

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

1. *National Instrument 44-101 Short Form Prospectus Distributions is amended by this Instrument.*

2. *Section 1.1 is amended by*

(a) inserting the following definition:

“annual report” has the same meaning as in section 1 of NI 51-103;

(b) replacing the definition of “applicable CD rule” with the following:

“applicable CD rule” means,

(a) for an issuer which was at the applicable time

(i) a reporting issuer but not a venture issuer, NI 51-102, or

(ii) a venture issuer, NI 51-103, and

(b) for an investment fund, NI 81-106;

(c) inserting the following definitions:

“applicable time” has the same meaning as in section 3 of NI 51-103;

“current annual report” means,

(a) if the venture issuer has filed an annual report for its most recently completed financial year, that annual report, or

(b) the venture issuer’s annual report filed for the financial year immediately preceding its most recently completed financial year if

(i) the venture issuer has not filed an annual report for its most recently completed financial year, and

(ii) the venture issuer is not yet required under the applicable CD rule to have filed its annual report for its most recently completed financial year,

(d) replacing the definition of “material change report” with the following:

“material change report” means,

- (a) for an issuer which was at the applicable time
 - (i) a reporting issuer but not a venture issuer, a completed Form 51-102F3 *Material Change Report*, or
 - (ii) a venture issuer, a completed 51-103F2 *Report of Material Change or Other Material Information* prepared for a material change, and
 - (b) for an investment fund, a completed Form 51-102F3 *Material Change Report* adjusted as directed by NI 81-106;.
 - (e) ***in the definition of “successor issuer”, adding “or, for a venture issuer, a transaction contemplated by subsection 32(6) of National Instrument 51-103 Ongoing Governance and Disclosure Requirements for Venture Issuers,” after each instance of “restructuring transaction”.***
3. ***Section 2.2 is amended by replacing paragraph (d) with the following:***
- (d) the issuer has filed in at least one jurisdiction in which it is a reporting issuer,
 - (i) in the case of an issuer other than a venture issuer, current annual financial statements and a current AIF, or
 - (ii) in the case of a venture issuer, a current annual report;.
4. ***Section 2.3 is amended by replacing paragraph (1)(d) with the following:***
- (d) the issuer has filed in at least one jurisdiction in which it is a reporting issuer,
 - (i) in the case of an issuer other than a venture issuer, current annual financial statements and a current AIF, or
 - (ii) in the case of a venture issuer, a current annual report;.
5. ***Section 2.7(1) is amended by adding “or, for a venture issuer, an annual report,” after “file annual financial statements”.***
6. ***Subsection 2.7(2) is amended by***
- (a) ***adding “or, for a venture issuer, an annual report,” after the first instance of “file annual financial statements”,***
 - (b) ***adding “or, for a venture issuer, an annual report” after the second instance of “file annual financial statements” and***

- (c) **adding** “or, for a venture issuer, disclosure as required by section 32 of National Instrument 51-103 *Ongoing Governance and Disclosure Requirements for Venture Issuers* and subsection 22(1) in Form 51-103F4 *Information Circular*” after “14.5 of Form 51-102F5”.

7. **Section 4.1 is amended by**

- (a) **replacing subparagraph (a)(iv) with the following:**

- (iv) **Documents Affecting the Rights of Securityholders** – a copy of any document that relates to the securities being distributed, and that has not previously been filed that is required to be filed under
 - (A) subsection 12.1(1) of NI 51-102,
 - (B) section 16.4 of NI 81-106, or
 - (C) any of paragraph (a), (b), (c) or (d) of subsection 36(1) of NI 51-103;

- (b) **replacing subparagraph (a)(iv.1) with the following:**

- (iv.1) **Material Contracts** – a copy of any material contract that has not previously been filed that is required to be filed under
 - (A) section 12.2 of NI 51-102,
 - (B) section 16.4 of NI 81-106, or
 - (C) paragraph 36(1)(e) and subsection 36(2) of NI 51-103;

8. **Form 44-101F1 Short Form Prospectus is amended**

- (a) **by replacing instruction 13 with the following:**

(13) Forward-looking information included in a short form prospectus must

- (a) in the case of an issuer other than a venture issuer,
 - (i) comply with section 4A.2 of NI 51-102,
 - (ii) include the disclosure described in section 4A.3 of NI 51-102, and
 - (iii) in the case of FOFI or a financial outlook, as those terms are defined in NI 51-102, comply with Part 4B of NI 51-102, and

(b) in the case of a venture issuer, comply with section 39 of NI 51-103.,

(b) in item 1 by adding the following section:

1.14 Cover Page -- A venture issuer must include in bold face type on the cover page of the prospectus the following statement:

"The issuer is a venture issuer subject to the ongoing governance and disclosure requirements under NI 51-103.”,

(c) by adding the following after subsection 4.1(1):

