

APPENDIX B

Schedule 4

COMPANION POLICY TO NATIONAL INSTRUMENT 41-101 GENERAL PROSPECTUS REQUIREMENTS

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**COMPANION POLICY
TO NATIONAL INSTRUMENT 41-101
GENERAL PROSPECTUS REQUIREMENTS**

PART 1: Introduction, Interrelationship with Securities Legislation, and Definitions

Introduction and purpose

- 1.1** This Policy describes how the provincial and territorial securities regulatory authorities (or “we”) intend to interpret or apply the provisions of the Instrument. Some terms used in this Policy are defined or interpreted in the Instrument, NI 14-101, or a definition instrument in force in the jurisdiction.

Interrelationship with other securities legislation

This Policy

- 1.2(1)** The Instrument applies to any prospectus filed under securities legislation and any distribution of securities subject to the prospectus requirement, other than a prospectus filed under NI 81-101 or a distribution of securities under such a prospectus, or unless otherwise stated. Parts of this Policy may not apply to all issuers.

Local securities legislation

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

Continuous disclosure (NI 51-102)

- (3)** NI 51-102 and other securities legislation imposes ongoing disclosure and filing obligations on reporting issuers. The regulator may consider issues raised in the context of a continuous disclosure review when determining whether it is in the public interest to refuse to issue a receipt for a prospectus. Consequently, unresolved issues may delay or prevent the issuance of a receipt.

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

cause the regulator to refuse a receipt for the prospectus.

Short form prospectus distributions (NI 44-101)

- (4) As set out in section 2.1 of NI 44-101 [*Short Form Prospectus*], an issuer must not file a prospectus in the form of Form 44-101F1 unless the issuer is qualified under any of sections 2.2 through 2.6 of NI 44-101 to file a short form prospectus. An issuer that is qualified to file a short form prospectus must satisfy the requirements of NI 44-101, including the filing requirements of Part 4 of NI 44-101 [*Filing Requirements for a Short Form Prospectus*], as well as any applicable requirements of the Instrument. Therefore, issuers qualified to file a short form prospectus and selling security holders of those issuers that wish to distribute securities under the short form system should refer to the Instrument, this Policy, and NI 44-101 and its companion policy.

Shelf distributions (NI 44-102)

- (5) Issuers qualified under NI 44-101 to file a prospectus in the form of a short form prospectus and their security holders can distribute securities under a short form prospectus using the shelf distribution procedures under NI 44-102. The Companion Policy to NI 44-102 explains that the distribution of securities under the shelf system is governed by the requirements and procedures of NI 44-101 and securities legislation, except as supplemented or varied by NI 44-102. Therefore, issuers qualified to file a short form prospectus and selling security holders of those issuers that wish to distribute securities under the shelf system should refer to the Instrument, this Policy, NI 44-101 and its companion policy, and NI 44-102 and its companion policy.

PREP procedures (NI 44-103)

- (6) NI 44-103 contains the post-receipt pricing (PREP) procedures. All issuers and selling security holders can use the PREP procedures of NI 44-103 to distribute securities. Issuers and selling security holders that wish to distribute securities using the PREP procedures as provided for in NI 44-103 should refer to the Instrument, this Policy, and NI 44-103 and its companion policy. Issuers and selling security holders that wish to distribute securities under a short form prospectus using the PREP procedures should also refer to NI 44-101 and its companion policy for any additional requirements.

Mutual reliance review system (MRRS) (NP 43-201)

- (7) National Policy 43-201 *Mutual Reliance Review System for Prospectuses* and, in Québec, *Notice 43-201 relating to the Mutual Reliance Review System for Prospectuses* (“NP 43-201”) describes the practical application of the mutual reliance review system relating to the filing and review of prospectuses, including investment fund and shelf prospectuses, amendments to prospectuses and related materials. While use of NP 43-201 is optional, NP 43-201 represents the only means by which an issuer can enjoy the benefits of coordinated review by the securities regulatory authorities in the various jurisdictions in

which the issuer has filed a prospectus. Under NP 43-201, one securities regulatory authority acts as the principal regulator for all materials relating to a filer.

No target time frame applies to the review of a prospectus of an issuer if the issuer has not elected to use NP 43-201.

Selective review

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

Definitions

Asset-backed security

- 1.3(1) The definition of “asset-backed security” is the same definition used in NI 51-102.

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

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

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

Business day

- (2) Section 1.1 of the Instrument [*Definitions*] defines business day as any day other than a Saturday, Sunday or a statutory holiday. In some cases, a statutory holiday may only be a statutory holiday in one jurisdiction. The definition of business day should be applied in each local jurisdiction in which a prospectus is being filed. For example, subsection 2.3(2) of the Instrument [*General requirements*] states that an issuer must not file a prospectus more than 3 business days after the date of the prospectus. A prospectus is dated Day 1. Day 2 is a statutory holiday in Québec but not in Alberta. If the prospectus is filed in both Alberta and Québec, it must be filed no later than Day 4, despite the fact that Day 2 was not a business day in Québec. If the prospectus is filed only in Québec, it could be filed on Day 5.

PART 2: General Requirements

Experience of officers and directors

- 2.1 Securities legislation requires that a securities regulatory authority or regulator refuse to issue a receipt for a prospectus if it appears that the proceeds received from the sale of securities to be paid to the treasury of the issuer, together with other resources of the issuer, will be insufficient to accomplish the purposes stated in the prospectus. In addition to financial resources, resources include people. We believe that a sufficient number of the directors and officers of the issuer should have relevant knowledge and experience so that a securities regulatory authority or regulator will not conclude that the human and other resources are insufficient to accomplish these purposes. If the requisite knowledge and experience are not possessed by the directors and officers, a securities regulatory authority or regulator may be satisfied that the human and other resources are sufficient if it is shown that the issuer has contracted to obtain the knowledge and experience from others.

Role of underwriter

- 2.2 The due diligence investigation undertaken by an underwriter in relation to the business of the issuer often results in enhanced quality of disclosure in the prospectus. In addition, an underwriter typically provides valuable advice regarding the pricing and marketing of securities. For these reasons, we strongly encourage underwriter participation in prospectus offerings, particularly where the offering is an initial public offering.

Indirect distributions

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

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

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

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

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

Over-allocation

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

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

To form part of the over-allocation position, securities must be sold to *bona fide* purchasers as of the closing of the offering. Securities held by an underwriter or in proprietary accounts of an underwriter for sale at a future date do not form part of the over-allocation position. Further, as discussed below, section 11.3 of the Instrument [*Distributions of securities under a prospectus to an underwriter*] restricts the distribution of securities under a prospectus to an underwriter. Since section 11.2 of the Instrument [*Over-allocation*] requires that all securities that are sold to create the over-allocation position be distributed under the prospectus, securities cannot be sold to an underwriter to increase the size of the over-allocation position.

Distribution of securities under a prospectus to an underwriter

- 2.5** Section 11.3 of the Instrument [*Distributions of securities under a prospectus to an underwriter*] restricts the distribution of securities under a prospectus to a person acting as an underwriter, other than an over-allotment option, the securities underlying an over-allotment option and compensation securities or options exercisable in aggregate for up to 5% of the base offering under the prospectus. The 5% limit should be determined as if all convertible or exchangeable securities offered under the prospectus were exercised for the underlying securities. The number of securities issueable or transferable on the exercise of the compensation securities or any over-allotment do not form part of the base offering.

Certificates

Discretion of regulator regarding control persons

2.6(1) Subsection 5.11(4) [*Certificate of promoter*], subsection 5.13(6) [*Certificate of substantial beneficiary of the offering*] and section 5.14 [*Certificate of selling security holders*] of the Instrument, provides the regulator in jurisdictions other than Ontario with the discretion to require a prospectus certificate from control persons of promoters or former promoters, substantial beneficiaries of the offering or selling security holders. These provisions are intended to ensure that statutory liability may not be avoided through the interposition of a holding entity. When deciding whether to exercise its discretion, the regulator may consider whether it appears that a person or company is organizing its business and affairs to avoid a requirement to sign a prospectus certificate or to avoid liability as a selling security holder under provincial and territorial securities legislation.

