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**CSA/ACVM**

Canadian Securities Administrators

Autorités canadiennes en valeurs mobilières

**Notice**

**Replacement of**
**Regulation 44-101 respecting Short Form Prospectus Distributions,**
**and Companion Policy 44-101 *Short Form Prospectus Distributions***

## Introduction

We, the Canadian Securities Administrators (CSA), are replacing the following regulations, which came into effect in December 2000:

- Regulation 44-101 respecting Short Form Prospectus Distributions (Former Regulation 44-101) and its forms,

with the following regulations, respectively:

- Regulation 44-101 respecting Short Form Prospectus Distributions (New Regulation 44-101).

(In this Notice, New Regulation 44-101 and the New Form are collectively referred to as the "Regulation".)

The Companion Policy 44-101 *Short Form Prospectus Distributions* (the Policy), which includes explanations, discussion and examples on how the CSA will interpret and apply the Regulation, is also being replaced.

Concurrently with the publication of this Notice, we are also publishing another CSA Notice that sets out related amendments (the Consequential Amendments) required to conform the following regulations to the Regulation:

- Regulation 44-102 respecting Shelf Distributions
- Regulation 44-103 respecting Post-Receipt Pricing
- Regulation 51-101 respecting Standards of Disclosure for Oil and Gas Activities.

Members of the CSA in the following jurisdictions have made, or expect to make, the Regulation

- a rule in each of British Columbia, Alberta, Manitoba, Ontario, Nova Scotia, Prince Edward Island, New Brunswick and Newfoundland and Labrador;
- a commission regulation in Saskatchewan and a regulation in Québec; and
- a policy in the Northwest Territories, Yukon and Nunavut.

The Policy has been, or is expected to be, adopted in all jurisdictions.

In British Columbia and Ontario, the implementation of the Regulation is subject to ministerial approval.

In Ontario, the Regulation and the other materials required to be delivered to the minister responsible for the oversight of the Ontario Securities Commission were delivered on **October 14, 2005**.

In Québec, the Regulation is a regulation made under section 331.1 of *The Securities Act* (Québec) and must be approved, with or without amendment, by the Minister of Finance. The Regulation will come into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation.

Provided all necessary ministerial approvals are obtained, the Regulation and Consequential Amendments will come into force on **December 30, 2005**.

**Substance and Purpose**

The Regulation modifies the qualification, disclosure and other requirements of the short form prospectus system so that this prospectus system can build on and be more consistent with recent developments and initiatives of the CSA. For example, the Regulation

- permits more reporting issuers to use the short form prospectus system by eliminating the minimum market capitalization requirement and the requirement that an issuer be a reporting issuer for a certain length of time before it can use the short form prospectus system;

- eliminates duplication and inconsistencies between the short form prospectus system and both Regulation 51-102 respecting Continuous Disclosure Obligations (Regulation 51-102) and Regulation 81-106 respecting Investment Fund Continuous Disclosure (Regulation 81-106) (together, the "CD Rules"), thereby better integrating the disclosure regimes for the primary and secondary markets;

- further streamlines the short form prospectus system by, for example, eliminating the requirement for regulatory review of an issuer's initial annual information form before the issuer could file a short form prospectus; and

- addresses deficiencies or ambiguities in Former Regulation 44-101 that the CSA had identified over the past four years.

**Summary of Written Comments**

On January 7, 2005, we published the Regulation and Policy for comment. The comment period ended in April 2005. During the comment period, we received submissions from 14 commenters. Appendix A lists the names of the commenters and Appendix B summarizes their comments and our responses.

When we published the Regulation and Policy for comment, we also requested comments on possible further changes in prospectus regulation; namely, whether we should permit certain eligible issuers to access public capital solely by filing a final prospectus without regulatory review. Appendix C summarizes the comments that we received in response to those proposed changes. We will keep those comments in mind when we return to deliberating whether such changes to the prospectus system ought to be made. We will also continue with the CSA project to harmonize and nationalize the general prospectus requirements, including the disclosure requirements of a long form prospectus. For now, the CSA has decided to proceed with the changes to, and expansion of, the short form prospectus system included in the Regulation.

We would like to thank everyone for taking the time to provide us with comments.

**Summary of Changes to the Regulation and Policy**

After considering the comments, we made some changes to the Regulation and the Policy that were published for comment in January 2005. We do not believe these changes are material and are not republishing the Regulation or the Policy for a further comment period. The changes are summarized in Appendix D.

**Questions**
Please refer your questions to any of the following:

Rosetta Gagliardi
Conseillère en réglementation
Autorité des marchés financiers
(514) 395-0558 ext. 4462
rosetta.gagliardi@lautorite.qc.ca

Michael Moretto
Manager, Corporate Finance
British Columbia Securities Commission
(604) 899-6767
mmoretto@bcsc.bc.ca

Tracy Hedberg
Senior Securities Analyst
British Columbia Securities Commission
(604) 899-6797
thedberg@bcsc.bc.ca

Charlotte Howdle
Securities Analyst
Alberta Securities Commission
(403) 297-2990
charlotte.howdle@seccom.ab.ca

Mavis Legg
Manager, Securities Analysis
Alberta Securities Commission
(403) 297-2663
mavis.legg@seccom.ab.ca

Patricia Leeson
Senior Legal Counsel
Alberta Securities Commission
(403) 297-5222
patricia.leeson@seccom.ab.ca

Melinda Ando
Senior Legal Counsel
Alberta Securities Commission
(403) 297-2079
melinda.ando@seccom.ab.ca

Ian McIntosh
Deputy Director, Corporate Finance
Saskatchewan Financial Services Commission
(306) 787-5867
imcintosh@sfsc.gov.sk.ca

Bob Bouchard
Director, Corporate Finance
Manitoba Securities Commission
(204) 945-2555
bbouchard@gov.mb.ca

Charlie MacCready
Senior Legal Counsel and Assistant Manager
Ontario Securities Commission
(416) 593-2367
cmaccready@osc.gov.on.ca

Sonny Randhawa
Accountant, Corporate Finance
Ontario Securities Commission
(416) 593-2380
srandhawa@osc.gov.on.ca

Michael Tang
Legal Counsel, Corporate Finance
Ontario Securities Commission
(416) 593-2330
mtang@osc.gov.on.ca

Marcel Tillie
Senior Accountant, Corporate Finance
Ontario Securities Commission
(416) 593-8078
mtillie@osc.gov.on.ca

Susan W. Powell
Legal Counsel
Market Regulation
New Brunswick Securities Commission
Susan.Powell@nbsc-cvmnb.ca

Bill Slattery
Deputy Director, Corporate Finance and Administration
Nova Scotia Securities Commission
(902) 424-7355
slattejw@gov.ns.ca

