Appendix A

Schedule 2

Summary of Comments and CSA Responses

Item	*Subject*	*Summarized Comment*	*CSA Response*
Part A: Comments in response to questions in CSA Notice dated December 21, 2006			
1: Certificate requirements (Questions 1 through 4)[1]			
1.1: Section 5.13 of Rule published for comment	*Certificate of substantial beneficiary of the offering – general comments*	Thirty-eight commenters do not support the adoption of this certification requirement. Their reasons include the following: • Costs outweigh benefits. • Certification is not limited to portions of prospectus dealing with the significant business. Such an unlimited certification requirement would place undue burden of due diligence on certifying party given that they would not necessarily have any particular knowledge of the business of the issuer. • Adverse effect on acquisitions financed by prospectus offerings. • Vendors would need to conduct due diligence to avoid liability, resulting in either an increase in the purchase price of the significant business or	In response to these comments, we removed the requirement to provide a certificate of a substantial beneficiary of the offering from the Rule. We also expanded on the guidance in section 2.6 of the Companion Policy regarding when a regulator will exercise its discretion to refuse receipt for a prospectus where it is not in the public interest to issue the receipt and when a regulator, other than in Ontario, will exercise its discretion to require any person or company to sign a prospectus certificate.

[1] Questions 1 through 4:

1. Except in Ontario, Proposed NI 41-101 includes a new certificate requirement for "substantial beneficiaries of the offering". We believe a person or company that controls the issuer or a significant business has the best information about the issuer or significant business. Do you agree? Such a person or company who also receives proceeds from the distribution should be liable for any misrepresentations in the prospectus about the issuer or a significant business. Are the definitions of substantial beneficiary of the offering and significant business broad enough to cover this class of persons and companies?

2. The definition of "significant business" in section 5.13 of Proposed NI 41-101 is based on the significance tests for acquisitions. We consider that these tests provide a useful initial threshold in the determination of whether a prospectus certificate is necessary; however, we seek specific comment on whether these tests are the most appropriate measure of significance for the purposes of determining prospectus liability.

3. Control of a significant business and direct or indirect receipt of 20% of the proceeds of an offering are both required to bring a person or company within the definition of substantial beneficiary of the offering. Is this dual threshold too limited?

4. Is receipt of 20% of the proceeds of the offering the appropriate threshold for paragraph 5.13(2)(b) of Proposed NI 41-101?

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		placing the issuer at a competitive disadvantage against competing offers not directly or indirectly contingent on prospectus financing. In some cases, a vendor would never be willing to sign a certificate for an arm's length purchaser, regardless of the purchase price. • Could significantly mitigate one of the principal reasons issuers become reporting issuers (i.e. use of public offerings to finance acquisitions). • In particular, prospectus financing of acquisitions by junior issuers, by oil & gas issuers, from foreign issuers, and from liquidators will be adversely affected. • Requirement to provide certificate for control person of substantial beneficiary of the offering will provide additional disincentive for vendors to deal with issuers that require access to the Canadian capital markets in connection with a potential significant acquisition. • Large vendors will often divest assets that are not material to them. For the purchaser, the assets may be highly material. Systems of internal controls and procedures for such assets and knowledge of large vendor's officers and directors would not be as detailed as for the purchaser. • Person or company that controls issuer or significant business does not always have the best information. For example, requirement would capture passive investors (including pension funds, institutional investors and financial institutions). • Not a requirement under U.S.	

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		securities law nor the laws of other jurisdictions. • Prospectus liability should not be imposed without specific amendment being made to securities acts. • In the event of proxy battle, a control block owner could prevent completion of a financing by refusing to sign a certificate. • Liability for misrepresentation in prospectus more appropriately dealt with contractually through indemnities and warranties in standard purchase and sale agreements. These contractual provisions provide purchaser/issuer with recourse in the event of misleading information being provided about the significant business. • Imposing vendor liability will not necessarily result in better disclosure by the purchaser. • One year retroactive application is problematic. It could increase uncertainty for those investors who wish to take significant ownership positions in issuers. It also may have the result of capturing parties that have no knowledge of the current status of the issuer. • Proposal may create barrier to accessing equity capital in Canada, reducing Canada's competitiveness in global capital markets. • Proposal may result in double liability for substantial beneficiary of the offering. If substantial beneficiary of the offering owns part of the issuer, such person becomes responsible for the disclosure in two different ways: directly through its execution of the prospectus certificate, and indirectly, through its ownership	

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		of an interest in the issuer. This could discourage valid and useful inter-company financing strategies. • Proposal may unfairly subject banks to the certificate requirements. Deemed beneficial ownership of securities owned by affiliates is problematic for financial institutions with diverse activities such as merchant banking, passive investment and hedging activities. Also, not clear which entity in the group would be required to provide a certificate.	
1.2: Section 5.13 of Rule published for comment	*Certificate of substantial beneficiary of the offering – suggested changes*	Eight commenters suggest specific changes to this requirement.	Though many commenters suggested specific changes, we removed the requirement entirely.
1.3: Section 5.13 of Rule published for comment	*Certificate of substantial beneficiary of the offering – alternatives*	Six commenters suggest specific alternatives to the requirement. • Policy concerns could be addressed under current "promoter" certification/liability provisions of Canadian securities legislation. • Use prospectus receipting powers to target situations that appear to have been constructed to avoid liability. • Though current requirements relating to certification of prospectuses are problematic and need to be revised, such revisions should be made as part of overall review of liability provisions relating to prospectuses. • Amend the definitions contained in subsection 5.4(1) and 5.5(2) of the Rule to delineate the circumstances in connection with an income trust prospectus offering and a spin-off of a business by way of initial public offering.	We have the following responses to these comments: • We acknowledge this comment. • We expanded subsection 2.6(1) of the Companion Policy, which provides guidance on when a regulator will exercise its discretion to refuse receipt for a prospectus where it is not in the public interest to issue the receipt. • A review of the liability provisions relating to prospectuses in provincial and territorial securities legislation is beyond the scope of the Rule. • We kept the proposed definitions because it is not appropriate to delineate specific circumstances for income trust and other indirect prospectus offerings. The guidance in section 2.6 of the Companion Policy applies to all prospectus distributions.

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2: Material contracts (Questions 5 and 6)[2]			
2.1: Section 1.1 of Rule published for comment	*Material contracts – definition*	Three commenters suggest changes to the definition of "material contract". The definition provided is not useful. The definition should be broadened to permit some determination of materiality by the issuer or have some dollar value threshold attached. Provide guidance on how materiality is to be determined (e.g. by reference to the effect of the contract on market price or value of the securities of the issuer).	The definition of "material contract" is consistent with the current requirements for filing "other material contracts" in section 12.2 of NI 51-102. The concept of materiality under NI 51-102, determined by reference "to the issuer", is well understood.
2.2: Subparagraph 9.2(a)(iii) of Rule published for comment	*Material contracts – filing requirement – general comments*	Two commenters do not support this requirement. Investors should receive necessary information regarding an issuer's material contracts through the requirement to make full, true, and plain disclosure in its prospectus regarding such contracts. Investors do not need to review the actual contract and so there should be no requirement to file the contract. This requirement will only serve to aid competitive interests and may prove detrimental to issuers, particularly those in highly competitive and/or sensitive business sectors. CSA should undertake a cost-benefit analysis to determine if the imposition of such broader obligations is warranted.	We kept the proposed requirement, subject to the changes described in items 2.3 through 2.9, below. After publishing for comment certain amendments to NI 51-102 on December 9, 2005, we received three comments supporting the requirement to file material contracts (see, Notice of Amendments to NI 51-102, Summary of Comments, published October 13, 2006). These comments included a statement that the information in a filed material contract is not only useful, but is essential in understanding and evaluating an issuer's financial disclosure. The requirement to file material contracts is an existing prospectus and continuous disclosure requirement across Canada, and in other jurisdictions such as the United States.
2.3: Subparagraph 9.2(a)(iii) of Rule published for	*Material contracts – filing requirement – suggested*	One commenter suggests changes to this requirement. Only contracts entered into within the last financial year, or before the last financial	We made the suggested change. See section 9.3 of the Rule.

[2] Questions 5 and 6:

5. Should each type of contract listed in subsection 9.1(1) of Proposed NI 41-101 be excluded from the exemption to file contracts entered into in the ordinary course of business? Are there other types of contracts not listed that should be excluded from the exemption to file contracts entered into in the ordinary course of business? If so, please identify the type of contract and explain why they should be excluded.

6. Is the list of provisions that are "necessary to understanding the contract" set out in subsection 9.1(2) of Proposed NI 41-101 appropriate? If not, why not?

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comment	*changes*	year but still in effect should be required to be filed (similar to the limitation in subsection 12.2(1) of NI 51-102).	
2.4: Clause 9.2(a)(iii)(B) of Rule published for comment	*Material contracts – redaction of information necessary to understanding the contract - general comments*	Three commenters do not support the limitation on redacting provisions that are necessary to understanding the contract. Their reasons include the following: • Disclosure of competitively sensitive information would be prejudicial to the issuer's business. • Limitations may result in more disclosure being provided than is otherwise required under section 27.1 of Proposed Form 1.	See our response to item 2.8, below.
2.5: Clause 9.2(a)(iii)(B) of Rule published for comment	*Material contracts – redaction of information necessary to understanding the contract – suggested changes*	One commenter requests that the Rule expressly permit an issuer to redact risk allocation provisions contained in commercial agreements that might be misinterpreted by participants in the secondary markets as statements of fact (e.g. a strict environmental warranty provided by a vendor to a purchaser is not necessarily a statement of facts by the vendor).	An issuer may redact these provisions if: (a) they are not "necessary to understanding the impact of the material contract on the business of the issuer"; and (b) the issuer has satisfied the other conditions in subsection 9.3(3) of the Rule.
2.6: Subsection 9.1(1) of Rule published for comment	*Material contracts – list of contracts that are not "contracts entered into in the ordinary course of business"*	Two commenters support the effort to clarify the current regime. No other types of contracts should be added to the list.	We acknowledge these comments. We have not added any other types of material contracts to the list in subsection 9.3(2) of the Rule.
2.7: Subsection 9.1(1) of Rule published for comment	*Material contracts – list of contracts that are not "contracts entered into in the ordinary course of business" – suggested changes*	Eight commenters suggest specific changes to the list: • Clarify that a materiality threshold applies to this list (if not, add one). Otherwise, agreements that may only have a trivial effect on the capitalization of the issuer will have to be filed. • In paragraph 9.1(1)(a):	We have the following responses to these comments: • Only material contracts are required to be filed. Subsection 9.3(2) of the Rule provides an exemption from the requirement to file a material contract if it is entered into in the ordinary course of business unless the material contract is a type of contract listed in paragraphs

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		• Limit the filing of contracts to which officers are parties to "Named Executive Officers" (as defined in Form 51-102F6). Otherwise, issuers will be required to file employment contracts for a significant number of individuals that are not required to be disclosed in an information circular. • Exclude all employment contracts. • Exclude contracts to which substantial beneficiaries of the offering are parties. These are entered into in the ordinary course of business by most issuers. • Clarify the reference to "current" assets. If the intention is to confine to current assets for balance sheet purposes, there is no compelling reason to distinguish current from non-current assets for balance sheet purposes. • Exclude all contracts with directors, officers and similar parties at "fair value" (not just contracts for the purchase and sale of current assets at fair value). • In paragraph 9.1(1)(b): • Clarify the meaning of the term "upon which the issuer's business depends to a material extent". • Add a materiality standard to clarify the meaning of "major part" because there is no common understanding of the meaning of that term. • In paragraph 9.1(1)(c): • Increase the "20%" threshold for certain issuers. For example, junior oil and gas companies will be required to disclose information that is not significant or useful to an investor. • Clarify how an issuer is to account for a contract that	9.3(2)(a) through (f). • We removed "contracts of employment" from the type of contracts described in paragraph 9.3(2)(a) of the Rule. We also added subsection 3.6(3) of the Companion Policy to provide guidance on the types of contracts that may be contracts of employment. • We removed contracts to which substantial beneficiaries of the offerings are parties from the types of contracts described in paragraph 9.3(2)(a) of the Rule. • We removed the term "the contracts are for the purchase or sale of current assets at fair value" from paragraph 9.3(2)(a) of the Rule. Material contracts with directors, officers and similar parties, unless they are contracts of employment, are not eligible for the ordinary course of business exemption. • We removed the term "upon which the issuer's business depends to a material extent" from paragraph 9.3(2)(b) of the Rule. This term is redundant because an issuer must only file material contracts. • We replaced the term "the major part" with "majority" in paragraph 9.3(2)(b) of the Rule. "Majority" means greater than 50%. • We removed contracts calling for the acquisition or sale of any property, plant or equipment from the list in subsection 9.3(2) of the Rule. An issuer is not required to file these types of material contracts if they are in the ordinary course of business. However, under paragraph 9.3(2)(f) of the Rule, an issuer must file this type of material contract if it is a contract upon which its business is substantially dependent. We also added guidance in subsection 3.6(5) of the Companion Policy providing

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		contemplates non-cash consideration and whether fixed assets are to be valued at fair market value or book value.
		
		• In paragraph 9.1(1)(d):
		  • Clarify that only "material" credit agreements are required to be filed.
		  • Exclude credit agreements. Otherwise, issuers will incur significant costs redacting these "ordinary course of business" agreements without a corresponding benefit to shareholders. Lenders will not want terms and margins publicly disclosed because they could reveal competitive information.
		  • Requirement to file "any credit agreement" is inconsistent with provision that only the financing covenants in "material" financing or credit agreements are prohibited from being redacted under paragraph 9.1(2)(g).
		
		• In paragraph 9.1(1)(e):
		  • Exclude management or administration agreements. These are entered into in the ordinary course of business by most issuers. The term could encompass a wide range of agreements that are not of interest or importance to securityholders. Filing such agreements is unnecessary given current proposal to enhance executive compensation disclosure in Form 51-102F6.
		  • Clarify that only "material" management or administration agreements are required to be filed.
		
		• In paragraph 9.1(1)(f), clarify the meaning of the term "on which the issuer's business is substantially dependent".
			that a contract upon which an issuer's business is substantially dependent may include a contract calling for the acquisition or sale of substantially all of the issuer's property, plant and equipment, long-lived assets, or total assets.
			
			• Under paragraph 9.3(2)(d) of the Rule, only credit "and financing" agreements with terms that have a direct correlation with anticipated cash distributions are not eligible for the ordinary course of business exemption.
			
			• Under paragraph 9.3(2)(e) of the Rule, only "external" management and administration agreements are not eligible for the ordinary course of business exemption.
			
			• We added subsection 3.6(5) of the Companion Policy to provide guidance regarding the meaning of the term "on which the issuer's business is substantially dependent".

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2.8: Subsection 9.1(2) of Rule published for comment	*Material contracts – list of provisions "necessary to understanding the contract" – suggested changes*	One commenter suggests the list is unnecessary. There are significant variations between types of contracts and the provisions that would be relevant to an understanding of the contract. If there is to be a requirement not to redact provisions, the determination of what terms fall into that category should be left to the issuer and its counsel.
		
		Three commenters suggest that the list be deleted from the Rule and moved to guidance in the companion policy. The list should set out examples of clauses potentially necessary to understanding the contract rather than specifically prescribing such clauses.
		
		Four commenters suggest specific changes to the list:
		
		• Add change of control clauses to the list.
		
		• Clarify that subsection 9.1(2) only applies to "material" provisions.
		
		• In the lead in language:
		  • Delete the term "include the following" and replace it with the term "means" so that the list is definitive.
		  • Add the term "information relating to the issuer or its securities" to make it consistent with clause 9.2(a)(iii)(B).
		
		• In paragraphs 9.1(2)(a), (b), (f) and (g), clarify the use of the adjective "material" given that, presumably, subsection 9.1(2) is only applicable to "material contracts".
		
		• In paragraph 9.1(2)(a), exclude the name of a material customer or material supplier under paragraph 9.1(2)(a).
		
		• In paragraph 9.1(2)(b), clarify how to determine or calculate the applicable interest rate of
			The Rule has been redrafted to clarify the following:
			
			• The filing requirement applies to material contracts entered into since the beginning of the last financial year ending before the date of the prospectus or before that financial year but that are still in effect at the time the prospectus is filed.
			
			• Material contracts that are entered into in the ordinary course of business do not need to be filed unless these contracts are of a type described in paragraphs 9.3(2)(a) through (f) of the Rule. We changed this list from the list in subsection 9.1(1) of the Rule published for comment, as discussed in our response in item 2.7, above.
			
			The Rule also clarifies that an issuer may redact provisions in a material contract on the grounds that disclosure would be seriously prejudicial to the interests of the issuer or would violate confidentiality provisions. Under subsection 9.3(4) of the Rule, the list of provisions that may not be redacted has been limited to the following:
			
			• Debt covenants and ratios in material financing or credit agreements.
			
			• Events of default or other terms relating to the termination of the material contract.
			
			• Other terms necessary for understanding the impact of the material contract on the business of the issuer.
			
			We added subsection 3.6(8) of the Companion Policy to provide guidance on the meaning of "terms necessary for understanding the impact of the material contract on the business of the issuer".

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		an agreement. This may be difficult on account of complex formulas.
		
		• In paragraph 9.1(2)(c), clarify meaning of "concession".
		
		• In paragraph 9.1(2)(e), clarify what type of disclosure regarding related party transactions is contemplated.
		
		• In paragraph 9.1(2)(f):
		  • Clarify meaning of "material contingency" clauses.
		  • Clarify meaning of "take-or-pay" clauses.
		
		• In paragraph 9.1(2)(g),
		  • Clarify why financing agreements are included even though they are excluded in paragraph 9.1(1)(d).
		  • Clarify meaning of "financial covenants".	

