

BC Policy 41-601
Prospectus Filing Requirements

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BC Policy 41-601
Prospectus Filing Requirements

PART 1 APPLICATION, PURPOSE AND IMPLEMENTATION

- 1.1 Application** - This policy applies to all local and national long form prospectus filings with the Commission.
- 1.2 Purpose** - This policy sets out the filing requirements for the filing of a long form prospectus, provides guidance on a number of matters related to a prospectus filing and sets out procedures and filing requirements under the Commission's operating agreement with TSX Venture.
- 1.3 Long Form Prospectus Harmonization with OSC Requirements**
- (1) **OSC Rule 41-501** - Effective December 31, 2000 the Ontario Securities Commission has adopted OSC Rule 41-501. To harmonize the British Columbia long form prospectus requirements with OSC Rule 41-501, the Commission published a Notice and three BC Instruments.
 - (2) **BC Notice 2000/56** - Under BC Notice 2000/56, the executive director specified a new prospectus form - BC Form 41-601F *Information Required in a Prospectus*. This form is substantially similar to the form under OSC Rule 41-501.
 - (3) **BC Instrument 41-501** - Under BCI 41-501, the executive director varies the disclosure requirements of Part 9 of the Rules, if a comparable provision exists in OSC Rule 41-501, provided the issuer complies with the comparable provision in the OSC Rule 41-501 or has received a waiver from the OSC or from the issuer's principal regulator under NP 43-201. Even where an issuer chooses to rely on BCI 41-501 and complies with the requirements of OSC Rule 41-501, this policy applies to the prospectus filing.
 - (4) **BC Instrument 41-502** - Under BCI 41-502, the executive director waives the provisions of section 120(3)(d) of the Rules provided the prospectus discloses the information required by section 1.9(3) of BC Form 41-601F *Information Required in a Prospectus*.

- (5) **BC Instrument 52-501** - Under BCI 52-501, certain foreign issuers that comply with OSC Rule 41-501 are not required to obtain the executive director's written consent before filing financial statements prepared in accordance with foreign GAAP or an auditor's report prepared in accordance with foreign GAAS.

1.4 Short Form and Mutual Fund Prospectus Filings - Except as set out in this section, this policy does not apply to a short form prospectus under NI 44-101 or to a mutual fund prospectus filing under NI 81-101. When the Commission is the principal regulator, the executive director requires an issuer that files a short form prospectus or a mutual fund prospectus to file the documents referred to in Appendix A of NP 43-201 for that category of filing, together with

- (a) unless previously provided, a consent to conduct a criminal records check from every director and officer of the mutual fund's manager, unless that individual is a registrant. Mutual fund issuers should check with Commission staff, before filing, for the form of consent; and
- (b) in the case of a mutual fund prospectus filing or a short form prospectus filing, an undertaking referred to in section 9.2(a) of this policy relating to fees.

1.5 Effective Date - Effective December 31, 2000, this policy replaces Interim Local Policy 41-601 (BC) *Prospectus Filing Requirements* dated January 1, 2000.

1.6 Inquiries - Inquiries about this policy should be directed to the Corporate Finance inquiries line at (604) 899-6705 or (800) 373-6393 (in B.C. only).

PART 2 DEFINITIONS

2.1 Terms Defined in Legislation - Terms defined in the *Securities Act*, S.B.C. 1996, c. 418 (the Act), the *Securities Regulation*, B.C. Reg. 196/97 (the Regulation) or the *Securities Rules*, B.C. Reg. 194/97 (the Rules), and used in this policy have the same meaning as in the Act, Regulation or Rules.

2.2

Defined Terms - In this policy,

“*BCI 41-501*” means BC Instrument 41-501 *Variation of Prospectus Disclosure Requirements for Issuers Using OSC Prospectus Rule*;

“*BCI 41-502*” means BC Instrument 41-502 *Waiver - Firm Commitment Underwriting for Issuers Using OSC Prospectus Rule*;

“*BCI 52-501*” means BC Instrument 52-501 *Consent - Use of Foreign GAAP in Continuous Disclosure Filings by Issuers Using OSC Prospectus Rule*;

“*TSX Venture*” means the TSX Venture Exchange;

“*Commission*” means the British Columbia Securities Commission;

“*Commission policies*” means policies adopted by the Commission, including BC policies, local policy statements, national policies and national policy statements;

“*Commission rules*” means rules adopted by the Commission, including the Rules and national instruments;

“*CPC*” means a Capital Pool Company under the Capital Pool Company program established by TSX Venture and described in TSX Venture Policy 2.4;

“*Form 81-106F1*” means Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance*

“*investment fund*” means an investment fund as defined in NI 81-106

“*IPO*” means an initial public offering;

“*junior issuer*” means an issuer that satisfies all of the following criteria:

- (a) The issuer's total consolidated assets as at the date of the most recent balance sheet of the issuer included in the preliminary prospectus are less than \$10,000,000;
- (b) The issuer's consolidated revenue as shown in the most recent annual income statement of the issuer included in the preliminary prospectus is less than \$10,000,000;
- (c) The issuer's shareholders' equity as at the date of the most recent

balance sheet of the issuer included in the preliminary prospectus is less than \$10,000,000; and