Substantial beneficiaries of the offering

- (2)** Section 5.13 of the Instrument requires substantial beneficiaries of the offering to sign a prospectus certificate. The definition of substantial beneficiary of the offering captures those parties who, by virtue of control, have the best information about a significant business of the issuer and, by virtue of their direct or indirect receipt of the proceeds of the offering, have a substantial economic interest in the offering. The certificate is required to provide an incentive for such parties to ensure that the prospectus does in fact contain full, true and plain disclosure regarding the offered securities.
- (3)** The 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 a substantial beneficiary of the offering. Repayment of debt may constitute indirect receipt of proceeds of an offering. The control element of this test is intended to preclude the inclusion of *bona fide*, arms' length, commercial lenders to an issuer. However, in the unusual circumstance where such a lender falls within the definition of substantial beneficiary of the offering as a result of security taken or realized in connection with a loan, an application for relief from the certificate requirement may be appropriate.

Public interest

- (4)** Securities legislation provides the regulator with discretion to refuse a receipt for a prospectus where it is not in the public interest to issue the receipt. Statutory liability in connection with prospectus disclosure is provided under securities legislation to provide discipline in complying with the requirement that a prospectus contain full, true and plain disclosure of all material facts relating to the offered securities and to protect the integrity of the Canadian public markets. Where an offering is structured in a manner that circumvents the objects and purposes of securities legislation and results in a person or company accessing the public markets without accountability, significant public interest concerns may be raised. Such public interest concerns will be addressed on a case by case basis as part of the analysis of whether a receipt should be issued for a final

prospectus. There may be circumstances in which it will be appropriate for the regulator to request a person or company, that is not otherwise required to do so, to certify a prospectus as a means of resolving such public interest concerns.

In Ontario, substantial beneficiaries of the offering and officers and directors of a reverse take-over acquirer are not required to provide a prospectus certificate under sections 5.13 and 5.8 of the Instrument. The discretion to require certificates from a selling security holder or control persons of a promoter, substantial beneficiary or selling security holder and the general discretion to require certificate from any person or company also do not apply in Ontario. The fact that these provisions of the Instrument do not apply in Ontario should not be interpreted as affecting the public interest analysis that is undertaken in connection with the issuance of a receipt for a final prospectus.

Chief executive officer and chief financial officer

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

Promoters of issuers of asset-backed securities

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

For example, in the context of a securitization program under which assets of one or more related entities are financed by issuing asset-backed securities (sometimes called a "single seller program"), we will usually consider an entity transferring or originating a significant portion of such assets, an entity initially agreeing to provide on-going collection, administrative or similar services to the issuer, and the entity for whose primary economic benefit the asset-backed program is established, to be a promoter of the issuer if it took the initiative in founding, organizing or substantially reorganizing the business of the issuer. Persons or companies contracting with the issuer to provide credit enhancements, liquidity facilities or hedging arrangements or to be a replacement

servicer of assets, and investors who acquire subordinated investments issued by the issuer, will not typically be promoters of the issuer solely by virtue of such involvement.

In the context of a securitization program established to finance assets acquired from numerous unrelated entities (sometimes called a “multi-seller program”), we will usually consider the person or company (frequently a bank or an investment bank) establishing and administering the program in consideration for the payment of an on-going fee, for example, to be a promoter of the issuer if it took the initiative in founding, organizing or substantially reorganizing the business of the issuer. Individual sellers of the assets into a multi-seller program are not ordinarily considered to be promoters of the issuer, despite the economic benefits accruing to such persons or companies from utilizing the program.

As with single-seller programs, other persons or companies contracting with the issuer to provide services or other benefits to the issuer of the asset-backed securities will not typically be promoters of the issuer solely by virtue of such involvement.

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

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

Special warrants

Distributions to resale market

- 2.8(1)** In certain special warrant transactions, the dealer involved in the private placement may itself have purchased special warrants from the issuer on an exempt basis, notwithstanding that it has not disclosed any commitment to do so.

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

It is a requirement, therefore, that any dealer who has acquired special warrants with a view to their distribution or the distribution of the underlying securities deliver during the period of distribution a prospectus to its purchasers (where the sale to such purchasers is made otherwise than pursuant to a prospectus exemption) in order that such purchasers have the benefit of all rights and remedies provided to prospectus purchasers under provincial and territorial securities legislation.

In connection with their prospectus review procedure, our staff may request confidential disclosure by the issuer of all beneficial purchasers of special warrants.

Underwriters' certificate and due diligence

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

The registrants involved in placing the special warrants are, therefore, also involved in prospectus distribution and such registrants in a contractual relationship with the issuer must include their certificate in the prospectus under subsection 5.9(1) of the Instrument [*Certificate of underwriter*] or securities legislation. We note that the resulting incentive to such registrants to participate in the due diligence investigation of the issuer is also beneficial to the secondary market.

The obligation to deliver an underwriter's certificate as described in this Policy should not be construed as an extension of the scope of distributions any registrant is authorized to make under applicable provincial and territorial securities legislation.

Offerings of convertible or exchangeable securities

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

The investor protection concern arises because the conversion or exchange feature of the security may operate to limit the remedies available to an investor for incomplete or inaccurate disclosure in a prospectus. For example, an investor may pay part of the purchase price at the time of the purchase of the convertible security and part of the purchase price at the time of the conversion. To the extent that an investor makes a

further “investment decision” at the time of conversion, the investor should continue to enjoy the benefits of statutory rights or comparable contractual rights in relation to this further investment. In such circumstances, issuers should ensure that:

- (a) the distribution of both the convertible or exchangeable securities and the underlying securities will be qualified by the prospectus; or
- (b) the statutory rights that an investor would have if he or she purchased the underlying security offered under a prospectus are otherwise provided to the investor by way of a contractual right of action.

PART 3: Filing and Receipting Requirements

Extension of 90-day period for issuance of final receipt

- 3.1** The effect of subsection 2.3(1) of the Instrument [*General requirements*] is to ensure that issues are not being marketed by means of preliminary prospectuses containing outdated information. Part 19 of the Instrument [*Exemption*] gives a securities regulatory authority or regulator discretion to exempt the issuer from compliance with any provision of subsection 2.3(1) of the Instrument [*General requirements*] if the applicable securities regulatory authority or regulator is satisfied that there is sufficient justification for so doing.

Confidential material change reports

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

Supporting documents

- 3.3** Material that is filed in a jurisdiction will be made available for public inspection in that jurisdiction, subject to the provisions of securities legislation in the local jurisdiction

regarding confidentiality of filed material. Material that is delivered to a regulator, but not filed, is not generally required under securities legislation to be made available for public inspection.

Consents of lawyers

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

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

Documents affecting the rights of security holders

- 3.5(1)** Subclause 9.2(a)(ii)(A) of the Instrument [*Documents Affecting the Rights of Security Holders*] requires the issuer to file copies of its articles of incorporation, amalgamation, continuation or any other constating or establishing documents, unless the document is a statutory or regulatory instrument. This carve out for a statutory or regulatory instrument is very narrow. For example, the carve out would apply to Schedule I or Schedule II banks under the Bank Act, whose charter is the Bank Act. It would not apply when only the form of the constating document is prescribed under statute or regulation, such as articles under the Canada Business Corporations Act.
- (2)** Subclause 9.2(a)(ii)(E) of the Instrument [*Documents Affecting the Rights of Security Holders*] requires an issuer to file copies of contracts that can reasonably be regarded as materially affecting the rights of an issuer's security holders generally. A warrant indenture is one example of this type of contract. We would expect that contracts entered into in the ordinary course of business would not usually affect the rights of security holders generally, and so would not be required to be filed under this subclause.

Material contracts

Contracts entered into in the ordinary course of business

- 3.6(1)** Under subsection 9.1(1) of the Instrument [*Application and interpretation*], the filing requirement only applies to material contracts: There is no requirement to file a contract if it is not material.

Subparagraph 9.2(a)(iii) of the Instrument [*Material Contracts*] requires the issuer to file with a preliminary prospectus any material contract, other than a contract entered into in the ordinary course of business. Whether a contract was entered into in the ordinary course of business is a question of fact. It must be considered in the context of the issuer's business and industry.

Paragraphs 9.1(1)(a) through (e) of the Instrument [*Application and interpretation*] describe specific types of contracts that are not considered to be contracts entered into in the ordinary course of business. The exemption from the requirement to file material contracts for contracts entered into in the ordinary course of business is not available for any contract of the type described in these paragraphs. Accordingly, such a material contract must be filed under subparagraph 9.2(a)(iii) of the Instrument [*Material Contracts*].

Under paragraph 9.1(1)(f) of the Instrument [*Application and interpretation*], any contract on which the issuer's business is substantially dependent is also considered not to be a contract entered into in the ordinary course of business. These contracts include contracts not otherwise described in paragraphs 9.1(1)(a) through (e) of the Instrument [*Application and interpretation*].