2.9 Subsection 3.6(3) of Companion Policy published for comment	*Material contracts – guidance on omission or redaction – suggested changes*	One commenter suggests that the guidance in subsection 3.6(3) of the Companion Policy be limited to those contracts entered into after the Rule comes into force. While new contracts can incorporate provisions that address the approach set out in the Companion Policy, contracts drafted prior to the introduction of the Rule do not have similar flexibility.	We added guidance in subsection 3.6(6) of the Companion Policy providing that a regulator or securities regulatory authority may consider granting an exemption to permit a provision of the type listed in subsection 9.3(4) of the Rule to be redacted in some cases.
3: Personal information form and authorization (Question 7)[3]			
3.1: Appendix A of Rule published for comment	*Personal Information Form (**PIF**) – general comments*	One commenter believes there are no practical difficulties with requiring an issuer to deliver PIFs with the first preliminary prospectus filed by the issuer. Three commenters do not support the expanded PIF in the form set	We acknowledge these comments. In response to concerns about the burden of preparing and delivering an expanded PIF, we changed the delivery requirement so that it only applies to individuals for whom an issuer has not previously delivered:

[3] Question 7:

7. Subparagraph 9.2(b)(ii) of Proposed NI 41-101 will require an issuer to deliver a completed personal information form and authorization for every individual described in this subparagraph with the first preliminary prospectus filed by the issuer after the Rule becomes effective. Please describe any significant practical difficulties an issuer may have in complying with this requirement.

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		out in Appendix A. Their reasons include the following: • Completion of a PIF in the suggested form is a time-consuming exercise, which occasionally requires hours of work on the part of those involved to collect historical information that might otherwise be considered dated. • The burden is exacerbated in the case of U.S. residents because allegations of fraud is routinely alleged in proceedings under U.S. federal securities laws. Disclosure of such allegations of alleged fraud represents a significant additional burden. • No policy reason for establishing another filing for issuers to be obligated to obtain and file if the issuer is already a reporting issuer and is listed on a Canadian exchange (or filing an initial public offering with an application to be listed on a Canadian exchange). • PIFs should only be required for initial public offerings or where there is other good reason for the regulator to need them.	(a) an expanded PIF; or (b) before March 17, 2008, an authorization to collect personal information. The information required to be included in the expanded PIF set out in Appendix A of the Rule is necessary for the regulators to determine whether to refuse receipt of a prospectus because the past conduct of the individual affords reasonable grounds for belief that the business of the issuer will not be conducted with integrity and in the best interests of its securityholders. The benefits of requiring the delivery of the information set out in Appendix A outweigh the burden of preparing and delivering the information. To further facilitate the delivery of expanded PIFs, we also made the following changes to Schedule 1 of Appendix A of the Rule: • we added a statement in bold that the expanded PIF is a confidential document, • we added instructions on how to deliver a completed Schedule 1 to the regulators, and • we changed the statutory declaration requirement to a certification requirement.
3.2: Appendix A of Rule published for comment	*PIF – suggested changes*	Two commenters suggest specific changes to the PIF set out in Appendix A: • Do not require individuals to submit two forms of PIFs (the form set out in Schedule 1 of Appendix A and the Exchange Form (as defined in Appendix A)). Should rely on the submission of the Exchange Form. • Confirm that the exchanges may continue to have the discretion to amend their Exchange Forms from time to time with no implications as to	We have the following responses to these comments: • Individuals may deliver their Exchange Form, as permitted under Schedule 1 of Appendix A of the Rule, instead of an expanded PIF. However, these individuals must deliver a separate certificate and consent with the Exchange Form. • We do not intend to change any authorized discretion of exchanges to amend their Exchange Forms. We will, however, monitor any changes to the Exchange Forms.

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		how such changes may affect the PIF. • Delete, as unnecessary, the references to TSX and TSX Venture as divisions of TSX Inc. and TSX Venture Exchange Inc., respectively. • Shorten the requirement to disclose 10 years of residential address history in the PIF because it is onerous.	• We deleted the references to TSX and TSX Venture as divisions of TSX Inc. and TSX Venture Exchange Inc. • We note that the Exchange Forms require ten years of residential address history.
3.3: Subparagraph 9.2(b)(ii) of Rule published for comment	*PIF – delivery requirement – general comments*	One commenter has no objection to the requirement provided that the form is interchangeable with the similar forms required by the Toronto Stock Exchange.	We acknowledge this comment. See our response to item 3.2, above.
3.4: Subparagraph 9.2(b)(ii) of Rule published for comment	*PIF – delivery requirement – suggested changes*	Seven commenters suggest specific changes to PIF delivery requirement: • Do not require that PIF be filed every three years. This will impose a significant administrative and timing burden on issuers. Particularly for issuers and individuals actively engaged in prospectus offerings. • Clarify that individual who holds multiple directorships does not have to file more than once every three years. • Clarify if background checks will be undertaken by securities commissions, based on information in PIF and whether the receipt of a final prospectus may be delayed while securities regulatory authorities await the results of background inquiries undertaken in other jurisdictions. • Do not require PIF from substantial beneficiaries of the offering. • Do not require PIF from promoters. • Clarify that there is no stated	We have the following responses to these comments: • See our response to item 3.1, above. • See our response to item 3.1, above. Individuals who are existing directors of a reporting issuer must provide an expanded PIF if they become a director for another issuer that files a prospectus. • The regulator may conduct background checks based on the information in an expanded PIF. The regulator will not generally delay the receipt of a final prospectus while awaiting the results of a foreign background check unless it is in the public interest to do so. • We removed the requirement for substantial beneficiaries of the offering to provide certificates. Accordingly, we also removed the requirement for substantial beneficiaries of the offering to provide an expanded PIF. • We kept the proposed requirement to provide an expanded PIF for promoters. An expanded PIF for promoters is necessary for the regulators in

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		time limit on the age of a previously filed PIF or Exchange Form when filed with a statutory declaration. • Add a transition provision indicating that the expanded PIF set out in Appendix A does not need to be delivered if a personal information form under the existing requirements (e.g. Form 41-501F2 *Authorization of Indirect Collection of Personal Information*) has been delivered in the three years previous to the applicable filing.	determining whether to refuse to issue a receipt for the prospectus because the past conduct of the promoter affords reasonable grounds for belief that the business of the issuer will not be conducted with integrity and in the best interests of its securityholders. • See our response to item 3.1, above. There is no stated time limit on the age of a previously delivered expanded PIF provided that a certificate dated within 30 days of the preliminary prospectus is attached. • See our response to item 3.1, above. Given the changes to the delivery requirement, a transition provision is unnecessary.
4: Over-allocation and Distribution of securities under a prospectus to an underwriter (Questions 8 and 9)[4]			
4.1: Section 11.2 of Rule published for comment	*Over-allocation – general comments*	One commenter generally supports this proposal. Two commenters support the change in date of determination to the closing of the offering.	We acknowledge these comments.
4.2: Section 11.3 of Rule published for comment	*Distribution of securities under a prospectus to an underwriter – general comments*	Ten commenters do not support the adoption of this requirement. Their reasons include the following: • Compensation should be a matter of negotiation between the issuer and its underwriter. Issuers try to limit compensation securities when	We changed the requirement to permit the prospectus to qualify compensation securities up to 10% of the base offering and the securities represented by the over-allotment option. See our response to item 4.3, below. The requirement limiting the

[4] Question 8 and 9:

8. Section 11.3 of Proposed NI 41-101 and the definitions of over-allocation position and over-allotment option restrict the exercise of an over-allotment option to the lesser of the underwriters' over-allocation position and 15% of the base offering. This section substantially codifies and harmonizes across Canada the existing guidance in paragraph 10 of Ontario Securities Commission Policy 5.1 Prospectuses – General Guidelines; however, the time for the determination of the over-allocation position has been moved to the closing of the offering from the close of trading on the second trading day next following the closing of the offering. We believe that this change is consistent with current industry practice. We seek comment on this change.

9. Section 11.3 of Proposed NI 41-101 permits compensation options or warrants to be acquired by an underwriter under the prospectus where the securities underlying such compensation options or warrants are, in the aggregate, less than 5% of the number or principal amount of the securities distributed under the prospectus. Is 5% an appropriate limit?

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		possible and those with greater than 5% compensation securities tend to be less known issuers with less liquidity that require more work by the underwriters. Imposition of 5% threshold is unduly restrictive and unnecessary given competitive market among underwriters.
		
		• Costs of proposal outweighs the benefits.
		  • In particular, small and mid size issuers will be adversely affected.
		  • Restricted compensation securities issued to an underwriter increases the risks to underwriters and may deter underwriters from financing issuers.
		
		• No evidence of "backdoor underwritings". If backdoor underwriting exists, the problem could be adequately addressed by a civil liability regime for secondary market disclosure.
		
		• Underwriters do not typically give up the option value of compensation warrants (typically 18 to 24 months) to realize small spread which may exist between the trading price and the new issue price at the time a prospectus distribution is being completed.
		
		• While investors who purchase securities issued from the exercise of compensation warrants may not have a right of rescission, the rights provided under civil law would protect these purchasers in the event that the prospectus does not contain full, true and plain disclosure.
		
		• Not necessary if securities will be traded on a recognized market that imposes appropriate standards of trading oversight
			compensation securities distributed under a prospectus that may be issued to a person or company acting as an underwriter does not preclude compensation securities being issued to that person or company under an exemption from the prospectus requirement. Compensation securities issued under an exemption to the prospectus requirement are subject to applicable resale restrictions under NI 45-102. Issuers and their underwriters are free to negotiate the payment of compensation securities on this basis.
			
			Under the extended definition of "distribution" in provincial and territorial securities legislation, "backdoor underwriting" occurs if securities acquired by a person or company acting as an underwriter under a prospectus are sold into the secondary market without the purchaser receiving a prospectus. The threshold in section 11.2 of the Rule is intended to reflect existing market practice.

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		• Issue of compensation securities more appropriately considered in context of regulation of securities dealers generally by their self-regulatory organization. • Proposal may prohibit underwritten financings. If underwriter is unable to sell and distribute to the public the total amount of securities agreed to, the underwriter agrees to purchase the remaining securities directly from the issuer. If the securities an underwriter may purchase under the prospectus is limited to over-allotment options and compensation securities, this may limit prospectus offerings on an underwritten basis. • May have unintended consequence of causing issuers to pay more compensation in cash.	
4.3: Section 11.3 of Rule published for comment	*Distribution of securities under a prospectus to an underwriter – suggested changes and alternatives*	Four commenters suggest specific changes to the requirement: • Require a minimum hold period of 60 days rather than cap the percentage permitted. • Calculate the percentage limit based on not only the base offering but the over-allocation position as well, to conform with market practice. • Do not include any underlying securities issueable or transferable on the exercise of compensation securities in the limit. Otherwise, this results in double counting the same securities as effectively once the compensation security is exercised and the underlying security is issued, the compensation security will no longer exist. • Clarify how to calculate limits for compensation securities in	We have the following responses to these comments: • Compensation securities acquired under an exemption from the prospectus requirement are subject to the appropriate resale restrictions under NI 45-102. There is no policy reason justifying a different hold period. • We added the term “plus any securities that would be acquired upon the exercise of an over-allotment option” immediately after “base offering” in paragraph 11.2(b) of the Rule. • We replaced the term “together with any underlying securities issuable or transferable on the exercise of any these securities (if these securities are convertible or exchangeable securities)” with “on an as-if-converted basis” in paragraph 11.2(b) of the Rule. This clarifies that we did not intend for

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		different forms, such as warrants or other exchangeable or convertible securities. • Raise the limit to 10% to facilitate fund raising for smaller issuers. The TSX Venture provides for a limit of up to 25% and market practice is to allow up to 10%.	compensation securities that are convertible or exchangeable into an underlying security to be double-counted. This also clarifies how to calculate limits on compensation securities like warrants or other exchangeable or convertible securities. • We raised the limit to 10% on the understanding that this limit reflects existing market practice.
5: Waiting period (Question 10)[5]			
5.1: Section 1.1 of Rule published for comment	*Minimum waiting period*	Four commenters support the proposal not to have a minimum waiting period. One commenter notes that the review period set out in National Policy 43-201 effectively imposes a minimum waiting period.	We acknowledge these comments.
6: Amendments to preliminary and final prospectus (Question 11)[6]			
6.1: Part 6 of Rule published for comment	*Amendments to preliminary and final prospectus*	Six commenters support the *status quo* with respect to the trigger to file amendments to preliminary and final prospectuses.	We acknowledge these comments. We are not proposing any changes to Part 6 of the Rule at this time.

[5] Question 10:

10. Proposed NI 41-101 does not impose a minimum period of time between the issuance of a receipt by the regulator for a preliminary prospectus and the issuance of a receipt by the regulator for a final prospectus (though the MRRS review timelines will remain as they are set out in NP 43-201). In Ontario, the Securities Act (Ontario) imposes a minimum waiting period of at least 10 days but the proposed local implementing rule (see Appendix L) will vary this minimum waiting period so that it may be less than 10 days. Is a minimum waiting period necessary to ensure investors receive a preliminary prospectus and have sufficient time to reflect on the disclosure in the preliminary prospectus before making an investment decision?

[6] Question 11:

11. Part 6 of Proposed NI 41-101 requires the filing of an amendment to a preliminary prospectus upon the occurrence of a material adverse change. An amendment to a final prospectus must be filed upon the occurrence of a material change. This Part codifies the existing requirements under the securities legislation of most jurisdictions. The requirements in Québec differ. An amendment to a preliminary prospectus is triggered if a material change is likely to have an adverse influence on the value or the market price of the securities being distributed and the existing requirement to amend a final prospectus is triggered if a material change occurs in relation to the information presented in the prospectus. "Material change" is not defined in Québec.

While not specifically included as an alternative in the Rule, we are soliciting your comments on whether we should instead be requiring an amendment based on the continued accuracy of the information in the prospectus. What should be the appropriate triggers for an obligation to amend a preliminary prospectus or final prospectus? Should the obligation to amend a preliminary prospectus or prospectus be determined based on the continued accuracy of the disclosure in the prospectus, rather than changes in the business, operations or capital of the issuer?

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		One commenter suggests an alternative trigger for filing an amendment could be the filing of audited annual financial statements and MD&A. Such continuous disclosure documents are deemed to be incorporated by reference into a short form prospectus. The absence of a comparable requirement in long form prospectuses means that reporting issuers distributing securities under a long form prospectus are subject to a lower level of disclosure than those under a short form prospectus. One commenter recommends requirements should be reviewed as part of an overall review of the liability provisions relating to prospectuses.	
7: *Bona fide* estimate of range of offering price or number of securities being distributed (Question 12)[7]			
7.1: Section 1.7 of Form F1 published for comment	*Pricing range – general comments*	Six commenters do not support the adoption of this requirement. Their reasons include the following: • Disclosure is not necessary for follow-on offerings. • No evidence of investor harm from non-disclosure. • Disclosure should not apply to smaller issuers. • In the United States, issuers typically do not include a price range in the registration statement containing a preliminary prospectus. Only the commercial copy of the preliminary prospectus filed	In light of these comments, we limited the requirement to disclose, in a preliminary prospectus, the offering price or the number of securities being distributed, or an estimate of the range of the offering price or the number of securities being distributed, to those instances where the issuer has already publicly disclosed this information in a jurisdiction or a foreign jurisdiction. We also added subsection 4.2(2) of the Companion Policy to provide further guidance regarding our concerns about disclosure of this information on a selective basis.

[7] Question 12:

12. We are proposing to require disclosure in the preliminary prospectus of a bona fide estimate of the range within which the offering price or the number of securities being distributed is expected to be set.

We are also considering adding a requirement to provide disclosure throughout a preliminary prospectus based on the mid-point of the disclosed offering price range or number of securities. This would require that the consolidated capitalization table, earnings coverage ratios and any pro forma financial information in the preliminary prospectus be calculated and disclosed using the mid-point of the offering range rather than being bulleted. Would such a requirement be appropriate ?

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		and printed prior to the roadshow would contain the price range. • As a result, issuers should only be required to include the range in an amended and restated preliminary prospectus that is being printed prior to the roadshow for consistency with the U.S. approach. • If price range is provided in an amendment instead of the preliminary, there may not be any benefit for investors. Issuers would have higher costs and more time (to print and re-circulate the amendment) without any tangible benefit to investors. CSA should undertake cost-benefit analysis to ensure added costs are justified. Two commenters support the adoption of this requirement. Such information is important to investors making informed investment decisions and the initiative will be helpful to the marketplace. Disclosure in the preliminary prospectus in the consolidated capitalization table, earnings coverage ratios and *pro forma* financial information should be calculated and disclosed using the mid-point of the pricing range. Such information is helpful to investors in understanding the effects that the offering will have on the issuer. Pricing outside the disclosed ranges may be a material adverse change in respect of the issuer and may require an amendment to the preliminary prospectus be filed. Such potential will serve as an incentive to issuers to consider, with the help of their advisers, a realistic set of estimates regarding an offering's pricing terms.	
7.2: Section 1.7 of Form F1 published for comment	*Pricing range – suggested changes and alternatives*	Two commenters note that the guidance in section 4.2 of the Companion Policy states that the difference between the estimate and the actual offering price or	We replaced the term "generally" with "in itself". We changed the requirement so that an issuer must only disclose a

Item	*Subject*	*Summarized Comment*	*CSA Response*
		number of securities being distributed is not generally a material adverse change. The commenters suggest the following changes: • Delete the term "generally" in section 4.2 of the Companion Policy and replace it with the term "in itself". • Require an amendment if the actual offering price is more than a specific percentage (e.g. 5% or 10%) outside of the high- or low-end of the estimated range. Two commenters suggest that issuers should have a right but not the obligation to provide disclosure of an estimated range.	pricing range if it was disclosed before the filing of the preliminary prospectus. See our response to item 7.1, above. As per the guidance in subsection 4.2(1) of the Companion Policy, a difference between an estimate and the actual offering price or number of securities being distributed is not, in itself, a material adverse change for which the issuer must file an amended preliminary prospectus. However, a significant difference between the actual offering price and an estimate may indicate an underlying material change requiring the filing of an amended preliminary prospectus. A specific percentage is inappropriate in these cases because issuers are responsible for determining whether an underlying material change has occurred.
8: Two years' financial statement history (Question 13)[8]			
8.1: Item 32 of Form F1 published for comment	*Two years' financial statement history*	Six commenters support this requirement.	We acknowledge these comments.

[8] Question 13:

13. We are proposing to harmonize the requirements between the short form and long form prospectus systems for reporting issuers and therefore, propose that reporting issuers using the long form prospectus system be required to include only two years' financial statement history in the prospectus as opposed to three years' history on the basis that prior years' history is readily available on SEDAR. Do you agree that reporting issuers using the long form system should only have to provide the same number of years financial history they would normally provide under the short form system?