**October 21, 2005**

**Appendix A**

**List of Commenters**

| | **COMMENTER** | **DATE** |
|---|---|---|
| 1. | Shawn Allen | January 31, 2005 |
| 2. | Aur Resources Inc. | March 8, 2005 |
| 3. | Canadian Trading and Quotation System Inc. | March 29, 2005 |
| 4. | Macleod Dixon | April 7, 2005 |
| 5. | Canaccord Capital Corporation | April 8, 2005 |
| 6. | Investment Dealers Association of Canada | April 8, 2005 |
| 7. | Ontario Bar Association -<br>Securities Law Subcommittee of the Business Law Section | April 8, 2005 |
| 8. | Torys LLP | April 8 and 26, 2005 |
| 9. | TSX Group | April 8, 2005 |
| 10. | Ernst & Young | April 11, 2005 |
| 11. | Osler, Hoskin & Harcourt LLP | April 11, 2005 |
| 12. | Stikeman Elliott LLP | April 11, 2005 |
| 13. | KPMG LLP | April 12, 2005 |
| 14. | Borden Ladner Gervais LLP | April 13, 2005 |

**Appendix B**

**Summary of Comments**
**on Regulation and Policy**

| *Item* | *Reference* | *Summarized Comment* | *CSA Response* |
|---|---|---|---|
| **Part A: Comments in Response to Questions in CSA Notice dated January 7, 2005** | | | |
| **1. Question 1 - Alternative A vs. B[1]** | | | |
| 1.1 | Preference for Alternative B | None of the commenters expressed a preference for Alternative A. Eleven out of fourteen commenters expressed their preference for Alternative B.<br><br>Some of the comments supporting Alternative B were:<br>• Investors are now receiving timely, comprehensive information from reporting issuers through continuous disclosure (CD) filings and there is no reason to discriminate against issuers based on their market capitalization or the length of time the issuer has been a reporting issuer.<br><br>• Alternative B will significantly improve the ability of junior issuers, in particular, to access equity markets on a more timely and cost efficient basis. This proposal will benefit the junior market as a whole.<br><br>• The preference for Alternative B is significantly influenced by the qualification requirement that issuers | The commenters overwhelmingly supported Alternative B. We will proceed with Alternative B, which will broaden access to the short form prospectus system. |

[1] Question 1: The changes reflected in Alternative A of Part 2 of Proposed NI 44-101 are necessary to update and harmonize Current NI 44-101 with the CD Rules and other regulatory developments. Alternative B, however, represents a significant broadening of access to the short form prospectus system. Do you believe this broadening of access is appropriate? What are your views on the proposed qualification criteria set out as Alternative B?

| *Item* | *Reference* | *Summarized Comment* | *CSA Response* |
|---|---|---|---|
| | | have a Canadian listing. | |
| 1.2 | Qualification criteria – review of annual information forms (AIF) | One commenter urged the CSA to review the first AIF filed by a new reporting issuer that did not file a long-form initial public offering prospectus with the same rigour used to review an initial public offering prospectus. | All reporting issuers are subject to the CSA's CD review program, which CSA Staff Notice 51-312 Harmonized Continuous Disclosure Review Program describes in greater detail. We believe our CD review program adequately addresses the commenter's concerns because we review AIFs as well as issuers' other CD documents. We also note that, whether we review a document or not, the onus remains with the issuer to ensure it complies with prescribed disclosure requirements. |
| 1.3 | Qualification criteria – definition of AIF | One commenter recommended that the proposed definition of AIF be changed so that it would be consistent with the definition of AIF in proposed Regulation 45-106 respecting Prospectus and Registration Exemptions, which definition takes into account alternative forms of an "acceptable" AIF other than an AIF under the CD Rules. | We have not changed the definition of AIF. We believe that section 2.7 of Regulation 44-101, which exempts new reporting issuers and successor issuers from the requirement to have a current AIF, is sufficient. |
| 1.4 | Qualification criteria – novel securities | One commenter questioned whether, absent pre-filing consultations, any issuer that proposes to distribute novel securities should be qualified to use a short-form prospectus. | We believe that current procedures adequately address the commenter's concerns. Notice 43-201 relating to the Mutual Reliance Review System for Prospectuses encourages pre-filing consultations and enables the regulator to take more time to review a preliminary prospectus if the regulator requires the additional time.<br><br>If we adopt further changes to our offering system (such as eliminating preliminary prospectus and prospectus review and receipt) the commenter's concerns regarding novel securities will be reconsidered in that context. |
| 1.5 | Qualification criteria – reference to Regulation 51-102 *Continuous Disclosure* | One commenter suggested replacing, in sections 2.2, 2.3 and 2.4 of Regulation 44-101, "applicable securities legislation" with "Regulation 51-102" in the phrase "periodic and timely | We cannot limit this criterion to Regulation 51-102. For example, certain investment funds can use the short form prospectus system, but their CD filing obligations arise out of |

| *Item* | *Reference* | *Summarized Comment* | *CSA Response* |
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| | *Obligations* | disclosure documents that the issuer is required to have filed in that jurisdiction under applicable securities legislation". | Regulation 81-106 not Regulation 51-102. We also believe that disclosure documents under all applicable securities legislation should be filed in order for an issuer to be qualified to use the short form prospectus system. |
| 1.6 | Qualification criteria – venture issuers | Two commenters suggested that venture issuers be required to comply with the disclosure and governance obligations of non-venture issuers to be qualified to use the short form prospectus system.<br><br>One commenter suggested that a venture issuer choosing to access the short form distribution system be required to file its annual financial statements, annual MD&A and AIF within 90 days of its financial year end. | Regulation 44-101 harmonizes and integrates the short form prospectus regime with the CD regime. Other than the requirement to have a current AIF (which is a base disclosure document for a short form prospectus), we do not think it is necessary to change the CD and corporate governance obligations of venture issuers to permit them to use the short form prospectus system. |
| 1.7 | Qualification criteria – issuers whose operations have ceased or whose principal asset is cash or exchange listing | One commenter suggested changing the qualification criteria in 2.2(e). There may be circumstances where an issuer has operations but whose principal asset is cash or cash equivalents. Nevertheless, the issuer should be qualified to file a short form prospectus. | We disagree. We generally believe that an issuer whose principal asset is cash or cash equivalents will not have significant operations and should not be qualified to file a short form prospectus. If there are exceptional circumstances and such an issuer would like to be qualified to file a short form prospectus, the issuer may apply for exemptive relief from this qualification criterion. |
| 1.8 | Qualification criteria - short form eligible exchange | Two commenters suggested that the Canadian Trading and Quotation System Inc. be included in the definition of "short form eligible exchange".<br><br>Both commenters also noted that the definition will make it difficult to accommodate new exchanges. They suggested changing the definition so that any exchanges recognized by a CSA jurisdiction in the future would automatically also become a "short form eligible exchange". | We agree with the commenters' first suggestion. We have added the Canadian Trading and Quotation System Inc. to the definition of "short form eligible exchange".<br><br>We have not, however, made the second change to the definition suggested by the commenters. We believe that the criteria to be recognized as an exchange are different from the criteria to be recognized as a short form eligible exchange. There may be exchanges that we recognize in the future which should not be "short form eligible exchanges". |

