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FORM 44-101F1 AIF

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FORM 44-101F2 SHORT FORM PROSPECTUS

## **NATIONAL INSTRUMENT 44-101<sup>1</sup> SHORT FORM PROSPECTUS DISTRIBUTIONS**

<sup>1</sup> The proposed Instrument is an initiative of the Canadian Securities Administrators (the "CSA") and is expected to be adopted as a rule in British Columbia, Alberta, Ontario, Manitoba and Nova Scotia, as a Commission Regulation in Saskatchewan and as a Policy in all other jurisdictions represented by the CSA. This proposed Instrument is derived from National Policy Statement No.

47 ("NP47") and, in part, National Policy Statement No. 1 ("NP1") of the Canadian securities regulatory authorities and related Blanket Orders or Rulings adopted by them. The proposed National Instrument was first published for comment on February 20, 1998 at (1998), 21 OSCB 1138. A revised version of the proposed National Instrument was published on July 23, 1999 at (1999), 22 OSCB (POP Supp)(the "1999 proposed National Instrument"). Unless otherwise specified, changes noted in these footnotes refer to changes made to the 1999 proposed National Instrument.

## **PART 1            DEFINITIONS AND INTERPRETATION**

### **1.1                Definitions<sup>2</sup>**

<sup>2</sup> A national definition instrument has been adopted as National Instrument 14-101 Definitions. It contains definitions of certain terms used in more than one national instrument. National Instrument 14-101 also provides that a term used in a national instrument and defined in the statute relating to securities of the applicable jurisdiction, the definition of which is not restricted to a specific portion of the statute, will have the meaning in that jurisdiction given to it in that statute, unless the context otherwise requires. National Instrument 14-101 also provides that a provision or a reference within a provision in a national instrument that specifically refers by name to a jurisdiction, other than the local jurisdiction, shall not have any effect in the local jurisdiction, unless otherwise stated in the provision.

In this Instrument

"acquisition of related businesses" means the acquisitions of two or more businesses if

- (a) the businesses were under common control or management before the acquisitions were completed, or
- (b) each acquisition was conditional upon the completion of each other acquisition;

"AIF" means an annual information form

- (a) in the form of Form 44-101F1 AIF,
- (b) in the form referred to in section 3.4, or
- (c) in the form of Appendix A to National Policy Statement No. 47, if the annual information form was filed before this Instrument came into force;

"alternative credit support" means support, other than a guarantee, for the payments to be made by an issuer of securities, as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities, that

- (a) obliges the person or company providing the support to provide the issuer with funds sufficient to enable the issuer to make the stipulated payments, or
- (b) entitles the holder of the securities to receive payment from the person or company providing the support, if the issuer fails to make a stipulated payment;

"approved rating" means, for a security, a rating at or above one of the following rating categories issued by an approved rating organization for the security or a rating category that replaces a category listed below:

Approved Rating Organization	Long Term Debt	Short Term Debt	Preferred Shares
CBRS Inc.	B++	A-2	P-3
Dominion Bond Rating Service Limited	BBB	R-2	Pfd-3
Duff & Phelps Credit Rating Co.	BBB-	D-3	BBB-
Fitch IBCA, Inc.	BBB	F3	BBB
Moody's Investors Service, Inc.	Baa	Prime-3	"baa"
Standard & Poor's Corporation	BBB	A-3	BBB
Thomson BankWatch, Inc.	BBB	TBW-3	BBB

"approved rating organization" means each of CBRS Inc., Dominion Bond Rating Service Limited, Duff & Phelps Credit Rating Co., Fitch IBCA, Inc., Moody's Investors Service, Inc., Standard & Poor's Corporation, Thomson BankWatch, Inc., and any of their successors;

"asset-backed security" means a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, and any rights or other assets designed to assure the servicing or timely distribution of proceeds to securityholders;

"associated party" means, if used to indicate a relationship with a person or company,

- (a) a partner, other than a limited partner, of the person or company,
- (b) a trust or estate in which the person or company has a substantial beneficial interest or for which the person or company serves as trustee or in a similar capacity,
- (c) an issuer in respect of which the person or company beneficially owns or controls, directly or indirectly, voting securities carrying more than 10 percent of the voting rights attached to all outstanding voting securities of the issuer,
- (d) a relative of the person who has the same home as that person,

- (e) an individual who has the same home as the person and who is either married to the person or is living with the person in a conjugal relationship outside marriage, or
- (f) a relative of an individual mentioned in paragraph (e) who has the same home as the person;

"auditor's report" means

- (a) a Canadian auditor's report,<sup>3</sup> or

<sup>3</sup> The term "Canadian auditor's report" is defined in National Instrument 14-101 Definitions. The definition is "an auditor's report prepared in accordance with Canadian GAAS". The term "Canadian GAAS" is also defined in National Instrument 14-101 Definitions. The definition is "generally accepted auditing standards determined with reference to the Handbook". The term "Handbook" is defined in National Instrument 14-101 Definitions to mean "the Handbook of the Canadian Institute of Chartered Accountants, as amended from time to time".