Management or administration agreements

- (2) Under paragraph 9.1(1)(e) of the Instrument [*Application and interpretation*] management or administration agreements are not considered to be contracts entered into in the ordinary course of business. Management or administration agreements include any management contract or any compensatory plan, contract or arrangement including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing in which any director or any of the named executive officers of the company participates, other than the following:
- (a) ordinary purchase and sales agency agreements;
 - (b) agreements with managers of stores in a chain organization or similar organization;
 - (c) contracts providing for labour or salesperson's bonuses or payments to a class of security holders, as such;
 - (d) any compensatory plan, contract or arrangement which pursuant to its terms is available to employees, officers or directors generally and which in operation provides for the same method of allocation of benefits between management and non-management participants.

Omission or redaction

(3) Subparagraph 9.2(a)(iii) [*Material Contracts*] of the Instrument permits certain provisions of a material contract that is required to be filed to be omitted or marked so as to be unreadable subject to three conditions.

(a) An executive officer of the issuer has reasonable grounds to believe that disclosure of any omitted or redacted provisions would be seriously prejudicial to the interests of the issuer or would violate confidentiality provisions.

A boilerplate blanket confidentiality provision covering the entire contract would not satisfy this condition.

(b) An executive officer of the issuer has reasonable grounds to believe that any omitted or redacted provisions do not contain information relating to the issuer or its securities that would be necessary to understanding the contract.

Provisions that are necessary to understanding the contract include provisions disclosing the information listed in subsection 9.1(2) of the Instrument [*Application and interpretation*].

(c) The issuer must include a description of the type of information that has been omitted or redacted in the copy of the material contract filed by the issuer.

A brief one-sentence description immediately following the omitted or redacted information would be sufficient in most cases.

Response letters and marked up copies

3.7 In response to a comment letter for a preliminary prospectus, an issuer should include draft wording for the changes it proposes to make to a prospectus to address staff's comments. When the comments of the various securities regulators have been resolved, a draft of the prospectus with all proposed changes from the preliminary prospectus should be clearly marked and submitted as far as possible in advance of the filing of final material. These procedures may prevent delay in the issuing of a receipt for the prospectus, particularly if the number or extent of changes are substantial.

Undertaking in respect of credit supporter disclosure, including financial statements

3.8 Under subparagraph 9.3(a)(x) of the Instrument [*Required documents for filing a final long form prospectus*], an issuer must file an undertaking, in a form acceptable to the regulators, to file the periodic and timely disclosure of a credit supporter. For credit supporters that are reporting issuers with a current AIF (as defined in NI 44-101), the undertaking will likely be to continue to file the documents it is required to file under NI 51-102. For credit supporters registered under the 1934 Act, the undertaking will likely be to file the types of documents that would be required to be incorporated by reference

into a Form S-3 or Form F-3 registration statement. For other credit supporters, the types of documents to be filed pursuant to the undertaking will be determined through discussions with the regulators on a case-by-case basis.

If an issuer, a parent credit supporter, and a subsidiary credit supporter satisfy the conditions of the exemption in 34.3 of Form 41-101F1 [*Issuer is wholly-owned subsidiary of, and one or more subsidiary credit supporters controlled by, parent credit supporter*]. For continuous disclosure filings, an undertaking may provide that the subsidiary credit supporter will file periodic and timely disclosure if the issuer and the credit supporters no longer satisfy the conditions of the exemption in this item.

If an issuer and a credit supporter satisfy the conditions the exemption in 34.4 of Form 41-101F1 [*One or more credit supporters controlled by issuer*]. For continuous disclosure filings, an undertaking may provide that the credit supporter will file periodic and timely disclosure if the issuer and the credit supporter no longer satisfy the conditions of the exemption in this item.

For the purposes of such an undertaking, references to disclosure included in the prospectus should be replaced with references to the issuer or parent credit supporter's continuous disclosure filings. For example, if an issuer and subsidiary credit supporter(s) plan to continue to satisfy the conditions of the exemption in item 34.4 of Form 41-101F1 [*One or more credit supporters controlled by issuer*] for continuous disclosure filings, the undertaking should provide that the issuer will file with its consolidated financial statements,

- (a) a statement that the financial results of the credit supporter(s) are included in the consolidated financial results of the issuer if
 - (i) the issuer continues to have limited independent operations, and
 - (ii) the impact of any subsidiaries of the issuer on a combined basis, excluding the credit supporter(s) but including any subsidiaries of the credit supporter(s) that are not themselves credit supporters, on the consolidated financial statements of the issuer continues to be minor, or
- (b) for any periods covered by issuer's consolidated financial statements, consolidating summary financial information for the issuer presented in the format set out in subparagraph 34.4(e)(ii) of Form 41-101F1 [*One or more credit supporters controlled by issuer*].

Disclosure of investigations or proceedings

- 3.9** Securities legislation provides that, subject to certain conditions, the securities regulatory authorities or the regulator must issue a receipt for a prospectus unless it appears that it would not be in the public interest to do so. The securities regulatory authority or the

regulator will consider whether there are ongoing or recently concluded investigation or proceeding relating to

- an issuer,
- a promoter,
- a substantial beneficiary of the offering,
- a principal security holder, director or officer of the issuer, or
- an underwriter or other person or company involved in a proposed distribution

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

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

Amendments

- 3.10(1)** Except in Ontario, subsection 6.5(1) of the Instrument [*Amendment to a preliminary prospectus*] and in Ontario, securities legislation, provides that if a material adverse change occurs after a receipt for a preliminary prospectus is obtained, an amendment to the preliminary prospectus must be filed as soon as practicable, but in any event within 10 days after the change occurs. If a preliminary prospectus indicates the number or value of the securities to be distributed under the prospectus, an increase in the number or value is, absent unusual circumstances, unlikely to constitute a material adverse change requiring an amendment to the preliminary prospectus.
- (2) If, after filing a preliminary prospectus, an issuer decides to attach or add to the securities offered under a prospectus a right to convert into, or a warrant to acquire, the security of the issuer being offered under the preliminary prospectus, the attachment or addition of the conversion feature or warrant is, absent unusual circumstances, unlikely to constitute a material adverse change requiring an amendment to the preliminary prospectus.
- (3) Securities legislation provides that no person or company shall distribute securities, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued by the securities regulatory authority or regulator. If an issuer intends to add a

new class of securities to the distribution under the prospectus after the preliminary prospectus has been filed and receipted, we interpret this requirement to mean an issuer must file an amended and restated preliminary prospectus.

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

- (4) Any changes to the terms or conditions of the security being distributed, such as the deletion of a conversion feature, may constitute a material adverse change requiring an amendment to the preliminary prospectus.
- (5) Under provincial and territorial securities legislation, a regulator must not issue a receipt for a prospectus in certain circumstances, including if the regulator considers it prejudicial to the public interest to do so. The purpose of subsection 6.6(3) of the Instrument [*Amendment to a final prospectus*] is to clarify that these receipt refusal grounds apply to an amendment to a final prospectus or a final short form prospectus in certain jurisdictions.

Reduced price distributions

- 3.11 Subsection 7.2(3) of the Instrument [*Non-fixed price offerings and reduction of offering price*] permits an issuer to reduce the offering price of the securities being distributed without filing an amendment to the prospectus if certain conditions are satisfied. Satisfying the conditions in this subsection means the underwriter's compensation should decrease by the amount that the aggregate price paid by purchasers for the securities is less than the gross proceeds paid by the underwriter to the issuer or selling security holder. Item 20.8 of Form 41-101F1 [*Reduced price distributions*] requires disclosure of this fact.

Registration requirements

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

PART 4: General Content of Long Form Prospectus

Style of long form prospectus

- 4.1 Provincial and territorial securities legislation requires that a long form prospectus contain “full, true and plain” disclosure. Issuers should apply plain language principles when they prepare a long form prospectus including:
- using short sentences;
 - using definite everyday language;
 - using the active voice;
 - avoiding superfluous words;
 - organizing the document into clear, concise sections, paragraphs and sentences;
 - avoiding jargon;
 - using personal pronouns to speak directly to the reader;
 - avoiding reliance on glossaries and defined terms unless it facilitates understanding of the disclosure;
 - avoiding vague boilerplate wording;
 - avoiding abstract terms by using more concrete terms or examples;
 - avoiding multiple negatives;
 - using technical terms only when necessary and explaining those terms;
 - using charts, tables and examples where it makes disclosure easier to understand.