| *Item* | *Reference* | *Summarized Comment* | *CSA Response* |
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| **2. Question 2 - Credit Supporter Disclosure Undertaking (Subparagraph 4.2(b)(ii) of Regulation 44-101)** [2] | | | |
| 2.1 | Supportive | Four commenters expressed general support for the requirement to deliver an undertaking in respect of credit supporter disclosure under subparagraph 4.2(b)(ii) | We acknowledge these comments. |
| 2.2 | Not supportive | One commenter did not agree with the requirement to deliver an undertaking in respect of credit supporter disclosure. The commenter's view was that the issue is satisfactorily addressed in Regulation 51-102 where the issuer does not have to file CD if the credit supporter does so. Also, the indenture between the issuer and the credit supporter will contain covenants to ensure the credit supporter is in compliance with applicable rules. Therefore, the risk of the credit supporter not providing the required disclosure is minimal. | Regulation 51-102 does not currently require any credit supporter disclosure by the issuer though there is an exemption in section 13.4 of Regulation 51-102 from providing issuer disclosure if appropriate credit supporter disclosure is provided instead.<br><br>We note that the indenture is a private agreement and compliance with it does not necessarily ensure public disclosure. |
| 2.3 | From either issuer or credit supporter | One commenter suggested that the undertaking in respect of credit supporter disclosure could come from either the issuer or the credit supporter. | We believe the undertaking should come from the issuer because:<br>• the periodic and timely disclosure of the credit supporter will be filed on the issuer's SEDAR profile; and<br><br>• issuers and credit supporters can structure their agreements so that the issuer can meet its obligations pursuant to the undertaking. |
| 2.4 | Type of disclosure | Three commenters asked for clarification of the type of timely and periodic disclosure of the credit supporter that would have to be filed pursuant to the undertaking delivered. One commenter asked whether the undertaking could be limited to periodic and timely disclosure required by applicable home | We have clarified in subparagraph 4.2(b)(ii) that the undertaking will be to file the credit supporter's periodic and timely disclosure that is similar to the disclosure required in section 12.1 of Form 44-101F1. We have also added guidance in Policy Statement 44-101. |

[2] Question 2: Is the requirement to deliver an undertaking of the issuer to file the periodic and timely disclosure of applicable credit supporters under paragraph 4.3(b)2 of Proposed NI 44-101 an appropriate response to our concern about the lack of adequate credit supporter disclosure in the secondary market? If not, why not? Please also suggest alternatives to this requirement.

| *Item* | *Reference* | *Summarized Comment* | *CSA Response* |
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| | | jurisdiction corporate/securities laws.<br><br>One commenter asked for clarification particularly in regard to foreign public companies that are not reporting issuers in Canada.<br><br>One commenter noted that if neither subsection 12.1(1) nor subsection 12.1(2) of Form 44-101F1 applies to the credit supporter, it may be difficult for the issuer on an on-going basis to undertake that certain credit supporter information will be filed. | |
| 2.5 | Best efforts | One commenter suggested that, rather than undertaking to file credit supporter disclosure, the issuer undertake to use its "best efforts" to adhere to the credit supporter disclosure requirements in section 12.1 on a CD basis. | We believe that an issuer can structure its agreements with a credit supporter to ensure that the periodic and timely disclosure of the credit supporter is available for the issuer to file on its SEDAR profile. Accordingly, we believe that a "best efforts" standard is inappropriate. |
| **3. Question 3 - Credit Supporter Exemption (Item 13 of Form 44-101F1)** [3] | | | |
| 3.1 | General - supportive | One commenter expressed general support for the exemptions for certain issues of guaranteed securities contained in Item 13 of Form 44-101F1. | We acknowledge the comment. |
| 3.2 | General - not supportive | One commenter stated that the exemptions in Item 13 of Form 44-101F1 are inappropriate. Regulation 71-102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers and Regulation 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency already facilitate the direct offering of securities in Canada by foreign issuers. Investors should be provided with financial statements of the | The exemptions in Item 13 are consistent with exemptive relief that has been granted to date. The basis for granting relief and the principle supporting the exemptions is that full financial disclosure regarding both an issuer and any credit supporters is not required in all cases. We believe investors are primarily interested in the financial position and results of operations of the parent entity (whether that is the issuer or the guarantor). |

[3] Question 3: Is each of the exemptions in Item 13 of Proposed Form 1 appropriate? If not, why not? Are there any other exemptions we should include? If so, why? Is each of the conditions to the exemptions in Item 13 of Proposed Form 1 necessary to ensure that investors have all the information they need to make informed investment decisions? If not, why not? Are there any other conditions we should include? If so, why?

| *Item* | *Reference* | *Summarized Comment* | *CSA Response* |
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| | | subsidiary entities because the consolidating summary financial information described in Item 13 is too sparse to allow any meaningful financial analysis. | The consolidating summary financial information described in Item 13 is intended to address regulatory concerns regarding the disclosure of structural subordination (as discussed below) when only parent entity financial information is provided. |
| 3.3 | Auditor's report | One commenter expressed several concerns about the form and content of the auditor's report on the proposed consolidating summary financial information.<br><br>• A U.S. auditor of a U.S. credit supporter may not be able to opine that the consolidating summary financial information is "fairly stated".<br><br>• In the case of a Canadian credit supporter: (i) there are no Canadian professional standards for preparing consolidating summary financial information; and (ii) the type of opinion that would be expressed is not covered under Canadian GAAS.<br><br>• Instruction 1(c) to Item 13 requires the summary financial information of the subsidiary entities to be derived from financial statements of the subsidiary that are audited for the same periods that the parent company's financial statements have been audited. Such an audit requirement will render the exemption useless to most multinational issuers. | We acknowledge the comment. We have deleted instructions 1(b) and 1(c) from Item 13 of Form 44-101F1 and we have replaced them with an instruction stating that an entity's annual or interim financial information must be derived from the entity's financial information underlying the corresponding consolidated financial statements of the issuer or parent credit supporter included in the short form prospectus. |
| 3.4 | Recent acquisitions | One commenter noted that paragraph (g) of Rule 3-10 of Regulation S-X provides guidance as to when the financial statements of recently acquired subsidiary issuers or subsidiary guarantors is required. We should consider whether comparable guidance for the exemptions in Item 13 is necessary. | We do not believe that guidance comparable to the guidance in Rule 3-10 paragraph (g) is necessary because the exemptions in Rule 3-10 are structured differently than the exemptions in Item 13. |