- (b) in the case of an issuer incorporated or organized in a foreign jurisdiction
  - (i) a Canadian auditor's report, or
  - (ii) a foreign auditor's report;

"cash equivalent" means an evidence of indebtedness that has a remaining term to maturity of 365 days or less and that is issued, or fully and unconditionally guaranteed as to principal and interest, by

- (a) the government of Canada or the government of a jurisdiction,
- (b) the government of the United States of America, the government of one of the states of the United States of America, the government of another sovereign state or a permitted supranational agency, if, in each case, the evidence of indebtedness has an approved rating, or
- (c) a Canadian financial institution<sup>4</sup>,

<sup>4</sup> The term "Canadian financial institution" is defined in National Instrument 14-101 Definitions as "a bank, loan corporation, trust company, insurance company, treasury branch, credit union or caisse populaire that, in each case, is authorized to carry on business in Canada or a jurisdiction, or the Confédération des caisses populaires et d'économie Desjardins du Québec".

or other entity that is regulated as a banking institution, loan corporation, trust company, or insurance company or credit union by the government, or an agency of the government, of the country under whose laws the entity is incorporated or organized or a political subdivision of that country, if, in either case, the Canadian financial institution or other entity has outstanding short term debt securities that have received an approved rating from any approved rating organization;

"cash settled derivative" means a specified derivative, the terms of which provide for settlement only by means of cash or cash equivalent, the amount of which is determinable by reference to the underlying interest of the specified derivative;

"connected issuer" has the meaning ascribed to that term in securities legislation;<sup>5,6</sup>

5 This definition has been added to replace a reference to Multilateral Instrument 33-105 Underwriting Conflicts which has not yet come into force. The term is used in Form 44-101F2.

6 The definition of "securities legislation" in National Instrument 14-101 is "for the local jurisdiction, the statute and other instruments listed in Appendix B opposite the name of the local jurisdiction".

"convertible" means, if used to describe securities, that the rights and attributes attached to the securities include the right or option to purchase, convert into or exchange for or otherwise acquire equity securities of an issuer, or any other security that itself includes the right or option to purchase, convert into or exchange for or otherwise acquire equity securities of an issuer;

"credit supporter" means a person or company that provides a guarantee or alternative credit support for any of the payments to be made by an issuer of securities as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities;

"current AIF" means

- (a) for an issuer other than an issuer subsisting under the laws of a foreign jurisdiction that has filed an AIF in the form of a current annual report on Form 20-F under section 3.4
  - (i) during the period of 140 days following the issuer's most recently completed financial year,
    - (A) if the issuer has filed an initial AIF for its most recently completed financial year that has been accepted for filing under this Instrument, the initial AIF,
    - (B) if the issuer has filed a renewal AIF under this Instrument for its most recently completed financial year, the renewal AIF,
    - (C) if the issuer has not filed an AIF for its most recently completed financial year and has filed an initial AIF for the financial year preceding its most recently completed financial year that has been accepted for filing under this Instrument, the initial AIF, or
    - (D) if the issuer has not filed an AIF for its most recently completed financial year and has filed a renewal AIF under this Instrument for the financial year preceding its most recently completed financial year, the renewal AIF,
  - (ii) at any time after 140 days following the issuer's most recently completed financial year,
    - (A) if the issuer has filed an initial AIF for its most recently completed financial year that has been accepted for filing under this Instrument, the initial AIF, or
    - (B) if the issuer has filed a renewal AIF under this Instrument for its most recently completed financial year, the renewal AIF, or

- (iii) an AIF of the issuer filed before this Instrument came into force that would constitute a "Current AIF" for the purposes of National Policy Statement No. 47 if that instrument was applicable, or
- (b) for an issuer subsisting under the laws of a foreign jurisdiction that has filed an AIF in the form of a current annual report on Form 20-F under section 3.4
  - (i) during the period of 180 days following the issuer's most recently completed financial year
    - (A) if the issuer has filed an initial AIF for its most recently completed financial year that has been accepted for filing under this Instrument, the initial AIF,
    - (B) if the issuer has filed a renewal AIF under this Instrument for its most recently completed financial year, the renewal AIF,
    - (C) if the issuer has not filed an AIF for its most recently completed financial year and has filed an initial AIF for the financial year preceding its most recently completed financial year that has been accepted for filing under this Instrument, the initial AIF, or
    - (D) if the issuer has not filed an AIF for its most recently completed financial year and has filed a renewal AIF under this Instrument for the financial year preceding its most recently completed financial year, the renewal AIF,
  - (ii) at any time after 180 days following the issuer's most recently completed financial year,
    - (A) if the issuer has filed an initial AIF for its most recently completed financial year that has been accepted for filing under this Instrument, the initial AIF, or
    - (B) if the issuer has filed a renewal AIF under this Instrument for its most recently completed financial year, the renewal AIF, or
  - (iii) an AIF of the issuer filed before this Instrument came into force that would constitute a "Current AIF" for the purposes of National Policy Statement No. 47 if that instrument was applicable;

"equity security" means any security of an issuer that carries a residual right to participate in the earnings of the issuer and, upon the liquidation or winding up of the issuer, in its assets;

"executive officer" means an individual who is or at any time during the most recently completed financial year was

- (a) a chair of the issuer, if that individual performed the functions of the office on a full time basis,



- (b) a vice-chair of the issuer, if that individual performed the functions of the office on a full time basis,
- (c) the president of the issuer,
- (d) a vice-president of the issuer in charge of a principal business unit, division, or function such as sales, finance, or production,
- (e) an officer of the issuer or any of its subsidiaries who performed a policy-making function in respect of the issuer, or
- (f) any other person who performed a policy-making function in respect of the issuer;

"foreign auditor's report" means a report of an auditor that is prepared in accordance with foreign GAAS;

"foreign GAAP" means a body of generally accepted accounting principles, other than Canadian GAAP, that are as comprehensive as Canadian GAAP;

"foreign GAAS" means a body of generally accepted auditing standards, other than Canadian GAAS, that are substantially equivalent to Canadian GAAS;