Reference	*Subject*	*Summarized Comment*	*CSA Response*
Part B: Comments on other NI 41-101 matters			
9: General			
9.1: Rule published for comment	*Harmonization – general comments*	Twelve commenters support the efforts to harmonize prospectus requirements across the country.	We acknowledge these comments.
9.2: Rule published for comment	*Harmonization – Ontario carve-outs – general comments*	Eight commenters do not support the Ontario carve outs. Their concerns include the following: • Inconsistent with stated purpose of harmonizing and consolidating prospectus requirements. • Increases complexity and cost. • Non-level regulatory playing field among jurisdictions may result in investors in different jurisdictions having varying rights and opportunities. • Certain carve-outs may not even be effective. For example, persons who are obligated to sign certificates under the requirements in other jurisdictions may be liable in Ontario despite carve-out. To avoid application in Ontario, issuer would have to file one prospectus in Ontario and another in all other Canadian jurisdictions, which would run counter to the goal and stated purpose of streamlining the financing process. Two commenters urge the Ontario Securities Commission to move quickly to obtain any rulemaking necessary to eliminate these carve-outs.	We acknowledge these comments.
9.3: Rule published for comment	*Harmonization – Ontario carve-outs – other comments*	Two commenters suggest that the notes and explanations contained throughout the Rule that describes the situation in Ontario be retained.	We acknowledge these comments. The notes and explanations remain in the Ontario version of the Rule.

Reference	*Subject*	*Summarized Comment*	*CSA Response*
9.4: Rule	*Exchange requirements*	One commenter suggests that certain CSA members encourage their respective Exchanges to update their policies, manuals and forms to conform to the changes adopted in the Rule.	We acknowledge this comment. We have an ongoing dialogue with each of the Exchanges that includes discussions regarding any required updating of their policies, manuals and forms to reflect changes in provincial and territorial securities legislation.
9.5: Rule	*Prospectus liability regime*	One commenter suggests the CSA consider the appropriateness of amending the primary offering civil liability regime, which is based on certification, to more closely reflect the secondary market civil liability regime introduced in Ontario and certain other provinces.	We acknowledge this comment. Amending the primary offering civil liability regime is beyond the scope of the Rule.
9.6: Rule	*Electronic roadshow materials and cross-border initial public offerings*	One commenter notes an inconsistency between Canadian and U.S. securities law, which requires Canadian underwriters who want to utilize electronic roadshow materials to seek exemptive relief. Exemptive relief granted has required issuer and underwriters to provide purchasers with a contractual right of action equivalent to the statutory rights under section 130 of the *Securities Act* (Ontario) applicable to any misrepresentation in the roadshow materials. Exemption orders have not specified as of what date or time such liability attaches to the materials. Exemption orders do not contain any provision for updating or correcting the information to which liability attaches after the completion of the roadshow. Suggest that Rule should contain express provisions allowing for use of an electronic roadshow in cross-border initial public offerings. If contractual rights of action are required, the materials and the prospectus should be considered as a whole, which can be updated or corrected through amendments to the preliminary prospectus or through the final prospectus, as necessary.	We acknowledge this comment. It is premature to propose rules regulating electronic roadshows based on the limited number of exemptive relief applications that have been filed to date. We will continue to monitor these types of applications and will consider proposing requirements codifying any relief granted, as appropriate. Also, see our response to item 12.11, below.
10: Rule - specific sections			
10.1: Section 1.1 of	*Definitions*	Two commenters suggest changes to the following	We have the following responses to these comments:

Reference	*Subject*	*Summarized Comment*	*CSA Response*

Rule published for comment		definitions in Part 1:
		• "Derivative":
		  • conform to definition of "specified derivative" in section 1.1 of NI 81-102;
		  • carve-out convertible debt, floating rate notes or exchangeable securities.
		• "Executive officer": carve-out chair or vice-chair who do not serve in full-time capacity.
		• "IPO venture issuer":
		  • clarify whether reference to "U.S. marketplace" includes an issuer trading on the OTC Bulletin Board or the Nasdaq Small Cap Market;
		  • clarify whether reference to "a marketplace outside of Canada" includes issuers listed and posted for trading on the Regulated Unofficial Market of the Frankfurt Stock Exchange or the Unofficial Regulated Market of the Berlin-Bremen Stock Exchange;
		  • reference to "OFEX" should be to its new name, "PLUS MARKET".
		• "Junior issuer":
		  • limit requirement to make adjustments for acquisitions to significant acquisitions or significant probable acquisitions of a business;
		  • provide additional guidance on how these adjustments are to be made.
		• "Principal securityholder":
		  • carve-out underwriters and those holding securities as collateral;
		  • should be determined based on voting rights attached to "all voting securities" (not based on voting rights attached to any class of voting securities).
			• We kept the proposed definition of "derivative". This definition is identical to the one in existing NI 44-101. Disclosure of the material attributes of "derivatives" is required under section 10.4 of Form F1. There is no policy reason to exclude convertible debt, floating rate notes, exchangeable securities, or the securities listed in section 1.1 of NI 81-102 from these disclosure requirements. For investment funds, see our response in item 15.1, below.
			• We kept the proposed definition of "executive officer". This definition is used in a number of disclosure items under Form F1, including the interests of management and others in material transactions. We decided to require this disclosure irrespective of whether the chair or vice chair is serving in a full- or part-time capacity.
			• In the definition of "IPO venture issuer":
			  • We kept the proposed reference to "U.S. marketplace". Under the Rule, "U.S. marketplace" has the same meaning as in NI 51-102. A U.S. marketplace means an exchange registered as a "national securities exchange" under section 6 of the 1934 Act, or the Nasdaq Stock Market". The SEC publishes the names of the registered national securities exchanges on its website. The Nasdaq Stock Market currently has three tiers of listed companies: The Nasdaq Global Select Market (formerly known as the Nasdaq National Market), The Nasdaq Global Market and The Nasdaq Capital Market (formerly known as the Nasdaq SmallCap Market). The OTC Bulletin Board is separate and distinct from the Nasdaq Stock Market. It does not currently fall into the definition of "U.S. marketplace".
			  • We kept the proposed references to "listing or quoting

Reference	*Subject*	*Summarized Comment*	*CSA Response*

		• "Probable reverse takeover": change reference to "acquisition" to "probable reverse takeover".
		
		• "Special warrant":
		  • in paragraph (a), add the term "by the issuer" after "other security";
		  • in paragraph (b), add the term "from the issuer" after "material additional consideration";
		  • clarify that the definition does not apply to secondary offerings.
			on a marketplace outside of Canada". In item A-5 of CSA Staff Notice 51-311, CSA staff stated that they determined that trading on the Regulated Unofficial Market of the Frankfurt Stock Exchange (now known as the Open Market) or the Unofficial Regulated Market of the Brelin-Bremen Stock Exchange does not constitute listing or quotation.
			• We changed the reference to "the market known as OFEX" to "the PLUS markets operated by PLUS Markets Group plc". This is consistent with the amendments to the definition of "venture issuer" in NI 51-102 that will become effective on December 31, 2007.
			
			• We changed the definition of "junior issuer" to limit the requirement to make adjustments for acquisitions to significant acquisitions or significant probable acquisitions of a business and to provide additional guidance on how these adjustments are to be made.
			
			• We kept the proposed definition of "principal securityholder". Determination by class of voting security is consistent with the requirement under section 6.5 of 51-102F5 and section 15.1 of Rule 41-501. A carve out for underwriters is not appropriate especially given the limitation under section 11.2 of the Rule.
			
			• We removed the definition of "probable reverse takeover" from the Rule.
			
			• We kept the proposed definition of "special warrant". Paragraph (a) of the definition is identical to the definition in existing NI 44-101. We added paragraph (b) of the definition to clarify that special warrants include voluntary filings of a prospectus by the issuer to qualify the distribution of the other security.

Reference	***Subject***	***Summarized Comment***	***CSA Response***
10.2: Section 1.5 of Rule published for comment	*Interpretation of "payments to be made"*	One commenter asks how this provision would apply to payments where the amount is discretionary. Also, credit support for subordinated debt should be allowed to be given on a subordinated basis.	Full and unconditional credit support includes discretionary dividends to be made by the issuer of securities if the terms of the securities or an agreement governing rights of holders of the securities expressly provides that the holder of such securities will be entitled, once the discretionary dividend is declared, to receive payment from the credit supporter within 15 days of any failure by the issuer to pay the declared dividend. We added clarifying language to section 1.5 of the Rule. The definition of "full and unconditional credit support" does not preclude indebtedness that may be secured by a subordinated guarantee.
10.3: Subsection 2.2(3) of Rule published for comment	*Language*	One commenter asks for clarification that, in Québec, the documents must be in French or two separate versions, one in French and one in English. Provision appears to imply that one document in both languages may have to be filed.	In Québec, the prospectus and documents required to be incorporated by reference must be in French or in French and English. They are usually filed as separate documents. Further clarification is unnecessary.
10.4: Section 4.2 of Rule published for comment	*Audit of financial statements*	One commenter suggests that pro forma financial statements be specifically carved out of these provisions as they are not audited.	We added subsection 4.1(3) to the Rule to clarify that pro forma financial statements are not subject to Part 4, including the audit requirement in section 4.2 of the Rule.
10.5: Section 4.4 of Rule published for comment	*Approval of financial statements and related documents*	One commenter suggests that subsection 4.4(1) should indicate what type of approval is required where the issuer does not have a board of directors. Subsection 4.4(2) should also take into consideration delegation by other means other than by constating documents (e.g. through a contract or agreement).	We kept the proposed requirements. With respect to subsection 4.4(1) of the Rule, the definition of "director" under provincial and territorial securities legislation includes a person acting in a capacity similar to that of a director of a company. This requirement is substantially similar to the requirement in Part 10 of Rule 41-501. With respect to subsection 4.4(2) of the Rule, if there is delegation of authority it should be included in the constating documents.
10.6: Paragraph 5.5(2)(b) of Rule published for comment	*Trust issuer*	Eleven commenters express concerns about the application of this paragraph to a corporate trustee that is a regulated trust company. Typically, the	We added subsection 5.5(4) to the Rule to clarify that regulated trust company trustees that do not perform functions for the issuer similar to those performed by the directors of a

Reference	*Subject*	*Summarized Comment*	*CSA Response*
		declaration of trust delegates responsibility for executing prospectus certificates to an operating subsidiary. In performing its duties, the regulated trust company and its officer and directors would not be in a position to execute a prospectus certificate. Eight commenters suggest the following changes to this requirement: • Add the term "or by any two individuals who perform functions similar to those performed by the directors of a company" to paragraph 5.5(1)(b). • Provide an exemption similar to that applicable to investment funds for trust issuers that meet the same criteria. All trusts should be permitted to delegate the authority to sign a trust certificate to another entity, such as a management company, by way of the declaration of trust or other agreement. • Provide a transition period. This will allow trust issuers to call a meeting of unitholders to reorganize the trust.	company are not required to sign the certificate provided that two individuals who do perform these functions sign the certificate. We added subsection 2.6(3) to the Companion Policy to provide guidance that a certificate signed by an agent or attorney of the trustee would not be acceptable in the absence of relief from the requirements of section 5.5 of the Rule. We also added subsection 2.6(4) of the Companion Policy to clarify that in a situation where a regulated trust company is a trustee but does not perform functions similar to those of corporate directors, the regulated trust company and its officers and directors are not required to sign a prospectus certificate if two other individuals who perform those functions do provide a certificate. In light of these changes, the other suggested changes are unnecessary.
10.7: Section 5.8 of Rule published for comment	*Reverse takeovers*	Two commenters believe this requirement is onerous. The requirement is especially onerous for reverse takeovers involving large and sophisticated entities. Requiring each director and officer to sign a certificate does not serve any purpose other than to impose liability on those individuals and, typically, those individuals are protected from personal liability through corporate indemnities and directors' and officers' insurance. Accordingly, the commenter recommends that the requirement be for one authorized signatory to execute the certificate on behalf of the reverse takeover acquirer (similar to the approach taken with respect to promoters).	In response to this comment, we changed section 5.8 of the Rule to require, except in Ontario, the chief executive officer and the chief financial officer of the reverse takeover acquirer to sign a certificate. We also changed section 5.8 of the Rule to require, except in Ontario, two directors of the reverse takeover acquirer to sign a prospectus certificate on behalf of the board of directors of the reverse takeover acquirer.

Reference	*Subject*	*Summarized Comment*	*CSA Response*
10.8: Section 5.11 of Rule published for comment	*Certificate of promoter*	One commenter submits that the requirement in subsection 5.11(4) is overreaching because promoters may have control persons who are passive investors. The requirement may be appropriate in situations in which the regulator reasonably determines that a person or company is attempting to avoid prospectus liability merely through the insertion of a holding company. However, the existing definition of promoter may be broad enough to capture these situations. The commenter suggests subsection 5.11(4) be deleted and appropriate guidance and policy be set forth in the Companion Policy. One commenter suggests that guidance be provided as to when regulators intend on requiring additional certificates from control persons under subsection 5.11(4).	We removed subsection 5.11(4) of the Rule that was published for comment. We added guidance to subsection 2.6(1) of the Companion Policy to clarify that public interest concerns may also arise where it appears a person or company is organizing its business and affairs to avoid a requirement to sign a prospectus certificate or to avoid prospectus liability.
10.9: Section 5.14 of Rule published for comment	*Certificate of selling securityholders*	One commenter suggests that guidance be provided as to when regulators intend on requiring additional certificates from control persons under this section.	We removed the requirement for control persons of selling securityholders to provide certificates under section 5.14 of the Rule published for comment. Under section 5.13 of the Rule, a regulator, other than in Ontario, <u>may</u> require a selling securityholder certificate. Regardless of whether they provide a certificate, selling securityholders are liable under provincial and territorial securities legislation. We added subsection 2.6(6) of the Companion Policy to provide further guidance on the circumstances under which a regulator may require a prospectus certificate from the selling securityholder.
10.10: Section 5.15 of Rule published for comment	*Certificate of operating entity*	One commenter believes this requirement is overly burdensome. Two commenters suggest that the requirement be for one authorized signatory to execute the certificate on behalf of the operating entity.	In response to this comment, we changed section 5.14 of the Rule to require the chief executive officer and the chief financial officer of the operating entity to sign a certificate. We also changed section 5.14 of the Rule to require two directors of the operating entity to sign a prospectus certificate on behalf of the board of directors of the operating entity.

Reference	*Subject*	*Summarized Comment*	*CSA Response*
10.11: Section 5.16 of Rule published for comment	*Certificate of other persons – general comments*	Two commenters do not support adopting this requirement. • Securities legislation in most provinces already provide regulators with the discretion to refuse to issue a receipt for a final prospectus if it is not in the public interest to do so. • Under this provision, regulators will have the power to require certification of a prospectus in ways that were entirely unintended. • Unlike the corresponding power to refuse receipt of a prospectus, there is no right to be heard in the event that a person required to certify a prospectus disagrees with the regulator. • Unfettered and discretionary nature of such certification requirements reduces transparency and certainty in public offerings.	We kept the proposed requirement. The requirement to provide a certificate for any person or company at the discretion of the regulator is an existing requirement under certain securities legislation. If the exercise of discretion results in receipt refusal, there is a right to a hearing.
10.12: Section 5.16 of Rule published for comment	*Certificate of other persons – alternative*	One commenter suggests, in lieu of adopting the requirement, adding guidance to the Companion Policy that the regulator will not exercise this power unless it is in the public interest to do so.	We added subsection 2.6(2) of the Companion Policy to provide further guidance that the exercise of this discretion will generally be informed by pubic interest concerns, including those discussed in subsection 2.6(1) of the Companion Policy.
10.13: Section 6.2 of Rule published for comment	*Required documents for filing an amendment*	One commenter suggests that consent letters be required to be filed again with an amendment only where the original consent letters are no longer correct as of the date of the amendment.	We kept the proposed requirement. The nature of consent letters is such that they must be current as of the date of the amended prospectus.
10.14: Section 6.3 of Rule published for comment	*Auditor's comfort letter*	One commenter suggests deleting "relates to" and replacing it with "affects".	We added the term "materially affects or" immediately before "relates to" in section 6.3 of the Rule. This is identical to the language in section 5.3 of existing NI 44-101.
10.15: Section 6.6 of Rule published for comment	*Amendment to a final prospectus – general comment*	One commenter notes that this provision may make a prospectus distribution illegal where a material change has occurred, even where the material change occurred on	A material change is generally limited to "a change in the business, operations or capital of the issuer". We also note that section 4.2 of NP 51-201 provides guidance on materiality

Reference	*Subject*	*Summarized Comment*	*CSA Response*
		account of circumstances outside the control of the issuer and/or where the issuer is not aware of the material change while it is in the process of distribution. This may result in disproportionate and unfair impact on underwriters.	determinations and section 4.3 of NP 51-201 provides examples of potentially material information. Under this definition, as supplemented by this guidance, it is unlikely that a material change will occur without the issuer's knowledge.
10.16: Section 6.6 of Rule published for comment	*Amendment to a final prospectus – suggested change*	One commenter suggests adding "by the issuer" after "are to be distributed" in subsection 6.6(2).	We kept the proposed requirement.
10.17: Section 7.2 of Rule published for comment	*Non-fixed price offerings and reduction of offering price*	One commenter notes that this section is tighter than under current rules as section 1.5 of NI 41-501 (sic) does not contain a requirement to distribute at a fixed price. The commenter asks how this may affect the issuance of debt securities on an accrued interest basis.	We kept the proposed requirement. This section is consistent with the current rules. Under section 11.1 of Rule 41-501, a person or company distributing securities under a prospectus must do so at a fixed price. We are not aware of any difficulties in complying with the current requirement in respect of debt securities issued on an accrued interest basis.
10.18: Section 8.2 of Rule published for comment	*Minimum amount of funds*	One commenter suggests that funds should be returned to subscribers without any interest.	We kept the proposed requirement. Section 8.3 of the Rule does not mandate the payment of interest. Precluding the payment of interest would restrict market practices without any offsetting benefits to investors.
10.19: Subparagraphs 9.3(a)(xi), (xii) and (xiii) of Rule published for comment	*Undertaking in respect of continuous disclosure – undertaking to file documents and material contracts – undertaking in respect of restricted securities*	One commenter suggests it would streamline the long form prospectus filing process if the filing of these undertakings was eliminated and the subject matter of the undertakings simply included as requirements imposed by the Rule or NI 51-102, as applicable.	We kept the proposed requirement. Undertakings are more effective in dealing with policy concerns regarding a specific class of issuer without imposing general requirements that should not apply to many issuers. Undertakings can also be adapted to the specific circumstances of a particular issuer.
10.20: Subparagraph 9.3(a)(xi) of Rule published for comment	*Undertaking in respect of continuous disclosure*	Two commenters believe that the requirement should only apply if an issuer is not required to consolidate results of the operating entity in an issuer's consolidated financial statements and disclosure.	We kept the proposed requirement. All income trust issuers must file this undertaking at the time of filing a final long form prospectus. However, the undertaking can specify that separate financial statements of the operating entity will only apply in instances when generally accepted accounting principles prohibit the consolidation of the operating entity and the income trust.

