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

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

PART 1 INTRODUCTION AND DEFINITIONS

1.1 Introduction and Purpose

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

Regulation 44-101 is amended and restated to reflect the implementation in 2004 of *Regulation 51-102 respecting Continuous Disclosure Obligations* ("Regulation 51-102") and *Regulation 52-107 respecting Acceptable Accounting Principles, Auditing Standards and Reporting Currency* ("Regulation 52-107"), the implementation of *Regulation 81-106 respecting Investment Fund Continuous Disclosure* ("Regulation 81-106") in 2004 and various other developments in provincial and territorial securities legislation since the adoption of Regulation 44-101 in 2000.

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

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

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

1.2 Interrelationship With Local Securities Legislation

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

1.3 Interrelationship with Continuous Disclosure (Regulation 51-102 and Regulation 81-106)

The short form prospectus distribution system established under Regulation 44-101 is based on the continuous disclosure filings of reporting issuers pursuant to Regulation 51-

102 or, in the case of an investment fund, Regulation 81-106. Issuers who wish to use the system should be mindful of their ongoing disclosure and filing obligations under the applicable CD rule. Issues raised in the context of a continuous disclosure review may be taken into consideration by the regulator when determining whether it is in the public interest to refuse to issue a receipt for a short form prospectus. Consequently, unresolved issues may delay or prevent the issuance of a receipt.

1.4 Interrelationship with MRRS

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

1.5 Interrelationship with Selective Review

The securities regulatory authorities in many jurisdictions have, formally or informally, adopted a system of selective review of certain documents, including short form prospectuses and amendments to short form prospectuses. Under the selective review system, these documents may be subject to an initial screening to determine whether they will be reviewed and, if reviewed, whether they will be subject to a full review, an issue-oriented review or an issuer review. Application of the selective review system, taken together with MRRS, may result in certain short form prospectuses and amendments to short form prospectuses not being reviewed beyond the initial screening.

1.6 Interrelationship with Shelf Distributions (Regulation 44-102)

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

1.7 Interrelationship with PREP Procedures (Regulation 44-103)

Regulation 44-103 respecting Post-Receipt Pricing ("Regulation 44-103") contains the post receipt pricing procedures (the "PREP procedures"). All issuers and selling security holders can use the PREP procedures of Regulation 44-103 to distribute securities. Issuers and selling security holders that wish to distribute securities under a prospectus in the form of a short form prospectus using the PREP procedures should have regard to Regulation 44-101 and this Policy first, and then refer to Regulation 44-103 and the accompanying policy for any additional requirements.

1.8 Definitions

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

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

(2) **Asset-backed security** - The definition of “asset-backed security” is the same definition used in Regulation 51-102.

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

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

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

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

financial year. If an issuer fails to file a new AIF by the filing deadline under the applicable CD rule for its annual financial statements, it will not have a current AIF and will not qualify under Regulation 44-101 to file a prospectus in the form of a short form prospectus. If an issuer files a revised or amended AIF for the same financial year as an AIF that has previously been filed, the most recently filed AIF will be the issuer's current AIF.

An issuer that is a *venture issuer* for the purpose of Regulation 51-102, and certain investment funds, may have no obligation under the applicable CD rule to file an AIF. However, to qualify under Regulation 44-101 to file a prospectus in the form of a short form prospectus, that issuer will be required to file an AIF in accordance with the applicable CD rule so as to have a "current AIF". A current AIF filed by an issuer that is a venture issuer for the purposes of Regulation 51-102 can be expected to expire later than a non-venture issuer's AIF, due to the fact that the deadlines for filing annual financial statements under Regulation 51-102 are later for venture issuers than for other issuers.

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

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

(5) **Principal obligor** - The term "principal obligor" is defined to mean, for an asset-backed security, a person or company that is obligated to make payments, has guaranteed payments, or has provided alternative credit support for payments, on financial assets that represent a third or more of the aggregate amount owing on all of the financial assets underlying the asset-backed security. This term applies to a person or company that is obligated by the terms of the asset, eg. a receivable, to make payments. It does not include a person or company acting as "servicer" that collects payments from an obligor and remits payments to the issuer. Nor does the term include a seller, i.e. a person or company that has sold the financial assets comprising the pool to the issuer. Sellers of financial assets have assigned to the issuer the right to receive payments on the financial assets; they are not the ones contractually obligated to make payments on the financial assets.

