

Appendix D

Proposed Amendments to National Instrument 44-101 *Short Form Prospectus Distributions* and Companion Policy

Schedule D-1

Proposed Amendment Instrument for National Instrument 44-101 *Short Form Prospectus Distributions*

Although this amendment instrument amends section headers in National Instrument 44-101, section headers do not form part of the instrument and are inserted for ease of reference only.

1. *National Instrument 44-101 Short Form Prospectus Distributions is amended by this instrument.*
2. *Subsection 1.1 of National Instrument 44-101 is amended by, in the definition of “short form eligible exchange”, striking out “Canadian Trading and Quotation System Inc.” and substituting “Canadian National Stock Exchange”.*
3. *Paragraph 4.3(2)(a) of National Instrument 44-101 is repealed and the following substituted:*
 - (a) U.S. AICPA GAAS, the unaudited financial statements may be reviewed in accordance with the review standards issued by the American Institute of Certified Public Accountants,
 - (a.1) U.S. PCAOB GAAS, the unaudited financial statements may be reviewed in accordance with the review standards issued by the Public Company Accounting Oversight Board (United States of America),.
4. *National Instrument 44-101 is amended by adding the following after section 9.3:*

9.4 Transition - Despite section 9.3, the amendments to this Instrument which came into force on January 1, 2011 only apply to a preliminary short form prospectus, an amendment to a preliminary short form prospectus, a final short form prospectus or an amendment to a final short form prospectus of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning on or after January 1, 2011.
5. *The general instructions of Form 44-101F1 are amended by*
 - (a) *in instruction (3), striking out “This concept of materiality is consistent with the financial reporting notion of materiality contained in the Handbook.”, and*

- (b) *in instruction (8), striking out “the Handbook” and substituting “Canadian GAAP”.*
- 6. *Section 1.6.1 of Form 44-101F1 is amended by striking out “reporting”.*
- 7. *Section 6.1 of Form 44-101F1 is amended by*
 - (a) *in paragraph (1)(c), striking out “interim financial statements of the issuer have” and substituting “an interim financial report of the issuer has”,*
 - (b) *in subparagraph 2(b)(i), striking out “issued”,*
 - (c) *in paragraphs (2)(b) and (d), striking out “annual or interim financial statements” wherever it occurs and substituting “annual financial statements or interim financial report”,*
 - (d) *in paragraph (2)(c), striking out “annual or interim financial statements” and substituting “annual financial statements or interim financial report; and”,*
 - (e) *in paragraphs (2)(c) and (d), striking out “long-term” wherever it occurs,*
 - (f) *in paragraph (2)(d), striking out “prospectus; and” and substituting “prospectus.”,*
 - (g) *repealing paragraph (2)(e),*
 - (h) *repealing subsection (3), and*
 - (i) *in subsection (4), striking out “earnings required” and substituting “numerator required”.*
- 8. *The instructions under item 6 of Form 44-101F1 are amended by,*
 - (a) *in instruction (2), striking out “entity’s earnings (the numerator) by its interest” and substituting “entity’s profit or loss (the numerator) by its borrowing costs”,*
 - (b) *in instruction (3),*
 - (i) *in paragraph (a), striking out “net income before interest” and substituting “profit or loss before borrowing costs”,*
 - (ii) *repealing paragraph (c),*
 - (iii) *repealing paragraph (d) and substituting the following:*

- (d) *for distributions of debt securities, the appropriate denominator is borrowing costs, after giving effect to the new debt securities issue and any retirement of obligations, plus the borrowing costs that have been capitalized during the period;*
- (iv) ***in subparagraph (e)(i), striking out “annual interest requirements, including the amount of interest that has” and substituting “annual borrowing cost requirements, including the borrowing costs that have”, and***
- (v) ***in paragraph (f), adding “securities” after “effect of the debt”.***
- (c) ***in instruction (4),***
 - (i) ***striking out “interest obligations on all long-term debt” and substituting “borrowing cost obligations on all financial liabilities”,***
 - (ii) ***repealing paragraph (a) and substituting the following:***
 - (a) *the issuance of all financial liabilities and, in addition in the case of an issuance of preferred shares, all preferred shares issued, since the date of the annual financial statements or interim financial report;*
 - (ii) ***in paragraph (b), adding “and” after “distributed;”,***
 - (iii) ***repealing paragraph (c) and substituting the following:***
 - (c) *the repayment or redemption of all financial liabilities since the date of the annual financial statements or interim financial report, all financial liabilities to be repaid or redeemed from the proceeds to be realized from the sale of securities under the short form prospectus and, in addition, in the case of an issuance of preferred shares, all preferred shares repaid or redeemed since the date of the annual financial statements or interim financial report and all preferred shares to be repaid or redeemed from the proceeds to be realized from the sale of securities under the short form prospectus., and*
 - (iv) ***repealing paragraph (d).***
- (d) ***repealing instruction (5),***
- (e) ***in instruction (6), striking out “interest requirements, after giving effect to the issue of [the debt securities to be distributed under the short form prospectus], amounted to \$• for the 12 months ended •. [Name of the issuer]’s earnings before***