"income from continuing operations" means net income or loss, excluding discontinued operations and extraordinary items, and before income taxes;

"initial AIF" means an AIF, as may be revised from time to time, filed by an issuer in the local jurisdiction, if at the time of filing the issuer either

- (a) has not previously had a current AIF in the local jurisdiction, or
- (b) previously had a current AIF in the local jurisdiction and no longer has one;

"interim period" means 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 short form prospectus;

"investee" means an entity that the Handbook<sup>7</sup>

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National Instrument 14-101 Definitions defines the term "Handbook" as "the Handbook of the Canadian Institute of Chartered Accountants, as amended from time to time".

recommends that an issuer account for by the equity method or the proportionate consolidation method;

"MD&A" means the management's discussion and analysis of financial condition and results of operations of an issuer required to be disclosed in an AIF;

"MRRS" has the meaning ascribed to that term in National Policy 43-201 Mutual Reliance Review System for Prospectuses and AIFs;

"MRRS decision document" means a decision document issued under National Policy 43-201 for a preliminary short form prospectus, a short form prospectus,

an amendment to a preliminary short form prospectus or a short form prospectus, an initial AIF or a renewal AIF;

"non-convertible" means, if used to describe a security, a security that is not convertible;

"participant" means an issuer that is a party to a reorganization;

"permitted supranational agency" means the International Bank for Reconstruction and Development, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the Caribbean Development Bank, the European Bank for Reconstruction and Development, the African Development Bank and any person or company prescribed under paragraph (g) of the definition of "foreign property" in subsection 206(1) of the ITA;<sup>8</sup>

<sup>8</sup> The term "ITA" is defined in National Instrument 14-101 Definitions as meaning "the *Income Tax Act* (Canada)".

"POP regulator" means, for an issuer filing an AIF, preliminary short form prospectus, short form prospectus or amendment to a short form prospectus,

- (a) the regulator in the local jurisdiction, if
  - (i) the AIF, preliminary short form prospectus, short form prospectus or amendment is filed only in the local jurisdiction, or
  - (ii) the AIF, preliminary short form prospectus, short form prospectus or amendment is filed in more than one jurisdiction and the issuer has not elected to use the MRRS, or
- (b) the person referred to in Appendix D of National Instrument 14-101 Definitions opposite the name of the jurisdiction that acts as principal regulator for the review of the document under National Policy 43-201, together with the regulator in each jurisdiction, if any, that has opted out of, without having opted back into, the MRRS, if
  - (i) the AIF, preliminary short form prospectus, short form prospectus or amendment is filed in more than one local jurisdiction, and
  - (ii) the issuer has elected to use the MRRS;

"principal obligor" means, for an asset-backed security, a person or company that is obligated to make payments, has guaranteed payments, or has provided alternative credit support for payments, on financial assets that represent a third or more of the aggregate amount owing on all of the financial assets underlying the asset-backed security;

"probable acquisition of a business" means a proposed acquisition of a business that has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high;

"probable acquisition of related businesses" means

- (a) proposed acquisitions of two or more businesses if

- (i) each proposed acquisition has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high, and
- (ii) either
  - (A) the businesses are under common control or management, or
  - (B) each acquisition is conditional upon the completion of each other acquisition, or
- (b) a completed acquisition of a business and a proposed acquisition of a business if
  - (i) the proposed acquisition has progressed to a state where a reasonable person would believe that the likelihood of the acquisition being completed is high, and
  - (ii) either
    - (A) the businesses were under common control or management, or
    - (B) the proposed acquisition was conditional upon the completed acquisition;<sup>9</sup>

<sup>9</sup> Paragraph (b) is new.

"probable disposition of a business" means a proposed disposition of a business that has progressed to a state where a reasonable person would believe that the likelihood of the disposition being completed is high;<sup>10</sup>

<sup>10</sup> This definition is new.

"renewal AIF" means an AIF filed by an issuer in the local jurisdiction, as may be revised from time to time, if at the time of filing the issuer had a current AIF;

"reorganization" means

- (a) a statutory amalgamation,
- (b) a statutory merger, or
- (c) a statutory arrangement;

"SEDAR" has the meaning ascribed to that term in National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR);

"specified derivative" means an instrument, agreement or security, the market price, value or payment obligation of which is derived from, referenced to, or based on an underlying interest;

"successor issuer" means an issuer existing as a result of a reorganization, other than, in the case where the reorganization involved a divestiture of a portion of a

participant's business, an issuer that succeeded to or otherwise acquired the portion of the business divested;

"underlying interest" means, for a specified derivative, the security, commodity, financial instrument, currency, interest rate, foreign exchange rate, economic indicator, index, basket, agreement, benchmark or any other reference, interest or variable, and, if applicable, the relationship between any of the foregoing, from, to or on which the market price, value or any payment obligation of the specified derivative is derived, referenced or based; and

"U.S. GAAS" means the body of generally accepted auditing standards in the United States of America.<sup>11</sup>

<sup>11</sup> This definition is new.

## 1.2 Significant Acquisitions<sup>12</sup>

<sup>12</sup> Each is applied on two dates; the earlier of the two dates is new.

(1) For the purposes of this Instrument, an acquisition of a business, an acquisition of related businesses, a probable acquisition of a business or a probable acquisition of related businesses is a significant acquisition, if it satisfies any of the following three conditions:

1. **The Asset Test.** The issuer's proportionate share of the total consolidated assets of the business or related businesses exceeds 20 percent of the consolidated assets of the issuer as at both

(a) the date of the most recent financial year end of the issuer before the date of the acquisition, without giving effect to the acquisition; and

(b) the date of the most recent balance sheet of the issuer included in the preliminary short form prospectus, without giving effect to the acquisition.