(6) **Regulator** - The regulator for each jurisdiction is listed in Appendix D to Regulation 14-101. In practice, that person has often delegated his or her powers to act under Regulation 44-101 to another staff member of the same securities regulatory authority or, under the relevant statutory framework, another person is permitted to exercise those powers. Generally, the person exercising the powers

of the regulator for the purposes of Regulation 44-101 holds, as of the date of this Policy, the following position in each jurisdiction:

Jurisdiction	Position
Alberta	Director, Capital Markets
British Columbia	Director, Corporate Finance
Manitoba	Director, Corporate Finance
New Brunswick	Administrator of Securities
Newfoundland and Labrador	Director of Securities
Northwest Territories	Deputy Registrar of Securities
Nova Scotia	Director of Securities
Nunavut	Registrar of Securities
Ontario	Manager, Corporate Finance or, in the case of an investment fund, Manager, Investment Funds
Prince Edward Island	Registrar of Securities
Quebec	Director, Marché des capitaux
Saskatchewan	Deputy Director, Corporate Finance (except for applications for exemptions from Part 2 of Regulation 44-101, for which the regulator is the Saskatchewan Financial Services Commission)
Yukon Territory	Registrar of Securities

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

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

ALTERNATIVE A.

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

2.1 Basic Qualification Criteria - Issuers that have been Reporting Issuers for 12 Months (Section 2.2 of Regulation 44-101)

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

Alternatively, an issuer may rely on the exemption from the requirement to file such documents in section 2.9. Section 2.9 provides an exemption from the current AIF and current annual financial statement requirements for new reporting issuers and successor issuers who have not yet been required to file such documents under the applicable CD Rule and who have filed a prospectus or information circular containing disclosure which would have been included in such documents.

(2) An issuer need not have filed all of its continuous disclosure filings in the local jurisdiction in order to be qualified to file a short form prospectus, but under sections 4.2 and 4.3 of Regulation 44-101 it will be required to file in the local jurisdiction all documents incorporated by reference into the short form prospectus no later than the date of filing the preliminary short form prospectus.

2.2 Alternative Eligibility Criteria - Issuers that have not been Reporting Issuers for 12 Months (Sections 2.3, 2.5, 2.6 and 2.7 of Regulation 44-101)

Issuers that have not been reporting issuers for 12 months in at least one jurisdiction in Canada may nonetheless be qualified to file a prospectus in the form of a short form prospectus under the following alternative qualification criteria of Regulation 44-101:

1. Section 2.3, which applies to issuers with a market value of $300,000,000 or more.

2. Section 2.5, which applies to issuers of non-convertible debt securities, non-convertible preferred shares or non-convertible cash settled derivatives, if another person or company that satisfies prescribed criteria provides full and unconditional credit support for the payments to be made by the issuer of the securities.

3. Section 2.6, which applies to issuers of convertible debt securities or convertible preferred shares, if the securities are convertible into securities of a credit supporter that satisfies prescribed criteria provides and full and unconditional credit support for the payments to be made by the issuer of the securities.

4. Section 2.7, which applies to issuers of asset-backed securities.

Under sections 2.5, 2.6 and 2.7 of Regulation 44-101, an issuer is not required to be a reporting issuer in any jurisdiction in order to qualify to file a prospectus in the form of a short form prospectus. Section 2.3 requires the issuer to be a reporting issuer in at least one jurisdiction in Canada.

Section 2.9 provides an exemption for a successor issuer from the requirement to have been a reporting issuer for 12 months. The successor issuer may rely on the reporting history of one of the participants in the reorganization for the purposes of meeting the seasoning requirement.

2.3 Calculation of the Aggregate Market Value of an Issuer's Equity Securities (Section 2.8 of Regulation 44-101)

(1) Section 2.8 of Regulation 44-101 sets out how to determine whether an issuer satisfies the market value criteria contained in Part 2 of Regulation 44-101. Subsection 2.8(2) requires certain securities to be excluded when calculating the total number of equity securities outstanding, and subsection 2.8(3) requires a subset of those excluded securities to be included nonetheless, despite subsection 2.8(2). The following examples are provided to assist issuers and their advisers in determining which securities are to be excluded in accordance with subsections 2.8(2) and 2.8(3):

Example (1):

A portfolio manager manages a pension fund. The pension fund holds 11% of the equity securities of the issuer.
Result: These equity securities must be excluded in calculating the market value of the issuer's equity securities.