- (d) The average aggregate market value of the issuer's equity securities, if any, for which there is a published market, as calculated in accordance with section 2.3, is less than \$10,000,000, but, in determining whether criteria (a), (b) and (c) have been satisfied, appropriate adjustments must be made to reflect the effect of each probable acquisition of a business and each acquisition of a business that has been completed before the date of the preliminary prospectus and after the date of the issuer's most recent balance sheet included in the preliminary prospectus with respect to criteria (a) and (c) and after the last day of the most recent annual income statement of the issuer included in the preliminary prospectus with respect to criterion (b);

“*MRRS*” means the mutual reliance review system under NP 43-201;

“*National Escrow Regime*” means the proposal for a national escrow regime applicable to IPOs published under CSA Notice 46-301 or any successor proposal, national instrument or national policy;

“*NI 41-101*” means National Instrument 41-101 *Prospectus Disclosure Requirements*;

“*NI 43-101*” means National Instrument 43-101 *Standards of Disclosure for Mineral Projects*;

“*NI 44-101*” means National Instrument 44-101 *Short Form Prospectus Distributions*;

“*NI 81-101*” means National Instrument 81-101 *Mutual Fund Prospectus Disclosure*;

“*NI 81-106*” means National Instrument 81-106 *Investment Fund Continuous Disclosure*

“*NP 43-201*” means National Policy 43-201 *Mutual Reliance Review System for Prospectuses and Annual Information Forms*; and

“*OSC Rule 41-501*” means Ontario Securities Commission Rule 41-501 *General Prospectus Requirements*.

2.3 Calculation of Market Capitalization for Junior Issuer

- (1) For the purposes of the definition of “junior issuer”, the aggregate market value of the issuer's equity securities is the aggregate of the market value of each class of its equity securities for which there is a published market, calculated, for each class, by multiplying the simple average of the closing prices of the equity securities of the class for each of the 20 most recent trading days on which there was a closing price, the last of which days was no more than five trading days prior to the date of the preliminary prospectus by the simple average number of equity securities of the class outstanding over that 20 trading day period.
- (2) If a class of an issuer's equity securities is traded on more than one published market, the closing price for the market on which the equity securities of the class are principally traded shall be used for the calculation under subsection (1).

PART 3 PRE-FILING OR WAIVER APPLICATIONS

- 3.1 **Pre-filing Applications** - To avoid delays during the prospectus review process, issuers are strongly encouraged to make a written pre-filing application to the Corporate Finance Division of the Commission if the prospectus filing will involve a unique or complex issue. However if the prospectus filing is made under Part 18 of this policy issuers should direct any pre-filings to TSX Venture.
- 3.2 **MRRS Pre-filing Applications** - If the filing will be made under MRRS, the issuer should follow the pre-filing application procedures set out in NP 43-201.
- 3.3 **Evidence of Waiver** - Under section 95 of the Rules, the executive director may waive or vary a provision of Part 9 of the Rules or a prospectus form requirement. A waiver under section 95 of the Rules is generally evidenced by the issuance of a receipt for a prospectus. Except where the issuer is relying on BCI 41-501, if a specific waiver is not requested, the receipt will not evidence the waiver and the prospectus may not comply with Part 9 of the Rules or may not be in the required form.
- 3.4 **Exemption Applications** - There may be situations where relief from a requirement in the Act, Regulation or Commission rules cannot be evidenced by the issuance of a prospectus receipt. In these situations the issuer is required to make an application to either Capital Markets Regulation or Corporate Finance in accordance with section 21 of the

Local Policy Statement 45-601 *Statutory and Discretionary Exemptions*, or any successor BC policy.

- 3.5 Security Issuer Registration** - While section 6 of the Rules contemplates security issuer as a category of dealer registration under the Act, it has normally been the practice of the executive director not to grant registration under this category. Issuers that anticipate registering as a security issuer should discuss it with the Director of Registration on a pre-filing basis.

PART 4 PRELIMINARY PROSPECTUS - MATERIALS TO BE FILED

- 4.1 NP 43-201** - The executive director requires an issuer filing a long form prospectus to file the materials for that category of filing set out in Appendix A to NP 43-201, whether or not the filing is made under NP 43-201, in which case the confirmation letter under section 7.2 of NP 43-201 is not required. All personal information filing requirements in NP 43-201 are satisfied by filing the Personal Information Form referred to in section 4.2(c) of this Policy.