interest and income tax for the 12 months then ended was \$•, which is • times [name of the issuer]’s interest requirements” and substituting “borrowing cost requirements, after giving effect to the issue of [the debt securities to be distributed under the short form prospectus], amounted to \$• for the 12 months ended •. [Name of the issuer]’s profit or loss before borrowing costs and income tax for the 12 months then ended was \$•, which is • times [name of the issuer]’s borrowing cost requirements”, and

(f) in instruction (7), striking out “interest requirements for the 12 months then ended amounted to \$•. [Name of the issuer]’s earnings before interest and income tax for the 12 months ended • was \$•, which is • times [name of the issuer]’s aggregate dividend and interest requirements” and substituting “borrowing cost requirements for the 12 months then ended amounted to \$•. [Name of the issuer]’s profit or loss before borrowing costs and income tax for the 12 months ended • was \$•, which is • times [name of the issuer]’s aggregate dividend and borrowing cost requirements”.

9. Paragraph 7.3(3)(b) of Form 44-101F1 is amended by striking out “income” and substituting “profit”.

10. Paragraph 11.1(1)3 of Form 44-101F1 is amended by striking out “interim financial statements” and substituting “interim financial report”.

11. Subsection 13.1(1) of Form 44-101F1 is amended by

(a) in paragraph (c), striking out “revenues” and substituting “revenue”.

(b) in paragraph (g)

(A) in subparagraph (i), striking out “sales or revenues” and substituting “revenue”,

(B) in subparagraph (ii), striking out “income” and substituting “profit or loss”,

(C) in subparagraph (iii), striking out “net earnings” and substituting “profit”, and

(D) in subparagraph (iv), striking out “balance sheet” and substituting “statement of financial position”.

12. Subparagraph 13.2(f)(ii) of Form 44-101F1 is amended by striking out “interim and annual consolidated” and substituting “consolidated interim financial report and consolidated annual”.

13. *This instrument only applies to a preliminary short form prospectus, an amendment to a preliminary short form prospectus, a final short form prospectus or an amendment to a final short form prospectus of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning on or after January 1, 2011.*
14. *This instrument comes into force on January 1, 2011.*

Schedule D-2

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

1. *Companion Policy 44-101CP to National Instrument 44-101 Short Form Prospectus Distributions is amended.*
2. *Subsection 4.4(1) is amended by*
 - (a) *striking out* “operating cash flow” *wherever it occurs and substituting* “cash flow from operating activities”, *and*
 - (b) *adding the following at the end of the paragraph:*

For the purposes of this section, in determining cash flow from operating activities, the issuer must include dividends and borrowing costs.
3. *Section 4.9 is amended by*
 - (a) *in subsection (1),*
 - (i) *striking out* “Our interpretation of” *and substituting* “When interpreting”, *and*
 - (i) *striking out* “is consistent with the concept of a likely contingency in CICA Handbook section 3290. It” *and substituting* “, it”.
 - (b) *in subparagraph (2)(d), striking out* “comparative interim financial statements” *and substituting* “a comparative interim financial report”.
4. *Section 4.11 is amended by striking out* “Interim financial statements” *and substituting* “Certain transition rules in the applicable CD rule apply to the first interim financial report required to be filed in the year of adopting IFRS in respect of an interim period beginning on or after January 1, 2011. Otherwise, an interim financial report”.
5. *Section 4.14 is amended by striking out* “or MD&A supplement”.
6. *The following is added after Part 5:*

PART 6 TRANSITION

- 6.1 Transition** – The amendments to this Policy which came into effect on January 1, 2011 only apply to a preliminary short form prospectus, an amendment to a preliminary short form prospectus, a final short form prospectus or an amendment

to a final short form prospectus of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning on or after January 1, 2011.

7. *These amendments only apply to a preliminary short form prospectus, an amendment to a preliminary short form prospectus, a final short form prospectus or an amendment to a final short form prospectus of an issuer which includes or incorporates by reference financial statements of the issuer in respect of periods relating to financial years beginning on or after January 1, 2011.*
8. *These amendments become effective on January 1, 2011.*