Example (2):

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

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

Example (3):

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

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

Example (4):

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

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

(2) Instalment receipts that evidence the beneficial ownership of outstanding equity securities (subject to an encumbrance to secure the obligation of the instalment receipt holder to pay future instalments) and other similar receipts that evidence beneficial ownership of outstanding equity securities are not, themselves, equity securities. Consequently, the market value of such a receipt may not be included in the market value calculation of an issuer's outstanding equity securities (subject to the exception in paragraph 2.8(1)(b) of Regulation 44-101). The market value of the equity securities evidenced by the receipt, may however, be included, subject to subsections 2.8(2) and 2.8(3) of Regulation 44-101.

The exclusions set out in subsection 2.8(2) of Regulation 44-101 refer to equity securities of an issuer that are beneficially owned, or over which control or direction is exercised by persons or companies that, alone or together with their respective affiliates and associated parties, beneficially own or exercise control or direction over more than 10 per cent of the outstanding equity securities of the issuer. Instalment receipt transactions typically involve a custodian holding a security interest in the securities the beneficial ownership of which is evidenced by instalment receipts. The securities regulatory authorities do not regard the custodian, by virtue of holding a security interest, as exercising “control or direction” over the securities for the purposes of subsection 2.8(2) of Regulation 44-101 if the custodian is not entitled to exercise any voting rights attached to the securities or dispose of the securities without the beneficial owner's consent.

2.4 Alternative Qualification Criteria - Issuers of Guaranteed Debt Securities, Preferred Shares and Cash Settled Derivatives (Sections 2.5 and 2.6 of Regulation 44-101)

Sections 2.5 and 2.6 of Regulation 44-101 allow an issuer to qualify to file a prospectus in the form of a short form prospectus based on full and unconditional credit support, which may take the form of a guarantee or alterative credit support. The securities regulatory authorities are of the view that a person or company that provides the full and unconditional guarantee or alternative credit support is not, simply by providing that guarantee or alternative credit support, issuing a security.

2.5 Alternative Qualification Criteria for Issuers of Asset-Backed Securities (Section 2.7 of Regulation 44-101)

(1) In order to be qualified to file a prospectus in the form of a short form prospectus under section 2.7 of Regulation 44-101, an issuer must have been established in connection with a distribution of asset-backed securities. Ordinarily, asset-backed securities are issued by special purpose issuers established for the sole purpose of purchasing financial assets with the proceeds of one or more distributions of these securities. This ensures that the credit and performance attributes of the asset-backed securities are dependent on the underlying financial assets, rather than upon concerns relating to ancillary business activities and their attendant risks. Qualification to file a prospectus in the form of a short form prospectus under this section has been limited to special purpose issuers to avoid the possibility that an otherwise ineligible issuer would structure securities falling within the definition of “asset-backed security”.

(2) The qualification criteria for a distribution of asset-backed securities under a prospectus in the form of a short form prospectus are intended to provide sufficient flexibility to accommodate future developments. To qualify under section 2.7 of Regulation 44-101, the securities to be distributed must satisfy the following two criteria:

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

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

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

2.6 Reorganizations

(1) A successor issuer may satisfy the criteria to have current annual financial statements or a current AIF by filing its comparative annual financial statements or AIF in accordance with Regulation 51-102 for its most recently completed financial year. It is not necessary that the issuer be required by the applicable CD rule to have filed such documents. An issuer may voluntarily choose to file either of these documents in accordance with the applicable CD rule for the purposes of satisfying the eligibility criterion under item 4 of section 2.2 of Regulation 44-101.

(2) A successor issuer who chooses not to file its own current annual financial statements or a current AIF may nonetheless be exempt from the requirements to have such documents if it satisfies the requirements of section 2.9. In such circumstances, the successor issuer may rely on the information circular filed with respect to the reorganization until the successor issuer is required to file its updated annual financial statements and AIF.

(3) An issuer that was previously qualified to file a prospectus in the form of a short form prospectus under the basic qualification criteria set out in section 2.2 of Regulation 44-101, including the $75,000,000 market value requirement, and is the subject of a reorganization that results in that issuer becoming a wholly-owned subsidiary of another entity, will not be qualified to file a prospectus in the form of a short form prospectus under section 2.2. This is because it cannot satisfy the $75,000,000 market value requirement. It may continue to be qualified to file a prospectus in the form of a short form prospectus under section 2.4 or section 2.5 of Regulation 44-101 (approved rating or guaranteed securities) or section 2.7 of Regulation 44-101 (asset-backed securities).