Reference	*Subject*	*Summarized Comment*	*CSA Response*
10.21: Subparagraph 9.3(a)(xiii) of Rule published for comment	*Undertaking in respect of restricted securities*	One commenter notes that this provision should also be subject to the same definition of "non-voting security" as set out in subsection 12.1(1) of the Rule.	We moved the definition of "non-voting security" to section 1.1 of the Rule.
10.22: Subparagraph 9.3(b)(ii) of Rule published for comment	*Communication with exchange*	One commenter believes that this requirement should only apply where application has been made to list securities on a Canadian exchange because it may be difficult to obtain such communication from exchanges outside of Canada.	We changed the requirement in subparagraph 9.2(b)(ii) of the Rule to limit it to Canadian exchanges.
10.23: Section 10.2 of Rule published for comment	*Licenses, registrations and approvals*	Two commenters express concerns about this requirement. Certain issuers will need to use funds held in trust to pay for any material licenses, registrations and approvals. Certain licenses, registrations and approvals may take many years to obtain (well beyond the time limit specified). One commenter suggests that funds should be returned to subscribers without any interest.	We changed the requirement in section 10.2 of the Rule so that it only applies if the proceeds of the distribution will be used to substantially fund a material undertaking that would constitute a material departure from the business or operations of the issuer and the issuer has not obtained all material licences, registrations and approvals necessary for the stated principal use of proceeds. We also added section 3.12 of the Companion Policy to provide further guidance on this requirement. Section 10.2 of the Rule does not mandate the payment of interest. Precluding the payment of interest would restrict market practices without any offsetting benefits to investors.
10.24: Subsection 11.1(2) of Rule published for comment	*Over-Allocation and Underwriters – Definitions*	One commenter suggests replacing the term "closing of a distribution" with "completion of a distribution".	We kept the proposed requirement. There is no policy reason supporting the suggested change.
10.25: Section 12.1 of Rule published for comment	*Restricted securities – application and definitions*	One commenter suggests the following drafting changes: • In the definition of "restricted security reorganization": carve out an increase in the restricted class of securities itself from the list of items that will be considered a restricted security reorganization (track subparagraph (b)(i) under definition of "reorganization" in OSC Rule 56-501). • In the definition of "restricted	We have the following responses to these comments: • We moved the definitions in Part 12 of the Rule to section 1.1 of the Rule. • In the definition of "restricted security reorganization", we added the term "other than a restricted security". • In the definition of "restricted voting security": • We added the term "or

Reference	*Subject*	*Summarized Comment*	*CSA Response*
		voting security": • in paragraph (a), add "or regulation or policy" after "statute"; • the reference to securities that may be "voted" does not conform to the wording in paragraph 12.1(2)(b), which also references securities that are "owned". • In paragraph 12.1(2)(c), replace the term "governing" with the term "applicable to".	regulation", immediately after "statute". Restrictions should not be permitted or prescribed by policies. • We added the term "or owned" immediately after "that may be voted". • We kept the proposed language in paragraph 12.1(c) of the Rule. The term "governing" is used in paragraph 1.2(1)(c) of OSC Rule 56-501.
10.26: Section 12.3 of Rule published for comment	*Restricted securities – prospectus filing eligibility*	Two commenters express concerns about the shareholder approval requirement. • Requirement to seek approval for prospectus distribution on class basis has undesirable impact on small companies that do not meet the definition of "private issuers" and were not reporting issuers at the time of the reorganization which created the restricted securities. • Issuance of securities is a business decision which corporate law has always recognized as within the authority of the directors of the corporation. • Why should issuance of securities that have less rights than the currently issued and outstanding shares be subject to shareholder approval when the issuance of the same class of shares with the same rights is not?	We kept the proposed requirements. The purpose of the Rule is to codify existing rules and harmonize requirements across jurisdictions in Canada. A re-examination of the underlying principles relating to shareholder approval for restricted securities is beyond the scope of the Rule. Relief from the requirements for certain issuers may be appropriate depending on specific facts and circumstances. Appropriate relief will be considered on a case-by-case basis.
10.27: Section 12.3 of Rule published for comment	*Restricted securities – prospectus filing eligibility*	One commenter suggests the following drafting changes: • In paragraph 12.3(1)(a), the reference in the first line should be to prior majority approval of the "voting" securityholders. • In paragraph 12.3(1)(a), the term "control person" should	We have the following responses to these comments: • We kept the proposed language. Prior majority approval should be obtained from any securityholders of the issuer required under applicable law even if applicable law requires majority approval by "non-voting" securityholders.

Reference	*Subject*	*Summarized Comment*	*CSA Response*
		be defined. • In paragraph 12.3(1)(a) and subparagraph 12.3(1)(b)(i), the phrase "in accordance with applicable law" does not indicate whether it would include requirements imposed by stock exchanges outside applicable law. • In subparagraph 12.3(1)(b)(iii), the term "or business reason" should be deleted. • Paragraphs 12.3(2)(a) and (c) should be limited by the term "to the extent known by the issuer after reasonable inquiry" (similar to paragraph 12.3(2)(b)).	• We kept the proposed language. The term "control person" is defined under provincial and territorial securities legislation. • We kept the proposed language. Requirements imposed by stock exchanges outside applicable law should not affect the approval by the securityholders of the issuer in accordance with applicable law. • We kept the proposed language. We see no policy reason to delete the term "or business reason". • We added the term "to the extent known to the issuer after reasonable inquiry" immediately after "or notice" in paragraph 12.3(2)(a) of the Rule and immediately after "the approval" in paragraph 12.3(2)(c) of the Rule.
10.28: Sections 13.1 and 13.2 of Rule published for comment	*Legend for communications during the waiting period – legend for communications following receipt for the final prospectus*	One commenter notes the term "permitted or not prohibited" as used in these sections is vague and unclear. In this respect, the commenter also notes that it is also unclear as to exactly what type of information is permitted or not prohibited under paragraph 65(2)(a) of the *Securities Act* (Ontario). One commenter suggests adding the term "generally" immediately after the term "as that used" in subsections 13.1(2) and 13.2(2). This would clarify that the size of text used in headings is not contemplated under these requirements.	We deleted the term "permitted or not prohibited". Though certain sections in some of our securities acts, including the one cited by the commenter, only specify what is "permissible" during the waiting period, the prospectus requirement and the broad definition of a "trade" under securities legislation mean that other activities that constitute a trade are prohibited. The deletion of the term "permitted or not prohibited" should not be read to mean that sections 13.1 and 13.2 of the Rule permit activities that are otherwise prohibited under securities legislation. We made the suggested changes to subsections 13.1(2) and 13.2(2) of the Rule.

10.29: Section 17.2 of Rule published for comment	*Lapse date*	One commenter suggests the following changes:
		
		• In subsection 17.2(2),
		  • the term "the distribution of" should be added after "with reference to";
		  • the term "that has been qualified under a prospectus," should replace the term "that is being distributed under applicable securities legislation or the
			We have the following responses to these comments:
			
			• We made the suggested changes to subsection 17.2(2) of the Rule.
			
			• In paragraphs 17.2(4)(b) and (c) of the Rule, we added the term "final" immediately after "new".

Reference	*Subject*	*Summarized Comment*	*CSA Response*
		Instrument". • In paragraphs 17.2(4)(b) and (c), the term "prospectus" should expressly state whether it is a "preliminary" or a "final" prospectus, given the interpretation of the term "prospectus" under subsection 1.2(1).	
10.30: Subparagraph 19.3(2)(a)(ii) of Rule published for comment	*Evidence of exemption*	One commenter recommends that the letter and acknowledgement be required to be filed on SEDAR.	We kept the proposed requirement. Section 31.1 of Form F1 requires disclosure of all exemptions granted to the issuer which are to be evidenced by the issuance of a receipt for the prospectus. Section 39.1 of Form F2 includes a similar requirement.
10.31: Section 20.1 of Rule published for comment	*Applicable rules*	One commenter asks for clarification how the Rule would apply to a distribution that was qualified by a prospectus prior to the Rule becoming effective that has not been completed at the time the Rule comes into force or to provisions relating to custodianship of portfolio assets, etc.	We added subsection 20.1(2) to the Rule to clarify that securities legislation in effect at the date of the issuance of a receipt for a preliminary prospectus applies to a distribution qualified by the preliminary prospectus and a final prospectus in certain circumstances.
11: Form F1 - specific sections			
11.1: General Instruction (9) of Form F1 published for comment	*Significance*	One commenter asks for clarification of how significance will be determined.	We kept the proposed requirement. To facilitate the disclosure of certain information required under Form F1, we do not generally require it to be updated to the prospectus date. Issuers should use their judgement, however, in determining whether a change in any information required to be provided as at a date before the prospectus date is significant and should be updated.
11.2: Sections 1.1 and 1.2 of Form F1 published for comment	*Required statement and preliminary prospectus disclosure*	One commenter suggests that the requirement should be to state language substantially similar to that which is set out (as opposed to requiring the exact language) to accommodate multi-national and/or cross border offerings.	We kept the proposed requirement. Though the prospectus must contain the stated language, this disclosure requirement does not preclude additional language necessary for multi-national or cross border distributions. Issuers should apply for exemptive relief to be evidenced by the receipt of the prospectus if the prospectus will include language that is inconsistent with the stated language.

Reference	*Subject*	*Summarized Comment*	*CSA Response*
11.3: Section 1.1 of Form F1 published for comment	*Disclosure of underwriter compensation options*	One commenter suggests adding a specific requirement to disclose underwriter compensation options (similar to the requirement under subsection 1.4(8) of Form 41-501F1 *Information Required in a Prospectus* (**Form 41-501F1**)).	Underwriter compensation options must be disclosed in the table required under subsection 1.11(6) of Form F1. We added an instruction to this subsection requiring disclosure of whether the prospectus qualifies the grant of all or part of the compensation securities and providing a cross-reference to the applicable section of the prospectus where information about the compensation securities is provided.
11.4: Subsection 1.4(2) of Form F1 published for comment	*Distribution*	One commenter believes that it is inappropriate for this subsection to apply to securities acquired in the secondary market. If an interim misrepresentation results, this section would impose damages or rescission rights against an issuer who had received no proceeds.	We kept the proposed requirement. At closing, the purchasers under the prospectus have no way of knowing whether they are purchasing securities under the base offering or securities that may be backed by an over-allotment option. Accordingly, all of these purchasers should be entitled to damages against an issuer in the event of a misrepresentation in the final prospectus.
11.5: Section 1.9 of Form F1 published for comment	*Market for securities*	One commenter asks for clarification of whether the requirement in subsection 1.9(1) is to disclose Canadian exchanges and quotation systems only. One commenter suggests that the disclosure required under subsection 1.9(3) also be provided if no market for the securities currently exists (similar to subsection 1.7(3) of Form 41-501F1).	The requirement to identify exchanges and quotation systems is not limited to Canadian exchanges and quotation systems. Further clarification is unnecessary. We added the term “exists or” immediately after “distributed under the prospectus” in subsection 1.9(3) of Form F1.
11.6: Section 1.11 of Form F1 published for comment	*Underwriter(s)*	One commenter suggests the following changes: • In the first column, disclosure of any option granted by the issuer or insider of the issuer, total securities under option and other compensation securities should be limited to those that are issuable “to underwriters”; • In the second column, replace the term “held” with the term “available”.	We have the following responses to these comments: • We added the term “to underwriter” immediately after “insider of issuer”, and the term “issuable to underwriters” immediately after “under option” and “compensation securities”, in the first column in subsection 1.11(6) of Form F1. • We replaced the term “held” with “available” in the second column in subsection 1.11(6) of Form F1.

Reference	*Subject*	*Summarized Comment*	*CSA Response*
11.7: Section 1.13 of Form F1 published for comment	*Restricted securities*	One commenter suggests that the issuer should be able to describe the restricted securities by the term used in the constating documents to the extent it differs from the required restricted security term, at least once in the prospectus (similar to subsection 2.3(2) of OSC Rule 56-501).	We kept the proposed requirement. The exemption provided under subsection 2.3(2) of Rule 56-501 is set out in subsection 12.2(3) of the Rule.
11.8: Section 3.1 of Form F1 published for comment	*Summary of prospectus*	One commenter notes that in most circumstances none of the information appearing in a typical summary of financial information can be accurately described as "audited". The commenter suggests the addition of an instruction to Item 3, illustrating how the requirement in subsection 3.1(2) may be satisfied. For example, by specifically noting that information has been extracted from the audited financial statements of the issuer. One commenter asks for clarification of the "source" of the financial information required to be disclosed in subsection 3.1(2). One commenter suggests that subsection 3.1(3) should also account for information that is included by reference in the prospectus.	We kept the proposed requirement. The extraction of information from "audited" financial statements and the appropriate labelling of this information is within the purview of the Canadian Institute of Chartered Accountants. We changed paragraph 3.1(2)(a) of Form F1 to clarify that the "source" is information that appears elsewhere in the prospectus from which the financial information is based. We kept the proposed requirement. There is no provision that permits the incorporation by reference of information in a long form prospectus prepared in accordance with Form F1.
11.9: Section 4.2 of Form F1 published for comment	*Intercorporate relationships*	One commenter suggests the following changes: • In paragraph 4.2(2)(c), add the term "formed or organized" to account for subsidiaries that may not be corporate entities. • In subsection 4.2(4), the carve-outs should also apply if, prior to filing the prospectus, there has been a restructuring or other transaction that would result in a subsidiary not being required to be disclosed if these thresholds are calculated as of a more recent date.	We have the following responses to these comments: • We made the suggested change. We also added General Instruction (13) to Form F1 to clarify that any disclosure requirements regarding "subsidiaries" also applies to business organizations that are not companies. • We kept the proposed requirement. The requirement to describe intercorporate relationships is harmonized with section 3.2 of Form 51-102F2 and is not overly onerous.
11.10: Subsections 5.1(2) and (3) of	*Describe the business*	One commenter suggests the disclosure required by these subsections should be limited to	We added General Instruction (14) to Form F1 to clarify that any disclosure requirement substantially similar to a

Reference	*Subject*	*Summarized Comment*	*CSA Response*
Form F1 published for comment		the extent that it is material.	disclosure requirement in Form 51-102F2 may be omitted provided that: (a) the disclosure may be omitted under Form 51-102F2; and (b) the disclosure is not necessary to provide full, true and plain disclosure of all material facts relating to the securities being distributed.
11.11: Subsection 5.2(3) of Form F1 published for comment	*Three-year history*	One commenter believes that issuers should not be required to disclose such forward looking information unless defences for forward-looking disclosure are made available.	We kept the proposed requirement. Disclosure of changes in the issuer's business that the issuer expects will occur during the current financial year is fundamentally important even if defences for this forward-looking information are not available. This same requirement is in section 5.1 of Form 41-501F1 and section 4.1 of Form 51-102F2. Section 11.1 of Form 44-101F1 generally requires an issuer to incorporate by reference the disclosure in a Form 51-102F2 into a short form prospectus.
11.12: Sections 5.3, 5.4, and 5.5 of Form F1 published for comment	*Issuers with asset-backed securities, issuers with mineral projects, and issuers with oil and gas operations*	One commenter suggests the disclosure required by these sections should be limited to the extent that it is material.	See our response to item 11.10, above.
11.13: Subparagraph 6.2(b)(i) of Form F1 published for comment	*Use of proceeds – junior issuers*	One commenter suggests adding the term "estimated" before the term "net proceeds".	We added the term "estimated" immediately before "net proceeds in subparagraph 6.2(b)(i) of Form F1.
11.14: Subparagraphs 6.2(b)(ii) of Form F1 published for comment	*Use of proceeds – junior issuers*	One commenter notes that the disclosure as at the most recent month end will not be readily available if the prospectus is filed in the beginning of a month.	We kept the proposed requirement. Providing the disclosure as at the most recent month end is not overly onerous for junior issuers.
11.15: Paragraphs 6.3(1)(a) and (b) of Form F1 published for comment	*Use of proceeds – principal purposes – generally*	One commenter suggests that the term "will" be replaced with the term "are expected to".	We kept the proposed requirement. Proceeds should be used in the manner described in the prospectus. This is consistent with the requirements under section 7.3 of Form 41-501F1.
11.16: Subsection	*Use of proceeds – principal*	One commenter asks for clarification of whether the	We kept the proposed requirement. There is no policy reason to distinguish