- 4.2 Additional Materials** - In addition to the materials filed under section 4.1 of this policy, the executive director requires an issuer to file the following materials with a long form preliminary prospectus, whether or not the filing is made under NP 43-201:

- (a) A cover letter that includes the following information:
 - (i) a description of the required materials that are not being filed, will be filed at a later date, or vary from the form or content prescribed by the Act or Rules, the reasons for the omission or variation and the expected date that the materials will be filed;
 - (ii) details of non-compliance with Commission policies and the reasons for the non-compliance;
 - (iii) if the issuer is relying on BCI 41-501 and the Commission is the principal regulator under NP 43-201, the comparable provisions in OSC Rule 41-501 that the prospectus complies with;
 - (iv) if applicable, the information required by NP 43-201 relating to any MRRS pre-filing or waiver applications under NP 43-201, or details of any other pre-filing

application, or concurrent or required waiver or exemption application filed or to be filed;

- (v) in the case of a prospectus filing by an issuer that is not a reporting issuer, the financial year end of the issuer.

- (b) If the issuer's securities are not listed on an exchange, a description of the steps, if any, being taken either to list the issuer's securities on an exchange or to establish liquidity on conclusion of the distribution qualified by the prospectus. See section 8.2 of this policy for further information regarding exchange listing.

- (c) If the prospectus is filed only in British Columbia or if the Commission is the principal regulator under NP 43-201, a copy of the Personal Information Form the issuer files with the exchange on which the issuer is listed must be filed. If the issuer is not listed on an exchange, it may use the Personal Information Form TSX Venture requires its listed issuers to file. In both cases, the form should be filed for each director, officer, promoter or control person of the issuer and its existing or proposed material subsidiaries, or in the case of a mutual fund prospectus, the manager of the fund. Unlisted issuers must include the written consent of each person listed in the form for the Commission to conduct a criminal records check. Issuers should check with Commission staff, before filing, for the form of consent.

If a promoter or control person is not an individual, a copy of the Personal Information Form filed with the issuer's exchange or, if the issuer is not listed, the Personal Information Form TSX Venture requires its listed issuers to file must be filed for any individuals that are control persons of the promoter or control persons of the issuer. A person or combination of persons that has direct or indirect beneficial ownership of, control or direction over, or a combination of direct or indirect beneficial ownership of and control or direction over securities carrying more than 20% of the voting rights attached to securities issued by the promoter or control person, in the absence of evidence to the contrary, is deemed to be a control person of the promoter or control person.

In the case of investment funds and other issuers that distribute their securities continuously, the individuals concerned need not file a Personal Information Form with the pro forma prospectus provided that they have filed one within the preceding three years and there have not been material changes to the personal

information since the last form was filed. The pro forma prospectus should be accompanied by a letter stating when each officer and director last filed a Personal Information Form.

Where a promoter or control person is a reporting issuer, no person is required to file a personal Information Form with respect to that promoter or control person.

- (d) **Repealed.**
- (e) Copies of all material contracts to which the issuer is a party that have not been previously filed or, alternatively, if a material contract has previously been filed, details of when it was filed.
- (f) All reports for which a written consent of a professional person named is required under section 106 of the Rules. Effective February 1, 2001 if the issuer has a mineral project, the technical reports required to be filed under NI 43-101.
- (g) If a financial statement included in a prospectus has been prepared in accordance with foreign GAAP or includes a foreign auditor's report, a letter to the Commission from the foreign auditor that discusses the auditor's expertise
 - (i) to audit the reconciliation of foreign GAAP to Canadian GAAP; and
 - (ii) in the case of foreign GAAS, other than U.S. GAAS applied by a U.S. auditor, to make the determination that the auditing standards applied are substantially equivalent to Canadian GAAS.

4.3 Certificate Date - The certificates required under sections 68 and 69 of the Act must be dated within three business days before the date of filing the preliminary prospectus. See section 8.4 of this policy for further information about certificates.

PART 5 REFUNDS

If, within two days of filing a preliminary prospectus, an issuer requests that a preliminary receipt not be issued or that its prospectus filing be withdrawn, staff will generally, upon a request in writing, refund the filing fees (less a \$500 processing fee). In all other circumstances, staff will not refund any portion of the filing fees.

PART 6 THE REVIEW PROCESS

6.1 Issuance of Preliminary Receipt - Subject to section 6.2 of this policy, the executive director will issue a receipt for a preliminary prospectus as soon as practicable after the preliminary prospectus has been filed. The receipt will be dated the date the executive director receives the preliminary prospectus, provided none of the conditions in section 6.2 exists.

6.2 Refusal to Issue a Preliminary Receipt - The executive director generally will not issue a receipt for a preliminary prospectus if

- (a) the required financial statements are not included;
- (b) the prospectus does not contain the disclosure required under section 2.1 of NI 41-101;
- (c) the certificates accompanying the preliminary prospectus are not in the required form, or have not been executed by all parties;
- (d) the executive director is the principal regulator under NP 43-201 and the letter required under section 7.2 of NP 43-201 is not filed;
- (e) the executive director is the principal regulator under NP 43-201, a pre-filing was made and the cover letter does not comply with section 9.4 of NP 43-201; or
- (f) the prescribed filing fees have not been paid.

There may be circumstances in which a preliminary MRRS Decision Document will not be issued under NP 43-201. Issuers should refer to section 7.2 of NP 43-201 for further information.