(4) An entity that carries on the portion of the business that was "spun-off" is not a successor issuer within the meaning of the definition. The securities regulatory authorities have, from time to time, granted relief allowing the "spun-off" entity to

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

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

2.7 Notice Declaring Intention

Each of sections 2.2, 2.3, 2.4 and 2.7 of Regulation 44-101 includes as a qualification criterion the requirement that the issuer have filed in the local jurisdiction, at least 10 business days prior to filing the preliminary short form prospectus, a notice declaring the issuer's intention to be qualified to file a short form prospectus under Regulation 44-101, and that this notice has not been withdrawn. This is a new requirement that came into effect on [effective date of restatement]. The Canadian Securities Administrators expect that this notice will be a one-time filing for issuers who intend to be participants in the short form prospectus distribution system established under the Instrument. Once filed, the notice is operative until withdrawn. Section 2.10 of Regulation 44-101 is a transitional provision that has the effect of deeming issuers who are participants in the short form prospectus distribution system as of [effective date of restatement] to have filed this notice and no additional filing is required to satisfy the notice requirements set out in each of these sections.

ALTERNATIVE B.

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

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

(1) Section 2.2 of Regulation 44-101 provides that an issuer with equity securities listed and posted for trading on a short form eligible exchange and that is up-to-date in its periodic and timely disclosure filings in all jurisdictions in which it is a reporting issuer satisfies the criteria for being qualified to file a prospectus in the form of a short form prospectus if it meets the other general qualification criteria. In addition to the listing requirement, the issuer may not be an issuer whose operations have ceased or whose principal asset is its exchange listing. The purpose of this requirement is to ensure that eligible issuers have an operating business in respect of which the issuer must provide current disclosure through application of the applicable CD rule.

The basic qualification criteria is structured to allow most Canadian listed issuers to participate in the expedited offering system created by this Regulation,

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

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

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

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

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

(3) An issuer need not have filed all of its continuous disclosure filings in the local jurisdiction in order to be qualified to file a short form prospectus, but under sections 4.2 and 4.3 of Regulation 44-101 it will be required to file in the local jurisdiction all documents incorporated by reference into the short form prospectus no later than the date of filing the short preliminary form prospectus.

2.2 Alternative Eligibility Criteria - Issuers that are Not Listed (Sections 2.3, 2.4, 2.5 and 2.6 of Regulation 44-101)

Issuers that do not have equity securities listed and posted for trading on a short form eligible exchange in Canada may nonetheless be qualified to file a prospectus in the form

of a short form prospectus under the following alternative qualification criteria of Regulation44-101:

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

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

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

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

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

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

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

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

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

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

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

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

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

2.5 Notice Declaring Intention

Each of sections 2.2 through 2.6 of Regulation 44-101 includes as a qualification criterion the requirement that the issuer have filed in the local jurisdiction, at least 10 business days prior to filing the preliminary short form prospectus, a notice declaring the issuer's intention to be qualified to file a short form prospectus under Regulation 44-101, and that this notice has not been withdrawn. This is a new requirement that came into effect on [effective date of restatement]. The Canadian Securities Administrators expect that this notice will be a one-time filing for issuers who intend to be participants in the short form prospectus distribution system established under the Instrument. Once filed, the notice is operative until withdrawn. Section 2.8 of Regulation 44-101 is a transitional provision that has the effect of deeming issuers who are participants in the short form prospectus distribution system as of [effective date of restatement] to have filed this notice and no additional filing is required to satisfy the notice requirements set out in each of sections 2.2 through 2.6.

PART 3 FILING AND RECEIPTING OF SHORT FORM PROSPECTUS

3.1 Confidential Material Change Reports

Confidential material change reports cannot be incorporated by reference into a short form prospectus. It is the view of the Canadian Securities Administrators that an issuer cannot meet the standard of "full, true and plain" disclosure and, in Québec, disclosure of all material facts likely to affect the value or the market price of the securities to be distributed, while a material change report has been filed but remains undisclosed publicly. Accordingly, an issuer who has filed a confidential material change report may not file a short form prospectus until the material change that is the subject of the report is generally disclosed, and an issuer may not file a confidential material change report during a distribution and continue with the distribution. If circumstances arise that cause an issuer to file a confidential material change report during the distribution period of securities under a short form prospectus, the issuer should cease all activities related to the distribution until

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

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

3.2 Supporting Documents

(1) Material that is filed in a jurisdiction will be made available for public inspection in that jurisdiction, subject to the provisions of securities legislation in the local jurisdiction regarding confidentiality of filed material. Material that is delivered to a regulator, but not filed, is not required under securities legislation to be made available for public inspection. However, the regulator may choose to make such material available for inspection by the public.