Reference	*Subject*	*Summarized Comment*	*CSA Response*
6.5(1) of Form F1 published for comment	*purposes – asset acquisition*	disclosure contemplated by this section is meant to include securities where the assets consist of securities.	securities from other assets.
11.17: Section 6.9 of Form F1 published for comment	*Use of proceeds – Unallocated funds in trust or escrow*	One commenter suggests the disclosure required by this section should be limited to apply to the extent that it is applicable (it should not apply to most issuers).	We kept the proposed requirement. General Instruction (6) of Form F1 provides that issuers do not need to reference inapplicable items and, unless otherwise required, may omit negative answers.
11.18: Subsection 8.4(1) of Form F1 published for comment	*Management's discussion and analysis – disclosure of outstanding security data*	One commenter suggests that this requirement not apply if the offering consists of securities that are not voting or equity securities.	We kept the proposed requirement. Investors need outstanding share data disclosure even if the securities being distributed are not voting or equity securities. Also, the requirement is the same as the one in section 5.4 of NI 51-102, which is consistent with our objective of harmonizing the prospectus and continuous disclosure regimes.
11.19: Subsection 8.8(1) of Form F1 published for comment	*Management's discussion and analysis – additional disclosure for issuers with significant equity investees*	One commenter notes that there is no definition of the term "significant equity investees".	We added a definition of "equity investee" in the Instrument and we added subsection 4.4(3) of the Companion Policy to provide further guidance as to when an equity investee is "significant". With these changes, this disclosure requirement is the same as the requirement in section 5.7 of NI 51-102, as supplemented by the guidance in section 5.4 of 51-102CP.
11.20: Section 10.3 of Form F1 published for comment	*Asset-backed securities*	One commenter suggests that Instruction (2) be changed to permit the most recent information on pool assets to coincide with the most recently issued financial statements of the seller of the pool of assets.	We kept the proposed requirement. There is a benefit to having the most recent financial information available and providing the information as at a date that is within 90 days of the prospectus date is not overly onerous.
11.21: Section 10.5 of Form F1 published for comment	*Special warrants, etc.*	One commenter notes that the disclosure contemplated by this provision apparently creates a legal remedy for a holder of special warrants in certain circumstances and questions whether the CSA has the jurisdiction to create legal remedies through disclosure required in a prospectus form.	We have rulemaking authority to adopt this disclosure requirement. We also added section 2.4 of the Rule to clarify that an issuer must not file a prospectus to qualify the conversion of a special warrant into other securities of the issuer unless purchasers of the special warrants have been provided with a contractual right of rescission not only of the holder's exercise of its special warrant but also of the private placement transaction pursuant to which the special warrant was initially

Reference	*Subject*	*Summarized Comment*	*CSA Response*
			acquired.
11.22: Section 10.9 of Form F1 published for comment	*Ratings*	One commenter suggests that disclosure should only be required if the issuer has asked for and has received any other kind of rating, including a provisional rating (carve-out should not be limited to stability ratings). Issuers should not be responsible for disclosure of ratings which are unsolicited and/or of which they may not be aware.	We added the term "is aware that it" immediately before "has received any other kind of rating" in section 10.9 of Form F1.
11.23: Subsection 12.1(1) of Form F1 published for comment	*Options to purchase securities*	One commenter suggests that paragraphs (a) through (e) of this subsection should clearly state that the disclosure is required without naming the individuals (similar to section 12.1 of Form 41-501F1).	We kept the proposed requirement. The disclosure under paragraphs 12.1(1)(a) through (e) of Form F1 is required to be provided "as a group".
11.24: Section 13.1 of Form F1 published for comment	*Prior sales*	One commenter suggests the following changes: • Clarify that disclosure regarding prior sales of compensation securities, such as stock options, is not required. • The disclosure should be required of the prices at which the securities have been sold and the number of securities sold at each price, not every trade. • Paragraph 13.1(a) should include a reference to securities that are to be sold by the issuer or the selling securityholder (similar to section 13.1 of Form 41-501F1).	We have the following responses to these comments: • Disclosure regarding compensation securities is required. If the disclosure in section 13.1 of Form F1 is duplicative, issuers may provide a cross-reference to the section of the prospectus where such disclosure is provided. • In paragraph 13.1(b) of Form F1, we added the term "at that price" immediately after "issued". We also added a requirement to disclose the date on which the securities were issued in paragraph 13.1 (c) of Form F1. This effectively requires disclosure of every trade. • In paragraph 13.1(a) of Form F1, we added the term "or are to be issued by the issuer or selling securityholder" immediately after "issued".
11.25: Subsection 14.1(1) of Form F1 published for comment	*Escrowed securities and securities subject to contractual restriction on transfer*	One commenter suggests that contractual restrictions should only be required to be disclosed with respect to the securities offered by the prospectus and imposed by the issuer or selling securityholder. Disclosure of contractual	An issuer must disclose contractual restrictions on all of its issued and outstanding securities. However, securities subject to contractual restrictions as a result of pledges made to lenders are not required to be disclosed. We added Instruction (2) to

Reference	*Subject*	*Summarized Comment*	*CSA Response*
		restrictions on transfer should expressly carve-out certain restrictions, such as those existing under pledges made to lenders.	Item 14 of Form F1 to clarify this requirement. We also made consequential amendments to Item 9 of Form 51-102F2.
11.26: Section 16.3 of Form F1 published for comment	*Conflicts of interest*	One commenter suggests that this disclosure be limited to existing or potential conflicts of interest which are known to the issuer.	We kept the proposed requirement. Issuers should be responsible for disclosing all potential conflicts of interests.
11.27: Section 16.4 of Form F1 published for comment	*Management of junior issuers*	One commenter suggests the age of each member of management should not be disclosed. Such information is confidential and disclosure is not appropriate under privacy and protection of personal information principles. One commenter suggests the following changes to the instructions: • Clarify that disclosure is required only of "executive directors" and that including employees and contractors is beyond what is commonly understood to be the management group. • Reference to "entrepreneur" should be deleted because this term in fact best describes the occupation of some individuals.	We kept the proposed requirement. Junior issuers often have a limited history of operations. Management of a junior issuer is a key factor in the future success or failure of the company. Information about management's background and experience is necessary information in making a reasoned judgement about their qualification. The disclosure of the age of management is permitted under privacy and protection of personal information principles as it is material and relevant information to a purchaser making an informed investment decision. We removed instruction (2) to section 16.4 of Form F1.
11.28: Item 19 of Form F1 published for comment	*Audit committees and corporate governance*	One commenter suggests that it is not appropriate to require this disclosure in a prospectus and to subject all of those signing a certificate to prospectus liability for such disclosure.	We kept the proposed requirement. The effectiveness of an issuer's audit committee and the nature of its corporate governance practices are fundamental to an investment decision. Accordingly, the requirement for this disclosure is appropriate. There is no policy reason to distinguish this disclosure from other required prospectus disclosure.
11.29: Section 20.6 of Form F1 published for comment	*Stabilization*	One commenter notes that the anticipated size of any over-allocation position and the effect on the price of securities may not be known at the time this disclosure is required to be included in the prospectus.	We kept the proposed requirement. The issuer, selling securityholder or underwriter should know the nature of the stabilization transactions at the time this disclosure is required to be disclosed in the prospectus.

Reference	*Subject*	*Summarized Comment*	*CSA Response*
11.30: Section 20.7 of Form F1 published for comment	*Approvals*	One commenter expresses concerns about this disclosure requirement. Certain issuers will need to use funds held in trust to pay for any material licenses, registrations and approvals. Certain licenses, registrations and approvals may take many years to obtain (well beyond the time limit specified). The commenter also suggests that funds should be returned to subscribers without any interest.	We changed the disclosure requirement in section 20.7 of Form F1 to harmonize with the changes to the escrow requirement in section 10.2 of the Rule, as discussed in our response to item 10.23, above.
11.31: Section 20.10 of Form F1 published for comment	*Conditional listing approval*	One commenter notes that the term "conditional listing approval" is a Canadian term and asks how it will be applied to foreign markets.	We kept the proposed requirement. Disclosure is not required if a foreign exchange has not provided a "conditional listing approval" or something substantially similar. This requirement is substantially similar to the one in section 19.9 of Form 41-501F1 and section 5.8 of Form 44-101F1.
11.32: Section 21.1 of Form F1 published for comment	*Risk factors*	One commenter notes that it will be difficult for trust and partnership issuers to comply with the disclosure required by subsection 21.1(2) because issues relating to trust beneficiary and partnership liability is unclear in some jurisdictions. One commenter notes that the requirement to disclose risks in order of seriousness under the instruction to this item is not appropriate. An assessment of order of importance is highly subjective and there may be consequences to being wrong. The commenter suggests the instruction be changed to guidance in the Companion Policy.	We kept the proposed requirement. Many trust and limited partnership issuers have provided this risk factor disclosure in their prospectuses and annual information forms. It is important for issuers to disclose risks in their order of seriousness to emphasize the relative seriousness of each risk. Issuers may include qualifying language for risks that may change over time or where the evaluation of a particular risk is highly subjective.
11.33: Section 22.1 of Form F1 published for comment	*Promoters and substantial beneficiaries of the offering*	One commenter suggests the following changes: • Do not require this disclosure for any person or company that has been a promoter of the issuer or subsidiary of the issuer in the third year before the date of the prospectus. Currently, disclosure is required only for a person or	We have the following responses to these comments: • We changed the requirement to only require disclosure for a person or company who has been a promoter within the past two years. We also made a consequential amendment to section 11.1 of Form 51-102F2.

Reference	*Subject*	*Summarized Comment*	*CSA Response*
		company who has been a promoter within the past two years. • Add Ontario carve-out to requirement for disclosure from substantial beneficiary of the offering because no certificate is required in Ontario. • Do not require disclosure for an asset acquired in the third year before the date of the prospectus under paragraph 22.1(1)(d). Currently, disclosure is required only for an asset acquired within the past two years. • The disclosure in subparagraph 22.1(1)(d)(ii) should be required only to the extent that it is applicable. • The disclosure required under paragraph 22.1(4)(b) should expressly exclude penalties or sanctions imposed by securities regulatory authorities relating to late SEDI filings.	• We removed the requirement to provide this disclosure for substantial beneficiaries of the offering in all jurisdictions given our decision to remove the requirement for substantial beneficiaries of the offering to provide certificates. • We changed the requirement to only require disclosure for an asset acquired within the past two years. We also made a consequential amendment to section 11.1 of Form 51-102F2. • We kept the proposed requirement. General Instruction (6) of Form F1 provides that issuers do not need to reference inapplicable items and, unless otherwise required, may omit negative answers. • We added Instruction (3) to Item 22 of Form F1 clarifying that a late filing fee, such as a filing fee that applies to the late filing of an insider report, is not a "penalty or sanction" for the purposes of this Item.
11.34: Section 23.1 of Form F1 published for comment	*Legal proceedings*	One commenter suggests replacing the term "current assets" with the term "assets" because the term current assets is too limiting and changes daily.	We kept the proposed requirement. The amount of current assets is an indicator of the liquidity of an issuer and is a more relevant measure for purposes of disclosure regarding legal proceedings. This requirement is harmonized with section 12.1 of Form 51-102F2.
11.35: Section 23.2 of Form F1 published for comment	*Regulatory actions*	One commenter suggests that this disclosure should only be required to the extent it is material.	See our response to item 11.10, above.
11.36: Section 24.1 of Form F1 published for comment	*Interests of management and others in material transactions*	One commenter suggests replacing the term "will materially affect" with the term "is reasonably expected to materially affect" because an issuer will not be in a position to know what will materially affect the issuer or a subsidiary.	We made the suggested change. We also made consequential amendments to section 13.1 of Form 51-102F2.
11.37:	*Material*	One commenter suggests that the	We changed this requirement so that it

Reference	***Subject***	***Summarized Comment***	***CSA Response***
Section 27.1 of Form F1 published for comment	*contracts*	disclosure required by this section be limited to material contracts entered into in the two years immediately preceding the date of the preliminary prospectus.	only applies to material contracts required to be filed under section 9.3 of the Rule or that would be required to be filed under section 9.3 of the Rule but for the fact that it was previously filed. Section 9.3 of the Rule generally requires the filing of material contracts entered into since the beginning of the last financial year ending before the date of the prospectus or before then if the material contract is still in effect.
11.38: Section 31.1 of Form F1 published for comment	*List of exemptions from instrument*	One commenter suggests adding the term "or Form 41-101F2, as applicable," immediately after "Form 41-101F1". One commenter asks for clarification of whether an issuer would be required to list exemptions granted to other parties governed by the Rule, such as underwriters, custodians, substantial beneficiaries of the offering, etc.	We kept the proposed requirement. The additional language is unnecessary because an issuer using Form F1 will not require relief from the requirements of Form F2. Also, disclosure similar to that required in section 31.1 is required under section 39.1 of Form F2. The requirement applies to exemptions "granted to the issuer". No further clarification is necessary.
11.39: Item 32 of Form F1 published for comment	*Financial statement disclosure for issuers*	One commenter suggested the optional test under 35.1(4) of Form 41-101F1 for determining significance should not be permitted for an acquisition that is significant to the issuer at over a 100% level. The commenter suggested that subsequent growth of the issuer should not eliminate financial statement disclosure for its primary business, which otherwise would be subject to subsection 32.2(6) to provide at least 3 years of operations of the primary business.	We added guidance to subsection 5.3(1) of the Companion Policy. If we encounter circumstances under which the use of the optional test is not appropriate, we may request financial statements necessary to satisfy the requirement that the prospectus contain full, true and plain disclosure of all material facts be included in the prospectus.
11.40: Section 32.4 of Form F1 published for comment	*Financial statement disclosure for issuers*	One commenter suggests the CSA consider making the relief in subsection 32.4 to provide only 2 years of financial statements, contingent on such financial statements being made available on SEDAR.	We kept the proposed requirement. For existing reporting issuers, we harmonized the financial statement disclosure requirement for prospectuses with their ongoing continuous disclosure obligations.
11.41: Paragraph 32.4(a) of Form F1 published for comment	*Financial statement disclosure for issuers*	One commenter questioned how the exemption available in s. 32.4(a) to exclude the third most recently completed financial year works in concert with subsection 5.3(1) of the Companion Policy	The exemption in paragraph 32.4(a) of Form F1 only applies to reporting issuers. We changed subsection 5.3(2) of the Companion Policy to clarify that two years of financial statements are required for a primary

Reference	*Subject*	*Summarized Comment*	*CSA Response*
		regarding a "primary business".	business or businesses acquired by reporting issuers.
11.42: Section 32.4 of Form F1 published for comment	*Exceptions to financial statement requirements*	One commenter suggests an exception to this section be added permitting issuers to exclude any interim financial statements otherwise required for a period ending prior to the date of any audited financial statements for a period of at least 9 months included in the prospectus. One commenter suggests that the Rule should expressly permit the inclusion of pro forma financial statements giving effect to a proposed transaction when a restructuring transaction is proposed in connection with a prospectus offering. The financial effects of some restructuring transactions are best presented in accompanying pro forma financial statements.	We kept the proposed requirement. Interim financial statements for periods ending on or prior to the date of any audited financial statements are not required to be included in the prospectus. The reference to "most recent financial year" in paragraph 32.3(1)(a) of Form F1 includes audited financial statements that have been provided under paragraphs 32.4(d) or (e) of Form F1. In subsection 5.4(1) of the Companion Policy, we clarified that issuers should consider including pro forma financial statements in these circumstances.
11.43: Section 34.2 of Form F1 published for comment	*Issuer is wholly-owned subsidiary of parent credit supporter*	One commenter notes that in some cases subordinated indebtedness may be secured by a subordinated guarantee. The commenter suggests clarifying that these circumstances should not be excluded by reference to "full and unconditional credit support" in this section.	We kept the proposed requirement. The definition of "full and unconditional credit support" does not preclude indebtedness that may be secured by a subordinated guarantee. Further clarification is unnecessary.
11.44: Item 34 of Form F1 published for comment	*Exemptions for certain issues of guaranteed securities*	One commenter notes that subparagraphs 34.1(2)(b) and (c) require all subsidiary entity columns to account for investments in non-credit supporter subsidiaries under the equity method. The commenter believes that, under U.S. requirements, the subsidiary entity column must account for investments in all guarantor and non-guarantor subsidiaries under the equity method. The commenter suggests these subparagraphs be conformed to the U.S. requirements to avoid the need for U.S. GAAP reconciling items in this area.	We kept the proposed requirement. This requirement is consistent with Item 13 of Form 44-101F1. The U.S. rules require that certain investments held by subsidiary issuers be accounted for by the equity method (for example, non-guarantor subsidiaries, issuers whose guarantees are not full and unconditional, and issuers whose guarantee is not joint and several with the guarantees of other subsidiaries). We do not intend to create a disclosure difference from the U.S. requirements in relation to this disclosure. In the event that a disclosure difference occurs, an issuer may request exemptive relief. Relief will be considered on a case-by-case basis. We are not aware of any cases where the Form 44-101F1 requirements have created U.S. disclosure differences.

