

**Proposed Changes to
Companion Policy 44-101CP to National Instrument 44-101
Short Form Prospectus Distributions**

1. *The changes proposed to Companion Policy 44-101CP to National Instrument 44-101 Short Form Prospectus Distributions are set out in this schedule.*
2. *Section 1.3 is changed by inserting “, NI 51-103” after each occurrence of “NI 51-102”.*
3. *Subsection 1.7(3) is replaced by the following:*
 - (3) **Current AIF** – An issuer’s AIF filed under the applicable CD rule is a “current AIF” until the issuer files an AIF for the next financial year, or is required by the applicable CD rule to have filed its annual financial statements for the next financial year. If an issuer fails to file a new AIF by the filing deadline under the applicable CD rule for its annual financial statements, it will not have a current AIF and will not qualify under NI 44-101 to file a prospectus in the form of a short form prospectus. If an issuer files a revised or changed AIF for the same financial year as an AIF that has previously been filed, the most recently filed AIF will be the issuer’s current AIF.

An issuer that is a senior unlisted issuer for the purpose of NI 51-102, and certain investment funds, may have no obligation under the applicable CD rule to file an AIF. However, to qualify under NI 44-101 to file a prospectus in the form of a short form prospectus, that issuer will be required to file an AIF in accordance with the applicable CD rule so as to have a “current AIF”. A current AIF filed by an issuer that is a senior unlisted issuer for the purposes of NI 51-102 can be expected to expire later than the AIF of an issuer that is not a senior unlisted issuer, due to the fact that the deadlines for filing annual financial statements under NI 51-102 are later for senior unlisted issuers than for other issuers.
 - (3.1) **Current Annual Report** – A venture issuer’s annual report, which is required to include its annual financial statements, or, in the case of an SEC issuer, the alternative disclosure permitted by section 36 of NI 51-103, filed under the applicable CD Rule is a “current annual report” until the venture issuer files an annual report for the next financial year, or is required by the applicable CD rule to have filed its annual report for the next financial year. If a venture issuer fails to file a new annual report by the filing deadline under the applicable CD rule, it will not have a current annual report and will not qualify under NI 44-101 to file a prospectus in the form of a short form prospectus. If a venture issuer files a revised or changed annual report for the same financial year as an annual report that has previously been filed, the most recently filed annual report will be the venture issuer’s current annual report.
4. *Subsection 2.1(2) is changed by inserting “, NI 51-103” after “NI 51-102”.*

5. *Section 3.5 is changed by inserting “or NI 51-103, as applicable” after “NI 51-102”.*
6. *Subsection 4.4(1) is changed by replacing “or section 5.2 in NI 51-102F2” with “, item 5.2 of Form 51-102F2 or item 23 of Form 51-103F1, as applicable”.*
7. *Section 4.9 is replaced by the following:*

4.9 Recent and Proposed Acquisitions

- (1) Subsections 10.2(2) and 10.3(2) of Form 44-101F1 require prescribed disclosure of a proposed acquisition that has progressed to a state “where a reasonable person would believe that the likelihood of the acquisition being completed is high” and that would, if completed on the date of the short form prospectus, be a significant acquisition for the purposes of Part 8 of NI 51-102 or a major acquisition for the purposes of sections 22 and 23 of NI 51-103, as applicable. When interpreting the phrase “where a reasonable person would believe that the likelihood of the acquisition being completed is high”, 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.

- (2) For issuers other than venture issuers, subsection 10.2(3) of Form 44-101F1 requires inclusion of the financial statements or other information relating to certain acquisitions or proposed acquisitions if the inclusion of the financial statements or other information is necessary in order for the short form prospectus to contain full, true and plain disclosure of all material facts relating to the securities being distributed. 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. 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.