2. **The Investment Test.** The issuer's consolidated investments in and advances to the business or the related businesses exceeds 20 percent of the consolidated assets of the issuer as at both

(a) the date of the most recent financial year end of the issuer before the date of the acquisition, without giving effect to the acquisition; and

(b) the date of the most recent balance sheet of the issuer included in the short form prospectus, without giving effect to the acquisition.<sup>13</sup>

<sup>13</sup> Each is applied on two dates; the earlier of the two dates is new.

3. **The Income Test.** Both the following subparagraph (a) and subparagraph (b) are true:

(a) The issuer's proportionate share of the consolidated income from continuing operations of the business or the

related businesses for the most recently completed financial year of the business or the related businesses before the date of the acquisition exceeds 20 percent of the total consolidated income from continuing operations of the issuer for the most recently completed financial year of the issuer before the date of the acquisition.

(b) The income from continuing operations referred to in the following clause (i) exceeds 20 percent of the income from continuing operations referred to in the following clause (ii):

(i) The issuer's proportionate share of the consolidated income from continuing operations of the business or the related businesses for the later of

(A) the most recently completed financial year of the business or the related businesses that ended more than 90 days before the date of the preliminary short form prospectus, or

(B) the 12 months ended on the last day of the most recently completed interim period of the business or related businesses that ended more than 60 days before the date of the preliminary short form prospectus.

(ii) The income from continuing operations of the issuer on a consolidated basis for the later of

(A) the most recently completed financial year, without giving effect to the acquisition, or

(B) the 12 months ended on the last day of the most recently completed interim period of the issuer for which statements are included in the preliminary short form prospectus, without giving effect to the acquisition.

(2) In determining whether an acquisition of related businesses or a probable acquisition of related businesses is a significant acquisition, the related businesses shall be considered on a combined basis.

(3) Unless the context otherwise requires, the term "significant acquisition" refers to an acquisition of a business, an acquisition of related businesses, a probable acquisition of a business or a probable acquisition of related businesses that satisfies any of the three conditions in subsection (1).<sup>14</sup>

### 1.3 Application of Income Test<sup>15</sup>

<sup>15</sup> This section is new.

- (1) For the purposes of paragraph 3 of subsection 1.2(1), if
  - (a) the issuer's income from continuing operations on a consolidated basis for the most recently completed financial year referred to in subclause 3(b)(ii)(A) of subsection 1.2(1) was not a loss; and
  - (b) the issuer's income from continuing operations on a consolidated basis for that year is
    - (i) positive, and
    - (ii) lower by 20 percent or more than the average consolidated income from continuing operations of the issuer for the three most recently completed financial years,

then, the average consolidated income for the three most recently completed financial years shall, subject to subsection (3), be substituted in determining whether the condition set out in paragraph 3 of subsection 1.2(1) is satisfied.

- (2) For the purposes of paragraph 3 of subsection 1.2(1), if
  - (a) the issuer's income from continuing operations on a consolidated basis for the most recent 12 month period referred to in subclause 3(b)(ii)(B) of subsection 1.2(1) was not a loss; and
  - (b) the issuer's income from continuing operations on a consolidated basis for that 12 month period is
    - (i) positive, and
    - (ii) lower by 20 percent or more than the average consolidated income from continuing operations of the issuer for the three previous 12 month periods,

then, the average consolidated income for the three previous 12 month periods shall, subject to subsection (3), be substituted in determining whether the condition set out in paragraph 3 of subsection 1.2(1) is satisfied.

- (3) If the issuer's income from continuing operations on a consolidated basis for either of the two earlier periods referred to in subsection (1) or (2) is a loss, the issuer's income from continuing operations for that period is considered to be zero for the purposes of calculating the average consolidated income for the three previous periods.

### 1.4 Probable Acquisitions

- (1) The term "probable acquisition" refers to both a probable acquisition of a business and a probable acquisition of related businesses.

- (2) The term "significant probable acquisition" refers to a probable acquisition of a business, and a probable acquisition of related businesses, that is a significant acquisition under section 1.2.

**1.5 Acquisitions** - The term "acquisition" includes an acquisition of an interest in a business accounted for using the equity method.<sup>16</sup>

<sup>16</sup> This section is new and has been added for greater clarity.

**1.6 Significant Dispositions**<sup>17</sup>

<sup>17</sup> This section is new and has been added to provide a quantitative test to measure the significance of a disposition.

- (1) For the purposes of this Instrument, a disposition of a business, including a probable disposition of a business, is a significant disposition, if it satisfies either of the following conditions:

1. The issuer's proportionate share of the total consolidated assets of the business exceeds 20 percent of the consolidated assets of the issuer, after giving effect to the disposition, as at the date of the most recent financial year end of the issuer before the date of the disposition, without giving effect to the disposition.
2. The issuer's proportionate share of the consolidated income from continuing operations of the business for the most recently completed financial year of the business before the date of the disposition exceeds 20 percent of the total consolidated income from continuing operations of the issuer for the most recently completed financial year of the issuer before the date of the disposition, without giving effect to the disposition.

- (2) Unless the context otherwise requires, the term "significant disposition" refers to a disposition of a business and a probable disposition of a business that satisfies either of the two conditions in subsection (1).

**1.7 References to Information Included in a Document** - References in this Instrument to information included in a document refer to both information contained directly in the document and information incorporated by reference in the document.