6.3 Incomplete Submissions - Under section 22(4) of the Regulation, if a record is filed with the executive director and the record has not been completed in accordance with the Act or the Rules, the executive director

may return the record to the person who filed the record. In these circumstances, the executive director will not refund any portion of the filing fee.

6.4 Section 81 Cease Trade Order - The executive director may issue a cease trade order under section 81 of the Act if, as a result of the review process, the executive director considers that the preliminary prospectus does not substantially comply with section 63 of the Act. The cease trade order will remain in effect until a revised preliminary prospectus satisfactory to the executive director has been filed, together with confirmation from the agent or underwriter that the revised preliminary prospectus has been distributed to each recipient of the defective preliminary prospectus according to the distribution list required to be maintained under section 80 of the Act.

6.5 Filing of Black-lined Materials - To expedite the review process, all revised materials, including preliminary prospectuses, financial statements, future oriented financial information, engineering reports, valuation or appraisal reports and material contracts, that are filed subsequent to the initial filing should be black-lined to reflect all changes to the materials.

PART 7 AMENDMENTS TO A PRELIMINARY PROSPECTUS

7.1 Amendment to Preliminary Prospectus - Under section 66(1) of the Act, if an adverse material change in the affairs of the issuer occurs after a receipt is issued for the preliminary prospectus but before a final receipt is issued for the prospectus, the issuer must file an amendment to the preliminary prospectus no later than 10 days after the change occurs. The amendment may consist of either an amendment to the preliminary prospectus or an amended and restated preliminary prospectus. To ensure the prospectus contains plain disclosure, issuers should file an amended and restated preliminary prospectus where a substantial number of changes are made to the original preliminary prospectus.

An issuer may file an amendment to a preliminary prospectus if a material change in the affairs of the issuer occurs, other than an adverse material change.

7.2 Requirements for Amendment - The executive director has not prescribed a form to be used by issuers for an amendment to a preliminary prospectus. However, in addition to providing disclosure concerning the material change an amendment to a preliminary prospectus must

- (a) either
 - (i) be numbered and dated as follows, “Amendment No. 1 dated * to Preliminary Prospectus dated *”), or
 - (ii) if the amendment takes the form of an amended and restated preliminary prospectus, be dated as follows, “Dated * (date of original preliminary prospectus), as amended on *”;
- (b) if the issuer is a junior issuer, contain an updated “Use of Proceeds” section that, among other things, updates the funds available at the amendment date; and
- (c) contain certificates required by sections 68 and 69 of the Act that are dated within three business days before the date of filing the amendment.

7.3 **Materials to be Filed** - The executive director requires an issuer that files an amendment to a long form preliminary prospectus to file the materials for that category of filing set out in Appendix A to NP 43-201, whether or not the filing is made under NP 43-201, in which case the letter under section 10.2 of NP 43-201 is not required. All personal information filing requirements in NP 43-201 are satisfied by filing the Personal Information Form referred to in section 4.2(c) of this Policy.

7.4 **Delivery** - A copy of the amendment to the preliminary prospectus must be sent to each recipient of the preliminary prospectus according to the record maintained under section 80 of the Act.

PART 8 FINAL RECEIPT REFUSALS

8.1 **General** - Under section 65(2) of the Act, the executive director must issue a receipt for a prospectus unless the executive director considers it to be contrary to the public interest to do so. Section 120 of the Rules sets out a number of specific circumstances in which the executive director must not issue a receipt for a prospectus. In addition, section 64(1) of the Act gives the executive director the discretion to impose additional filing requirements and conditions if the executive director considers that it is in the public interest to do so. Whether additional filing requirements or conditions are in the public interest will depend on the facts of a particular filing. This Part provides some guidance on when the executive director may refuse to issue a receipt or exercise discretion to impose conditions before issuing a receipt.

8.2 **Repealed.**

- 8.3 Lack of Underwriter** - An underwriter plays an important role in protecting the public interest and maintaining the integrity of the capital markets. The due diligence undertaken by an underwriter provides the underwriter with a thorough understanding of an issuer's business and risks associated with the business and securities to be distributed. The executive director generally will impose a condition that a prospectus filed by an issuer that is not a reporting issuer contain an underwriter's certificate.
- 8.4 Certificate of Issuer** - Section 68(2)(a) of the Act requires the issuer's certificate to be signed by the issuer's chief executive officer and chief financial officer. The executive director expects that the corporate governance policies of a reporting issuer will ensure that separate individuals hold the positions of the chief executive officer and chief financial officer. The executive director generally will impose a condition that the issuer have a chief executive officer and chief financial officer and that different individuals hold the positions.
- 8.5 Escrow Agreement** - The executive director will generally impose a condition that the issuer file an escrow agreement under the National Escrow Regime, before issuing a receipt for a final prospectus.
- 8.6 Issuer in Default for Failure to File** - The executive director generally will not issue a receipt for a prospectus if the issuer is in default for failure to file a document required to be filed by the issuer under the Act or Commission rules.