Reference	*Subject*	*Summarized Comment*	*CSA Response*
11.45: Item 35 of Form F1 published for comment	*Significant acquisitions*	One commenter notes that the cross reference to NI 51-102 in subparagraph 35.1(4)(b)(vi) is incorrect as the statements "required to be filed" no longer exists in Part 8 of NI 51-102.	We changed subparagraph 35.1(4)(b)(vi) to clarify that references to audited annual financial statements "filed" should be read to mean references to annual audited statements "included in the long form prospectus". We also added subparagraph 35.1(4)(b)(vii) to clarify the application of subsection 8.3(15) of NI 51-102.
12: Companion Policy - specific sections			
12.1: Subsection 1.3(2) of Companion Policy published for comment	*Business day*	One commenter believes that the interpretation of "business day" would effectively penalize issuers in the jurisdiction that observed a statutory holiday in that it abridges the time period available to them while affording an extra day to all others. The commenter suggests that, where a statutory holiday in any jurisdictions falls during a relevant time period, the time period should be extended by one day in all jurisdictions.	We kept the proposed guidance. Abridging the time period for an issuer in a jurisdiction that observes a statutory holiday facilitates administrative efficiency.
12.2: Section 2.3 of Companion Policy published for comment	*Indirect distributions*	One commenter suggests the reference to "controlling shareholder" in the third bullet of the second full paragraph should be a reference to "controlling person".	We made the suggested change.
12.3: Section 3.2 of Companion Policy published for comment	*Confidential material change report*	One commenter suggests adding the "or the decision to implement the change has been rejected and the issuer so notified the regulator of each jurisdiction where the confidential material change report was filed" after "generally disclosed".	We made the suggested change.
12.4: Subsection 3.6(2) of Companion Policy published for comment	*Material contracts – management or administration agreements*	One commenter suggests that it is not appropriate to require disclosure of the types of plans and arrangements listed in this section on account of privacy concerns and in order to protect the personal information of individuals.	We replaced the guidance in subsection 3.6(2) of the Companion Policy published for comment with the guidance in subsection 3.6(4) of the Companion Policy. Only external management or external administration agreements are required to be filed under paragraph 9.3(2)(e) of the Rule. The guidance in subsection 3.6(4) of the Companion Policy provides that external management and external administration agreements include agreements between the issuer and a

Reference	*Subject*	*Summarized Comment*	*CSA Response*
			third party, the issuer's parent entity, or an affiliate of the issuer, under which the latter provides executive management and other services to the issuer.
12.5: Subsection 4.4(2) of Companion Policy published for comment	*MD&A – disclosure of outstanding security data*	One commenter suggests replacing the term "year" with the term "period" to be consistent with the corresponding guidance in section 5.3 of 51-102CP.	We made the suggested change.
12.6: Subsection 5.9(2) of Companion Policy published for comment	*Completed significant acquisitions and the obligation to provide business acquisition report level disclosure for a non-reporting issuer*	One commenter believes that the last sentence of the second paragraph of this subsection is incorrect. This sentence indicates that the applicable time period for the optional test is derived from the most recent interim financial statements of the issuer and the acquired business or related businesses before the date of the long form prospectus. In respect of the issuer, subparagraph 35.1(4)(b)(iii) of Form F1 actually requires the use of the most recently completed interim period or financial year that is included in the prospectus.	We made the suggested change.
12.7: Subsection 5.9(2) of Companion Policy published for comment	*Completed significant acquisitions and the obligation to provide business acquisition report level disclosure for a non-reporting issuer*	One commenter suggests replacing the term "within 45 days of the year end" in the last sentence of this subsection with the term "within 45 days after the year end".	We made the suggested change.
12.8: Subsection 5.9(2) of Companion Policy published for comment	*Completed significant acquisitions and the obligation to provide business acquisition report level disclosure for a non-reporting issuer*	One commenter is unable to appreciate the difference highlighted in the last paragraph of this subsection. For any significant acquisition that occurred within the timeframes stipulated in paragraph 35.3(1)(d) of Form F1 a reporting issuer would have already filed a BAR on or before the date of the prospectus. Section 35.3 of Form F1 merely ensures that an issuer that was not a reporting issuer on the date of acquisition includes the	We changed subsection 5.9(2) of the Companion Policy to clarify the intent of section 35.3 of Form F1.

Reference	*Subject*	*Summarized Comment*	*CSA Response*
		same disclosure in the prospectus that a reporting issuer would have included in a BAR filed as at the date of the prospectus. The commenter suggests including an example to illustrate the difference.	
12.9: Subsection 5.9(5) of the Companion Policy published for comment	*Indirect acquisitions*	One commenter suggested adding to the Companion Policy the guidance provided in subsection 4.9(3) of 44-101 CP regarding indirect acquisitions.	This guidance was included in subsection 5.9(5) of the Companion Policy published for comment.
12.10: Subsection 5.9(7) of Companion Policy published for comment	*Updated pro forma financial statements to date of long form prospectus*	One commenter notes that the guidance in this subsection appears to contradict section 35.7 of Form F1. The commenter believes that section 35.7 of Form F1 allows an issuer to present in one set of pro forma financial statements the combined effects of all the significant acquisitions that are proposed or have occurred since the beginning of the issuer's most recently completed financial year for which financial statements are included in the prospectus. This section expressly allows an issuer providing this one set of pro forma financial statements to exclude the pro forma financial statements otherwise required for each acquisition. The commenter supports the adoption of section 35.7 of Form F1 and asks that the guidance in this subsection be clarified.	We removed subsection 5.9(7) of the Companion Policy published for comment. Section 35.7 of Form F1 provides an exemption from the requirement to provide pro forma financial statements for each individual significant acquisition if a combined set of pro forma financial statements is included in the long form prospectus. Since pro forma financial statements may not have been prepared for each individual significant acquisition, this exemption would save the issuer the costs of preparing them. For a short form prospectus, each previously filed business acquisition report required to be incorporated by reference must be incorporated by reference in its entirety. This business acquisition report includes pro forma financial statements for each significant acquisition.
12.11: Part 6 of Companion Policy published for comment	*Advertising or marketing activities in connection with prospectus offerings*	Three commenters do not support the adoption of this guidance. The guidance is substantially different from industry practice (specifically with respect to roadshows). If the securities regulatory authorities have concerns about selective disclosure in these information sessions, they have existing powers that can be used to address this problem. One commenter suggests the CSA reconsider the policy pronouncements in sections 6.5 through 6.10 in light of	We understand that industry practice may be different from the guidance in Part 6 of the Companion Policy. We note that that guidance is based on existing prospectus requirements under securities legislation. To change that guidance, we would also have to seek changes to the underlying securities legislation in each province and territory. We concluded that a full review of the existing legislation and consideration of the changes necessary to modernize the regime would delay the finalization of the Rule. Since the primary substance and purpose of the Rule and the

Reference	*Subject*	*Summarized Comment*	*CSA Response*
		developments in the securities marketplace generally since these statements were first formulated.	consequential amendments is to harmonize and consolidate prospectus requirements across Canada, we decided not to make any changes to the guidance at this time. Nevertheless, we acknowledge these comments. We also believe the concerns expressed by the commenters warrant further review. Accordingly, following the publication of the Rule, we will consider initiating a new project to review marketing and pre-marketing requirements in the context of a prospectus, including the guidance in Part 6 of the Companion Policy.
13: Proposed amendments to other instruments and policies			
13.1: Appendix A of NP 43-201	*Materials required to be filed*	One commenter suggests that all references in Appendix A to an auditors' comfort letter should be deleted.	On August 31, 2007, we published for comment proposed National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions*. We anticipate NP 11-202 will be effective at the same time as the Rule. As a consequence of adopting NP 11-202, NP 43-201 will be repealed at that time. Thus, we have not adopted any of the proposed amendments to NP 43-201 that we published for comment. The commenter's suggestion is reflected in the version of NP 11-202 published for comment.
13.2: Proposed amendment to subparagraph 4.1(b)(i) of NI 44-101 published for comment	*Personal information form and authorization to collect, use and disclose personal information*	One commenter does not support the adoption of this requirement. The process of completing a PIF can be time consuming and is inconsistent with the fundamental rationale for short form offerings.	See our response to item 3.1, above. We made corresponding changes to the consequential amendment to subparagraph 4.1(b)(i) of NI 44-101.
13.3: Proposed amendment to Item 7A of Form 44-101F1 published for comment	*Prior sales*	One commenter does not support the adoption of this requirement because the information is unnecessary since it is already publicly available.	We have kept the proposed amendment. Though the information may be publicly available, it should be included directly in the short form prospectus to facilitate informed investment decisions. Also, see our response to item 11.24, above. This amendment harmonizes the disclosure in Form 44-101F1 with Item 13 of the Rule. The amendment is also substantially similar to the requirement

Reference	*Subject*	*Summarized Comment*	*CSA Response*
			in Item 13 of OSC Rule 41-501.
13.4: Proposed amendment to paragraph 6(b) subsection 11.1(1) of Form 44-101F1 published for comment	*Mandatory incorporation by reference*	One commenter suggests that the term "the issuer's most recent financial statements" be deleted and replaced with "the issuer's current annual financial statements", to conform to corresponding provision in section 35.4 of Proposed Form 1.	We made the suggested change.
13.5: Form 44-101F1	*Pro forma financial statements for multiple acquisitions*	One commenter recommends adding a section regarding pro forma financial statements for multiple acquisitions to Form 44-101F1 similar to section 35.7 of Proposed Form 1.	We kept the proposed amendment. The short form prospectus regime is based on the issuer incorporating its continuous disclosure record into the prospectus. An issuer may include updated pro forma financial statements in the prospectus that reflects multiple acquisitions during the period. However, a previously filed business acquisition report is required to be incorporated by reference in its entirety.
13.6: Proposed amendment to section 1.1 of NI 44-102 published for comment	*Definition of "novel"*	Three commenters do not support the proposed amendment to the definition of "novel" in section 1.1 of NI 44-102. Requiring pre-clearance on an issuer basis may be cumbersome and inefficient because it would make it more difficult for issuers to respond to particular market opportunities and will not be transparent to other issuers of similar types of securities. One commenter expresses specific concerns regarding investment fund issues. The proposed approach to pre-clearance would impose an unwritten regime on issuers of novel specified derivatives under which such issuers could be subject to certain aspects of the investment funds regime without being able to determine in advance of pre-clearance, which aspects of the regime would be regarded by regulators as applicable. The commenter also notes that passive linked securities are not similar to investment funds and an investment fund regime	We kept the proposed amendment. The shelf system was generally not designed for offerings of novel specified derivatives. Significant disclosure about such products is typically found in the shelf prospectus supplement, which is not subject to regulatory review and can be up to 50 pages in length. It is in the public interest that this disclosure be subject to regulatory review. We acknowledge, however, that regulatory review must be balanced against issuer speed-to-market concerns. Though not specifically set out in the proposed amendments to NI 44-102, we have, on a case-by-case basis, pre-cleared templates of shelf prospectus supplements. These templates typically include most of the disclosure that will be in the final shelf supplement but may omit certain information that will not be known until the final shelf prospectus supplement is filed. Our pre-clearance review typically focuses on material aspects of either the template or draft shelf prospectus supplement. See CSA Staff Notice 44-304 *Linked Notes Distributed Under Shelf Prospectus System* published on

Reference	*Subject*	*Summarized Comment*	*CSA Response*
		should not apply to them. One commenter believes that a 10-day review period in the pre-clearance process is too long and requests the period be reduced to 5 days. The commenter also requests that the regulators limit their review to the aspects of the proposed distribution that are novel.	July 20, 2007 for further guidance on the pre-clearance process and the use of templates. We proposed the new definition of "novel" because it is important for an issuer to fully describe the nature of a specified derivative that the issuer has not previously distributed in its shelf prospectus. If another issuer has distributed a similar product, reference to the other product will facilitate our pre-clearance review. Issuers may also provide blacklines of a template or draft shelf prospectus supplement against the disclosure provided by another issuer to facilitate our review. If appropriate, we may be able to minimize the timing of the pre-clearance process. However, we are generally not prepared to reduce the 10-day review period set out in the proposed amendments to NI 44-102.
13.7: Proposed amendment to Part 8 of NI 51-102 published for comment	*Business acquisition report*	One commenter supports the proposed amendments to paragraph 8.4(5)(b) and subparagraph 8.10(3)(e)(ii) of NI 51-102. These changes will provide more meaningful pro forma financial information because they require the issuer to consider and reflect the financial effects of all other significant acquisitions that occurred during the period covered by the pro forma income statement.	We acknowledge this comment.
13.8: Proposed amendment to section 16.1 of 44-101F1 published for comment	*Promoters and substantial beneficiaries of the offering*	One commenter does not support the adoption of the proposed consequential amendments to section 16.1 of Form 44-101F1. This disclosure provides no benefit to the public markets and will provide a disincentive to vendors to do business with Canadian acquirers who may undertaking a prospectus financing within the year following the transaction. Similarly the expanded disclosure with respect to bankruptcies or other penalties and sanctions of substantial beneficiaries of the offering is unnecessary and of no value to investors.	We removed the requirement for substantial beneficiaries of the offering to provide certificates. Accordingly, we also removed this disclosure requirement in respect of substantial beneficiaries of the offering.

Reference	*Subject*	*Summarized Comment*	*CSA Response*
Part C: Comments relating to investment funds			
14: Investment fund issues – general			
14.1 Rule published for comment	*Custodian and advertising*	Two commenters recommend that NI 81-102 take precedence over the custodian and advertising sections in the Rule with respect to labour sponsored investment funds so that there would be no conflicts.	We kept the proposed advertising sections as we do not see any conflict with NI 81-102. We clarified that the custodian sections in the Rule do not apply to investment funds that are subject to NI 81-102. Consequently, labour sponsored investment funds that are mutual funds will comply with the custodian provisions of Part 6 of NI 81-102 and not with those of Part 14 of the Rule.
14.2 Rule published for comment	*NI 81-101 prospectus form*	One commenter recommends that all investment funds be subject to the prospectus form in NI 81-101. One commenter suggests that scholarship plans should be subject to the prospectus form in NI 81-101 which would provide clearer and understandable disclosure for investors.	We kept the proposed requirement. There are inherent differences between conventional mutual funds and other investment funds (including, for example, differences in investment restrictions and structure). NI 81-101 is appropriate for conventional mutual funds. The disclosure required by Form F2 is tailored for investment funds that are not conventional mutual funds.
14.3 Rule published for comment	*Pricing NAV*	One commenter recommends that NI 41-101 and Form 41-101F2 provide for the use of a "Pricing NAV" for labour sponsored investment funds since they are allowed to include the unamortized balance of up-front sales commissions in calculating their sale and redemption prices for their shares in some jurisdictions under certain conditions.	We kept the proposed requirement. While not expressly provided for in the Rule and Form F2, the Rule and Form F2 do not prohibit labour sponsored investment funds from using a "Pricing NAV".
14.4 Rule published for comment	*Minimum waiting period*	One commenter supports the proposal not to have a minimum waiting period, and notes that investment funds conduct little or no marketing from the preliminary prospectus.	We acknowledge the comment.

Reference	*Subject*	*Summarized Comment*	*CSA Response*
15: **Investment fund issues: Rule - specific sections**			
15.1: Section 1.1 of Rule published for comment	*Definition of "derivative"*	One commenter suggests that "in the interests of national consistency of rules, the CSA consider ensuring that the term as defined in NI 41-101 is consistent with the term as defined in NI 81-102, including the CSA policy discussion of that term provided for in the companion policy to NI 81-102."	We kept the proposed definition. The definition is consistent with the definition in existing NI 44-101. The definition in NI 81-102 is directed to investment restrictions of mutual funds, which has a different purpose than in the Rule.
15.2: Section 2.2 of Rule published for comment	*Language*	One commenter asks for guidance as to who would be acceptable to provide a translation certificate.	The certificate required in subsection 2.2(4) of the Rule must be provided by the issuer. Any representative of the issuer duly authorized to sign on behalf of the issuer may sign the certificate.
15.3: Section 4.1 of Rule published for comment	*MRFP*	One commenter recommends for clarity that "s.4.1 be subject to s. 15.1(1) so that it is clear that funds in continuous distribution be permitted to incorporate such documentation by reference, as is the case for investment funds governed by NI 81-101."	We amended section 4.1 of the Rule to clarify that investment funds in continuous distribution (other than scholarship plans) must incorporate financial statements and related documents by reference.
15.4: Section 4.3(1) of Rule published for comment	*Review of unaudited financial statements*	Two commenters oppose this change on the basis of cost and time to conduct the review. One commenter also suggests that the language may not be clear with respect to financial statements incorporated by reference. The commenter notes that "section 4.3 speaks of interim statements that are "included" in a long form prospectus." The commenter also notes that "Form 41-101F2 allows most investment funds to not "include" financial statements in the prospectus – rather these statements are incorporated by reference into the prospectus." The commenter suggests that "the language would reasonably support an interpretation that financial statements incorporated by reference into a long form prospectus are not "included" with	We narrowed this provision to require only unaudited financial statements included or incorporated by reference into the prospectus at the date of filing of the prospectus to be reviewed. CICA Handbook Section 7110 - *Auditor Involvement with Offering Documents of Public and Private Entities* sets out the auditor's professional responsibilities when the auditor is involved with a prospectus or other securities offering document and requires that the auditor perform various procedures prior to consenting to the use of its report or opinion, including reviewing unaudited financial statements included in the document.

Reference	*Subject*	*Summarized Comment*	*CSA Response*
		the prospectus and therefore do not need to be reviewed by an auditor."	
15.5: Section 4.4(2) of Rule published for comment	*Approval of financial statements and related documents*	One commenter suggests that the language was confusing regarding the words "included in the long form prospectus" as they relate to financial statements. The commenter asks whether financial statements incorporated by reference into the prospectus contained in Form 41-101F2 could be interpreted as being "included" in the filed long form prospectus or not.	We added the words "or incorporated by reference" to clarify that financial statements incorporated by reference must also be approved.
15.6: Section 5.10 (2)(b) of Rule published for comment	*Certificate of investment fund manager*	One commenter asks for clarification about who should sign the certificate when the investment fund manager has only one director.	We kept the proposed requirement. The requirement in subsection 5.10(2) of the Rule is the same as the certificate of the manager required to be included in the prospectus of a mutual fund. This requirement puts all investment funds on the same footing.
15.7: Section 5.13 of Rule published for comment	*Certificate of substantial beneficiary of the offering*	One commenter notes that this section probably does not apply to investment funds (including mutual funds) and recommended that it would be beneficial for the CSA to state this directly in the Rule if the CSA decide to retain this provision.	This section has been removed from the Rule.
15.8: Section 6.6(5) and (7) of Rule published for comment	*Amendment to a final prospectus*	One commenter suggests that the exclusion in subsection (7) for the named categories of investment funds also should apply to other issuers that are distributing securities on a continuous basis.	We clarified this subsection to exclude investment funds that are in continuous distribution.
15.9: Section 8.1 of Rule published for comment	*Distribution period*	One commenter asks for clarification regarding whether this section applies to investment funds in continuous distribution.	We clarified this section to exclude investment funds that are in continuous distribution.
15.10: Section 9.2 of Rule published for comment	*Pro forma prospectus*	Two commenters recommend that "s. 9.2 specifically identify and/or distinguish the required documents for filing a preliminary long form	We revised Part 9 of the Rule to identify the required documents for filing a pro forma long form prospectus.

