the number of securities above certain thresholds under a bought deal may raise questions as to the motivation and	

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		vision behind the decision to carry out the offering. • Therefore, any upsizing should not exceed 15% of the original size of the offering.	
Term sheet provision for bought deals			
83	The term sheet provision for bought deals provides that a bought deal term sheet could only be given to permitted institutional investors before the receipt of a preliminary short form prospectus. Should the regulations also allow a bought deal term sheet to be given to retail investors before the receipt of a preliminary short form prospectus? Why or why not?	***Commenters in favour of providing bought deal term sheets to retail investors*** Nine commenters were in favour of allowing bought deal term sheets to be given to retail investors. Specific comments include the following: • If a policy goal is to allow as many investors as possible to participate in a bought deal offering, all investors should have access to the term sheet. • While it is unlikely individual investors will form part of a "testing of the waters" group in a bought deal, it is not necessary to restrict delivery of the term sheet for a bought deal only to permitted institutional investors. This may allow, in limited circumstances, a more level playing field with respect to the allocation of securities which may occur prior to the filing of the preliminary prospectus. • Although the proposed regulations would allow retail investors to receive a term sheet after a preliminary prospectus receipt is issued, this will be of little practical benefit	We have revised the amendments to Regulation 44-101 to allow bought deal marketing materials to be given to any investor. We believe that investor protection concerns that may arise when retail investors receive marketing materials before a preliminary prospectus is filed are mitigated by requiring that: • all information in the marketing materials be included in the bought deal news release, the issuer's continuous disclosure record on SEDAR or the subsequent preliminary prospectus, • a template version of the marketing materials be included or incorporated by reference in the final prospectus, and • a template version of the marketing materials be filed on SEDAR.

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		unless a portion of the offering is reserved for retail investors, as bought deals are generally fully allocated well before the preliminary short form prospectus is filed (typically by the morning after launch). • There should not be a distinction between retail investors and institutional investors, particularly since it is proposed that all information contained in the bought deal term sheet must be included in the news release announcing the bought deal or the issuer's continuous disclosure record. • There is no information in a typical bought deal term sheet that is appropriate only for institutional investors. In any event, a term sheet would be required to be included or incorporated by reference in the preliminary prospectus and the final prospectus under the proposed regulations. • As the proposals contemplate the term sheet being incorporated into the prospectus, statutory liability will arise for its contents. • The protections in respect of prospectus and secondary liability ensure that there are no investor protection issues in this regard. • Retail investors should benefit from the same information as institutional investors in making their investment decisions. • A term sheet may benefit investors and the proposed term sheet provisions provide for	

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		investor protection. Therefore, it would be in keeping with the policy rationales to allow a bought deal term sheet to be given to retail investors before the receipt of a preliminary short form prospectus. • Due to the limited scope of materials provided between the execution of an engagement letter and filing of a preliminary prospectus and the desire to not treat groups of potential investors differentially, the regulation amendments should permit marketing materials to be provided to any potential investor. Limiting the permitted audience of such materials would legislate unequal access to information based only on apparent sophistication. One commenter was unclear as to the rationale for not permitting a bought deal term sheet to be given to retail investors before the receipt for the preliminary prospectus. The commenter submitted that: • Although the majority of pre-marketing that is conducted before the preliminary prospectus is most often with institutional investors, the commenter was not certain of the concern of having to provide a copy of the preliminary prospectus with the term sheet, as long as the preliminary prospectus is provided once it is available.	

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		• If an investment dealer is able to solicit expressions of interest from retail investors before filing a preliminary prospectus, is it better that they do so without any documentation? Or, is it better to at least permit them to give a document (i.e., the term sheet) that provides "fair, true and plain" disclosure to be followed up with a copy of the preliminary prospectus? The commenter believes the latter is preferable.	
Comparables			
84	Our proposals would permit a road show for institutional investors to contain comparables even if the comparables were not contained in the prospectus and therefore not subject to prospectus liability. It has been suggested that institutional investors are better able to understand the nature of comparables and the risks related to comparables (e.g., "cherry picking") than ordinary retail investors and individuals who are accredited investors. Do you agree? Why or why not?	***Commenters in favour of restrictions*** Two commenters were in favour of restrictions that would only permit comparables to be given to institutional investors. One of these commenters agreed that comparables can be "cherry picked" and misunderstood by retail investors. Another commenter was of the view that comparable multiples should not be made available to retail investors. The commenter felt that the current practices and requirements are sufficient with respect to road shows and the inclusion of comparable multiples and that comparable multiples should continue to be part of road show presentations and available to institutional investors and retail brokers.	We have revised the regulation amendments to provide that comparables can be provided to any investor (i.e., institutional, accredited or retail). Comparables can be removed from the template version of marketing materials that is filed on SEDAR and included or incorporated by reference in the relevant prospectus. As a result, those comparables would not be subject to statutory civil liability. However, the regulation amendments require additional disclosure and other safeguards relating to comparables. Additionally, as noted in Policy Statement 41-101, any comparables included in marketing materials would be subject to statutory provisions in securities legislation which prohibit misleading or untrue statements.