PART 9 FINAL PROSPECTUS - MATERIAL TO BE FILED

- 9.1 NP 43-201** - The executive director requires an issuer to file a long form prospectus to file the materials for that category of filing set out in Appendix A to NP 43-201, whether or not the filing is made under NP 43-201, in which case the letter under section 7.4 of NP 43-201 is not required. All personal information filing requirements in NP 43-201 are satisfied by filing the Personal Information Form referred to in section 4.2(c) of this Policy.
- 9.2 Additional Materials** - In addition to the materials filed under section 9.1 of this policy, the executive director requires an issuer to file the following materials with a final long form prospectus whether or not the filing is made under NP 43-201:
- (a) If the proceeds to be derived in British Columbia from the

distribution under the prospectus are not ascertainable, the undertaking set out in section 22 of the Regulation.

- (b) If not previously filed, all reports or revised reports for which a written consent of a professional person named is required under section 106 of the Rules.

9.3 Auditor's Comfort Letter Regarding Unaudited Financial Statements

- The auditor's comfort letters required by section 9.1 of this policy include

- (a) a comfort letter to the Commission from the auditor of the issuer or the business, as applicable, prepared in accordance with the relevant standards in the Handbook, if an unaudited financial statement of an issuer or a business is included in a prospectus;
- (b) a comfort letter to the Commission from the auditor of the business, prepared in accordance with the relevant standards in the Handbook, if the prospectus includes unaudited financial information of a business that has been derived from financial statements of a business that are not included in the prospectus as permitted by section 14.5 of this policy;
- (c) a comfort letter to the Commission from the auditor of the business, prepared in accordance with the relevant standards in the Handbook, if a *pro forma* income statement of the issuer included in the prospectus includes results of the business for a constructed period ending no more than 93 days from the ending date of the issuer's income statement; and
- (d) a comfort letter to the Commission from the auditor of the issuer, prepared in accordance with the relevant standards of the Handbook, if a *pro forma* financial statement of the issuer included in the prospectus reflects the results of a significant disposition in accordance with Part 16 of this policy.

9.4 Certificate Date - The certificates required under sections 68 and 69 of the Act must be dated within three business days before the date of filing the final prospectus.

PART 10 AMENDMENTS TO A PROSPECTUS

10.1 Amendment to Prospectus - Under section 67 of the Act, an issuer must file an amendment to a prospectus if a material change in the affairs of the

issuer occurs after a receipt is issued for the prospectus but before the completion of the distribution under the prospectus. The amendment must be filed with the executive director and with TSX Venture, if applicable, as soon as practicable and, in any event, no later than 10 days after the change occurs. The amendment may consist of either an amendment to the prospectus or an amended and restated prospectus. Issuers should file an amended and restated prospectus where a substantial number of changes have been made to the original prospectus.

- 10.2 Prospectus Amending Procedure** - The requirements set out in section 7.2 of this policy concerning the form and content of an amendment to a preliminary prospectus apply equally to an amendment to a prospectus.
- 10.3 Effect on Distribution** - Under section 67(5) of the Act, except with the written permission of the executive director, if an amendment to a prospectus is required to be filed under section 67 of the Act, the distribution under the prospectus must not proceed until the executive director has issued a receipt for the amendment.
- 10.4 Materials to be Filed under NP 43-201** - The executive director requires an issuer that wishes to file an amendment to a long form preliminary prospectus to file the materials for that category of filing set out in Appendix A to NP 43-201, whether or not the filing is made under NP 43-201 (except for the letter under section 10.6 of NP 43-201). All personal information filing requirements in NP 43-201 are satisfied by filing the Personal Information Form referred to in section 4.2(c) of this Policy.
- 10.5 Technical Report** - In addition to materials filed under section 10.4 of this policy, the executive director requires an issuer to file a technical report relating to a natural resource property if the report is revised as a result of the material change.
- 10.6 Further Consents** - Where the amendment materially affects a consent given under section 106 of the Rules, for example if the program recommended in the property report has changed, a new consent letter under section 108 of the Rules must be filed.

PART 11 EXTENSION OF OFFERING PERIOD

11.1 Extension Beyond 90 days - Under section 120(3)(f) of the Rules, an offering period in connection with a best efforts offering is restricted to 90 days after the date of the final receipt. The executive director may extend the offering period to more than 90 days by way of amendment provided

- (a) the amendment is in the form of an amended and restated prospectus;
- (b) the amendment received under section 67(4) of the Act includes the financial statements that would be required under Parts 13, 14, 15 and 16 of this policy;
- (c) if the issuer is a junior issuer, the use of proceeds disclosure section is amended to reflect changes to the funds available;
- (d) new comfort letters or consents from the auditor are filed;
- (e) the amendment includes amended disclosure of management's discussion and analysis relating to the new financial statements;
- (f) the issuer and underwriter(s) confirm all persons who have purchased or are committed to purchase securities have been given the opportunity to rescind their purchase or cancel their commitment; and
- (g) the extended period together with any prior extensions does not end more than 90 days from the date of the receipt for the amendment, 180 days from the date of final receipt, or 12 months from the date of the preliminary receipt.