Subsection 10.2(4) of Form 44-101F1 provides that issuers must satisfy the requirements of subsection 10.2(3) of Form 44-101F1 by including either

- (i) the financial statements or other information that would be required by Part 8 of NI 51-102, 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 10.2(3) when the financial statements or other information that would be required by Part 8 of NI 51-102 relate to a financial year ended within 90 days before the date of the prospectus or an interim period ended within 60 days before the date of the prospectus for issuers that are senior unlisted issuers, and 45 days before the date of the prospectus for issuers that are not senior unlisted 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 short form prospectus, or
- (b) an interim period ended within 60 days before the date of the short form prospectus for issuers that are senior unlisted issuers or venture issuers and 45 days-for issuers that are not senior unlisted 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 that ended more than 90 days before the date of the short form prospectus, audited for the most recently completed financial period in accordance with NI 52-107, and reviewed for the comparative period in accordance with section 4.3 of NI 44-101,
- (d) a comparative interim financial report or other information for the acquisition or probable acquisition for any interim period ended subsequent to the latest annual financial statements included in the short form prospectus and more than 60 days before the date of the short form prospectus for issuers that are senior unlisted issuers, and 45 days for issuers that are not senior unlisted issuers reviewed in accordance with section 4.3 of NI 44-101, and
- (e) pro forma financial statements or other information required under Part 8 of NI 51-102.

If the issuer intends to include financial statements as set out in the example above as satisfactory alternative financial statements or other information, we ask that this be highlighted in the cover letter to the 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.

- (3) 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 prospectus disclosure about the indirect acquisition, including historical financial statements, is necessary to satisfy the requirement that the 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:
 - (a) whether the indirect acquisition would meet any of the significance tests in Part 8 of NI 51-102 or in section 22 of NI 51-103, as applicable, when the issuer applies each of those tests to its proportionate interest in the indirect acquisition of the business;
 - (b) whether 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.

- (4) Subsection 10.2(3) of Form 44-101F1 discusses financial statements or other information for the completed or proposed acquisition of the business or related businesses. This “other information” is intended to capture the financial information disclosures required under Part 8 of NI 51-102 other than financial statements. An example of “other information” would include, for an issuer other than a venture issuer, the operating statements, property descriptions, production volumes and reserves disclosures described under section 8.10 of NI 51-102.

8. Section 4.11 is replaced by the following:

4.11 General Financial Statement Requirements – A reporting issuer, other than a venture issuer, is required under the applicable CD rule to file its annual financial statements 90 days after year end (or 120 days if the issuer is a senior unlisted issuer as defined in NI 51-102). A venture issuer is required under NI 51-103 to file its annual report, which contains its annual financial statements, 120 days after year end. The financial statement requirements in NI 44-101 are based on these continuous disclosure reporting time frames and do not impose accelerated filing deadlines for a reporting issuer’s financial statements. However, to the extent an issuer has filed financial statements in advance of the deadline for doing so, those financial statements must be incorporated by reference in the short form prospectus. We are of the view that directors of an issuer should endeavour to consider and approve financial statements in a timely manner and should not delay the approval and filing of the financial statements for the purpose of avoiding their inclusion in a short form prospectus. Once the financial statements have been approved, they should be filed as soon as possible.

- 9. Subsection 4.14(3) is changed by inserting “or section 39 of NI 51-103, as applicable” after “as required by section 5.8 of NI 51-102”.**

10. The Companion Policy is changed by adding the following section:

4.15 Incorporation by Reference Transition Issues (NI 51-103 - NI 51-102) – If since the end of the issuer’s most recently completed financial year, the issuer has transitioned from being an issuer other than a venture issuer to being a venture issuer, or from being a venture issuer to being an issuer other than a venture issuer, that issuer may be required to incorporate by reference into its short form prospectus certain documents required under both NI 51-103 and NI 51-102. An issuer determines which documents it is required to file based on the “applicable time” (see subsection 3(4) of NI 51-103). The applicable time for determining whether the issuer is subject to NI 51-103 or NI 51-102 is different depending on the disclosure required to be provided.

For example, a venture issuer with a year end of December 31 that lists on the TSX in June and files a short form prospectus in December will be obliged to incorporate into its short form prospectus its annual report, required under NI 51-103, and its interim financial report and MD&A for the 3rd quarter, required under NI 51-102. The issuer in this example would be required to incorporate by reference disclosure from both NI 51-103 and NI 51-102 because, at the applicable time for the purpose of the annual report, the issuer was a venture issuer and, at the applicable time for the purpose of the interim financial report and MD&A for the 3rd quarter, it was an issuer other than a venture issuer.

II. These changes become effective on ●.