(1.1) If the issuer is a venture issuer, state the total funds available and the following breakdown of those funds:

- (a) the estimated net proceeds from the sale of the securities offered under the prospectus;
- (b) the estimated consolidated working capital (deficiency) as at the most recent month end before filing the prospectus;
- (c) the total other funds available to be used to achieve the principal purposes identified pursuant to this Item.,

(d) in sections 4.2, 4.3, 4.4, 4.5, and 4.6 by adding “or, for a venture issuer, the funds available,” after each instance of “net proceeds”,

(e) in section 4.7 by adding “or, for a venture issuer, the funds available” after “net proceeds of the distribution under section 4.1”,

(f) by adding the following after section 4.10:

4.11 Actual use of financing proceeds

If the issuer is a venture issuer, unless previously disclosed, include a table comparing disclosure previously made by the issuer about how it was going to use financing proceeds to actual use of such funds, an explanation of any variances and a discussion of the impact of the variances, if any, on the issuer’s ability to achieve its business objectives and performance targets.

4.12 Additional disclosure for venture issuers with negative cash flows

(1) For a venture issuer that had negative cash flow from operating activities in its most recently completed financial year for which financial statements have been included in the prospectus, disclose each of the following:

- (a) the period of time the funds available are expected to fund the operations;

- (b) the estimated total operating costs necessary for the issuer to achieve its stated business objectives during that period of time;
 - (c) the estimated amount of other material capital expenditures during that period of time.
- (2) In determining cash flows from operating activities, the issuer must include cash payments related to dividends and borrowing costs.
- (g) *by replacing section 9.1 with the following:*

9.1 Mineral Property – (1) If, for an issuer other than a venture issuer, a material part of the proceeds of the distribution is to be expended on a particular mineral property and if the current AIF does not contain the disclosure required under section 5.4 of Form 51-102F2 for the property or that disclosure is inadequate or incorrect due to changes, disclose the information required under section 5.4 of Form 51-102F2.

(2) If, for a venture issuer, a material part of the proceeds of the distribution is to be expended on a particular mineral property and if the current annual report does not contain the disclosure required under subsection 17(2) or permitted under subsection 17(3) of Form 51-103F1 for the property or that disclosure is inadequate or incorrect due to changes, disclose the information required under subsection 17(2) or subsection 17(3) of Form 51-103F1.,

(h) *in section 10.2, by inserting the following subsections*

- (1.1) Subsection (1) does not apply to an issuer that was a venture issuer at the acquisition date.
- (2.1) Subsection (2) does not apply to a venture issuer.,

(i) *in item 10 by adding the following section:*

10.3 Major Acquisitions

- (1) For an issuer that was a venture issuer at the acquisition date, describe any major acquisition of a business or related business,
 - (a) that the issuer completed within 75 days prior to the date of the short form prospectus, or
 - (b) for which the issuer has not filed a Form 51-103F2 or related financial statements.
- (2) Describe any proposed major acquisition of a business or related business by a venture issuer that

- (a) has progressed to a state where a reasonable person would believe that the likelihood of the issuer completing the acquisition is high, and
 - (b) would be a major acquisition if completed as of the date of the short form prospectus.
- (3) If disclosure about a major acquisition or proposed major acquisition is required under subsection (1) or (2), include financial statements or other information about the acquisition or proposed acquisition if the inclusion of the financial statements is necessary for the short form prospectus to contain full, true and plain disclosure of all material facts relating to the securities being distributed.
- (4) The requirement to include financial statements or other information under subsection (3) must be satisfied by including
- (a) the financial statements or other information that will be required to be included in, or incorporated by reference into, a Form 51-103F2, or
 - (b) satisfactory alternative financial statements or other information.

INSTRUCTION

For the description of the major acquisition or proposed major acquisition, include the information required by Item 10 of Form 51-103F2. For a proposed major acquisition, modify this information as necessary to convey that the acquisition is not completed.,

- (j) *in item 10A*
- (i) *by adding “or, for a venture issuer, the venture issuer’s current annual report,” after “current AIF”, and*
 - (ii) *by adding “or, for a venture issuer, Form 41-101F4,” after each instance of “Form 41-101F1”.*
- (k) *by replacing subsection (1) of section 11.1 with the following:*
- (1) In addition to any other document that an issuer may choose to incorporate by reference, an issuer must specifically incorporate by reference in the short form prospectus, by means of a statement in the short form prospectus to that effect, each of the following documents, as applicable:
- 1. in the case of an issuer other than a venture issuer, the issuer’s current AIF, if it has one;