11.2 Extension of up to 90 days - If the issuer's initial offering period was less than 90 days and the issuer wants to extend it to up to 90 days, the issuer and underwriter(s) must confirm that all persons who have purchased or are committed to purchase securities have been given the opportunity to rescind the purchase or cancel their commitment.

PART 12 GENERAL FINANCIAL STATEMENT REQUIREMENTS

Financial statements included in a prospectus must be prepared in accordance with section 3 and Part 9, Division 2 of the Rules. Sections 113 and 113.1 of the Rules require an investment fund to file financial statements in the form required by NI 81-106.

PART 13 FINANCIAL STATEMENT DISCLOSURE FOR THE ISSUER

13.1 Annual Audited Financial Statements - Section 112 of the Rules requires a prospectus of an issuer other than an investment fund to include annual audited financial statements of an issuer for each of its last 5 financial years.

BCI 41-501 varies certain provisions of Part 9 of the Rules provided that the issuer complies with the comparable provisions in OSC Rule 41-501. The annual audited financial statements of the issuer to be included in the prospectus as required by OSC Rule 41-501 are:

- (1) If the issuer is not a junior issuer:
 1. Statements of income, retained earnings and cash flows for
 - (a) each of the three most recently completed financial years ended more than 90 days before the date of the prospectus;
 - (b) if the issuer has not completed three financial years, each completed financial year ended more than 90 days before the date of the prospectus; or
 - (c) if the issuer has not completed one financial year, the financial period from the date of formation to a date not more than 90 days before the date of the prospectus.
 2. A balance sheet as at
 - (a) the last day of the
 - (i) most recently completed financial year, if any, ended more than 90 days before the date of the prospectus; and
 - (ii) immediately preceding financial year, if any; or
 - (b) if the issuer has not completed one financial year, as at a date not more than 90 days before the date of the prospectus.
- (2) If the issuer is a junior issuer, the financial statements required by (1) above except that a junior issuer may omit from its prospectus

an auditor's report for its financial statements for the second and third most recently completed financial years for which financial statements are included in the prospectus if

- (a) the auditor has not issued an auditor's report on the financial statements; and
- (b) the most recently completed financial year for which audited financial statements are included in the prospectus is not less than 12 months in length.

13.2 Unaudited Interim Financial Statements - Where the ending date of an issuer's most recent annual audited financial statements is more than 120 days prior to the date of the preliminary prospectus receipt, section 112 of the Rules requires a prospectus to include financial statements of an issuer for a period subsequent to the most recent annual audited year and ended not more than 120 days before the date of the preliminary prospectus receipt. Section 111 of the Rules permits any financial statements for the subsequent period referred to above to be unaudited where the end of that subsequent period is not more than 90 days before the date of the preliminary receipt and not more than 12 months after the end of the most recent audited annual financial statements.

BCI 41-501 varies certain provisions of Part 9 of the Rules provided that the issuer complies with the comparable provisions in OSC Rule 41-501. The unaudited interim financial statements to be included in the prospectus as required by OSC Rule 41-501 are:

1. Statements of income, retained earnings and cash flows for the most recently completed interim period that ended more than 60 days before the date of the prospectus and for the comparable period in the immediately preceding financial year.
2. A balance sheet as at the last day of the most recently completed interim period referred to in paragraph 1.

OSC Rule 41-501 defines "interim period" to mean a completed three, six or nine month period in the financial year that commenced immediately following the end of the most recently completed financial year for which audited annual financial statements are included in a prospectus.

13.3 Updated Audited and Unaudited Financial Statements - The executive director generally will require, under section 64(1) of the Act, the preliminary and final prospectus to include the financial statements

required by OSC Rule 41-501. Issuers should note that this may require the inclusion of more recent annual or interim financial statements in the final prospectus than those included in the preliminary prospectus.

13.4 Additional Financial Statements or Financial Information Filed or Released - The executive director generally will require, under section 64(1) of the Act, a prospectus to include

- (a) the issuer's financial statements for a period that is more recent than the periods for which financial statements are required under section 13.1, 13.2 or 13.3 of this policy if financial statements for the more recent period have been filed; and
- (b) the content of a news release or public communication disseminated by, or on behalf of, the issuer concerning financial information about the issuer for a period that is more recent than the periods for which financial statements are required under section 13.1, 13.2 or 13.3 of this policy.

13.5 Reverse Take overs - If an issuer has been involved in a business combination accounted for as a reverse take over, financial statements required under this Part should be provided for the legal subsidiary, as that term is used in the Handbook.

PART 14 FINANCIAL STATEMENT DISCLOSURE FOR SIGNIFICANT ACQUISITIONS

14.1 Annual Audited and Unaudited Interim Financial Statements for Business Acquisitions - Where any of the proceeds of the securities offered by a prospectus are to be applied in whole or in part, directly or indirectly, to finance the acquisition of a business, section 114 of the Rules requires the prospectus to include audited financial statements of the acquired business for the same periods required for the issuer under section 112 of the Rules. Section 114 also specifies the requirements for pro forma financial statements. Section 111 of the Rules permits any financial statements for a period subsequent to the business' most recent annual audited financial statements to be unaudited where the end of that subsequent period is not more than 90 days before the date of the preliminary receipt and not more than 12 months after the end of the most recent audited annual financial statements.