(2) Any material incorporated by reference in a preliminary short form prospectus or a short form prospectus is required under sections 4.2 and 4.3 of Regulation 44-101 to be filed with the preliminary short form prospectus or short form prospectus unless previously filed. When an issuer files a previously unfiled document with its short form prospectus, the issuer should ensure that the document is filed under the SEDAR category of filing and filing subtype specifically applicable to the document, rather than the generic type "Other". For example, an issuer that has incorporated by reference an interim financial statement in its short form prospectus and has not previously filed the statement should file that statement under the "Continuous Disclosure" category of filing, and the "Interim Financial Statements" filing subtype.

3.3 Experts' Consent

Issuers are reminded that an auditor's consent is required to be filed for audited financial statements that are included as part of other continuous disclosure filings that are incorporated by reference into a short form prospectus. For example, a separate auditor's consent is required for each set of audited financial statements that are included as part of a business acquisition report or an information circular incorporated by reference into a short form prospectus.

3.4 Amendments and Incorporation by Reference of Subsequently Filed Material Change Reports

The requirement in securities legislation for the filing of an amendment to a preliminary prospectus and prospectus is not satisfied by the incorporation by reference in a preliminary short form prospectus or a short form prospectus of a subsequently filed material change report.

3.5 Short Form Prospectus Review

No target time frame applies to the review of a short form prospectus of an issuer if the issuer has not elected to use MRRS.

3.6 "Waiting Period"

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

3.7 Registration Requirements

Issuers filing a preliminary short form prospectus or short form prospectus and other market participants are reminded to ensure that members of underwriting syndicates are in compliance with registration requirements under Provincial and territorial securities legislation in each jurisdiction in which syndicate members are participating in the distribution of securities under the short form prospectus.

PART 4 CONTENT OF SHORT FORM PROSPECTUS

4.1 Prospectus Liability

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

4.2 Style of Prospectus

Provincial and territorial securities legislation requires that a prospectus contain "full, true and plain" disclosure and, in Québec, disclosure of all material facts likely to affect the value or the market price of the securities to be distributed. To that end, issuers and their advisors are reminded that they should ensure that disclosure documents are easy to read, and encourage issuers to adopt the following plain language principles in preparing a prospectus in the form of a short form prospectus:

- use short sentences
- use definite, concrete, everyday language
- use the active voice
- avoid superfluous words
- organize the document into clear, concise sections, paragraphs and sentences
- avoid legal or business jargon
- use strong verbs
- use personal pronouns to speak directly to the reader
- avoid reliance on glossaries and defined terms unless it facilitates understanding of the disclosure
- avoid vague boilerplate wording
- avoid abstractions by using more concrete terms or examples
- avoid excessive detail
- avoid multiple negatives.

If technical or business terms are required, clear and concise explanations should be used. The securities regulatory authorities are of the view that question and answer and bullet point formats are consistent with the disclosure requirements of Regulation 44-101.

4.3 Firm Commitment Underwritings

If an underwriter has agreed to purchase a specified number or principal amount of the securities to be distributed at a specified price, Subsection 1.10(4) of Form 44-101F1 requires the short form prospectus to contain a statement that the securities are to be taken up by the underwriter, if at all, on or before a date not later than 42 days after the date of the receipt for the short form prospectus. If the provincial and territorial securities

legislation of a jurisdiction requires that a prospectus indicate that the securities must be taken up by the underwriter within a period that is different than the period provided under Regulation 44-101, the implementing law of a jurisdiction exempts issuers from that requirement if they comply with Regulation 44-101.

4.4 Minimum Distribution

If a minimum amount of funds is required by an issuer and the securities are proposed to be distributed on a best efforts basis, Item 5.5 of Form 44-101F1 requires that the short form prospectus state that the distribution will not continue for a period of more than 90 days after the date of receipt for the short form prospectus if subscriptions representing the minimum amount of funds are not obtained within that period unless each of the persons and companies who subscribed within that period has consented to the continuation. If the provincial and territorial securities legislation of a jurisdiction requires that a distribution may not continue for more than a specified period if subscriptions representing the minimum amount of funds are not obtained within that period and the specified period is different than the period provided under Regulation 44-101, the implementing law of a jurisdiction exempts issuers from that requirement if they comply with Regulation 44-101.