**1.8 References to Information to be Included in a Document** - Provisions of this Instrument that require an issuer to include information in a document require an issuer either to insert the information directly in the document or to incorporate the information in the document by reference.

**1.9 Incorporation by Reference** - A document deemed by this Instrument to be incorporated by reference in another document is conclusively deemed for purposes of securities legislation to be incorporated by reference in the other document.

## **PART 2 QUALIFICATION TO FILE A PROSPECTUS IN THE FORM OF A SHORT FORM PROSPECTUS**

**2.1 Short Form Prospectus**

- (1) An issuer shall not file a prospectus in the form of Form 44-101F2 Short Form Prospectus, unless the issuer is qualified under section 2.2, 2.3, 2.4, 2.5, 2.6, 2.7 or 2.8 to file a prospectus in the form of a short form prospectus.
- (2) An issuer that is qualified under section 2.2, 2.3, 2.4, 2.5, 2.6, 2.7 or 2.8 to file a prospectus in the form of a short form prospectus or that has been exempted from subsection (1) under section 13.1 may file
  - (a) a preliminary prospectus, prepared and certified in the form of Form 44-101F2 Short Form Prospectus, pertaining to a type of securities for which the issuer is qualified under this Instrument or permitted under any exemption to file a short form prospectus; and
  - (b) a prospectus, prepared and certified in the form of Form 44-101F2 Short Form Prospectus, pertaining to a type of securities for which the issuer is qualified under this Instrument or permitted under any exemption to file a short form prospectus.
- (3) An issuer that filed and obtained a receipt for a preliminary short form prospectus for a distribution of securities under National Policy Statement No. 47
  - (a) is considered to have satisfied the requirement in securities legislation to file and obtain a receipt for a preliminary prospectus for the distribution unless, in the case where securities legislation provides for lapsing of a preliminary prospectus, the issuer's preliminary short form prospectus has lapsed; and
  - (b) may file a prospectus, prepared and certified in the form of Form 44-101F2 Short Form Prospectus, for the distribution if in the case where securities legislation provides for lapsing of a preliminary prospectus, the issuer's preliminary short form prospectus has not lapsed.
- (4) If an issuer, before the coming into force of this Instrument, filed and obtained a receipt under National Policy Statement No. 47 for a short form prospectus pertaining to a distribution of securities, the prospectus requirement does not apply to the distribution only insofar as the prospectus requirement concerns the form and content of a preliminary prospectus and prospectus and only for one year from the date of the receipt issued for the short form prospectus pertaining to the distribution.
- (5) A short form prospectus shall, at the issuer's option, be prepared in accordance with securities legislation in effect at either the date of issuance of a receipt for the preliminary short form prospectus or the date of issuance of a receipt for the short form prospectus.

## 2.2

**Basic Qualification Criteria** - An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of any of its securities in the local jurisdiction, if all of the following criteria are satisfied:

1. Either paragraph (a) or (b) is true:



- (a) the issuer is a reporting issuer in the local jurisdiction and the issuer
  - (i) has been a reporting issuer in the local jurisdiction for the 12 calendar months preceding the date of the filing of its most recent AIF, or
  - (ii) is, and has been for the 12 calendar months preceding the date of the filing of its most recent AIF, a reporting issuer under Canadian securities legislation in at least one jurisdiction, other than the local jurisdiction, and has filed in the local jurisdiction all continuous disclosure documents that it was required to file during the 12 calendar months preceding the date of the filing of its most recent AIF under Canadian securities legislation of any jurisdiction in which it has been a reporting issuer; or
- (b) all of the following are true:
  - 1. The issuer is not a reporting issuer in the local jurisdiction.
  - 2. The securities regulatory authority is unable to deem the issuer to be, or designate the issuer as, a reporting issuer.
  - 3. The issuer is, and has been for the 12 calendar months preceding the date of the filing of its most recent AIF, a reporting issuer under Canadian securities legislation in at least one jurisdiction, other than the local jurisdiction.
  - 4. The issuer has filed in the local jurisdiction all continuous disclosure documents that it was required to file during the 12 calendar months preceding the date of the filing of its most recent AIF under Canadian securities legislation of any jurisdiction in which it has been a reporting issuer.
  - 5. The issuer has provided an undertaking to the securities regulatory authority that it will file all continuous disclosure documents that it would be required to file under securities legislation if it were a reporting issuer from the time of the filing of its most recent AIF until the issuer becomes a reporting issuer.
- 2. The issuer has a current AIF.
- 3. The aggregate market value of the issuer's equity securities, listed and posted for trading on an exchange in Canada, is \$75,000,000 or more on a date within 60 days before the date of the filing of the issuer's preliminary short form prospectus.

4. If the issuer is filing a preliminary short form prospectus more than 90 days after the end of its most recently completed financial year, the issuer has filed financial statements for that year.<sup>18</sup>

<sup>18</sup> This last criterion is new and has been added to require issuers doing short form prospectus distributions to have filed their annual financial statements sooner than is otherwise required under continuous disclosure.

**2.3 Alternative Qualification Criteria for Substantial Issuers** - An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of any of its securities in the local jurisdiction, if all of the following criteria are satisfied:

1. The issuer is
  - (a) a reporting issuer in the local jurisdiction; or
  - (b) a reporting issuer under Canadian securities legislation in at least one jurisdiction, other than the local jurisdiction, and satisfies the criterion in subparagraph 5 of paragraph 1(b) of section 2.2.
2. The issuer has a current AIF.
3. The aggregate market value of the issuer's equity securities, listed and posted for trading on an exchange in Canada, is \$300,000,000 or more on a date within 60 days before the date of the filing of the issuer's preliminary short form prospectus.
4. If the issuer is filing a preliminary short form prospectus more than 90 days after the end of its most recently completed financial year, the issuer has filed financial statements for that year.<sup>19</sup>

<sup>19</sup> This last criterion is new and has been added to require issuers doing short form prospectus distributions to have filed their annual financial statements sooner than is otherwise required under continuous disclosure.