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

Cover page disclosure for non-fixed price distributions

- 4.2 Item 1.7 of Form 41-101F1 [*Pricing range*] states that, if the offering price or the number of securities being distributed has not been determined at the date of the preliminary long form prospectus, the issuer must disclose a *bona fide* estimate of the range in which the offering price or the number of securities being distributed is expected to be set. A difference between this *bona fide* estimate and the actual offering price or number of securities being distributed is not generally a material adverse change for which the issuer must file an amended preliminary long form prospectus.

Issuers with negative operating cash flow

- 4.3 Subsection 6.3(1) of Form 41-101F1 [*Principal purposes – generally*] requires disclosure of each of the principal purposes for which the issuer will use the net proceeds. If an issuer has negative operating cash flow in its most recently completed financial year for which financial statements have been included in the long form prospectus, the issuer should prominently disclose that fact in the use of proceeds section of the long form prospectus. The issuer should also disclose whether, and if so, to what extent, the issuer

will use the proceeds of the distribution to fund any anticipated negative operating cash flow in future periods. An issuer should disclose negative operating cash flow as a risk factor under subsection 21.1(1) of Form 41-101F1 [*Risk factors*].

MD&A

Additional information for venture issuers without significant revenue

4.4(1) Item 8.6 of Form 41-101F1 [*Additional disclosure for venture issuers or IPO venture issuers without significant revenue*] requires certain venture issuers and IPO venture issuers to provide in their annual or interim MD&A or MD&A supplement (unless the information is included in their annual and interim financial statements), a breakdown of material costs whether capitalized, deferred or expensed. A component of cost is generally considered to be a material component if it exceeds the greater of

- (a) 20% of the total amount of the class, and
- (b) \$25,000.

Disclosure of outstanding security data

(2) Item 8.4 of Form 41-101F1 [*Disclosure of outstanding security data*] requires disclosure of information relating to the outstanding securities of the issuer as of the latest practicable date. The “latest practicable date” should be, as close as possible, to the date of the long form prospectus. Disclosing the number of securities outstanding at the most recently completed financial year is generally not sufficient to meet this requirement.

Distribution of asset-backed securities

4.5 Item 10.3 of Form 41-101F1 [*Asset-backed securities*] specifies additional disclosure that applies to distributions of asset-backed securities. Disclosure for a special purpose issuer of asset-backed securities will generally explain

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

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

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

- (a) The extent of disclosure respecting an issuer will depend on the extent of the issuer's on-going involvement in the conversion of the assets comprising the pool to cash and the distribution of cash to security holders; this involvement may, in turn, vary dramatically depending on the type, quality and attributes of the assets comprising the pool and on the overall structure of the transaction.
- (b) Disclosure about the business and affairs of the issuer should relate to the financial assets underlying the asset-backed securities.
- (c) Disclosure about the originator or the seller of the underlying financial assets will often be relevant to investors in the asset-backed securities particularly where the originator or seller has an on-going involvement with the financial assets comprising the pool. For example, if asset-backed securities are serviced with the cash flows from a revolving pool of receivables, an evaluation of the nature and reliability of the future origination or the future sales of underlying assets by the seller to or through the issuer may be a critical aspect of an investor's investment decision.

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

Subparagraph 10.3(d)(i) of Form 41-101F1 [*Asset-backed securities*] requires issuers of asset-backed securities to describe any person or company who originated, sold or deposited a material portion of the financial assets comprising the pool, irrespective of whether the person or company has an on-going relationship with the assets comprising the pool. The securities regulatory authorities consider 33 1/3 % of the dollar value of the financial assets comprising the pool to be a material portion in this context.

Underlying securities

- 4.6** If the securities being distributed are convertible into or exchangeable for other securities, or are a derivative of, or otherwise linked to, other securities, a description of the material attributes of the underlying securities will generally be necessary to meet the requirements of securities legislation that a long form prospectus contain full, true and plain disclosure of all material facts concerning the securities being distributed.

Restricted securities

- 4.7** Item 10.6 of Form 41-101F1 [*Restricted securities*] specifies additional disclosure for restricted securities, including a detailed description of any significant provisions under applicable corporate and securities law that do not apply to the holders of the restricted securities but do apply to the holders of another class of equity securities. An example of such provisions would be rights under takeover bids.

Audit committees

- 4.8** With respect to the condition under subsection 19.1(3) of Form 41-101F1 [*Audit committees*], an issuer should consider whether it will become a reporting issuer in Ontario upon obtaining a receipt for its final long form prospectus. Since Ontario has not adopted MI 11-101, an issuer that becomes a reporting issuer in Ontario upon obtaining a receipt for its final long form prospectus will not be eligible to rely on the exemption contained in section 3.2 of MI 11-101 [*Continuous Disclosure Exemptions*].

Corporate governance

- 4.9** For the purpose of the requirements in subsections 19.2(1) or (2) of Form 41-101F1 [*Corporate governance*], an issuer may be eligible to apply the British Columbia test for independence described in subsection 1.2(2) of NI 58-101 [*Meaning of Independence*]. Under subsection 19.2(3), an issuer that will become a reporting issuer in a jurisdiction other than British Columbia upon obtaining a receipt for its final long form prospectus may not apply the British Columbia test for independence.

Risk factors

- 4.10** Item 21 of Form 41-101F1 [*Risk Factors*] requires an issuer to include risk factor disclosure in the long form prospectus. Issuers should not deemphasize risk factors by including excessive caveats or conditions.

Credit supporter disclosure

- 4.11** A long form prospectus must include, under Item 33 of Form 41-101F1 [*Credit Supporter Disclosure, Including Financial Statements*], disclosure about any credit supporters that have provided a guarantee or alternative credit support for all or substantially all of the payments to be made under the securities being distributed. Disclosure about a credit supporter may be required even if the credit supporter has not provided full and unconditional credit support.

Exemptions for certain issues of guaranteed securities

- 4.12** Requiring disclosure about the issuer and any applicable credit supporters in a long form prospectus may result in unnecessary disclosure in some instances. Item 34 of Form 41-101F1 [*Exemptions for Certain Issues of Guaranteed Securities*] provides exemptions

from the requirement to include both issuer and credit supporter disclosure where such disclosure is not necessary to ensure that the long form prospectus includes full, true and plain disclosure of all material facts concerning the securities to be distributed.

These exemptions are based on the principle that, in these instances, investors will generally require issuer disclosure or credit supporter disclosure to make an informed investment decision. These exemptions are not intended to be comprehensive and issuers may apply for exemptive relief from the requirement to provide both issuer and credit supporter disclosure, as appropriate.

PART 5: Content of Long Form Prospectus (Financial Statements)

Exemptions from financial disclosure requirements

- 5.1** Request for exemptions from financial disclosure should be made in accordance with Part 19 of the Instrument [*Exemption*], which requires the issuer to make submissions in writing along with the reasons for the request. Written submissions should be filed at the time the preliminary long form prospectus is filed, and include any proposed alternative disclosure. If the application involves a novel and substantive issue or raises a novel public policy concern, we encourage issuers to use the pre-filing procedures under NP 43-201. Issuers that are not filing their prospectuses under MRRS should also follow the principles outlined and procedures set out in NP 43-201.

General financial statement requirements

- 5.2** If an issuer has filed annual or interim financial statements for periods that are more recent than those the issuer must otherwise include in a long form prospectus before it files the prospectus, sections 32.6 [*Additional financial statements or financial information filed or released*] and 35.8 [*Additional financial statements or financial information of the business filed or released*] of Form 41-101F1 require the issuer to include those financial statements in the long form prospectus. Issuers should update the disclosure in the prospectus accordingly in order to satisfy the requirement that the long form prospectus contain full, true and plain disclosure of all material facts relating to the securities being distributed. However, if information derived from more recent annual or interim financial statements is released to the public by the issuer before the financial statements are filed, the prospectus should include the information included in the news release or public communication. There is no specific requirement in the Instrument to otherwise update the prospectus, or *pro forma* financial statements to reflect the more recent information.

We are of the view that the directors of an issuer should endeavor to consider and approve financial statements in a timely manner and should not delay the approval and filing of the statements for the purpose of avoiding their inclusion in a long form prospectus. Once the financial statements have been approved, they should be filed as soon as possible.