| *Item* | *Reference* | *Summarized Comment* | *CSA Response* |
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| | | | Paragraph (g) ensures that the financial statements of a significant recently acquired issuer or guarantor are included in a registration statement filed with the SEC. In contrast, the financial statements of a significant recently acquired issuer or guarantor must be included in a short form prospectus as a part of a business acquisition report (of the parent issuer or guarantor) regardless of whether one of the exemptions in Item 13 applies. |
| 3.5 | Subsection 13.1(e) | One commenter believes that the condition in subsection 13.1(e) is redundant given that under subsection 13.1(a), the credit support provider must have provided full and unconditional credit support for the securities being offered. | We disagree. Subsection 13.1(e) is not redundant. The purpose of subsection 13.1(e) is to ensure that issuers with one or more subsidiary credit supporters look to the exemption in section 13.2 rather than the exemption in section 13.1. |
| 3.6 | Subsection 13.1(f) | One commenter expressed the view that the consolidating summary financial information contemplated by sections 13.1(f)(ii), 13.2(f)(ii) and 13.3(f)(ii) would not add meaningful disclosure for an investor and therefore should be deleted. | Including consolidating summary financial information will alleviate regulatory concerns relating to the disclosure of "structural subordination".<br><br>Structural subordination occurs, for example, when an issuer is a subsidiary of a credit supporter and the credit supporter has other subsidiaries that are not themselves credit supporters. Upon the insolvency of the credit supporter, investors relying on its full and unconditional guarantee would not have direct claims against the assets of the non-issuer subsidiaries. Instead, investors would only have claims against the equity of these subsidiaries. Moreover, these claims would be subordinate to the claims of the subsidiaries' creditors.<br><br>Paragraphs 13.1(f)(ii), 13.2(f)(ii) and 13.3(f)(ii) require disclosure of consolidating summary financial information for the issuer, the credit supporters, and any non-credit supporter subsidiaries. The disclosure of this information will enable |

| *Item* | *Reference* | *Summarized Comment* | *CSA Response* |
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| | | | investors to generally identify those assets against which they would only have indirect and subordinated claims in the event of insolvency. |
| **4. Question 4- Disclosure of Interests of Experts (Item 15 of Form 44-101F1)** [4] | | | |
| 4.1 | Supportive | Three commenters expressly agreed with the disclosure requirements contained in Item 15.<br><br>Some commenters suggested conforming changes be made to Form 51-102F2 *Annual Information Form.* | We acknowledge these comments and have made conforming changes to section 16.2 of Form 51-102F2 Annual Information Form (see CSA Notice of Consequential Amendments). |
| 4.2 | Not supportive | One commenter strongly objected to including Canadian auditors within the scope of this provision. The CSA should work with the Auditing and Assurance Standards Board of the CICA to effect appropriate amendments to the professional standards in Section 5751 and/or Section 7110 if the CSA believes it is desirable for an auditor to confirm independence every time a reporting issuer files a prospectus. | We have considered the comment and continue to believe that the disclosure requirement is not overly onerous. Therefore, we have retained the current requirement, in which the independence disclosure requirement for Canadian auditors is based on their compliance with applicable rules of professional conduct in their jurisdiction. |
| 4.3 | Alternative | One commenter suggested that, instead of the disclosure required by section 15.2 of Form 44-101F1, that section require disclosure affirming that the board of directors, or similar body, has determined whether each person or company described in paragraphs 15.1(a) and (b) is independent of the issuer and its management. | We have not made the suggested change because we believe that disclosure of the expert's actual interest in the issuer is relevant to investors. |
| **Part B: Comments on Other Regulation 44-101 Matters** | | | |
| **5. General** | | | |
| 5.1 | Multijurisdictional Disclosure System (MJDS) | Two commenters urged us to ensure that the proposed rule would not adversely affect MJDS. | We have confirmed with staff of the SEC that the proposed rule will not adversely affect MJDS. |
| 5.2 | U.S. proposal for new | One commenter urged the CSA to introduce amendments to the | We have not yet made any changes to the short form system to |

[4] Question 4: Does Item 15 of Proposed Form 1 accomplish its objective, which is to ensure disclosure of any ownership interests that would be perceived as creating a potential conflict of interest on the part of an expert? If not, what changes should be made to the parameters?

| *Item* | *Reference* | *Summarized Comment* | *CSA Response* |
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| | prospectus system for well known seasoned issuers | prospectus system to ensure that issuers who are interlisted in Canada and the United States can take advantage of a proposed prospectus system that the SEC has not yet implemented for "well-known seasoned issuers". | accommodate interlisted issuers as a result of the SEC changes to the U.S. offering regime. We will consider further changes to our offering systems in response to the SEC proposals as appropriate. |
| 5.3 | Extending period for filing preliminary to 4 business days | One commenter agreed with our proposal to add two more business days to the period that an issuer has to file and obtain a receipt for a preliminary short form prospectus after it has entered into an underwriting agreement. This change should assist with due diligence and the preparation of the preliminary prospectus in more complex transactions. | We acknowledge this comment. |
| 5.4 | Requirement to restate financial statements | One commenter stated that there are no regulatory requirements for a reporting issuer to file restated annual financial statements for certain subsequent events such as retroactive changes in accounting principles and discontinued operations ("Type A" subsequent events in the CICA Handbook). | We will consider this comment in a broader context than Regulation 44-101 amendments because any decision on this issue is not limited to prospectus situations. |
| 5.5 | Review of unaudited financial statements | One commenter noted that, depending on the local generally accepted auditing standards, foreign auditors may not have a professional responsibility to review of interim financial statements included in the prospectus. In the absence of this review of unaudited interim financial statements, it may be difficult to determine whether the prospectus contains full, true and plain disclosure. | We acknowledge the comment. We have included a requirement in section 4.3 of Regulation 44-101 that any unaudited financial statements included in or incorporated by reference into the short form prospectus must have been reviewed in accordance with the relevant standards set out in the CICA Handbook for a review of financial statements by an entity's auditor or a public accountant's review of financial statements, or other acceptable foreign review standards. Although Regulation 44-101 retains the review requirement, the comfort letter addressed to the regulators evidencing that review is no longer required. |
| **6. Significant Acquisitions and Business Acquisition Reports** | | | |
| 6.1 | Reliance on business acquisition reports (BARS) | Two commenters endorsed the CSA's decision to rely on the business acquisition reports for significant acquisition disclosure. In particular, the elimination of the requirement to | We acknowledge the comment. |