Reference	*Subject*	*Summarized Comment*	*CSA Response*
		prospectus and the required documents for filing a pro forma long form prospectus."	
15.11: Section 10.1 of Rule published for comment	*Auditor's consent*	One commenter asks for clarification about "whether an auditor's consent must be filed at the time audited financials are filed on SEDAR and automatically incorporated by reference into an investment fund's previously filed prospectus."	Paragraph 10.1(2)(a) specifically states that for financial statements incorporated by reference, the auditor's consent must be filed no later than the date those financial statements are filed.
15.12: Section 12.1(2) of Rule published for comment	*Application and definitions – restricted securities*	One commenter recommends that all investment funds be exempted from this Part on the same policy reasoning as why mutual funds are exempted from this Part. One commenter is "concerned that the term "restricted securities" could be construed to capture a scholarship plan agreement" and asks for clarification. One commenter asks for clarification that if this Part does not apply to mutual fund securities, then sections 13.1 and 21.6 of Form 41-101F2 regarding restricted securities should also not apply.	We kept subsection 12.1(2) as proposed. Legislation in certain provinces relating to restricted securities only excludes mutual fund securities and not investment fund securities generally. Consequently, subsection 12.1(2) has been drafted to exclude mutual funds only. The term "restricted securities" does not capture scholarship plan agreements. Section 21.6 of Form F2 does not apply if Part 12 of the Rule does not apply. However, section 13.1 of Form F2 applies because this section applies to sales of all securities, including restricted securities, for the 12-month period before the date of the prospectus.
15.13: Sections 13.1(1) and 13.2(1) of Rule published for comment	*Advertising for investment funds during the waiting period*	One commenter notes that the words "permitted or not prohibited" are vague and unclear. One commenter recommends that the words "prominent bold face type as large as that used generally in the body" be used to clarify that the size of text used in headings is not contemplated under these requirements.	See our response to item 10.28, above.
15.14: Section 13.3 of Rule published for comment	*Advertising for investment funds during the waiting period*	One commenter notes that while mutual funds are subject to similar rules regarding advertising in section 15.12 of NI 81-102, investment funds that are subject to NI 41-101 should not be subject	We introduced section 13.3 in response to the confusion in the marketplace relating to permissible advertising for investment funds. Investment funds may look to the Companion Policy for a discussion

Reference	*Subject*	*Summarized Comment*	*CSA Response*
		to the same type of rule but should be subject to the policy outlined in the Companion Policy. One commenter suggests that similar guidance contained in 41-101CP regarding advertising be put in 81-102CP. One commenter recommends that this section be clarified to apply to an "advertisement used in connection with a prospectus offering during a waiting period."	on the impact of the prospectus requirement on advertising during the waiting period. We clarified section 13.3 to apply to an "advertisement used in connection with a prospectus offering during the waiting period."
15.15: Part 14 of Rule published for comment	*Custodian of portfolio assets of an investment fund*	One commenter notes that "the custodian provisions in NI 41-101 need to accommodate the fact that investment funds will grant security interests over their assets and that their securities and other financial assets will need to be held by a securities intermediary in a securities account that is governed by a control agreement, all as required under the *Securities Transfer Act* and the PPSA." With respect to s. 14.8(3), one commenter notes that "it is not practical nor administratively feasible to require each security interest and its related collateral to be held in connection with only one particular derivative transaction, as the fund and the counterparty, as well as the underlying documents, all work on an aggregate basis." One commenter recommends that "subsection 14.6(3) be deleted as out-dated regulation." One commenter recommends that the Part state that "it applies only to investment funds that are reporting issuers." One commenter recommends that the CSA "clarify whether investment funds that have not filed a long form prospectus using Form 41-101F2 (such as those that are currently reporting issuers) will	To the extent that this comment is implying that the custodian provisions in Part 14 of the Rule may not accommodate the new commercial law concepts for the transfer of financial assets or the granting of security interests in financial assets held in the indirect holding system found in the *Securities Transfer Act* (STA) and conforming amendments to the *Personal Property Security Act* (PPSA), we disagree. We do not see any incompatibility between Part 14 of the Rule and STA/PPSA or other law. If, for example, investment funds wish to grant security interests in connection with their loan facilities or margin accounts, such funds will be required to comply with the custodian requirements in Part 14. STA/PPSA legislation is commercial law that facilitates commercial transactions; it does not supplant securities regulatory law. Subsection14.8(3) does not prohibit an investment fund from depositing portfolio assets over which it has granted a security interest with its counterparty, whether the documentation works on an individual or aggregate basis. We kept the proposed requirement in subsection 14.6(3). A requirement for all investment funds to file the compliance report

Reference	*Subject*	*Summarized Comment*	*CSA Response*
		be exempt from these provisions."	helps ensure compliance with the custodian provisions. We clarified section 14.1(1) so that the custodian requirements in Part 14 apply to an investment fund that prepares a prospectus in accordance with the Rule (other than an investment fund that is subject to NI 81-102). An investment fund that has not prepared a prospectus in accordance with the Rule does not need to comply with Part 14 of the Rule. See our response to item 10.31, above.
15.16: Section 15.1(1) of Rule published for comment	*Incorporation by reference*	One commenter asks "the CSA to mandate that scholarship plans incorporate financial statements (current and subsequent) by reference into their prospectuses, as is required for other investment funds, including mutual funds subject to NI 81-101."	Scholarship plans are currently being examined in a separate CSA initiative. We kept the proposed requirement for scholarship plans to attach their financial statements to the prospectus.
15:17 Sections 15.1(2) and 15.1(4) of Rule published for comment	*Incorporation by reference*	One commenter recommends that "s.15.1(2) and s. 15.1(4) should be worded similarly to s. 15.1(1) and (3) in that they should apply only to an investment fund that is in continuous distribution, as the applicable requirements meant to be imposed by those provisions only apply to such funds."	We added an application subsection to clarify that Part 15 applies to investment funds in continuous distribution except scholarship plans.
15.18: Section 17.1(3) of Rule published for comment	*Pro forma prospectus*	One commenter notes that "this subsection is "buried" in Part 17 and recommends that it be moved to Part 9 Requirements for Filing a Prospectus so as to facilitate ease of reference and compliance."	See our response to item 15.10, above.
15.19: Section 20.1 of Rule published for comment	*Transition*	One commenter recommends that this "transition provision be amended to include a reference to a pro forma prospectus, since many investment funds in continuous distribution may wish the reduced regulatory burden of complying with the new disclosure	We clarified this section to include pro forma prospectus transition provisions. See our response to item 10.31, above. An investment fund that commenced a distribution qualified by a prospectus filed prior to the Rule becoming effective does not

Reference	*Subject*	*Summarized Comment*	*CSA Response*
		format in their next renewal cycle". One commenter recommends that there be clarification regarding "how NI 41-101 would apply to a distribution that was qualified by a prospectus prior to NI 41-101 becoming effective that has not been completed at the time NI 41-101 comes into force or to provisions relating to custodianship of portfolio assets".	need to comply with Part 14.
15.20: Appendix A of Rule published for comment	*Personal information form*	One commenter recommends that "NI 41-101 be clarified to provide that if any individual has filed a personal information form in the three years previous to the applicable filing, he or she does not have to complete the new Form." The commenter notes that "as the rules are drafted, it is unclear whether any individual who completed an "old" personal information form would have to complete a "new" personal information form upon the coming into force of proposed NI 41-101."	See our response to item 3.1, above.
16: Investment fund issues – Form F2			
16.1: Form F2 published for comment	*General headings*	One commenter asks whether prescribed headings under which information is to be disclosed can be modified, where appropriate, for scholarship plans. For example, could scholarship plans use the heading "Enrolment and Registration" or something similar rather than "Purchase of Securities".	We kept the proposed prescribed headings for investment funds in general. However, we amended the General Instructions in Form F2 to permit scholarship plans to modify the disclosure items in order to reflect their unique characteristics.
16.2: Form F2 published for comment	*Changes to Form 41-101F1*	One commenter recommends that where there are changes made to Form 41-101F1 and Form 41-101F2 has identical provisions, the same changes should be made to 41-101F2.	We made the same changes to Form F2 where such changes are made to identical provisions in Form F1.
16.3: General	*Plain language disclosure*	One commenter recommends "the CSA to expand instructions (5) and	General Instruction (6) states that no reference need be made to

Reference	*Subject*	*Summarized Comment*	*CSA Response*
Instructions (5) and (8) of Form F2 published for comment		(8) to clarify that all investment funds must determine whether or not a particular disclosure item is relevant, material or even applicable to their business. If the investment fund reasonably concludes that the disclosure item is not, then it need not include the heading or anything about that disclosure item."	inapplicable items and negative answers to items may be omitted.
16.4: General Instruction (11) of Form F2 published for comment	*Prescribed order of headings*	One commenter opposes investment fund prospectuses following a prescribed order of disclosure. Another commenter opposes using a prescribed order of disclosure on the basis that it "will make it difficult for prospective investors to fully understand the features of a group education savings plan. In particular, the risk factor disclosure will not be very meaningful if read before the description of plan attributes."	We have found in the past that important information regarding an investment fund such as "risk factors" is often buried at the back of a lengthy prospectus, which does not serve to enhance investor protection. In order to enhance investor protection and make the prospectus more user-friendly, we kept the proposed requirement to present the prospectus disclosure in the specified order. In response to the second comment, we amended the General Instructions in Form F2 to permit scholarship plans to modify the disclosure items. See item 16.1 above.
16.5: General Instruction (13) of Form F2 published for comment	*Multiple series*	One commenter asks for clarification as to whether a single corporate entity that offers multiple series in circumstances where it cannot be said that the series are referable to the exact same portfolio can prepare a single prospectus, provided that separate disclosure is provided in response to particular items in 41-101F2 where the response would not be identical for all series.	We clarified General Instruction (13) to also permit multiple classes or series that are referable to different portfolios but are managed by the same manager to be combined into the same prospectus with the appropriate disclosure regarding each class or series.
16.6: Section 1.3 of Form F2 published for comment	*Basic disclosure about the distribution*	One commenter opposes using the term "non-redeemable investment fund" or "exchange-traded fund" and recommends that "closed end funds or exchange traded funds be permitted to use commonly used terminology to describe such funds."	We kept the proposed requirement as the terms used in this section are for legal disclosure purposes and those terms have meaning under securities regulation. Form F2 does not prohibit an investment fund from using other terminology to describe itself in other parts of the prospectus.

Reference	***Subject***	***Summarized Comment***	***CSA Response***
16.7: Section 1.4 of Form F2 published for comment	*Distribution*	One commenter recommends that "the CSA clarify what kind of disclosure in response to this item is to be provided by scholarship plans, commodity pools and LSIFs, as well as other investment funds being distributed on a continuous offering basis." The commenter notes that "subsection 1.4(1) "if the securities are being distributed for cash" would appear to require those funds to include the mandated table, much of which is not applicable to funds being distributed at a price equal to their net asset value next determined or for a fixed unit price (scholarship plans)." One commenter states that "scholarship plans cannot comply with the requirement for a distribution table presented on a per security basis due to the variety of contribution frequencies and amounts as set out in the contribution tables included in the prospectuses for scholarship plans." The commenter asks for clarification about whether scholarship plans have to include this table.	We removed investment funds in continuous distribution from this provision.
16.8: Section 1.6(c) of Form F2 published for comment	*Non-fixed price distributions*	One commenter recommends that "the heading of section 1.6(c) be changed and that "net asset value of a security" be added as a fourth pricing option in section 1.6(c)."	We kept the proposed heading. We added "net asset value of a security" as a fourth pricing option in paragraph 1.6(c).
16.9: Section 1.9 of Form F2 published for comment	*Market for securities*	One commenter questions whether funds that "are distributed continuously at NAV and are redeemable on demand have to include this disclosure" and recommends that such funds be exempted from this requirement. One commenter recommends that this part not be applicable for scholarship plans.	We clarified this section to exclude investment funds in continuous distribution.
16.10: Section 1.11 of	*No underwriter*	One commenter recommends that this requirement be eliminated	We clarified this provision to exempt labour sponsored or venture capital

Reference	***Subject***	***Summarized Comment***	***CSA Response***
Form F2 published for comment		because the securities have to be sold through a registrant anyway.	funds, commodity pools and scholarship plans since they are in continuous distribution and generally do not use an underwriter.
16.11: Section 1.15 of Form F2 published for comment	*Incorporation by reference*	One commenter asks the CSA to mandate that scholarship plans incorporate financial statements (current and subsequent) by reference into their prospectuses, as is required for other investment funds, including mutual funds subject to NI 81-101.	See our response to item 15.16, above.
16.12: Sections 3.5 and 28 of Form F2 published for comment	*Underwriting conflicts*	One commenter asks for clarification that this disclosure does not have to be included for scholarship plans.	Scholarship plan offerings are not underwritten. See General Instruction (6) in Form F2 for clarification.
16.13: Sections 3.6(5) and 7.2 of Form F2 published for comment	*MER*	One commenter asks for clarification that this disclosure does not have to be included for scholarship plans.	We clarified that the management expense ratio disclosed in the prospectus must be the management expense ratio for the past five years as disclosed in the investment fund's most recently filed annual management report of fund performance. Scholarship plans do not calculate a management expense ratio. See General Instruction (6) in Form F2 for clarification.
16.14: Section 5.4 of Form F2 published for comment	*Significant holdings in other entities*	Two commenters oppose the inclusion of the table. One commenter also states in the alternative, that if the table is to be retained that the fourth column be determined on "cost" rather than "value" basis.	We removed the fourth column of the table.
16.15: Section 6.1 of Form F2 published for comment	*Management discussion of fund performance*	One commenter questions the relevance of this section which appears to require the repetition of the disclosure provided in the documents referenced, given that "it would appear that all investment funds will either have these documents incorporated by reference or "included" with the prospectus."	We kept the proposed requirement as this section already provides for an exception for investment funds that either have included with the prospectus or incorporated by reference into the prospectus, the most recently filed management report of fund performance.

Reference	*Subject*	*Summarized Comment*	*CSA Response*
16.16: Section 7.2 of Form F2 published for comment	*Returns and management expense ratio*	One commenter recommends that the CSA clarify that this section does not apply to investment funds that do not calculate or disclose MER.	Except for scholarship plans, all investment funds that are reporting issuers must calculate MER in their management report of fund performance. Also, General Instruction (6) of Form F2 provides that inapplicable items need not be answered.
16.17: Section 11.2 of Form F2 published for comment	*Short-term trading*	One commenter notes that this section "would appear to be mostly relevant to funds that are redeemable on demand" and recommends that scholarship plans, exchange traded funds and other non redeemable investment funds be exempted from including this disclosure.	This section is applicable to an investment fund in continuous distribution whose securities are redeemable on demand by reference to the net asset value of the fund. No disclosure need be provided for inapplicable items. See General Instruction (6) of Form F2 for clarification.
16.18: Section 13.1 of Form F2 published for comment	*Prior sales*	Two commenters recommend that scholarship plans and other funds that are redeemable on demand and distributed on a continuous basis be exempted from this disclosure.	We revised this section so that investment funds in continuous distribution are excluded from this provision.
16.19: Section 15.1(5) of Form F2 published for comment	*Cease-trade orders and bankruptcies of the investment fund*	One commenter suggests that an investment fund that has been cease traded or gone bankrupt would not be filing a prospectus and therefore this section should be deleted. The commenter also states that the disclosure required by this item would require an investment fund to consider bankruptcies of its material controlling shareholders and that this would not be a practical or reasonable requirement given the nature of investment funds and the shareholders in those funds.	We revised this requirement so that it is no longer applicable to material controlling shareholders. We changed the sub-heading to "Cease Trade Orders and Bankruptcies". We kept the proposed requirement with respect to an investment fund's directors and executive officers who in the past were involved with another investment fund that was bankrupt or subject to a cease trade order. This section does not relate to any bankrupt history or cease trade order of the investment fund that filed the prospectus.
16.20: Section 15.1(6) of Form F2 published for comment	*Conflicts of interest of the investment fund*	One commenter suggests that investment funds do not commonly have "conflicts of interest" – although their managers may and recommends that (6) be deleted in favour of (9). The commenter also recommends that "the term "conflicts of interest"	We kept the proposed requirement. A conflict of interest may arise if an investment fund invests in a company or another investment fund in which a director or executive officer of the investment fund is also a director or executive officer of the company or other investment fund.

Reference	*Subject*	*Summarized Comment*	*CSA Response*
		be defined by reference to the same term in NI 81-107 to provide for consistent usage of terminology."	The term used in NI 81-107 is "conflict of interest matter" and is generally defined to include conflicts with the manager of the investment fund or conflicts with respect to mutual funds. For prospectus purposes, the term "conflict of interest" encompasses a broader range of conflicts of interest such as the one described above. However, investment funds can look to NI 81-107 for guidance.
16.21: Section 16.1 of Form F2 published for comment	*Independent review committee*	One commenter questions "why the prospectus of an investment fund does not list the members of an independent review committee (paragraph d would appear to be an error)." The commenter also recommends that "the disclosure of fees (paragraph e) should be conformed with NI 81-107." The commenter further notes that "there is no concept of "main components of fees" payable to IRC members" and recommends "some clarity and consistency with Form F2 and NI 81-107."	We clarified this section to include the requirement to disclose the names of the members of the independent review committee. We also revised this section to conform more closely with the disclosure regarding independent review committees required by mutual funds.
16.22: Section 23.3 of Form F2 published for comment	*Reporting of net asset value*	One commenter recommends that the CSA clarify whether or not the mandatory reporting of net asset value is important. The commenter also asks whether "if the fund does not propose to communicate NAV in the manner suggested in this item, may it state this". Two commenters recommend that "scholarship plans should be specifically excluded from this section, as has been done in section 23.2."	We believe that the reporting of net asset value is important for investors to make investment decisions about whether to buy, hold or sell units of the investment fund. Investment funds that do not make available their net asset value via a website or toll-free telephone number may state other means by which they intend to make their net asset value available at no cost. Scholarship plans do not report net asset value. See General Instruction (6) in Form F2 for clarification.
16.23: Section 25 of Form F2 published for comment	*Escrowed securities*	One commenter states that "specific escrow arrangements which are described in the prospectuses for scholarship plans are in place to deal with contributions for investors who have not yet obtained social insurance numbers for their	We deleted this provision from Form F2.