Interpretation of issuer – primary business

- 5.3(1)** An issuer is required to provide historical financial statements under Item 32 of Form 41-101F1 [*Financial Statement Disclosure for Issuers*] for a business or related businesses that a reasonable investor would regard as the primary business of the issuer. Examples of when a reasonable investor would regard the primary business of the issuer to be the acquired business or related businesses are when the acquisition(s) was
- (a) a reverse takeover,
 - (b) a qualifying transaction for a Capital Pool Company, or
 - (c) an acquisition that is a significant acquisition at over the 100% level under subsection 35.1(4) of Form 41-101F1 [*Application and definitions*].
- (2) The periods for which the issuer must provide financial statements under Item 32 of Form 41-101F1 [*Financial Statement Disclosure for Issuers*] for acquired business or businesses that are regarded as the primary business of the issuer would be determined in reference to sections 32.2 [*Annual financial statements*] and 32.3 [*Interim financial statements*] of Form 41-101F1, and with the same exceptions, where applicable, set out in subsections 32.4 (a) to (e) of Form 41-101F1 [*Exceptions to financial statement requirements*].

Interpretation of issuer – predecessor entity

- 5.4(1)** An issuer is required to provide historical financial statements under Item 32 of the Form 41-101F1 [*Financial Statement Disclosure for Issuers*] for any predecessor entity. This includes financial statements of acquired businesses that are unrelated and not otherwise individually significant, but together form the basis of the business of the issuer.
- (2) If an issuer determines the financial statements of certain acquired business referred to in subsection 5.4(1) [*Interpretation of issuer – primary business*] are not relevant, the issuer should utilize the pre-filing procedures in NP 43-201 to determine whether it would require an exemption from the requirement to include these financial statements.

Sufficiency of financial history included in a long form prospectus

- 5.5(1)** Item 32 of Form 41-101F1 [*Financial Statement Disclosure for the Issuers*] prescribes the issuer financial statements that must be included in a long form prospectus. We recognize that an issuer, at the time of filing a long form prospectus, may have been in existence for less than one year. We expect that in many situations the limited historical financial statement information that is available for such an issuer may be adequately supplemented by other relevant information disclosed in the long form prospectus. However, if the issuer cannot provide financial statements for a period of at least 12

months and the long form prospectus does not otherwise contain information concerning the business conducted or to be conducted by the issuer that is sufficient to enable an investor to make an informed investment decision, a securities regulatory authority or regulator may consider this a key factor when deciding whether it should refuse to issue a receipt for the long form prospectus.

- (2) A reference to a prospectus includes a preliminary prospectus. Consequently, the time references in sections 32.2 [*Annual financial statements*], 32.3 [*Interim financial statements*], 35.5 [*Recently completed acquisitions*] and 35.6 [*Probable acquisitions*] of Form 41-101F1 should be considered as at the date of the preliminary long form prospectus and again at the date of the final long form prospectus for both the issuer and any business acquired or to be acquired. Depending on the period of time between the dates of the preliminary and final long form prospectuses, an issuer may have to include more recent financial statements.

Applications for exemption from requirement to include financial statements of the issuer

- 5.6(1) We believe investors should receive in a long form prospectus for an IPO no less than 3 years of audited historical financial statements and that relief from the financial statements requirements should be granted only in unusual circumstances and generally not related solely to cost or the time involved in preparing and auditing the financial statements.
- (2) In view of our reluctance to grant exemptions from the requirement to include audited historical financial statements, issuers seeking relief should consult with staff on a pre-filing basis.
- (3) Considerations relevant to granting an exemption from the requirement to include financial statements, generally for the years immediately preceding the issuer's most recently completed financial year, may include the following:

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

- (a) In this case, as a condition of granting the exemption, the issuer may be requested by a securities regulatory authority or regulator to
 - (i) represent in writing to the securities regulatory authority or regulator, no later than the time the preliminary long form prospectus is filed, that the issuer made every reasonable effort to obtain copies of, or reconstruct, the historical accounting records necessary to prepare and audit the financial statements, but such efforts were unsuccessful, and
 - (ii) disclose in the long form prospectus the fact that the historical accounting records have been destroyed and cannot be reconstructed.

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

- (b) In this case, as a condition of granting the exemption, the issuer may be requested by a securities regulatory authority or regulator to
 - (i) represent in writing to the securities regulatory authority or regulator, no later than the time the preliminary long form prospectus is filed, that the issuer has made every reasonable effort to obtain access to, or copies of, the historical accounting records necessary to audit the financial statements but that such efforts were unsuccessful, and
 - (ii) disclose in the long form prospectus the fact that the issuer has emerged from bankruptcy and current management is denied access to the historical accounting records.

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

- (c) The evolution of a business or progression along a development cycle will not be considered to be a fundamental change in an issuer's business or operations. Relief from the requirement to include financial statements of the issuer required by the Instrument for the year in which the change occurred, or for the most recently completed financial year if the change in operations occurred during the issuer's current financial year, generally will not be granted.
- (4) If, in unusual circumstances, relief from Part 4 of the Instrument [*Financial Statements and Related Documents*] is granted, additional financial information will likely be requested to allow a reader to gain a similar understanding of the entity's financial position and prospects as one would gain from the information required in Part 4 of the Instrument [*Financial Statements and Related Documents*].

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

Additional information

- 5.7 An issuer may find it necessary, in order to meet the requirement for full, true and plain disclosure contained in securities legislation, to include certain additional information in its long form prospectus, such as separate financial statements of a subsidiary of the issuer in a long form prospectus, even if the financial statements of the subsidiary are

included in the consolidated financial statements of the issuer. For example, separate financial statements of a subsidiary may be necessary to help explain the risk profile and nature of the operations of the subsidiary.

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

- 5.8(1)** Part 4 of the Instrument [*Financial Statements and Related Documents*] requires that all financial statements included in a long form prospectus be audited, except financial statements specifically exempted in the Instrument. This requirement extends to financial statements of subsidiaries and other entities even if the financial statements are not required to be included in the long form prospectus but have been included at the discretion of the issuer.
- (2)** NI 52-107 requires that financial statements, other than acquisition statements, that are required to be audited by securities legislation, such as this Instrument, be accompanied by an auditor's report that does not contain a reservation if they were audited in accordance with Canadian GAAS, or contain an unqualified opinion if they were audited in accordance with U.S. GAAS. This requirement applies to all financial statements included in the long form prospectus under Item 32 of Form 41-101F1 [*Financial Statement Disclosure of Issuers*], including financial statements from entities acquired or to be acquired that are primary business or the predecessor of the issuer. For greater clarity, subsection 6.2(6) of NI 52-107 [*Acceptable Auditing Standards for Acquisition Statements*] only applies to financial statements included in the long form prospectus pursuant to Item 35 of Form 41-101F1 [*Significant Acquisitions*].

Financial statement disclosure for significant acquisitions

Applicable principles in NI 51-102

- 5.9(1)** Generally, it is intended that the disclosure requirements set out in Item 35 of Form 41-101F1 [*Significant Acquisitions*] for significant acquisitions follow the requirements in Part 8 of NI 51-102 [*Business Acquisition Report*]. Unless otherwise specified, the principles set out in Part 8 of the companion policy to NI 51-102 [*Business Acquisition Report*] apply to disclosure in a long form prospectus except references to
- a “reporting issuer” should be read as “issuer”,
 - the “Policy” should be read as the “Companion Policy to NI 51-102”,
 - the “Instrument” should be read as “NI 51-102”, and
 - the “filing of a business acquisition report”, or the “obligation to file a business acquisition report” should be read as “providing the business acquisition report disclosure required under Item 35 [*Significant Acquisitions*] of NI 41-101”.

Completed significant acquisitions and the obligation to provide business acquisition report level disclosure for a non-reporting issuer.

- (2) For an issuer that is not a reporting issuer immediately before filing the long form prospectus (a “non-reporting issuer”), the long form prospectus disclosure requirements for a significant acquisition are generally intended to mirror those for reporting issuers subject to Part 8 of NI 51-102 [*Business Acquisition Report*]. To determine whether an acquisition is significant, non-reporting issuers would first look to the guidance under section 8.3 of NI 51-102 [*Determination of Significance*]. The initial test for significance would be calculated based on the financial statements of the issuer and acquired business or related businesses for the most recently completed financial year before the date of acquisition.

To recognize the possible growth of a non-reporting issuer between the date of its most recently completed year end and the date of the acquisition and the corresponding potential decline in significance of the acquisition to the issuer, issuers should refer to the guidance in paragraph 35.1(4)(b) of Form 41-101F1 [*Application and definitions*] to perform the optional test. The applicable time period for this 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.

The significance thresholds for IPO venture issuers are identical to the significance thresholds for venture issuers.