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		Commenters opposed to restrictions Six commenters were opposed to restrictions that would only permit comparables to be given to institutional investors. Comments received include the following: • Any concerns regarding comparison of the issuer to other reporting issuers should be dealt with directly, rather than requiring that the comparison be disclosed selectively only to certain investors. • Investors should have the same access to information. • Given the complexity around comparables and the uncertainty of their value to institutional investors who are able to evaluate the offering and any comparables on their own, one commenter questioned the benefit of the provisions permitting comparables. However, if comparables are provided to institutional investors, the commenter believes (in keeping with the policy rationales) that they should also be provided to retail investors. • While road shows for individual investors are rare in Canada, there was no reason to restrict the availability of comparables to retail investors. • Comparables are currently provided to retail	

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		sales force registrants through green sheets. • While one commenter appreciated the concern of the CSA that comparables may be "cherry picked", the commenter saw no reason why these disclosures should be singled out as many other offering-related disclosures are also subject to this risk. Another commenter agreed that if comparables are to be provided, no class of potential investors should be denied access to the comparables. The commenter submitted that: • The CSA should not legislate unequal access to information based on apparent sophistication. • Traditional valuation comparables provide a reference point for the price that may be ascribed to the transaction. • Although comparables are helpful in assisting potential purchasers to understand relative pricing of an offering, the definitive pricing of any transaction is ultimately set by the forces of supply and demand and the independent assessment of institutional investors. • Retail investors, who do not influence price, should be permitted to see this information to also understand reference points and metrics that underlie the pricing process.	

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		Other comments While not expressly stating a view on whether comparables should be restricted to institutional investors, one commenter indicated that while a comparative analysis may be useful in many sectors, an in-depth knowledge of comparables is essential for explaining certain discrepancies. Another commenter did not specifically address the questions as to the use and regulation of comparables in road show presentations. However, the commenter submitted that differentiating between institutional road shows and "retail" road shows in the proposed regulation amendments and policy statement changes is not relevant in the Canadian context, because practically speaking, Canadian underwriters do not carry out road shows for retail investors.	
85	Do you agree with our proposal that before attending a road show that may contain comparables, the investment dealer conducting the road show must obtain confirmation in writing from the institutional investor that they will keep the comparables confidential? Why or why not?	Four commenters were opposed to the proposed requirement. Comments received include the following: • Because the information is derived from publicly available sources, there is no reason to require that road show attendees agree in writing to keep this information confidential. This would be a significant administrative burden with limited or no benefit. Further, it	We have not proceeded with the proposal to require investment dealers to obtain confirmation in writing from institutional investors that they will keep comparables confidential.

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		may be impractical to obtain such agreements from certain investors. • Obtaining confidentiality commitments from institutional investors with respect to comparables in a road show is an unnecessary compliance burden on investment dealers conducting road shows, for which there is not a significant corresponding benefit from a public policy perspective. • One commenter was unaware of any reason why institutional investors would share the details of comparables obtained during a road show. • The requirement is unnecessary since the Canadian capital markets are an efficient and competitive marketplace where there is issuer information available. Accordingly, institutional investors are generally already familiar with this information. • Another commenter thought the proposed confirmation was "overkill". The commenter suggested that lists of comparables are no different than various research papers that are published.	
86	If comparables are included in a prospectus or a road show, should the prospectus regulations prescribe a method for choosing comparables in	***Commenters in favour of detailed rules*** Two commenters favoured detailed rules on comparables. Comments received include the following:	We have not prescribed a method for choosing comparables. However, comparables must be accompanied by certain disclosure, which relates in part to the rationale for selecting the issuers and attributes included in the comparables.

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	order to reduce the risk of "cherry picking"? Should the regulations contain measures that would foster the preparation of comparables which are fair and balanced or comparables which could assist an investor in determining if an offering was properly priced? What methods would achieve these goals? For example, should the CSA prescribe a template mandating the metrics used in compiling comparables or mandating how to pick a representative sample? If so, do you have suggestions for these templates?	• If comparables are provided, detailed rules are required to ensure they are fair and balanced. • Where comparative information is provided, it must be given a framework by imposing certain criteria. In particular, it should be supported by verified or verifiable elements. ***Commenters opposed to detailed rules*** Six commenters were opposed to specific rules prescribing a method for choosing comparables in order to reduce the risk of "cherry picking". Comments received include the following: • One commenter acknowledged the CSA's concerns regarding the possibility of "cherry picking" comparable companies for discussion in the road shows. However, the commenter believed this is best addressed by the use of cautionary language in the disclosure concerning comparables, or by restricting the use of comparables altogether. • Another commenter believes that it would be impractical to attempt to prescribe rules relating to the selection and preparation of comparables for road show purposes. The commenter suggested that the CSA consider how the use of comparables is regulated in other jurisdictions before proposing any rules in this regard.	Marketing materials that contain comparables must also: • disclose any risks relating to the comparables, and • state that if the comparables contain a misrepresentation, investors will not have a remedy under civil liability provisions in securities legislation. Comparables will be subject to the provisions in securities legislation which prohibit misleading or untrue statements.