Reference	*Subject*	*Summarized Comment*	*CSA Response*
		beneficiaries" and asks for clarification regarding whether this section would apply to these types of arrangements.	
16.24: Section 26 of Form F2 published for comment	*Use of proceeds*	One commenter recommends that "the CSA either clarify that this section does not need to be complied with when the fund is in continuous distribution or by funds that are investing "net proceeds" in accordance with a stated investment objective or revise this section to delete irrelevant concepts."	We clarified this section so that it excludes investment funds in continuous distribution. We also revised this section to delete inapplicable concepts.
16.25: Section 40 of Form F2 published for comment	*Documents incorporated by reference*	One commenter asks the CSA to mandate that scholarship plans incorporate financial statements (current and subsequent) by reference into their prospectuses, as is required for other investment funds, including mutual funds subject to NI 81-101. One commenter recommends that similar to s. 40.1, s. 40.2 should also be limited to apply to "an investment fund that is in continuous distribution, except for a scholarship plan".	See our response to item 15.16, above. We clarified this section so that it applies to investment funds in continuous distribution except for scholarship plans.
16.26: Section 41 of Form F2 published for comment	*Financial statements*	One commenter asks for clarification regarding what financial statements are required for newly established investment funds, and whether they are required to be "included" in the prospectus or "incorporated by reference into the prospectus".	We added a new subsection to require a newly established investment fund to include (and not incorporate by reference) its opening balance sheet in its prospectus, accompanied by the auditor's report prepared in accordance with NI 81-106.
17: Investment fund issues – Companion Policy			
17.1: Part 6 of Companion Policy published for comment	*Advertising*	One commenter suggests that "additional flexibility should be given to issuers, including investment funds, to outline the material information about a particular issue during the waiting period in documents that are not	See our response to item 12.11, above.

Reference	*Subject*	*Summarized Comment*	*CSA Response*
		the preliminary prospectus."	
18: Investment fund issues – proposed amendments to other instruments and policies			
Appendix I, Schedule 1, Amendments to NI 81-101			
18.1: Proposed amendments to NI 81-101 published for comment	*General*	One commenter recommends that Item 17 of Form 81-101F1 (Dealer Compensation) be amended to state a specific formula for determining the net asset value (NAV) of a mutual fund for purposes of calculating trailing commissions as follows: "the end of each month NAV be averaged for the quarter, and this average be multiplied by the rate the fund company wishes to charge with the result divided by 4". One commenter recommends that Appendix A to NI 41-101 be attached as Appendix A to NI 81-101.	The Item in Form 81-101F1 referred to by the commenter was misstated and is actually Item 9, Part A, Form 81-101F1. We did not publish for comment any amendments to that Item and do not intend to make any changes at this time. It is not necessary to attach Appendix A to the Rule as an appendix to NI 81-101 as Appendix A to the Rule is clearly referred to in the proposed amendments to NI 81-101.
18.2: Section 1.2(3) of proposed amendments to NI 81-101 published for comment *(Section 2.1 of NI 81-101)*	*90 days requirement*	One commenter suggests that the period be 180 days.	We kept the proposed requirement. Any requests for exemptive relief to file a simplified prospectus after the expiry of the 90 day period will be considered on a case by case basis based on the merits of the application filed under Part 6 of NI 81-101.
18.3: Section 1.3 of proposed amendments to NI 81-101 published for comment *(Section 2.2 of NI 81-101)*	*Amendments*	One commenter suggests that "if it is possible to amend a prospectus to add new classes or series, then it should be legally possible (using the same interpretation of the applicable legislation) to add new classes or series to a pro forma filing" even though historically, the CSA has not permitted new classes or series to be added to a pro forma filing. The commenter recommends that this issue be clarified. Three commenters recommend that "a fund which has previously offered its securities under a simplified prospectus used in one	A new class or series that is referable to the same portfolio of an existing fund cannot be added to the fund's pro forma prospectus. In such cases, a preliminary and pro forma prospectus must be filed. A new class or series of securities of a fund cannot be added by way of an amendment to a simplified prospectus if the new class or series will be offered under another prospectus. This provision does not change existing securities legislation. Therefore, we did not make any changes with respect to the terms "material adverse change" and

Reference	*Subject*	*Summarized Comment*	*CSA Response*
		distribution network should be able to add classes or series of that fund in another prospectus of the same fund manager by means of an amendment without having to file a new preliminary prospectus for that new class or series, on the basis that the fund itself is already qualified, but just not under the same prospectus." One commenter notes that an amendment to a preliminary simplified prospectus must be done for a "material adverse change" however, an amendment to a simplified prospectus only has to be made when a "material change" occurs. The commenter recommends that an amendment in either case be made when a "material change", as defined in NI 81-106, occurs. One commenter recommends that "there should be no requirement to file an amendment to a preliminary prospectus unless the fund actually is marketing its units based on the preliminary prospectus and annual information form."	"material change" as used in this provision. With respect to filing an amendment to a preliminary prospectus, this provision mirrors the current provisions in securities legislation. We kept the proposed requirement.
18.4: Section 1.4 of proposed amendments to NI 81-101 published for comment *(Section 2.3 of NI 81-101)*	*Consents*	One commenter suggests that there are typographical errors with respect to references to Section 2.8 and those references should be to Section 2.9.	We corrected the incorrect references to section 2.8.
18.5: Section 1.4(1)(a)(iii) of proposed amendments to NI 81-101 published for comment *(Section 2.3 of NI 81-101)*	*Material contracts*	Two commenters recommend that articles of incorporation not be included as material documents that should be disclosed.	We kept the proposed requirement. We do not see any material difference between a declaration of trust, which is a constating document and has historically been filed, and articles of incorporation, which are also a constating document. This requirement is consistent with the requirements for other issuers under other prospectus rules.

Reference	*Subject*	*Summarized Comment*	*CSA Response*
18.6: Section 1.4(1)(a)(iii) of proposed amendments to NI 81-101 published for comment *(Section 2.3 of NI 81-101)*	*Voting trust agreement*	One commenter notes that the requirements to file a voting trust agreement under 2.3(1)(a)(iii)(C) or any other contract of the issuer or a subsidiary that materially affects the rights or obligations of securityholders under 2.3(1)(a)(iii)(E) have no practical application in the mutual fund context.	We kept the proposed requirement. No documents need be filed if they are not applicable.
18.7: Section 1.4(2)(ii) of proposed amendments to NI 81-101 published for comment *(Section 2.3 of NI 81-101)*	*Personal information*	Three commenters ask for clarification about whether personal information meant "personal information for directors, officers of the mutual fund and its manager". One commenter also recommends that the CSA clarify in the rules that where a fund manager has filed personal information forms for a director or officer within the last three years in connection with another mutual fund managed by the manager, then it does not have to refile these with any new fund. One commenter recommends that a fund need only file the current Form 41-501F2 together with an RCMP GRC Form 2674 (Securities Fraud Information Centre-Records Request/Reply) without the need to file the proposed personal information form. The same commenter also recommends that a filer should be exempt from the requirement to file the personal information form if the filer has previously filed such information under the National Registration Database or where a fund manager has previously filed such information under the proposed Registration Reform Project which proposes to register fund managers. The same commenter asks that the CSA confirm that it will not be necessary for mutual funds to deliver a personal information form upon the first renewal of their simplified prospectuses after	We clarified this provision by specifying that the required personal information be provided in the form of the Personal Information Form and Authorization to Collect, Use and Disclose Personal Information set out in Appendix A to the Rule. This provision states that personal information must be provided if it has not been previously delivered in connection with a simplified prospectus of the mutual fund or another mutual fund managed by the manager. Therefore, no clarification is needed. To ensure that all funds provide the same information, all personal information is required to be provided in the form of Appendix A to the Rule. We clarified that a personal information form in the form of Appendix A to the Rule will not need to be delivered upon the first renewal of a mutual fund's simplified prospectus if an expanded personal information form or an existing "abbreviated" personal information form has previously been delivered for a specified individual. We clarified that personal information is required for "executive officers" and included a definition of "executive officer" in NI 81-101.

Reference	*Subject*	*Summarized Comment*	*CSA Response*
		implementation of the consequential amendments, given that these mutual funds have not previously delivered a personal information form. The same commenter asks the CSA to clarify whether it would be necessary for a fund to deliver a personal information form annually or even every 3 years if there has been no significant change since the last filing. The same commenter notes that the instrument refers to "executive officers" and the consequential amendments refer to "officers" which is not defined.	
18.8: Sections 1.4(2)(iv) and 1.4(4)(vi) of proposed amendments to NI 81-101 published for comment *(Sections 2.3(1)(b) and 2.3(2)(b) of NI 81-101)*	*Comfort letters*	One commenter notes that comfort letters are typically included if a financial statement included in a preliminary or pro forma simplified prospectus is accompanied by an unsigned auditor's report. The commenter suggests that this is unnecessary because a pro forma simplified prospectus is not made public on SEDAR and a financial statement with a preliminary simplified prospectus typically contains no financial information whatsoever.	We kept the proposed requirement for preliminary simplified prospectus filings. An existing mutual fund that files a preliminary simplified prospectus must file financial statements together with the preliminary simplified prospectus. In such cases, if the financial statements are accompanied by an unsigned auditor's report, a signed letter from the auditor to the regulator is required. We removed the requirement for an auditor's letter in pro forma prospectus filings.
18.9: Section 1.4(4) of proposed amendments to NI 81-101 published for comment *(Section 2.3 of NI 81-101)*	*Pro forma prospectus*	One commenter recommends that the CSA delete subparagraph (vi) as this represents a change from current practice.	Subparagraph (vi) has been removed. See our response to item 18.8, above.
18.10: Section 1.4(5) of proposed amendments to NI 81-101 published for comment *(Section 2.3 of NI*	*Simplified prospectus*	One commenter notes that "there is no similar express reference made to the filing of a signed annual information form with respect to a final prospectus under section 2.3(3)" as there is for a preliminary or an amendment.	We added a requirement under paragraph 2.3(3)(a) that a certified copy of the annual information form has to be filed. This does not change the current practice of filing a signed SEDAR Form 6 with CDS Inc.

Reference	***Subject***	***Summarized Comment***	***CSA Response***
81-101)		The commenter asks if the requirement for a signed prospectus changed "the current practice of filing a signed SEDAR Form 6 with CDS Inc."	
18.11: Section 1.5 of proposed amendments to NI 81-101 published for comment *(Section 2.5 of NI 81-101)*	*Lapse date*	One commenter recommends that the 90 day cancellation period be reduced to 10 days and notes that the period "provides the purchaser with an inordinately long period of time during which they essentially have an option which they may choose to exercise at the end of the 90 day period once it is clear whether their mutual fund has increased or decreased in value since the date of their purchase." One commenter asks for clarification regarding what was meant by the phrase at the beginning of subsection 2.5(3), "Subject to subsection (2)". One commenter notes that the reference under s. 2.5(4) to "previous prospectus" should be "previous simplified prospectus". One commenter notes that the reference under s. 2.5(6) to "Subject to any extension granted under subsection (5)" seemed to be in error. One commenter recommends that the reference under 2.5(7) to "reporting issuer" should be "mutual fund".	We kept the proposed requirement. This provision was taken from existing securities legislation. We deleted the phrase "Subject to subsection (2)". We also clarified this section to conform with section 17.2 of the Rule. We changed "previous prospectus" to "previous simplified prospectus". We corrected the phrase "Subject to any extension granted under subsection (5)". We changed "reporting issuer" to "mutual fund".
18.12: Section 1.5 of proposed amendments to NI 81-101 published for comment *(Section 2.7 of NI 81-101)*	*Review of unaudited financial statements*	Eight commenters oppose this change on the basis of cost and time to conduct the review. One commenter notes that "currently, a fund's auditor is only required to review interim financial statements at the time that the auditor is involved in a simplified prospectus filing." Another commenter notes that "it also appears that this requirement	We narrowed this provision to require only unaudited financial statements included or incorporated by reference into the simplified prospectus at the date of filing of the simplified prospectus to be reviewed. CICA Handbook Section 7110 - *Auditor Involvement with Offering Documents of Public and Private Entities* sets out the auditor's professional responsibilities when the auditor is involved with a

Reference	*Subject*	*Summarized Comment*	*CSA Response*
		imposes an extra burden on funds that file a prospectus after the deadline for filing their interim financial statements that is not imposed on similar funds that happen to file their prospectuses earlier in their fiscal year, without any apparent corresponding benefit to securityholders." One commenter notes that a review of interim financial statements "could result in an additional cost of as much as $2000 per fund." Another commenter estimates the cost of a review for three funds to be approximately $20,000 and notes this "would translate into an increase of 1.0 to 4.2 basis points per year in MER". Two commenters note that "this new requirement would seriously impact the ability of mutual funds to file interim financial statements on time." One of the commenters also states that "the extra time that will need to be set aside for auditor review will leave far less time to actually prepare the statements and will jeopardize the ability of funds to file interim financial statements within the 60 day timeline."	prospectus or other securities offering document and requires that the auditor perform various procedures prior to consenting to the use of its report or opinion, including reviewing unaudited financial statements included in the document.
18.13: Section 1.5 of proposed amendments to NI 81-101 published for comment *(Section 2.9 of NI 81-101)*	*Consents of experts*	One commenter asks for clarification as to the requirement to file expert consents under proposed new section 2.9 of NI 81-101, specifically as to whether it is necessary to provide an auditor's consent letter (or a solicitor's consent letter with respect to the disclosure of their tax opinion, for example) with every prospectus amendment even when the amendment does not relate to the financial statements or information included in the simplified prospectus that has been derived from the financial statements (or the tax opinion).	This provision was drawn from OSC Rule 41-501 and moved into NI 81-101. As this provision is not new, it does not change the current requirements and staff practice with respect to the filing of expert consents. An expert's written consent does not need to be filed with an amendment if the amendment does not relate to the expertised sections in the prospectus.

Reference	*Subject*	*Summarized Comment*	*CSA Response*
18.14: Section 1.9 of proposed amendments to NI 81-101 published for comment *(Section 6.3 of NI 81-101)*	*Date of Certificates - certificates general*	One commenter suggests that the guidance in s. 1.3(2) of 41-101CP be added to 81-101CP. One commenter asks what the purpose of Part 6 is if there are certificate requirements in the prospectus form. One commenter notes that references to "prospectus" or "an amendment to a prospectus" should refer to "simplified prospectus". The commenter also recommends that the section also refer to an amendment to an annual information form.	We added the guidance in subsection 1.3(2) of 41-101CP to 81-101CP. We also added a definition of "business day" to NI 81-101. Part 6 establishes the certificate requirement and the prospectus form establishes the form of the certificate, similar to other prospectus rules. We changed section 1.9 to refer to a simplified prospectus and an annual information form.
18.15: Section 1.10 of proposed amendments to NI 81-101 published for comment *(Subsection 6(5) of Form 81-101F1)*	*Short-term trading*	One commenter recommends eliminating the requirement to disclose specific circumstances in which a short term trading restriction or fee may be waived. Two commenters note that "specific disclosure of circumstances in which a short term trading restriction or fee may be waived, may have the unintended adverse consequence of serving as a roadmap for "how to beat the system" and to circumvent the restrictions and penalties set forth in those policies, which exist to protect investors." One commenter expresses concern that the provision requiring a description of all arrangements with a person or company to permit short-term trades of mutual fund securities could be "misleading to investors". The commenter notes that "to the extent that a fund manager may have agreements in place which provide that for legitimate reasons, short term trading restrictions will not be actively enforced in regards to certain transactions, they are typically "fund on fund" –type agreements with institutional investors or other mutual fund managers." The commenter also notes that "these clients often require a degree of flexibility	We changed the requirement in paragraph 6(5)(b) of Part A of Form 81-101F1 to require disclosure of the circumstances under which the restrictions will not apply. Disclosure of the specific circumstances where the restrictions would be waived in the discretion of the manager is not required. In response to whether agreements to permit short-term trades should be disclosed, we are of the view that short-term trades that are not carried out with the specific intent to commit harmful short-term trading or market timing can nevertheless have a negative impact on a fund. For this reason, agreements with other mutual funds and other investment products to allow short-term trading in a mutual fund are not exempted from disclosure. To the extent that a fund manager is concerned that disclosure of these arrangements may be misleading to investors, the fund manager may explain in the disclosure why such arrangements are not, in its view, harmful to the fund. Regarding the comment suggesting that an exception be made for money market funds, it is within the discretion of the fund manager, not the CSA, to decide which trades should be exempted from short-term trading restrictions. Paragraph

Reference	*Subject*	*Summarized Comment*	*CSA Response*
		regarding their ability to buy and sell bottom fund units, in order to meet purchase and redemption requests in the top fund." The commenter recommends that this requirement be eliminated. One commenter recommends that "the CSA consider making an exception of these disclosure requirements in the case of money market funds where it is contemplated that investors may utilize them for short-term transactional purposes, and where for the most part a stable net asset value per unit is maintained that is not subject to manipulation through inappropriate short-term trading activities."	6(5)(b) requires that those exceptions be disclosed. Accordingly, where it is the policy of the manager to not subject short-term trades in money market mutual funds to any restrictions, the manager should simply disclose this exception in accordance with the requirement in paragraph 6(5)(b).
18.16: Section 1.11 of proposed amendments to NI 81-101 published for comment *(Subsection 19(1) of Form 81-101F2)*	*Amended and restated prospectus*	One commenter notes that the reference to "simplified prospectus" in the fourth line of s. 19(1)(c) should be "amended and restated prospectus".	We made the change.
Appendix L, Schedule 1, OSC Rule 41-801			
18.17: Section 3.1(1) of proposed OSC Rule 41-801	*Certificates*	One commenter recommends that this section also refer to the certificate requirements in the proposed new NI 81-101.	The OSC did not add a reference to the certificate requirements in NI 81-101 because those requirements already exist under Form 81-101F2.
Appendix L, Schedule 2, OSC Rule 81-803			
18.18: Section 1.1 and 1.2 of proposed OSC Rule 81-803		One commenter recommends that "these rules be incorporated in proposed NI 41-101 and in NI 81-101 for ease of reference and compliance."	These provisions have been removed because they are no longer required as a result of amendments to the *Securities Act* (Ontario).
Appendix K, National Policy 43-201			
18.19: Section 1.6 of	*Other requirements*	One commenter notes that "the proposed language for the	Refer to our response to item 13.1, above.

Reference	*Subject*	*Summarized Comment*	*CSA Response*
Appendix K *(Section 10.9 of NP 43-201)*		reminder in section 10.9 is essentially a requirement to cease distribution until a receipt for an amendment has been issued." The commenter notes that this would be administratively difficult for mutual funds and that some regulators require a cessation of distribution while some do not.	