4.5 Distribution of Asset-backed Securities

(1) Section 7.3 of Form 44-101F1 specifies additional disclosure applicable for distributions of asset-backed securities. Applicable disclosure for a special purpose issuer of asset-backed securities generally pertains to the nature, performance and servicing of the underlying pool of financial assets, the structure of the securities and dedicated cash flows and any third party or internal support arrangements established to protect holders of the asset-backed securities from losses associated with non-performance of the financial assets or disruptions in payment. The nature and extent of required disclosure may vary depending on the type and attributes of the underlying pool and the contractual arrangements through which holders of the asset-backed securities take their interest in such assets.

(2) The following factors should be considered by an issuer of asset-backed securities in preparing its short form prospectus:

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

2. Requested disclosure respecting the business and affairs of the issuer should be interpreted to apply to the financial assets underlying the asset-backed securities.

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

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

(3) Paragraph 7.3(d)(i) of Form 44-101F1 requires issuers of asset-backed securities to describe any person or company who originated, sold or deposited a material portion of the financial assets comprising the pool, irrespective of whether the person or company has an on-going relationship with the assets comprising the pool. The securities regulatory authorities consider $33^{1}/_{3}$ % of the dollar value of the financial assets comprising the pool to be a material portion in this context.

4.6 Distribution of Derivatives

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

4.7 Underlying Securities

Issuers are reminded that if securities being distributed are convertible into or exchangeable for other securities, or are a derivative of, or otherwise linked to, other securities, a description of the material attributes of the underlying securities would generally be necessary to meet the requirement of securities legislation that a prospectus contain full, true and plain disclosure of all material facts relating to the securities.

4.8 Offerings of Convertible or Exchangeable Securities

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

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

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

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

4.9 Restricted Securities

Section 7.7 of Form 44-101F1 specifies additional disclosure applicable to restricted securities, including a detailed description of any significant provisions under applicable corporate and securities law that do not apply to the holders of the restricted securities but do apply to the holders of another class of equity securities. An example of such provisions would be rights under takeover bids.

4.10 Recent and Proposed Acquisitions

(1) Item 10 of Form 44-101F1 requires a summary of certain acquisitions and proposed acquisitions. Paragraph 3 of that Item also requires inclusion of the financial statements that would be required by Part 8 of Regulation 51-102 to be included in a business acquisition report if the acquisition were completed as of the date of the preliminary short form prospectus if the acquisition or proposed acquisition is a reverse takeover or if the inclusion of the financial statements is necessary in order for the short form prospectus to contain full, true and plain disclosure of all material facts relating to, and in Québec, disclosure of all material facts likely to affect the value or the market price of, the securities being distributed. The securities regulatory authorities generally presume that such disclosure is required to satisfy those disclosure standards if any of the significance tests set out in subsections 8.3(2) and 8.3(4) is satisfied at the 40% level. Issuers can rebut this presumption if they can provide compelling evidence that the financial statements are not required for full, true and plain disclosure.

(2) Item 10 of Form 44-101F1 requires prescribed disclosure of a proposed acquisition that has progressed to a state "where a reasonable person would believe that the likelihood of the acquisition being completed is high" and that would, if completed on the date of the preliminary short form prospectus, be a significant acquisition for the purposes of Regulation 51-102. The securities regulatory authorities interpret the phrase "where a reasonable person would believe that the likelihood of the acquisition being completed is high" having regard to section 3290 of the Handbook "Contingencies". It is the view of the securities regulatory authorities that the following factors may be relevant in determining whether the likelihood of an acquisition being completed is high

(a) whether the acquisition has been publicly announced;

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

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

(3) The test of whether a proposed acquisition "has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high" is an objective, rather than subjective, test in that the question turns on what a "reasonable person" would believe. It is not sufficient for an officer of an issuer to determine that he or she personally believes that the likelihood of the acquisition being completed is or is not high. The officer must form an opinion as to what a reasonable person would believe in the circumstances. In the event of a dispute, an objective test requires an adjudicator to decide whether a reasonable person would believe in the circumstances that

the likelihood of an acquisition being completed was high. By contrast, if the disclosure requirement involved a subjective test, the adjudicator would assess an individual's credibility and decide whether the personal opinion of the individual as to whether the likelihood of the acquisition being completed was high was an honestly held opinion. Formulating the disclosure requirement using an objective test rather than a subjective test strengthens the basis upon which the regulator may object to an issuer's application of the test in particular circumstances.