**2.4 Alternative Qualification Criteria for Issuers of Approved Rating Non-Convertible Securities**

- (1) An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of non-convertible securities in the local jurisdiction, if all of the following criteria are satisfied:
  1. The issuer satisfies either of the 12 month reporting issuer history criteria in paragraph 1 of section 2.2.
  2. The issuer has a current AIF.
  3. The securities to be distributed
    - (a) have received an approved rating on a provisional basis;

- (b) are not the subject of an announcement by an approved rating organization of which the issuer is or ought reasonably to be aware that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating; and
  - (c) have not received a provisional or final rating lower than an approved rating from any approved rating organization.
4. If the issuer is filing a preliminary short form prospectus more than 90 days after the end of its most recently completed financial year, the issuer has filed financial statements for that year.<sup>20</sup>

<sup>20</sup> This last criterion is new and has been added to require issuers doing short form prospectus distributions to have filed their annual financial statements sooner than is otherwise required under continuous disclosure.

- (2) Paragraph 3 of subsection (1) does not apply to an issuer filing a preliminary short form prospectus that is a base shelf prospectus under National Instrument 44-102 Shelf Distributions.

## 2.5

### **Alternative Qualification Criteria for Issuers of Guaranteed Non-Convertible Debt Securities, Preferred Shares and Cash Settled Derivatives**

- (1) An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of non-convertible debt securities, non-convertible preferred shares or non-convertible cash settled derivatives in the local jurisdiction, if all of the following criteria are satisfied:
  - 1. A person or company
    - (a) fully and unconditionally guarantees the payments to be made by the issuer of securities as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities such that the holder of the securities is entitled to receive payment from the guarantor within 15 days of any failure by the issuer to make a payment as stipulated; or
    - (b) provides alternative credit support for the payments to be made by the issuer of securities as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities, that
      - (i) in the case
        - (A) where the securities are rated, results in the securities receiving the same credit rating as, or a higher credit rating than, the credit rating they would have received if payment had been fully and unconditionally guaranteed by the

person or company providing the support, or

(B) where the securities are not rated, would result, if the securities were rated, in the securities receiving the same credit rating as, or a higher credit rating than, the credit rating they would have received if payment had been fully and unconditionally guaranteed by the credit supporter, and

(ii) entitles the holder of the securities to receive payment from the credit supporter, or enables the holder to receive payment from the issuer, within 15 days of any failure by the issuer to make a payment as stipulated.

2. The credit supporter

(a) satisfies

(i) either of the 12 month reporting issuer history criteria in paragraph 1 of section 2.2, or

(ii) both

(A) the reporting issuer criterion in paragraph 1 of section 2.3, and

(B) the criterion that the credit supporter have equity securities, listed and posted for trading on an exchange in Canada, the aggregate market value of which is \$300,000,000 or more on a date within 60 days before the date of the filing of the issuer's preliminary short form prospectus; and

(b) has a current AIF.

3. Unless the aggregate market value of the credit supporter's equity securities listed and posted for trading on an exchange in Canada is \$75,000,000 or more on a date within 60 days before the date of the filing of the issuer's preliminary short form prospectus, then at the time the preliminary short form prospectus was filed

(a) the credit supporter has outstanding non-convertible securities that

(i) have received an approved rating,

(ii) have not been the subject of an announcement by an approved rating organization of which the issuer is or ought reasonably to be aware that

the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, and

(iii) have not received a rating lower than an approved rating from any approved rating organization; and

(b) the securities to be issued by the issuer

(i) have received an approved rating on a provisional basis,

(ii) have not been the subject of an announcement by an approved rating organization of which the issuer is or ought reasonably to be aware that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating, and

(iii) have not received a provisional or final rating lower than an approved rating from any approved rating organization.

4. If the issuer is filing a preliminary short form prospectus more than 90 days after the end of the most recently completed financial year of the credit supporter, the credit supporter has filed financial statements for that year.<sup>21</sup>

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This last criterion is new and has been added to require issuers doing short form prospectus distributions to have filed their annual financial statements sooner than is otherwise required under continuous disclosure.

(2) For the purpose of paragraph 1 of subsection (1), payments to be made by an issuer of securities as stipulated in the terms of the securities include any amounts to be paid as dividends in accordance with, and on the dividend payment dates stipulated in, the provisions of the securities, whether or not the dividends have been declared.

(3) Subparagraph 3(b) of subsection 2.5(1) does not apply to an issuer filing a preliminary short form prospectus that is a base shelf prospectus under National Instrument 44-102 Shelf Distributions.