The timing of the disclosure requirements set out in subsection 35.3(2) of Form 41-101F1 [*Completed acquisitions for which issuer has not filed business acquisition report because issuer was not reporting issuer on date of acquisition*] are based on the principles under section 8.2 of NI 51-102 [*Obligation to File a Business Acquisition Report*]. For reporting issuers, subsection 8.2(2) of NI 51-102 [*Obligation to File a Business Acquisition Report*] sets out the timing of disclosures for significant acquisitions where the acquisition occurs within 45 days of the year end of the acquired business. However, for non-reporting issuers, paragraph 35.3(1)(d) [*Completed acquisitions for which issuer has not filed business acquisition report because issuer was not reporting issuer on date of acquisition*] imposes a disclosure requirement for all significant acquisitions completed more than 90 days before the date of the long form prospectus. This differs from the business acquisition report filing deadline under paragraph 8.2(2)(a) of NI 51-102 [*Obligation to File a Business Acquisition Report*] for reporting issuers where the business acquisition report deadline for any significant acquisition where the acquisition occurs within 45 days of the year end of the acquired business is at least 90 days from the date of the acquisition.

Probable acquisitions

- (3) A probable acquisition is defined as a proposed acquisition that “has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high”. Our interpretation of the phrase “where a reasonable person would believe that the likelihood of the acquisition being completed is high” is consistent with

the concept of a likely contingency in CICA Handbook section 3290 “Contingencies”. It is our view that the following factors may be relevant in determining whether the likelihood of an acquisition being completed is high:

- (a) whether the acquisition has been publicly announced;
- (b) whether the acquisition is the subject of an executed agreement;
- (c) the nature of conditions to the completion of the acquisition including any material third party consents required.

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

We generally presume that the inclusion of financial statements or other information is required for all acquisitions that are, or would be, significant under Part 8 of NI 51-102 [*Business Acquisition Report*]. Reporting issuers can rebut this presumption if they can provide evidence that the financial statements or other information are not required for full, true and plain disclosure.

Satisfactory alternative financial statements or other information

- (4) Issuers must satisfy the disclosure requirements in section 35.5 [*Recently completed acquisitions*] or section 35.6 [*Probable acquisitions*] of Form 41-101F1 by including either:

- (i) the financial statements or other information that would be required by Part 8 of NI 51-102 [*Business Acquisition Report*]; or

- (ii) satisfactory alternative financial statements or other information.

Satisfactory alternative financial statements or other information may be provided to satisfy the requirements of subsection 35.5(3) [*Recently completed acquisitions*] or subsection 35.6(3) [*Probable acquisitions*] of Form 41-101F1 when the financial

statements or other information that would be required by Part 8 of NI 51-102 [*Business Acquisition Report*] relate to a financial year ended within 90 days before the date of the long form prospectus or an interim period ended within 60 days before the date of the long form prospectus for issuers that are venture issuers, and 45 days for issuers that are not venture issuers. In these circumstances, we believe that satisfactory alternative financial statements or other information would not have to include any financial statements or other information for the acquisition or probable acquisition related to:

- (a) a financial year ended within 90 days before the date of the long form prospectus;
or
- (b) an interim period ended within 60 days before the date of the long form prospectus for issuers that are venture issuers, and 45 days for issuers that are not venture issuers.

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

- (c) comparative annual financial statements or other information for the acquisition or probable acquisition for at least the number of financial years as would be required under Part 8 of NI 51-102 [*Business Acquisition Report*], audited for the most recently completed annual period in accordance with section 4.2 of the Instrument [*Audit of financial statements*], and reviewed for the comparative period in accordance with section 4.3 of the Instrument [*Review of unaudited financial statements*];
- (d) comparative interim financial statements or other information for the acquisition or probable acquisition for any interim period ended subsequent to the latest annual financial statements included in the long form prospectus and more than 60 days before the date of the long form prospectus for issuers that are venture issuers, and 45 days for issuers that are not venture issuers reviewed in accordance with section 4.3 of the Instrument [*Review of unaudited financial statements*]; and
- (e) *pro forma* financial statements or other information required under Part 8 of NI 51-102 [*Business Acquisition Report*].

If the issuer intends to include financial statements as set out in the example above as satisfactory alternative financial statements, we ask that this be highlighted in the cover letter to the long form prospectus. If the issuer does not intend to include financial statements or other information, or intends to file financial statements or other information that are different from those set out above, we encourage the utilization of pre-filing procedures in NP 43-201.

Acquired business has recently completed an acquisition

- (5) When an issuer acquires a business or related businesses that has itself recently acquired another business or related businesses (an “indirect acquisition”), the issuer should consider whether long form prospectus disclosure about the indirect acquisition, including historical financial statements, is necessary to satisfy the requirement that the long form prospectus contain full, true and plain disclosure of all material facts relating to the securities being distributed. In making this determination, the issuer should consider the following factors:
- if the indirect acquisition would meet any of the significance tests in section 35.1(4) of Form 41-101F1 [*Application and definitions*] when the issuer applies each of those tests to its proportionate interest in the indirect acquisition of the business; and
 - if the amount of time between the separate acquisitions is such that the effect of the first acquisition is not adequately reflected in the results of the business or related businesses the issuer is acquiring.

Financial statements or other information

- (6) Subsections 35.5(2)(b) [*Recently completed acquisitions*] and 35.6(2)(b) [*Probable acquisitions*] discuss financial statements or other information for the acquired business or related businesses. This “other information” is intended to capture the financial information disclosures required under Part 8 of NI 51-102 [*Business Acquisition Report*] other than financial statements. An example of “other information” would include the operating statements, property descriptions, production volumes and reserves disclosures described under section 8.10 of NI 51-102 [*Acquisition of an Oil and Gas Property*].

Updated *pro forma* financial statements to date of long form prospectus

- (7) In addition to the *pro forma* financial statements for completed acquisitions that are required to be included in a long form prospectus under Item 35 of Form 41-101F1 [*Significant Acquisitions*], an issuer may include a set of *pro forma* financial statements prepared as at the date of the long form prospectus. This Item does not provide an exemption from the requirements to include the *pro forma* financial statements otherwise required if the issuer voluntarily includes *pro forma* financial statements for completed acquisitions prepared as at the date of the long form prospectus. However, the regulator will consider granting exemptive relief from those requirements on a case-by-case basis. An issuer applying for such relief should utilize the pre-filing procedures in NP 43-201.

PART 6: Advertising or Marketing Activities in Connection with Prospectus Offerings

Scope

- 6.1(1) The discussion below is focused on the impact of the prospectus requirement on advertising or marketing activities in connection with a prospectus offering.
- (2) Issuers and market participants who engage in advertising or marketing activities must

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

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

The prospectus requirement

- 6.2(1) Securities legislation generally provides that no one may trade in a security where that trade would be a distribution unless the prospectus requirement has been satisfied, or an exemption is available.
- (2) The analysis of whether any particular advertising or marketing activities is prohibited by virtue of the prospectus requirement turns largely on whether the activities constitute a trade and, if so, whether such a trade would constitute a distribution.
- (3) In Québec, since securities legislation has been designed without the notion of a “trade”, the analysis is dependent solely on whether the advertising or marketing activities constitute a distribution.

Definition of “trade”

- (4) Securities legislation (other than the securities legislation of Québec) defines a “trade” in a non-exhaustive manner to include, among other things
 - any sale or disposition of a security for valuable consideration,
 - any receipt by a registrant of an order to buy or sell a security, and
 - any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing.
- (5) Any advertising or marketing activities that can be reasonably regarded as intended to promote a distribution of securities would be “conduct directly or indirectly in furtherance” of the distribution of a security and, therefore, would fall within the definition of a trade.

Definition of distribution

- (6) Even though advertising or marketing activities constitute a “trade” for the purposes of securities legislation (other than the securities legislation of Québec), they would be prohibited by virtue of the prospectus requirement only if they also constitute a distribution under securities legislation. Securities legislation (other than the securities legislation of Québec) defines a distribution to include a “trade” in, among other things, previously unissued securities and securities that form part of a control block.
- (7) The definition of distribution under the securities legislation of Québec includes the endeavour to obtain or the obtaining of subscribers or purchasers of previously unissued securities.