4.11 General Financial Statement Requirements

A reporting issuer is required under the applicable CD rule to file its annual financial statements and related MD&A 90 days after year end (or 120 days if the issuer is a *venture issuer* as defined in Regulation 51-102). Interim financial statements and related MD&A must be filed 45 days after the last day of an interim period (or 60 days for a venture issuer). The financial statement requirements in Regulation 44-101 are based on these continuous disclosure reporting time frames and do not impose accelerated filing deadlines for a reporting issuer's financial statements. However, to the extent an issuer has filed financial statements in advance of the deadline for doing so, those financial statements must be incorporated by reference in the short form prospectus. The securities regulatory authorities are of the view that directors of issuers should endeavor to review and approve financial statements in a timely manner and should not delay the approval and release of the financial statements in order to avoid their inclusion in a short form prospectus.

4.12 Credit Supporter Disclosure

In addition to the issuer's documents required to be incorporated by reference under sections 11.1 and 11.2 of Form 44-101F1 and the issuer's earnings coverage ratios required to be included under Item 6 of Form 44-101F1, a short form prospectus must include, under section 12.1 of Form 44-101F1, disclosure about any credit supporters that have provided a guarantee or alternative credit support for all or substantially all of the payments to be made under the securities being distributed. This type of guarantee or alternative credit support is not necessarily full and unconditional credit support as contemplated in sections 2.5 and 2.6 of Regulation 44-101. Accordingly, disclosure about a credit supporter may be required even if the credit supporter has not provided full and unconditional credit support.

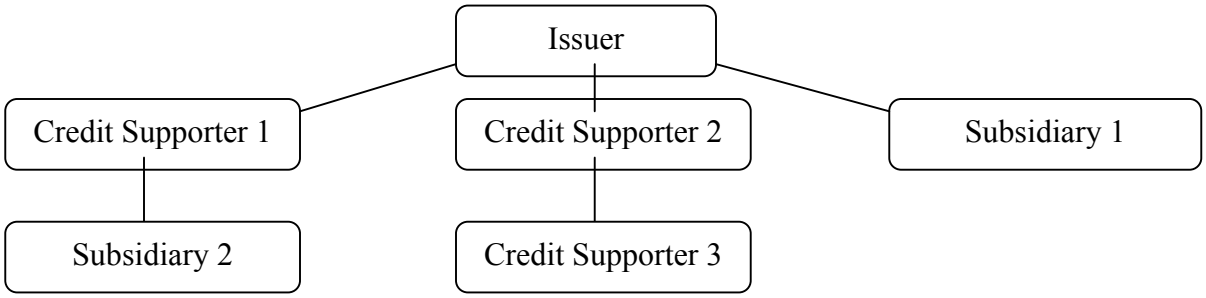
Disclosure relating to all applicable credit supporters is generally required to ensure that the short form prospectus includes full, true and plain disclosure of all material facts concerning, and in Québec, disclosure of all material facts likely to affect the value or the market price of, the securities to be distributed. This is based on the principle that investors need both issuer and credit supporter disclosure to make an informed investment decision because both the issuer and the credit supporter are liable for payments to be made under the securities being distributed.

4.13 Exemptions for Certain Issues of Guaranteed Securities

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

The exemptions in Item 13 of Form 44-101F1 are based on the principle that, in these instances, investors will generally require either issuer disclosure or credit supporter disclosure to make an informed investment decision. The exemptions set out in Item 13 of Form 44-101F1 are not intended to be comprehensive and issuers may apply for exemptive relief from the requirement to provide both issuer and credit supporter disclosure, as appropriate.

The following example illustrates the application of the exemption in section 13.3 of Form 44-101F1.



Facts:

- Credit Supporter 1, Credit Supporter 2, and Credit Supporter 3 are credit supporters.
- Credit Supporter 1, Credit Supporter 2, and Credit Supporter 3 have each provided full and unconditional credit support for the securities being distributed.
- The guarantees or alternative credit supports of Credit Supporter 1, Credit Supporter 2, and Credit Supporter 3, are joint and several.
- The securities being distributed are non-convertible debt securities or non-convertible preferred shares.
- Credit Supporter 1, Credit Supporter 2, and Credit Supporter 3 are wholly owned subsidiaries of Issuer.
- Subsidiary 1 and Subsidiary 2 are not credit supporters.