## 2.6

### **Alternative Qualification Criteria for Issuers of Guaranteed Convertible Debt Securities or Preferred Shares**

(1) An issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of convertible debt securities or convertible preferred shares in the local jurisdiction, if all of the following criteria are satisfied:

1. The debt securities or the preferred shares are convertible into securities of a credit supporter that

(a) fully and unconditionally guarantees the payments to be made by the issuer of the securities as stipulated in the

terms of the securities or in an agreement governing the rights of holders of the securities such that the holder of the securities is entitled to receive payment from the guarantor within 15 days of any failure by the issuer to make a payment as stipulated; or

- (b) provides alternative credit support for the payments to be made by the issuer of the securities as stipulated in the terms of the securities or in an agreement governing the rights of holders of the securities, that
  - (i) in the case
    - (A) where the securities are rated, results in the securities receiving the same credit rating as, or a higher credit rating than, the credit rating they would have received if payment had been fully and unconditionally guaranteed by the credit supporter, or
    - (B) where the securities are not rated, would result, if the securities were rated, in the securities receiving the same credit rating as, or a higher credit rating than, the credit rating they would have received if payment had been fully and unconditionally guaranteed by the credit supporter, and
  - (ii) entitles the holder of the securities to receive payment from the credit supporter, or enable the holder to receive payment from the issuer, within 15 days of any failure by the issuer to make a payment as stipulated.

2. The credit supporter

- (a) satisfies
  - (i) both
    - (A) either of the 12 month reporting issuer history criteria in paragraph 1 of section 2.2, and
    - (B) the criterion that the credit supporter have equity securities, listed and posted for trading on an exchange in Canada, the aggregate market value of which is \$75,000,000 or more on a date within 60 days before the date of the filing of the issuer's preliminary short form prospectus, or
  - (ii) both

- (A) the reporting issuer criterion in paragraph 1 of section 2.3, and
  - (B) the criterion that the credit supporter have equity securities, listed and posted for trading on an exchange in Canada, the aggregate market value of which is \$300,000,000 or more on a date within 60 days before the date of the filing of the issuer's preliminary short form prospectus; and
- (b) has a current AIF.
3. If the issuer is filing a preliminary short form prospectus more than 90 days after the end of the most recently completed financial year of the credit supporter, the credit supporter has filed financial statements for that year.<sup>22</sup>

<sup>22</sup> This last criterion is new and has been added to require issuers doing short form prospectus distributions to have filed their annual financial statements sooner than is otherwise required under continuous disclosure.

- (2) For the purpose of paragraph 1 of subsection (1), payments to be made by an issuer of securities as stipulated in the terms of the securities include any amounts to be paid as dividends in accordance with, and on the dividend payment dates stipulated in, the provisions of the securities, whether or not the dividends have been declared.

## **2.7 Alternative Qualification Criteria for Issuers of Asset-Backed Securities**

- (1) An issuer established in connection with a distribution of asset-backed securities is qualified to file a prospectus in the form of a short form prospectus for a distribution of asset-backed securities in the local jurisdiction, if all of the following criteria are satisfied:
  - 1. The issuer has a current AIF.
  - 2. The asset-backed securities to be distributed
    - (a) have received an approved rating on a provisional basis;
    - (b) have not been the subject of an announcement by an approved rating organization of which the issuer is or ought reasonably to be aware that the approved rating given by the organization may be down-graded to a rating category that would not be an approved rating; and
    - (c) have not received a provisional or final rating lower than an approved rating from any approved rating organization.
  - 3. If the issuer is filing a preliminary short form prospectus more than 90 days after the end of its most recently completed

financial year, the issuer has filed financial statements for that year.<sup>23</sup>

<sup>23</sup> This last criterion is new and has been added to require issuers doing short form prospectus distributions to have filed their annual financial statements sooner than is otherwise required under continuous disclosure.

- (2) Paragraph 2 of subsection 2.7(1) does not apply to an issuer filing a preliminary short form prospectus that is a base shelf prospectus under National Instrument 44-102 Shelf Distributions.

**2.8 Alternative Qualification Criteria Following Reorganizations** - A successor issuer is qualified to file a prospectus in the form of a short form prospectus for a distribution of any of its securities in the local jurisdiction, if all of the following criteria are satisfied:

1. The successor issuer is deemed under section 2.10 to have or otherwise has a current AIF.
2. The successor issuer is a reporting issuer under Canadian securities legislation of any jurisdiction.
3. The aggregate market value of the successor issuer's equity securities, listed and posted for trading on an exchange in Canada, is \$75,000,000 or more on a date within 60 days before the date of the filing of the successor issuer's preliminary short form prospectus.
4. The aggregate market value of the equity securities of at least one of the participants, listed and posted for trading on an exchange in Canada, is \$75,000,000 or more on a date within 60 days before the date of the reorganization.
5. One of the participants satisfies the criterion in paragraph 4 and the 12 month reporting issuer history criterion in paragraph 1 of section 2.2.
6. If the successor issuer is filing a preliminary short form prospectus more than 90 days after the end of its most recently completed financial year, the successor issuer has filed financial statements for that year.<sup>24</sup>

<sup>24</sup> This last criterion is new and has been added to require issuers doing short form prospectus distributions to have filed their annual financial statements sooner than is otherwise required under continuous disclosure.