| *Item* | *Reference* | *Summarized Comment* | *CSA Response* |
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| | | include financial statements where there have been multiple insignificant acquisitions is a great improvement. | |
| 6.2 | Transition | One commenter noted that there may be some acquisitions that have taken place in the last three completed financial years for which disclosure is currently required but for which a BAR was not required to have been filed. For example, a BAR was not required because the acquisition closed before March 30, 2004. The CSA should consider whether any transitional rules are required to fill the gap until the BAR requirements have been in place for three years. | We acknowledge the comment but believe that transitional rules are not necessary. Although no BAR will be filed for significant acquisitions completed prior to March 30, 2004, we are satisfied that, in respect of such acquisitions, an issuer's consolidated financial statements incorporated by reference would include adequate disclosure about the acquired business. For example, a December 31 financial year-end issuer will include at least nine months of operations of the acquired business in its consolidated annual audited financial statements. We also note that under Regulation 44-101, a BAR will require inclusion of financial statements for only the two most recently completed financial years of an acquired business and that only BARs filed since the beginning of the most recently completed financial year must be incorporated by reference into a short form prospectus. |
| 6.3 | Exemption from Regulation 51-102 BAR requirement | One commenter suggested that Regulation 51-102 be amended to provide an exemption from the requirement to file a BAR where a prospectus contains the information and financial statements that would otherwise be required in a BAR. This exemption would parallel the present exemption when disclosure is contained in an information circular. | We will consider this comment in the context of amendments to Regulation 51-102. |
| 6.4 | Pro forma statements for multiple acquisitions in BARs | One commenter suggested amending the pro forma financial statements requirements in Regulation 51-102 to require them to reflect, in addition to the acquisition that is the subject of the BAR, all significant acquisitions made during the periods covered by the audited and unaudited pro forma income statements of the issuer included in the BAR, to the extent not already reflected in the underlying historical statements. | We will consider this comment in the context of amendments to Regulation 51-102. |

| *Item* | *Reference* | *Summarized Comment* | *CSA Response* |
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| 6.5 | Auditor's compilation report on pro forma financial statements | One commenter would prefer that the CSA eliminate requirements for a compilation report on pro forma financial statements and rely on the enhanced professional standards in section 7110 of the CICA Handbook instead. | We will consider this comment in the context of amendments to Regulation 51-102 because the pro forma financial statements requirements in Regulation 44-101 were deleted in reliance on the business acquisition report requirements in Regulation 51-102. |
| **7. Regulation 44-101 - Specific Sections** | | | |
| 7.1 | Part 2 - notice declaring intention to qualify for short form prospectus system | One commenter questioned whether this notice would be made available on SEDAR to the public, and whether the notice expired after a period of time. The rule was not clear whether any procedures are required to be taken by the issuer if the issuer subsequently decides not to file a prospectus. | The purpose of the notice is merely to announce that the issuer intends to be qualified to use the short form prospectus system. We have moved this qualification criteria to section 2.8. In that section, we have clarified what the notice should state (see new Appendix A), when it must be filed, and to which regulator.<br><br>Issuers must file the notice on SEDAR and it will be publicly available. The notice will not have an expiry date and will remain in effect until the issuer withdraws it. There should not be any market implications resulting from this notice since it is not tied to a pending offering or transaction. |
| 7.2 | Subsection 2.7(1) - new reporting issuers | One commenter suggested that an IPO prospectus of a new reporting issuer under subsection 2.7(1) be deemed to be a "current AIF" so that it can be incorporated by reference into the short form prospectus under section 11.1 of Form 44-101F1. | An IPO prospectus does not need to be deemed to be a "current AIF". For a new reporting issuer relying on the subsection 2.7(1) qualification exemption in Regulation 44-101, section 11.3 of Form 44-101F1 requires disclosure that would have otherwise been in a current AIF to be included in a short form prospectus. The issuer may satisfy the section 11.3 disclosure requirement by incorporating by reference its IPO prospectus (see also General Instruction 5 of Form 44-101F1). |
| 7.3 | Section 4.4 - consent of experts | One commenter suggested that section 4.4 of proposed Regulation 44-101 be amended to accept the inclusion in the short form prospectus of the form of auditor's consent in CICA Handbook Section 7110 as satisfying the consent requirements that would otherwise apply under section 4.4. | We believe that the Handbook's auditor's consent is not sufficient for purposes of the short form prospectus. It does not include the statement that the auditor has read the short form prospectus and has no reason to believe that there are any misrepresentations in information derived from the following: |

| *Item* | *Reference* | *Summarized Comment* | *CSA Response* |
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| | | | the report, financial statements on which the auditor reported, knowledge of the auditor as a result of the services performed, or knowledge as a result of the audit of the financial statements. We believe these statements are an integral part of the auditor's consent. |
| 7.4 | Subsection 4.5(3) - translation into French | One commenter noted that, under current practice, if an issuer is not able to complete the translation of all documents to be incorporated by reference before the issuer files its preliminary prospectus, the issuer can apply for exemptive relief directly from the Autorité des Marchés Financiers (AMF). The commenter asked if subsection 4.5(3) would require an issuer to apply to the principal regulator for exemptive relief (either through the MRRS system or in the cover letter for the preliminary prospectus) rather than directly to the AMF. | The issuer must apply directly to the AMF for this relief, which would be evidenced by a decision document of the AMF, if granted. We have amended subsection 8.2(1) of Regulation 44-101 to add a reference to subsection 4.5(3) in the phrase "…other than an exemption, in whole or in part, from Part 2". This makes it clearer that exemptive relief from subsection 4.5(3) must be evidenced by a decision document and not the issuance of a receipt. |
| 7.5 | Section 7.1(c) - news release to be issued and filed | This section requires a news release be issued and filed prior to dealers being permitted to solicit expressions of interest. One commenter suggested that this section be amended so that the news release would only have to be issued, and not filed, before dealers could commence soliciting. The issuance of the press release is the more important of the two steps in this process and that, although the distinction may seem like a minor one, the practical implications in the context of "bought deal" financings can be significant. | We acknowledge the comment but have not made the suggested change. SEDAR is the central repository for regulatory filings and we believe news releases should be on SEDAR. |
| **8. Form 44-101F1 - Specific Sections** | | | |
| 8.1 | Item 3 - consolidated capitalization | One commenter suggested deleting the requirement for Item 3 (Consolidated Capitalization) in Form 44-101F1 because:<br>• the short form prospectus disclosure should not focus on share and loan capital<br>• a material change report disclosing any change in this | We have not made the suggested change because we believe the prospectus should have a summary of all changes to the issuer's share and loan capital, including the changes that will occur from the distribution. We believe this information is easier to understand if it is presented, on a consolidated basis, in one place in the prospectus. |