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		• Another commenter submitted that what are appropriate comparables will vary in each case; applying a "one size fits all" approach to the companies or metrics that may be used for comparison cannot work. Accordingly, the commenter does not believe that any method should be prescribed for choosing or presenting comparables, nor does the commenter believe that other safeguards are necessary beyond those generally governing disclosure in connection with an offering. • Another commenter suggested that the rules should only require that the prospectus and other documents disclose the criteria that the investment dealer used to include any list of comparables. The commenter suggested that being too prescriptive will only reduce the usefulness of this tool. Another commenter believes that the concern that investment dealers may "cherry pick" from publicly available information concerning other reporting issuers in connection with a term sheet or road show, should be adequately addressed by the proposed fair, true and plain requirements. Furthermore, the commenter submitted that: • The obligations of the registrants involved in the transaction should address concerns that	

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		retail investors may not understand the assumptions and limitations inherent in the use of comparables. • Restricting the use of comparables is also inconsistent with their common use by analysts and media in the secondary market. Another commenter appreciated the concern that comparables can be "cherry picked" and that they may not be readily understood by the average retail investor. However, the commenter submitted that: • This criticism could be made with respect to many disclosures in a typical prospectus (such as highly technical or financial and accounting matters). • While it is appropriate to mandate cautionary language, comparables vary from issuer to issuer and no simple rules could apply to their selection and presentation. • Regulation of the manner in which comparables may be selected or presented may lead to rules that cannot be applied for particular issuers or that result in disclosures that do not serve the purpose for which they were originally intended. ***Other comments*** While not commenting specifically on whether or not detailed rules of the nature discussed	

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		above should be included in the regulation amendments, one commenter noted that comparables would only be useful if the relevant metrics are adequately explained and footnoted.	
87	If comparables are included in a prospectus or a road show, should the prospectus regulations require additional disclosure to alert retail investors about the nature of comparables and how they can be "cherry picked" and misunderstood? What cautionary language and risk factors should be included? What other safeguards could we implement in order to reduce these risks?	Four commenters were in favour of requiring issuers and dealers to provide cautionary language if comparables were provided to investors. Comments received include the following: • If comparables are provided, cautionary language and risk factors should be included in the materials to alert investors of the risks related to comparables. • The regulations should require that the prospectus and other documents disclose the criteria that the investment dealer used to include any list of comparables. • Dealers should be required to state that any list of comparables is not complete and may not be representative. • It is appropriate to mandate cautionary language. • If comparables are used, the possibility of "cherry picking" comparable companies is best addressed by the use of cautionary language in the disclosure concerning comparables.	Comparables in marketing materials are not required to be included or incorporated by reference into the relevant prospectus, or filed on SEDAR. Accordingly, they will not be subject to statutory civil liability provisions in securities legislation. However, comparables must be accompanied by proximate disclosure that: • explains what comparables are, • explains the basis on which the other issuers were included in the comparables and why they are considered to be an appropriate basis for comparison with the issuer, • explains the basis on which the compared attributes were included, • states that the information about the other issuers was obtained from public sources and has not been verified by the issuer or the underwriters, • discloses any risks relating to the comparables, including risks in making an investment decision based on the comparables, and • states that if the comparables contain a misrepresentation, the investor does not have a remedy under securities legislation. Comparables will be subject to the provisions in securities

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			legislation which prohibit misleading or untrue statements.
General comments not specifically related to the proposed regulation amendments and policy statement changes			
88	Accredited investor	One commenter has concerns that some issuers and dealers sell prospectus-exempt securities in reliance on the accredited investor exemption in *Regulation 45-106 respecting Prospectus and Registration Exemptions* to individuals who do not meet the definition of "accredited investor" in that regulation.	We refer to the guidance in section 1.9 of Policy Statement 45-106. We have included similar guidance in subsection 6.4A(9) of Policy Statement 41-101, which states that an investment dealer seeking to rely on the testing of the waters exemption for IPO issuers should: • conduct reasonable diligence to determine that an investor is an accredited investor before soliciting that investor, and • retain all documentation they receive in this regard.