BCI 41-501 varies certain provisions of Part 9 of the Rules provided that the issuer complies with the comparable provisions in OSC Rule 41-501. OSC Rule 41-501 requires annual audited financial statements for businesses that are considered “significant acquisitions” for one, two or three years depending on the significance of the acquisition. Where a business is a junior issuer, OSC Rule 41-501 provides an exemption from the audit requirement for financial years of the business other than the most recently completed year, similar to section 13.1(2) of this policy. OSC Rule 41-501 also requires unaudited interim financial statement for business acquisitions that are considered “significant acquisitions” similar to those required for an issuer as described in section 13.2 of this policy.

14.2 Additional Financial Statements for Significant Business Acquisitions

- In addition to financial statements required under sections 111 and 114 of the Rules, the executive director generally will require, under section 64(1) of the Act, the preliminary and final prospectus to include the annual and interim financial statements required by OSC Rule 41-501 for significant acquisitions.

14.3 Updated Audited and Unaudited Financial Statements - Issuers should

note that the requirement set out in section 14.2 of this policy may result in the inclusion of more recent annual or interim financial statements in the final prospectus than those included in the preliminary prospectus.

14.4 Pro Forma Financial Statements for Business Acquisitions - The executive director generally will require, under section 64(1) of the Act, that the pro forma financial statements required to be included in a prospectus for the acquisition of a business comply with the requirements of section 6.5 of OSC Rule 41-501 and section 3.17 of OSC Companion Policy 41-501CP to OSC Rule 41-501.

14.5 Exception to Disclosure Requirements for Significant Acquisitions Accounted for Using the Equity Method - Despite sections 14.1, 14.2 and 14.4 of this policy, an issuer may omit from its prospectus the financial statements of a business and the *pro forma* financial statements of an issuer otherwise required under sections 14.1, 14.2 and 14.4 of this policy if

- (a) the acquisition is, or will be, an investment accounted for using the equity method, as that term is defined in the Handbook;
- (b) the prospectus includes disclosure for the periods for which financial statements are otherwise required under sections 14.1, 14.2 and 14.4 of this policy that

- (i) summarizes the assets, liabilities and results of operations of the business, and
 - (ii) describes the issuer's proportionate interest in the business and any contingent issuance of securities by the business that might significantly affect the issuer's share of earnings;
- (c) the financial information provided under paragraph (b) for any completed financial year
- (i) has been derived from audited financial statements of the business, or
 - (ii) has been audited; and
- (d) the
- (i) prospectus
 - (A) identifies the financial statements referred to in paragraph (c)(i) from which the disclosure provided under paragraph (b) has been derived, or
 - (B) discloses that the financial information provided under paragraph (b), if not derived from audited financial statements, has been audited, and
 - (ii) prospectus discloses that the audit opinion with respect to the financial statements referred to in subparagraph (i)(A), or the financial information referred to in subparagraph (i)(B), was issued without a reservation of opinion.

14.6

Additional Disclosure for Significant Acquisitions Completed After Financial Year End Accounted for Using the Purchase Method - If an issuer has completed a significant acquisition since its most recent financial year end, and the purchase method is used to account for the acquisition, the executive director generally will require, under section 64(1) of the Act, an issuer to include in a subsequent event note to its financial statements included in a prospectus the following information:

1. If
 - (a) determined by the date of the subsequent event note, details of the purchase equation, namely the allocation of the purchase price to the underlying assets being acquired, the underlying liabilities being assumed and any resulting goodwill; or
 - (b) not determined by the date of the subsequent event note, the issuer's reasonable estimate of the allocation.
2. The terms and status of the acquisition.

14.7 Additional Financial Statements or Financial Information Filed or Released - The executive director generally will require, under section 64(1) of the Act, a prospectus to include

- (a) financial statements for a significant business acquisition for a period that is more recent than the periods for which financial statements are required under section 14.1 or 14.2 of this policy if financial statements for the more recent period have been filed; and
- (b) the content of a news release or public communications disseminated by, or on behalf of the issuer concerning financial information about the business for a period that is more recent than the periods for which financial statements are required under section 14.1 or 14.2 of this policy.

PART 15 FINANCIAL STATEMENT DISCLOSURE FOR MULTIPLE ACQUISITIONS THAT ARE NOT OTHERWISE SIGNIFICANT OR RELATED

In addition to financial statements required under sections 111, 112 and 114 of the Rules, the executive director generally will require, under section 64(1) of the Act, a prospectus to include financial statements for individually insignificant unrelated acquisitions as required by Part 7 of OSC Rule 41-501.