| *Item* | *Reference* | *Summarized Comment* | *CSA Response* |
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| | | information would be incorporated by reference. | |
| 8.2 | Section 6.1 - earnings coverage ratio less than one | One commenter suggested that the disclosure of earnings coverage ratios of less than one continue to be on the cover page disclosure. | We agree and have added this requirement back in as section 1.13 of Form 44-101F1. |
| 8.3 | Section 6.1 - earnings coverage ratio calculation | One commenter suggested that all interest, whether accrued on current or long-term debt, should be used as the sole basis for the calculation of earnings coverage ratios. The commenter noted that the ability of an issuer to meet its interest requirements should not be impacted by the classification of debt as current or non-current. | To facilitate historical comparability, we have retained the requirement that issuers disclose an earnings coverage ratio that, as calculated, excludes interest on current debt. However, under instruction (5) to section 6.1 of Form 44-101F1 issuers are also required to disclose an earnings coverage ratio that is calculated as though all debt outstanding was classified as long term. |
| 8.4 | Section 9.1 - resource property | One commenter noted that, if a material part of the proceeds of the distribution is to be expended on a particular resource property, section 9.1 requires an issuer to disclose, for that property, information required under section 5.5 of Form 51-102F2 that, in turn, refers to disclosure requirements of Regulation 51-101 respecting Standards of Disclosure for Oil and Gas Activities. This section is unclear whether an issuer would be required to include in its prospectus reports in the form of Form 51-101F2 Report on Reserves Data by Independent Qualified Reserves Evaluator or Auditor and Form 51-101F3 Management and Directors on Oil and Gas Disclosure for that property. | This comment highlighted for us an unintended result of the reference to section 5.5 of Form 51-102F2 in section 9.1. The disclosure required by section 9.1 is intended to be property-specific, yet the disclosure that section 5.5 refers to is company-wide. We have deleted section 9.1's reference to section 5.5 of Form 51-102F2. Section 9.1 will continue to apply to mining properties. |
| 8.5 | Item 10 - significant acquisition (acceleration of financial statements) | One commenter noted that subsection 10.1(3) of Form 44-101F1 appeared to accelerate the inclusion in a prospectus of annual and quarterly financial statements for certain significant acquisitions. This acceleration seemed to be more onerous than significant acquisition filing requirements under existing prospectus rules. | We did not intend to accelerate the inclusion of financial statements of certain significant acquisitions. We have amended section 10.1 of Form 44-101F1 and added subsection 4.10(2) to the Policy Statement to clarify which financial statements of a significant acquisition should be included in a short form prospectus. |
| 8.6 | Item 10 - significant acquisition | One commenter was not clear on whether disclosure of the | We have replaced subsection 10.1(2) of Form 44-101F1 that |

| *Item* | *Reference* | *Summarized Comment* | *CSA Response* |
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| | (type of disclosure) | impact of a significant proposed acquisition, as required under paragraph 10.1(2)(d) of Form 44-101F1 should be quantitative or qualitative. Quantitative disclosure is probably not going to be very accurate in these situations since audited results of the acquired business would not yet be available. | was published for comment with an instruction that requires the issuer to provide the information required by sections 2.1 through 2.6 of Form 51-102F4 Business Acquisition Reports. This change, in effect, substitutes old paragraph 10.1(2)(d) with section 2.4 of Form 51-102F4.<br><br>Section 2.4 requires issuers to describe any plans or proposals for material changes in the issuer's business affairs or the affairs of the acquired business which may have a significant effect on the results of the operations and financial position of the issuer. From our reviews of business acquisition reports, we have noted that, in response to section 2.4, issuers disclose both quantitative and qualitative information and that the disclosure varies to the extent the information is known and how specific the issuer can be. |
| 8.7 | Item 10 - significant acquisitions: (materiality test for full, true and plain disclosure)<br><br>(See also section 4.10 of Policy Statement) | One commenter recommended that there be a hard and fast rule that financial statements are only required at and above the 40% level. In light of the requirement to file a BAR including financial statements at the 20% level, which presumably reflects a regulatory view on materiality, issuers may feel bound to include financial statements at the 20% threshold anyway.<br><br>In the alternative, paragraph 4.10(c) of the Policy Statement should be clarified to explain when to provide evidence rebutting the presumption regarding the requirement for financial statement disclosure if the significance tests are satisfied at the 40% level. Paragraph 4.10(c) should also clarify to whom to provide such evidence and whether an exemption is required. Furthermore, if a formal process is to be followed, that process should be spelled out. Note that if financial statements are required to be included in a short form | We do not believe that a bright line test is appropriate. We have amended section 4.10 of the Policy Statement to state that we presume that the inclusion of financial statements or other information is required for all acquisitions that are, or would be, significant under Part 8 of Regulation 51-102 instead of referring to significant acquisitions at the 40% level. Issuers can rebut this presumption if they can provide evidence that the financial statements or other information required by Part 8 of Regulation 51-102 are not required for the prospectus to contain full, true and plain disclosure.<br><br>We encourage issuers to utilize the pre-filing procedures in National Policy 43-201 Mutual Reliance Review System for Prospectuses if the issuer intends to omit from its short form prospectus the financial statements or other information |

| *Item* | *Reference* | *Summarized Comment* | *CSA Response* |
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| | | prospectus pursuant to a regulatory review, they could be very difficult and costly to obtain on a timely basis. | required by Part 8 of Regulation 51-102. |
| 8.8 | Section 11.1 - mandatory incorporation by reference | Two commenters noted that the term "disclosure document", in paragraph 11.1(8) of Form 44-101F1, seemed to refer to all filed documents, not just those documents filed, or required to be filed, pursuant to an undertaking. | We did not intend to capture all disclosure documents filed. We only intended to capture those documents that the issuer filed pursuant to an undertaking. We have made appropriate changes to this section. |
| **9. Policy Statement 44-101 - Specific Sections** | | | |
| 9.1 | Subsections 1.8(7) and 2.6(4) - successor issuer | One commenter suggested that we consider expanding the examples to cover a “reverse spin-off” where, in accordance with the substance of the transaction, the entity legally spun-off should be considered to be the successor issuer. | We do not believe that a “reverse spin -off” is a frequently occurring transaction. We would consider granting exemptive relief for this kind of transaction on a case-by-case basis. |

**Appendix C**

**Summary of Comments on**
**Possible Further Changes in Prospectus Regulation**

Following is a summary of the comments we received in response to questions 5 to 7 in CSA Notice dated January 7, 2005 concerning whether further changes to the securities offering systems should be made. We will keep this comments in mind when we return to deliberating whether further changes to the securities offering systems ought to be made.

| **1. Question 5 - Eliminating preliminary prospectuses and prospectus review[5]** | | |
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| 1.1 | Supportive | Five commenters supported the elimination of preliminary prospectuses and prospectus review. Reasons cited included the following:<br>• Eliminating these requirements will result in more timely and certain market access for issuers.<br>• Eliminating these requirements will result in lower costs of raising capital.<br>• In light of anticipated adoption in Ontario and possibly other jurisdictions of secondary market civil liability there does not appear to be a valid policy rationale to support these requirements other than in the context of an initial public offering. |
| 1.2 | Not Supportive | Three commenters did not support the elimination of preliminary prospectuses and prospectus review. Reasons cited include the following:<br>• Eliminating these requirements may have adverse implications for MJDS.<br>• Eliminating these requirements may create a situation where an issuer who is (unknown to it) the subject of a pending investigation or continuous disclosure review that raises serious concerns sells securities without buyers being made aware |

[5] Question 5: *General* Do you believe that issuers, investors or other market participants would benefit from the elimination of preliminary prospectuses and prospectus review? What are the principal benefits of such a system? Are there any potential drawbacks? Are you concerned about a lack of regulatory review in the context of a prospectus offering? Are you concerned that expediting the prospectus filing would put undue pressure on the due diligence process?