Prospectus exemptions

- (8) It has been suggested by some that advertising or marketing activities, even if clearly made in furtherance of a distribution, could be undertaken in certain circumstances on a prospectus exempt basis. Specifically, it has been suggested that if an exemption from the prospectus requirement is available in respect of a specific distribution (even though the securities will be distributed under a prospectus), advertising or marketing related to such distribution would be exempt from the prospectus requirement. This analysis is premised on an argument that the advertising or marketing activities constitute one distribution that is exempt from the prospectus requirement while the actual sale of the security to the purchaser constitutes a second discrete distribution effected pursuant to the prospectus.
- (9) We are of the view that this analysis is contrary to securities legislation. In these circumstances, the distribution in respect of which the advertising or marketing activities are undertaken is the distribution pursuant to the anticipated prospectus. Advertising or marketing must be viewed in the context of the prospectus offering and as an activity in furtherance of that distribution. If it were otherwise, the overriding concerns implicit and explicit in securities legislation regarding equal access to information, conditioning of the market, tipping and insider trading, and the provisions of the legislation designed to ensure such access to information and curb such abuses, could be easily circumvented.
- (10) We recognize that an issuer and a dealer may have a demonstrable *bona fide* intention to effect an exempt distribution and this distribution may be abandoned in favour of a prospectus offering. In these very limited circumstances, there may be two separate distributions. From the time when it is reasonable for a dealer to expect that a *bona fide* exempt distribution will be abandoned in favour of a prospectus offering, the general rules relating to advertising or marketing activities that constitute an act in furtherance of a distribution will apply.

Advertising or marketing activities

6.3(1) The prospectus requirement applies to any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a distribution unless a prospectus exemption is available. Accordingly, advertising or marketing activities intended to promote the distribution of securities, in any form, would be prohibited by virtue of the prospectus requirement. Advertising or marketing activities subject to the prospectus requirement may be oral, written or electronic and include:

- television or radio advertisements or commentaries;
- published materials;
- correspondence;
- records;
- videotapes or other similar material;
- market letters;
- research reports;
- circulars;
- promotional seminar text;
- telemarketing scripts;

- reprints or excerpts of any other sales literature.
- (2) Advertising or marketing activities that are not in furtherance of a distribution of securities would not generally fall within the definition of a distribution and, therefore, would not be prohibited by virtue of the prospectus requirement. The following activities would not generally be subject to the prospectus requirement:
- advertising and publicity campaigns that are aimed at either selling products or services of the issuer or raising public awareness of the issuer;
 - communication of factual information concerning the business of the issuer that is released in a manner, timing and form that is consistent with the regular past communications practices of the issuer if that communication does not refer to or suggest the distribution of securities;
 - the release or filing of information that is required to be released or filed pursuant to securities legislation.
- (3) Any activities that form part of a plan or series of activities undertaken in anticipation or in furtherance of a distribution would usually trigger the prospectus requirement, even if they would be permissible if viewed in isolation. Similarly, we may still consider advertising or marketing activities that do not indicate that a distribution of securities is contemplated to be in furtherance of a distribution by virtue of their timing and content. In particular, where a private placement or other exempt distribution occurs prior to or contemporaneously with a prospectus offering, we may consider activities undertaken in connection with the exempt distribution as being in furtherance of the prospectus offering.

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

- 6.4(1) In general, any advertising or marketing activities undertaken in connection with a prospectus prior to the issuance of a receipt for the preliminary prospectus are prohibited under securities legislation by virtue of the prospectus requirement.
- (2) In the context of a bought deal, a limited exception to the prospectus requirement has been provided in Part 7 of NI 44-101 [*Solicitations of Expressions of Interest*]. The exception is limited to communications by a dealer, directly or through any of its directors, officers, employees or agents, with any person or company (other than another dealer) for the purpose of obtaining from that person or company information as to the interest that it, or any person or company that it represents, may have in purchasing securities of the type that are proposed to be distributed, prior to a preliminary prospectus relating to those securities being filed with the relevant securities regulatory authorities.
- (3) The conditions set out in Part 7 of NI 44-101 [*Solicitations of Expressions of Interest*], including the entering into of an enforceable agreement between the issuer and an underwriter or underwriters who have agreed to purchase the securities and the issuance and filing of a press release announcing the agreement, must be satisfied prior to any solicitation of expressions of interest.
- (4) A distribution of securities commences at the time when

- a dealer has had discussions with an issuer or a selling security holder, or with another dealer that has had discussions with an issuer or a selling security holder about the distribution, and
 - those distribution discussions are of sufficient specificity that it is reasonable to expect that the dealer (alone or together with other dealers) will propose to the issuer or the selling security holder an underwriting of the securities.
- (5) We understand that many dealers communicate on a regular basis with clients and prospective clients concerning their interest in purchasing various securities of various issuers. We will not generally consider such ordinary course communications as being made in furtherance of a distribution. However, from the commencement of a distribution, communications by the dealer, with a person or company designed to have the effect of determining the interest that it, or any person or company that it represents, may have in purchasing securities of the type that are the subject of distribution discussions, that are undertaken by any director, officer, employee or agent of the dealer
- (a) who participated in or had actual knowledge of the distribution discussions, or
 - (b) whose communications were directed, suggested or induced by a person referred to in (a), or another person acting directly or indirectly at or upon the direction, suggestion or inducement of a person referred to in (a),
- are considered to be in furtherance of the distribution and contrary to securities legislation.
- (6) From the commencement of the distribution no communications, market making, or other principal trading activities in securities of the type that are the subject of distribution discussions may be undertaken by a person referred to in paragraph 5(a), above, or at or upon the direction, suggestion or inducement of a person or persons referred to in paragraph 5(a) or (b) above until the earliest of:
- the issuance of a receipt for a preliminary prospectus in respect of the distribution,
 - the time at which a press release that announces the entering into of an enforceable agreement in respect of a bought deal is issued and filed in accordance with Part 7 of NI 44-101 [*Solicitations of Expressions of Interest*], and
 - the time at which the dealer determines not to pursue the distribution.
- (7) We note that the Investment Dealers Association has adopted IDA by-law 29.13 which is consistent with the above discussion relating to pre-marketing of bought deals of equity securities. However, the principles articulated above apply to all offerings, whether of debt or equity, or a combination.

Advertising or marketing activities during the waiting period

- 6.5(1)** Securities legislation provides an exception to the prospectus requirement for limited advertising or marketing activities during the waiting period between the issuance of the receipt for the preliminary prospectus and the receipt for the final prospectus. Despite the prospectus requirement, it is permissible during the waiting period to

- (a) distribute notices, circulars, advertisements, letters or other communications that
- “identify” the securities proposed to be issued,
 - state the price of such securities, if then determined, and
 - state the name and address of a person or company from whom purchases of securities may be made,

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

- (b) distribute the preliminary prospectus, and
- (c) solicit expressions of interest from a prospective purchaser, if prior to such solicitation or forthwith after the prospective purchaser indicates an interest in purchasing the securities, a copy of the preliminary prospectus is forwarded to the prospective purchaser.
- (2) The use of any other marketing information or materials during the waiting period would result in the violation of the prospectus requirement.
- (3) The “identification” of the security does not permit an issuer or dealer to include a summary of the commercial features of the issue. These details are set out in the preliminary prospectus which is intended as the main disclosure vehicle pending the issuance of the final receipt. The purpose of the permitted advertising or marketing activities during the waiting period is essentially to alert the public to the availability of the preliminary prospectus.
- (4) For the purpose of identifying a security, the advertising or marketing material may only
- indicate whether a security represents debt or a share in a company or an interest in a non-corporate entity (e.g. a unit of undivided ownership in a film property) or a partnership interest,
 - name the issuer if the issuer is a reporting issuer, or name and describe briefly the business of the issuer if the issuer is not already a reporting issuer (the description of the business should be cast in general terms and should not attempt to summarize the proposed use of proceeds),
 - indicate, without giving details, whether the security qualifies the holder for special tax treatment, and
 - indicate how many securities will be made available.

Green sheets

- 6.6(1)** We understand that there is a practice for dealers to prepare summaries of the principal terms of an offering, sometimes referred to as green sheets. Typically green sheets include information beyond the limited information for which an exemption to the prospectus requirement is available during the waiting period. If so, we would consider the distribution of a green sheet to a potential investor to contravene the prospectus requirement.

- (2) Including material information in a green sheet or other marketing communication that is not contained in the preliminary prospectus could indicate a failure to provide in the preliminary prospectus full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and result in the prospectus certificate constituting a misrepresentation.
- (3) We may request copies of green sheets and other advertising or marketing materials as part of our prospectus review procedures. Any discrepancies between the content of a green sheet and the preliminary prospectus could result in the delay or refusal of a receipt for a final prospectus and, in appropriate circumstances, could result in enforcement action.