PART 16 *PRO FORMA FINANCIAL STATEMENT DISCLOSURE FOR SIGNIFICANT DISPOSITIONS*

In addition to financial statements required under sections 111, 112 and 114 of the Rules, the executive director generally will require, under section 64(1) of the Act, a prospectus to include pro forma financial statements for significant dispositions as required by Part 8 of OSC Rule 41-501.

PART 17 *PLAIN LANGUAGE*

Section 98(7) of the Rules specifies that the information contained in a prospectus must be in narrative form. Section 63(1) of the Act requires that a prospectus contain “full, true and plain” disclosure. To that end, issuers and their advisors are reminded that they should ensure that disclosure documents are easy to read, and are encouraged to adopt the following plain language principles in preparing a prospectus:

- use short sentences
- use definite, concrete, everyday language
- use the active voice
- avoid superfluous words
- organize the document into clear, concise sections, paragraphs and sentences
- avoid legal or business jargon
- use strong verbs
- use personal pronouns to speak directly to the reader
- avoid reliance on glossaries and defined terms unless it facilitates understanding of the disclosure
- avoid vague boilerplate wording
- avoid abstractions by using more concrete terms or examples
- avoid excessive detail
- avoid multiple negatives.

If technical or business terms are required, clear and concise explanations should be used.

PART 18 OPERATING AGREEMENT WITH TSX Venture

18.1 Purpose - The Commission and TSX Venture have an operating agreement that enables the Commission to rely on the Vancouver office of TSX Venture to assist in vetting IPO prospectuses of Capital Pool Companies (CPCs) and exchange offering prospectuses. This agreement does not limit the discretion of the executive director to refuse receipts for preliminary or final prospectuses or amendments to prospectuses.

The Commission does not currently have an operating agreement with TSX Venture to rely on any other office of TSX Venture.

18.2 Definitions - In this Part,

“*EOP*” means a prospectus filed by an issuer whose securities are listed on TSX Venture.

“*Qualifying Issuer*” means

- (i) in connection with an EOP, a reporting issuer whose securities are listed on TSX Venture that files an EOP only in British Columbia and that satisfies any one of the following requirements:
 - (1) the issuer is listed on Tier 1 of TSX Venture,
 - (2) the issuer allocates a significant portion of the proceeds raised under the EOP to fund a specific project, property or business undertaking,
 - (3) the issuer has not raised, by way of prospectus, or rights offering during the previous 12 months, together with the proceeds to be raised under the EOP, more than \$250,000, or
 - (4) the issuer has received the executive director's approval to file an EOP, or
- (ii) **Repealed.**

- (iii) in connection with an IPO prospectus that relates to securities of a CPC, an issuer that files an IPO in British Columbia or British Columbia and Alberta under MRRS and has made a conditional listing application to TSX Venture; and

“*Statutory Requirements*” means the Act, Regulation, Commission Rules, the National Escrow Regime, blanket orders and decisions as amended from time to time.

- 18.3** **Materials to be Filed** - When a Qualifying Issuer files a prospectus with TSX Venture, the Qualifying Issuer shall contemporaneously file with the Commission the materials required by Parts 4 and 10 of this policy.

Qualifying Issuers should refer to TSX Venture's policies with respect to TSX Venture's filing requirements.

- 18.4** **Waiver Applications** - Waiver applications are made only to the Vancouver office of TSX Venture. Applications should be made on a pre-filing basis with TSX Venture.

- (a) If the application relates to a waiver of a Statutory Requirement and TSX Venture considers that a waiver is appropriate, TSX Venture will make a recommendation to the executive director to grant the waiver. If the executive director does not agree to grant the waiver, TSX Venture will ensure compliance with the Statutory Requirement.
- (b) If the application relates to a waiver of a Commission policy, TSX Venture has the discretion to grant the waiver.

A waiver of a Statutory Requirement under section 95 of the Rules is generally evidenced by the issuance of a receipt for a prospectus.

- 18.5** **Exemption Applications** – Issuers should refer to section 3.4 of this policy relating to exemption applications where the exemption is not evidenced by a receipt.

PART 19 CPC PROGRAM FILING REQUIREMENTS

- 19.1** **Definitions** - In this Part,

“*Statutory Requirements*” means the Act, Regulation, Commission Rules, blanket orders and decisions as amended from time to time; and

“*CPC Qualifying Issuer*” means an issuer whose securities will be listed on TSX Venture, that complies with TSX Venture Policy 2.4 and that will be classified as a CPC.

- 19.2 Eligibility** - If a CPC Qualifying Issuer intends to file a CPC prospectus with the Commission and TSX Venture, the CPC Qualifying Issuer must comply with the requirements of TSX Venture Policy 2.4 and file the materials required by sections 4 and 11 of this policy that are applicable to a CPC with the Commission.
- 19.3 Waiver Applications** - Commission policies and Statutory Requirements apply to the filing of preliminary CPC Prospectuses and final CPC Prospectuses. A CPC Qualifying Issuer seeking relief from the application of any Commission policy or Statutory Requirement is required to apply for a waiver or exemption as described in sections 18.4 and 18.5.

June 1, 2005

Douglas M. Hyndman
Chair