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| | | of the possible problems.<br><br>• If Alternative B is adopted, the advantages of a system with no preliminary prospectus and prospectus review will be provided by the shelf prospectus system.<br><br>• A preliminary prospectus is a very important document in the marketing of a prospective distribution of securities. As a document filed on SEDAR it also contains information relevant to the secondary market trading of the securities of an existing reporting issuer.<br><br>• The harmonized continuous disclosure reviews described in CSA Notice 51-312 warrant a reduction in, but not elimination of, the regulatory review of prospectus filings.<br><br>• Certain required disclosure is no less onerous than the disclosure required in a long form prospectus and there is no reason to reduce regulatory oversight from what is currently imposed. |
| 1.3 | Delivery versus filing of preliminary prospectus | One commenter suggested that delivery of preliminary prospectuses should be eliminated but filing a preliminary prospectus is not particularly onerous. The CSA should implement a system similar to the rights offering system in which there is a period for staff to object. |
| 1.4 | Effect on due diligence process | One commenter suggested that a "final prospectus only" regime might add significantly to the pressure and strain already placed on the role of the underwriter and the director due diligence process. The same commenter was also of the view that the elimination of the preliminary prospectus requirement may "forfeit some of the long-standing market integrity created by the preliminary and final prospectus receipt regime". |
| **2. Question 6 - Additional qualification criteria and restrictions [6]** | | |
| 2.1 | Seasoning | Two commenters supported a seasoning requirement. One of these commenters believed that the need for adequate information about an issuer to be available and accessible for a period of time dictates such an eligibility requirement. |

[6] Question 6: *Qualification Criteria* If we eliminate the preliminary prospectus and prospectus review as contemplated above, do you think we should impose more onerous restrictions on this offering system, given the lack of regulatory review at the time of the offering? Such restrictions could include additional qualification criteria and restrictions, such as the following:
a one year seasoning requirement to ensure eligible issuers have filed required CD for a minimum period and to allow for regulators to review such CD;
· a prohibition from offering securities if the regulator has identified significant unresolved issues relating to the issuer's CD; and
· a restriction on types of eligible securities to disallow securities which may not be supported by the issuer's CD.
Do you think these are appropriate?

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| | | Three commenters did not support a seasoning requirement. One of these commenters noted that rather than restrict new, but potentially compliant issuers, from using the system for a seasoning period, the objective may be better achieved by penalizing non-compliant issuers. |
| 2.2 | Unresolved issues in CD | Four commenters supported a prohibition from offering securities if the regulator has identified significant unresolved issues relating to the issuer's CD. One of these commenters supports such a prohibition only if the unresolved issue would result in a cease trade order.<br><br>One commenter did not support a blanket prohibition from offering securities if the regulator has identified significant unresolved issues relating to the issuer's CD. The facts and circumstances need to be assessed on a case-by-case basis, taking into consideration the nature and complexity of the issues. |
| 2.3 | Types of securities | Four commenters supported a restriction on types of eligible securities to disallow securities that may not be supported by the issuer's CD. |
| 2.4 | Regulatory review | One commenter noted that it is critical that regulatory review of CD occur on a regular basis. Though this review may not take place at the time of an offering, issuers must be motivated to ensure that their CD as well as any supplementary disclosure included in a prospectus meets the full, true and plain disclosure standard. If an issuer's disclosure is found to be inadequate, the penalties must be significant enough to motivate them to comply in the future. |
| 2.5 | Minimum market capitalization | Two commenters suggested that consideration be given to an eligibility requirement based on a minimum market cap threshold. |
| **3. Question 7 - Marketing Regime Triggered by Press Release[7]** | | |
| 3.1 | | One commenter supported a marketing regime that is triggered on the issuance of a press release or other public notice announcing a proposed offering. While the suggested trigger is somewhat subjective, it may prevent premature disclosure that could occur if the trigger is based on more objective measures and may also prevent illegal insider trading in advance of a public announcement. That notice should be provided to the market in the event that the transaction is not completed within a reasonable period of time.<br><br>One commenter noted that given the opportunity issuers would use this alternative, depending on the issuer and the securities being marketed. |

[7] Question 7: Do you believe that a marketing regime triggered on the issuance of a press release or other public notice announcing a proposed offering is workable and would be utilized by issuers and dealers? If so, should the press release or public notice be required on "the issuer forming a reasonable expectation that an offering will proceed" or on some other event?

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| | | Three commenters expressed concerns regarding the suggested marketing regime:<br><br>• One commenter believes the approach suggested does not go far enough. Issuers will be reluctant to issue the type of press release that is suggested and, if the offering does not proceed, there will be market consequences and possibly some embarrassment on the part of the issuer. Furthermore, the same commenter was critical of the fact that, under the new Regulation, pre-filing marketing will continue to be permitted only in the case of bought deals. A prohibition on pre-filing marketing outside of the bought deal context unjustifiably prohibits underwriters from gauging market interest prior to making an underwriting commitment.<br><br>• One commenter believes that a marketing regime involving public notification of a forthcoming offering through a media release or term sheet, in tandem with reliance on the continuous disclosure regime, still leaves potential for abuse in the offering process.<br><br>• One commenter believed that the obligation of an issuer to issue a press release upon having determined to proceed with a public offering is a timely disclosure matter that should not be separately regulated by Regulation 44-101. Issuers and underwriters should not be permitted to trade securities with knowledge of undisclosed material information regarding the issuer but issuers should not be subject to a requirement that requires premature disclosure of an issuer's consideration of its capital requirements thereby inhibiting an issuer's ability to access the capital markets on an efficient basis. |
| **4. Other Ideas** | | |
| 4.1 | Eliminate prospectus requirement for seasoned issuers | One commenter suggested removing the prospectus requirement for certain secondary market offerings made by seasoned issuers. |

## Appendix D

## Summary of Changes

The following summarizes the changes to the Regulation and the Policy from the version published for comment in January 2005.

**Regulation 44-101**

*Qualification to File a Short Form Prospectus* – In January 2005, we sought comment on two alternative versions for the Regulation's qualification requirements: Alternative A, which retained the same qualification requirements that were in Former Regulation 44-101; and Alternative B, which eliminated the seasoning and minimum market capitalization requirements thereby permitting more reporting issuers to use the short form prospectus system. The commenters widely favoured Alternative B. We have decided to proceed with implementing that version of the Regulation's qualification requirements.

*Definition of Short Form Eligible Exchange* – We have added the Canadian Trading and Quotation System Inc. to the definition of "short form eligible exchange".

*Notice Declaring Intention to be Qualified* – The version of New Regulation 44-101 published in January 2005 had, as one of the qualification criteria, a requirement that issuers file a notice declaring they intend to be qualified to use the short form prospectus system. We have moved this qualification criteria to section 2.8 and have clarified in section 2.8 what the notice should state (see new Appendix A) as well as where and when it must be filed. Issuers will only be required to file the notice with one regulator, but will be able to use the short form prospectus system in all jurisdictions provided the issuer meets the other qualification criteria.