- 1.1 in the case of a venture issuer, the venture issuer's current annual report;
2. except in the case of a venture issuer, the issuer's current annual financial statements, if any, and related MD&A;
3. except in the case of a venture issuer, the issuer's interim financial report most recently filed or required to have been filed under the applicable CD rule in respect of an interim period, if any, subsequent to the financial year in respect of which the issuer has filed its current annual financial statements or has included annual financial statements in the short form prospectus, and the related interim MD&A;
 - 3.1 in the case of a venture issuer, the issuer's interim report most recently filed or required to have been filed under the applicable CD rule in respect of an interim period, if any, subsequent to the financial year in respect of which the issuer has filed its annual report or has included annual financial statements in the short form prospectus;
4. except in the case of a venture issuer, if, before the short form prospectus is filed, historical financial information about the issuer for a financial period more recent than the period for which financial statements are required under paragraphs 2 and 3 is publicly disseminated by, or on behalf of, the issuer through news release or otherwise, the content of the news release or public communication;
 - 4.1 in the case of a venture issuer, if, before the short form prospectus is filed, historical financial information about the issuer is publicly disseminated by, or on behalf of, the issuer through news release or otherwise, the content of the news release or public communication, if the historical financial information is for a financial period more recent than
 - (a) the period required to be covered by the financial statements required to be included in the current annual report under paragraph 1.1, or
 - (b) the interim report required under paragraph 3.1;
5. each material change report, except a confidential material change report, filed under Part 7 of NI 51-102, Part 11 of NI 81-106 or Part 5 of NI 51-103, as applicable, and related financial statements since the end of the financial year in respect of which the issuer's current AIF or, for a venture issuer, current annual report is filed;
6. each business acquisition report filed by the issuer under Part 8 of NI 51-102 for acquisitions completed since the beginning of the financial year in respect of which the issuer's current AIF is filed, unless the issuer

- (a) incorporated the business acquisition report by reference into its current AIF, or
 - (b) incorporated at least 9 months of the acquired business or related businesses operations into the issuer's current annual financial statements;
- 6.1 each completed Form 51-103F2 *Report of Material Change or Other Material Information* filed by the issuer under Part 5 and Part 6 of NI 51-103 for acquisitions completed since the beginning of the financial year in respect of which the issuer's current annual report is filed, unless the issuer incorporated at least 9 months of the acquired business or related businesses operations into the annual financial statements included in the issuer's current annual report;
7. each information circular filed by the issuer under Part 9 of NI 51-102, Part 12 of NI 81-106 or Part 4 of NI 51-103, as applicable, since the beginning of the financial year in respect of which the issuer's current AIF or, for a venture issuer, current annual report, is filed, other than an information circular prepared in connection with an annual general meeting if the issuer has filed and incorporated by reference an information circular for a subsequent annual general meeting;
8. the most recent Form 51-101F1, Form 51-101F2 and Form 51-101F3, filed by an SEC issuer, unless
- (a) the issuer's current AIF is in the form of Form 51-102F2 or, for a venture issuer, current annual report is in the form of Form 51-103F1, or
 - (b) the issuer is otherwise exempted from the requirements of NI 51-101;
9. each other disclosure document that the issuer has filed pursuant to an undertaking to a provincial or territorial securities regulatory authority since the beginning of the financial year in respect of which the issuer's current AIF or, for a venture issuer, current annual report is filed;
10. each other disclosure document of the type listed in paragraphs 1 through 8 that the issuer has filed pursuant to an exemption from a requirement under securities legislation since the beginning of the financial year in respect of which the issuer's current AIF or, for a venture issuer, current annual report is filed,

(l) *in section 11.3 by*

- (i) **adding** “or, for a venture issuer, a current annual report,” **before** “and is relying”, **and**
 - (ii) **adding** “or, for a venture issuer, a current annual report” **after the first instance of** “related MD&A” **and** “or, for a venture issuer, a current annual report,” **after the second instance of** “related MD&A”.
- (m) **in section 11.4 by adding the following subsection:**
- (3) This section does not apply to a venture issuer that was a venture issuer at the acquisition date.,
- (n) **in item 11 by inserting the following section after section 11.4, and before the Instruction:**

11.5 Major Acquisition for which no Report of Material Change or Other Material Information has been filed

- (1) Include the financial statements and other information that are prescribed by Form 51-103F2 in respect of an acquisition of a business or related business that would have been a major acquisition if the issuer had been a venture issuer at the time of the transaction, for which the issuer has not filed a Form 51-103F2 and which was completed
 - (a) since the beginning of the most recently completed financial year in respect of which annual financial statements are included in the short form prospectus, and
 - (b) more than 75 days prior to the date of filing the preliminary short form prospectus., **and**
- (o) **by replacing the instruction at the end of Item 11 with the following:**

INSTRUCTION

Disclosure required by section 11.3, 11.4 or 11.5 to be included in the short form prospectus may be incorporated by reference from another document or included directly in the short form prospectus..

- (p) **in item 15.2 by adding** “or, for a venture issuer, section 34 of Form 51-103F1” **after each instance of** “Form 51-102F2”.

9. This instrument comes into force on ●.