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

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

Sanctions and enforcement

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

Media reports and coverage

- 6.9(1)** We recognize that an issuer does not have control over media coverage; however, an issuer should take appropriate precautions to ensure that media coverage which can reasonably be considered to be in furtherance of a distribution of securities does not occur after a decision has been made to file a preliminary prospectus or during the waiting period.
- (2) We may investigate the circumstances surrounding media coverage of an issuer which appears immediately prior to or during the waiting period and which can reasonably be considered as being in furtherance of a distribution of securities. Action will be taken in appropriate circumstances.

Disclosure practices

- 6.10** At a minimum, participants in all prospectus distributions should consider the following practices to avoid contravening securities legislation:
- Directors or officers of an issuer should not give interviews to the media immediately prior to or during the waiting period. Directors and officers should normally limit themselves to responding to unsolicited inquiries of a factual nature made by shareholders, securities analysts, financial analysts, the media and others who have a legitimate interest in such information.

- No director or officer of an issuer should make any statement during the period of distribution of securities (which includes the period from the commencement of the distribution as described in subsection 6.4(4) [*Pre-marketing and solicitation of expressions of interest in the context of a bought deal*] until the closing of the distribution) which constitutes a forecast, projection or prediction with respect to future financial performance, unless that statement relates to and is consistent with a forecast contained in the prospectus.
- Underwriters and legal counsel have the responsibility of ensuring that the issuer and all directors and officers of the issuer who may come in contact with the media are fully aware of the restrictions applicable during the period of distribution of securities. It is not sufficient to make those restrictions known only to the officers comprising the working group.
- Issuers, dealers and other market participants should develop, implement, maintain and enforce procedures to ensure that advertising or marketing activities that are contrary to securities legislation are not undertaken whether intentionally or through inadvertence.

Misleading or untrue statements

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

**Appendix A
Financial Statement Disclosure Requirements for Significant Acquisitions**

Chart 1 – Reporting Issuer

Financial Statement Disclosure Requirements for Significant Acquisitions.

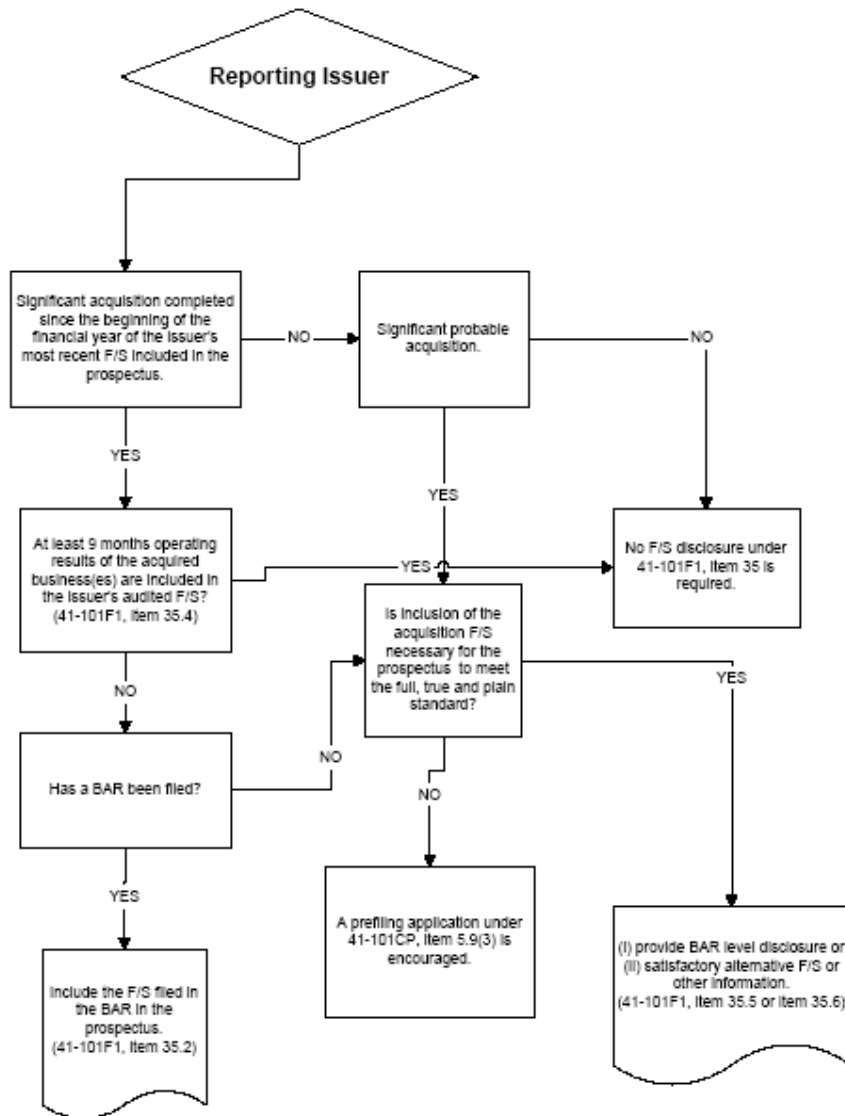
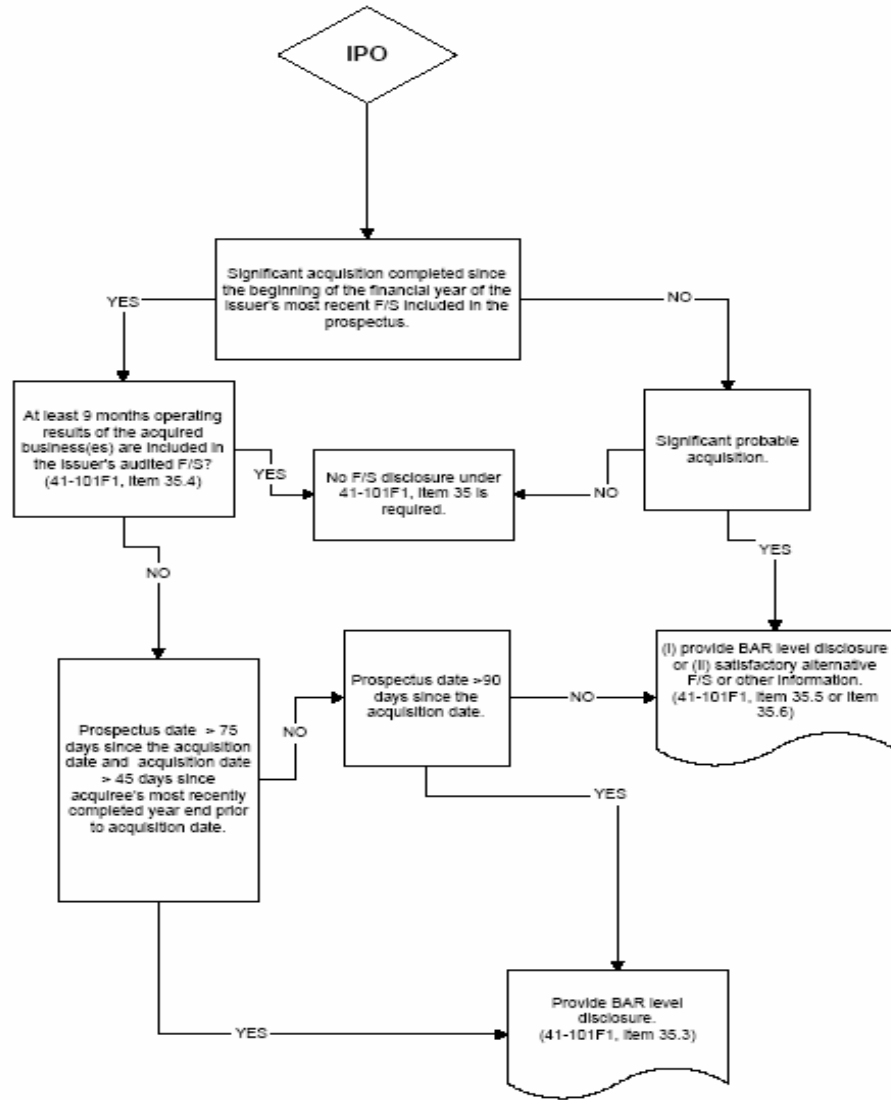


Chart 2 – Non-Reporting Issuer

Financial Statement Disclosure Requirements for Significant Acquisitions.



Note

These decision charts provide general guidance and should be read in conjunction with Form 41-101F1.