*Alternative Disclosure for Successor Issuers* – We have added, in section 2.7(2)(b)(ii) of Regulation 44-101 and section 11.3(2) of Form 44-101F1, reference to Item 14.5 of Form 51-102 F5 Information Circular. This change adds TSXV capital pool company information circulars to the types of disclosure that a successor issuer could have for it to be exempt from the current annual information form qualification criterion.

*New Transition Section* - We have added subsection 2.8(5) of Regulation 44-101 to address a transition issue that would have otherwise affected those issuers or credit supporters not yet required to file an AIF under the CD Rules, but who had filed, after their previously completed financial year, an AIF in the form of former Form 44-101F1 Annual Information Form.

This new section conclusively deems issuers and credit supporters that had an AIF in the form of Form 44-101F1 as it was on May 18, 2005 (Form 44-101F1 was revoked on May 19, 2005) to have a current AIF so that the issuer or credit supporter will still be qualified to file a short form prospectus even if its AIF is in the form of former Form 44-101F1. Issuers will no longer need to rely on this transition section once they have filed their AIF in the form of AIF required by the applicable CD Rule.

*Review of Unaudited Financial Statements* – We have added section 4.3 to require any unaudited financial statements included in or incorporated by reference into a short form prospectus to be reviewed in accordance with the relevant standards set out in the CICA Handbook for a review of financial statements by an entity's auditor or a public accountant's review of financial statements. This review requirement is consistent with the former comfort letter requirement that was in subparagraph 10.3(b) 1(i) of Former Regulation 44-101. In effect, New Regulation 44-101 retains the review requirement, but no longer requires the comfort letter addressed to the regulator evidencing that review.

Because Regulation 52-107 respecting Acceptable Accounting Principles, Auditing Standards and Reporting Currency permits certain issuers to include in a prospectus financial statements that have been audited in accordance with certain foreign auditing standards, section 4.3 permits issuers who have included financial statements audited in

accordance with foreign auditing standards in a short form prospectus to use certain foreign review standards for the review of unaudited financial statements.

*Evidence of Exemption* – We have added into section 8.2 a reference to subsection 4.5(3) so that it is clearer that relief from the French translation requirement must be evidenced by a decision document from the AMF and not by a receipt for the short form prospectus.

**Form 44-101F1**

*Earnings Coverage Ratio* – New section 1.13 retains the requirement, formerly in Form 44-101F3 Short Form Prospectus, that any earnings coverage ratio of less than one be disclosed on the cover page.

*Resource Property Disclosure* – In section 9.1 we have deleted the reference to section 5.5 of Form 51-102F2 Annual Information Form. The disclosure required by section 9.1 is intended to be property-specific yet the disclosure required by section 5.5 (which is the annual summary of reserves data and other information for an oil and gas reporting issuer) is company-wide. Section 9.1 will continue to apply to issuers with mining properties.

*Significant Acquisitions* – In section 10.1, we deleted subsection (2), which had previously listed the type of disclosure issuers were to provide for probable acquisitions and, instead, added Instruction (1), which requires issuers to provide the disclosure required by sections 2.1 through 2.6 of Form 51-102F4 Business Acquisition Reports. In substance, the disclosure requirement has not changed from what we had published for comment because the disclosure requirements previously listed in subsection (2) were similar to the disclosure requirements in sections 2.1 through 2.6 of Form 51-102F4. We have also added Instruction (2), which states that the financial statements or other information required to be included under subsection 10.1(3) must be either: (i) the financial statements or other information required by Part 8 of Regulation 51-102; or (ii) satisfactory alternative financial statements or other information. Subsection 4.10(2) of Policy Statement 44-101 provides further guidance on what we believe would be "satisfactory alternative financial statements or other information".

*Mandatory Incorporation by Reference* – We have added paragraph 9 to subsection 11.1(1). Disclosure documents of the type listed in paragraphs 1 through 7 of subsection 11.1(1) that are filed by an issuer under an exemption in lieu of the documents actually listed must be incorporated by reference into a short form prospectus.

*Exemptions for Certain Issues of Guaranteed Securities* – We have deleted instructions 1(b) and (c) of Item 13 of the version of Form 44-101F1 published for comment and replaced them with instruction 1(c) of Item 13 of Form 44-101F1. Instructions 1(b) and (c) of Item 13 of the version of Form 44-101F1 published for comment would have required an entity's annual summary financial information to be derived from the entity's comparative audited annual financial statements for the corresponding period. This would impose a stand-alone audit requirement on every subsidiary of the issuer, parent credit supporter, or subsidiary credit supporter, even if the subsidiary would not otherwise be audited on a stand-alone basis. We did not intend to impose such a requirement.

*Interests of Experts* – In response to the commenters, we have conformed the requirement for disclosure about interests of experts in section 16.2 of Form 51-102F2 Annual Information Form so that it is the same as what we had published for comment in section 15.2 of Form 44-101F1. Because the interests of experts disclosure requirements are now in section 16.2 of Form 51-102F2, section 15.2 has been changed so as to only require an issuer to update, in its short form prospectus, the information about interests of experts previously disclosed in its current AIF.

*List of Exemptions* – We have added a requirement for issuers to list all exemptions from the provisions of Regulation 44-101 or Form 44-101F1 granted to the issuer applicable to the distribution or the short form prospectus, including all exemptions to be evidenced by the issuance of a receipt for the short form prospectus pursuant to section 8.2 of Regulation

44-101. We have added this requirement to ensure issuers provide adequate disclosure about such exemptions.

**Policy Statement 44-101**

*Timely and Periodic Disclosure Documents* – We have added section 2.5 to clarify that the qualification criterion that the issuer have filed all timely and periodic disclosure documents also applies to those documents that an issuer has undertaken to file, must file as a condition of any exemptive relief granted, or has represented that it will file in a representation made to obtain exemptive relief.

*Undertaking in Respect of Credit Support Disclosure* – We have added section 3.5 to provide guidance about the types of disclosure documents to which the undertaking would relate, depending on whether the credit supporter is a reporting issuer, an SEC registrant or otherwise.

*Recent and Proposed Acquisitions* – We have amended section 4.10 of Policy Statement 44-101 to state that we presume that financial statements or other information would be required for all acquisitions that are, or would be, significant under Part 8 of Regulation 51-102 instead of referring to acquisitions at the 40% level. Issuers can still rebut this presumption if they can provide evidence that the financial statements or other information required by Part 8 of Regulation 51-102 are not necessary for the prospectus to contain full, true and plain disclosure. This section also states that we encourage issuers to utilize the pre-filing procedures in Notice 43-201 relating to the Mutual Reliance Review System for Prospectuses if the issuer intends to omit from its short form prospectus the financial statements or other information required by Part 8 of Regulation 51-102.

In addition, new subsection 4.10(2) provides guidance about when we would consider it acceptable for an issuer to provide financial statements or other information for periods other than what Part 8 of Regulation 51-102 requires.