Disclosure required in short form prospectus

- Issuer must incorporate by reference into the short form prospectus the documents required by Item 11 of Form 44-101F1.
- Under the exemption in section 13.3 of Form 44-101F1, Issuer is not required to include the disclosure of Credit Supporter 1, Credit Supporter 2, or Credit Supporter 3, as otherwise required by section 12.1 of Form 44-101F1.
- If Issuer has no operations or only minimal operations that are independent of Credit Supporter 1, Credit Supporter 2, and Credit Supporter 3, and each item of the summary financial information (as set out in Instruction (1) to Item 13 of Form 44-101F1) of Subsidiary 1 plus Subsidiary 2 is less than 3% of corresponding consolidated amounts of Issuer, the short form prospectus must state that the financial results of Credit Supporter 1 (less Subsidiary 2), Credit Supporter 2, and Credit Supporter 3 are included in the consolidated financial results of Issuer; or
- If paragraph (e)(i) of section 13.3 of Form 44-101F1 does not apply, the short form prospectus must include consolidating summary financial information for Issuer with a separate column for each of:

    - Issuer (Issuer's investment in Credit Supporter 1, Credit Supporter 2, and Subsidiary 1 should be accounted for under the equity method);

- Credit Supporter 1 plus Credit Supporter 2 (Credit Supporter 1's investment in Subsidiary 2 should be accounted for under the equity method but Credit Supporter 2 should consolidate Credit Supporter 3);
- Subsidiary 1 plus Subsidiary 2;
- consolidating adjustments; and
- total consolidated amounts.

PART 5 CERTIFICATES

5.1 Non-corporate Issuers

(1) Paragraph 20.1(a) of Form 44-101F1 requires an issuer to include a certificate in the prescribed form signed by the chief executive officer and the chief financial officer or, if no such officers have been appointed, a person acting on behalf of the issuer in a capacity similar to a chief executive officer and a person acting on behalf of the issuer in a capacity similar to a chief financial officer. For a non-corporate issuer that is a trust and has a trust company acting as its trustee, this officers' certificate is frequently signed by authorized signing officers of the trust company that perform functions on behalf of the trust similar to those of a chief executive officer and a chief financial officer. In some cases, these functions are delegated to and performed by other persons (e.g. employees of a management company). If the declaration of trust governing the issuer delegated the trustee's signing authority, the officers' certificate may be signed by the persons to whom authority is delegated under the declaration of trust to sign documents on behalf of the trustee or on behalf of the trust, provided that those persons are acting in a capacity similar to a chief executive officer or chief financial officer of the issuer.

(2) Paragraph 20.1(b) of Form 44-101F1 requires an issuer to include a certificate in the prescribed form signed on behalf of the board of directors, by two directors of the issuer, other than the persons referred to in paragraph 19.1(a), duly authorized to sign. Issuers that are not companies are directed to the definition of "director" in securities legislation to determine the appropriate signatories to the certificate. The definition of "director" in securities legislation typically includes a person acting in a capacity similar to that of a director of a company. Issuers that are not companies are also directed to the definition of "person" in securities legislation.

5.2 Promoters of Issuers of Asset-backed Securities

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

(2) For example, in the context of a securitization program under which assets of one or more related entities are financed by issuing asset-backed securities (sometimes called a "single seller program"), an entity transferring or originating

a significant portion of such assets, an entity initially agreeing to provide on-going collection, administrative or similar services to the issuer, and the entity for whose primary economic benefit the asset-backed program is established, will each be a promoter of the issuer if it took the initiative in founding, organizing or substantially reorganizing the business of the issuer. Persons or companies contracting with the issuer to provide credit enhancements, liquidity facilities or hedging arrangements or to be a replacement servicer of assets, and investors who acquire subordinated investments issued by the issuer, will not typically be promoters of the issuer solely by virtue of such involvement.

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

(4) While the securities regulatory authorities have included this discussion of promoters as guidance to issuers of asset-backed securities, the question of whether a particular person or company is a “promoter” of an issuer is ultimately a question of fact to be determined in light of the particular circumstances.