**2.9 Calculation of the Aggregate Market Value of an Issuer's Securities**

- (1) For the purposes of this Part,
- (a) the aggregate market value of the equity securities of an issuer on a date is the aggregate of the market value of each class of its equity securities on the date, calculated by multiplying
- (i) the total number of equity securities of the class outstanding on the date, by



- (ii) the closing price on the date of the equity securities of the class on the exchange in Canada on which that class of equity securities is principally traded; and
- (b) instalment receipts may, at the option of the issuer, be deemed to be equity securities if
  - (i) the instalment receipts are listed and posted for trading on an exchange in Canada, and
  - (ii) the outstanding equity securities, the beneficial ownership of which is evidenced by the instalment receipts, are not listed and posted for trading on an exchange in Canada.
- (2) For the purposes of subsection (1), in calculating the total number of equity securities of a class outstanding, an issuer shall exclude those equity securities of the class that are beneficially owned, or over which control or direction is exercised, by persons or companies that, alone or together with their respective affiliates and associated parties, beneficially own or exercise control or direction over more than 10 percent of the outstanding equity securities of the issuer.
- (3) Despite subsection (2), if a portfolio manager of a pension fund, mutual fund or non-redeemable investment fund, alone or together with its affiliates and associated parties, exercises control or direction in the aggregate over more than 10 percent of the outstanding equity securities of an issuer, and the fund beneficially owns or exercises control or direction over 10 percent or less of the issued and outstanding equity securities of the issuer, the securities that the fund beneficially owns or exercises control or direction over are not excluded unless the portfolio manager is an affiliate of the issuer.

## 2.10

### **Adoption by Successor Issuer of a Participant's AIF Following a Reorganization**

- A successor issuer that notifies the regulator that it has adopted as its own AIF the AIF of a participant in the reorganization, as a result of which the successor issuer exists, is deemed to have a current AIF for the purposes of securities legislation, if the AIF was a current AIF of the participant at the time of the reorganization, until the earlier of

- (a) the date the successor issuer files an AIF; and
- (b) either
  - (i) the date the AIF ceases to be a current AIF of the participant, if the participant continues to exist after the reorganization, or
  - (ii) the date that is 140 days following the end of the financial year to which the AIF relates, if the participant did not continue to exist after the reorganization.

## PART 3AIF

### 3.1

#### Initial AIF

- (1) An issuer filing an initial AIF shall file the AIF in Form 44-101F1 or the form referred to in section 3.4.
- (2) If an issuer revises its initial AIF, the issuer shall promptly
  - (a) file in all jurisdictions in which the initial AIF was filed the revised initial AIF and a copy of the revised initial AIF, blacklined to show changes from the initial AIF; and
  - (b) send a copy of the revised initial AIF to each person and company that was sent an initial AIF.
- (3) An issuer shall file a French language version of its initial AIF and any supporting documents before sending the French language version of the AIF to an investor or prospective investor.
- (4) An issuer that has prepared a French language version of its initial AIF shall file the French language version of the initial AIF and any supporting documents in New Brunswick concurrently with or as soon as practicable after filing the English language version of those documents.

### **3.2 Renewal AIF Filing Procedures**

- (1) An issuer filing a renewal AIF shall file the AIF in Form 44-101F1 or the form referred to in section 3.4.
- (2) An issuer filing a renewal AIF for a financial year in which the issuer made a significant acquisition of a business or a significant acquisition of related businesses, or was a party to a reorganization that was material to the issuer, shall state in a covering letter accompanying the renewal AIF that the acquisition or reorganization occurred.
- (3) The POP regulator may decide to review a renewal AIF at any time, in which case the POP regulator shall
  - (a) notify the issuer that the POP regulator will be reviewing the renewal AIF;
  - (b) review the renewal AIF before a receipt is issued for a short form prospectus incorporating by reference the renewal AIF; and
  - (c) send the issuer upon completion of the review a notice that the review of the renewal AIF has been completed.
- (4) Upon receipt of a notice from the POP regulator that its renewal AIF is being reviewed, an issuer shall promptly file the renewal AIF again, with the statement required under Item 1.2 of Form 44-101F1 added, in all jurisdictions in which the renewal AIF was filed.
- (5) If an issuer revises its renewal AIF, the issuer shall promptly
  - (a) file in all jurisdictions in which the renewal AIF was filed the revised renewal AIF and a copy of the revised renewal AIF, blacklined to show changes from the renewal AIF; and

- (b) send a copy of the revised renewal AIF to each person and company that was sent a renewal AIF.
- (6) An issuer shall file a French language version of its renewal AIF and any supporting documents before sending the French language version of the AIF to an investor or prospective investor.
- (7) An issuer that has prepared a French language version of its renewal AIF shall file the French language version of the renewal AIF and any supporting documents in New Brunswick concurrently with or as soon as practicable after filing the English language version of those documents.

### 3.3 Supporting Documents

- (1) In addition to any other requirement of securities legislation, an issuer that files an initial AIF and a renewal AIF shall
  - (a) file the following:
    - 1. **Material Incorporated by Reference** - Copies of all material incorporated by reference in the initial AIF or renewal AIF and not previously filed; and
    - 2. **Mining Reports** - The technical reports required to be filed with an AIF under National Instrument 43-101 Standards of Disclosure for Mineral Projects and not previously filed, if the issuer has mineral exploration, development or production activities on a mineral property,<sup>25</sup> and
  - (b) deliver to the regulator the following:
    - 1. **Personal Information** - For each director and executive officer of the issuer for whom the issuer has not previously delivered to the regulator the following information, a statement containing that individual's
      - (a) full name;
      - (b) position with or relationship to the issuer;
      - (c) employer's name and address, if other than the issuer;
      - (d) full residential address;
      - (e) date and place of birth; and
      - (f) citizenship.
    - 2. **Authorization of Collection of Information** - An authorization in the form set out in Appendix A to the collection of personal information.<sup>26</sup>

<sup>25</sup> This is new.

<sup>26</sup> This has been revised to refer to an "authorization" which more accurately reflects the requirements of local privacy legislation.

- (2) An issuer that files an AIF in the form of an annual report on Form 10-K, or on Form 20-F, under the 1934 Act<sup>27</sup>

<sup>27</sup> The term "1934 Act" means the Securities Exchange Act of 1934 of the United States of America.

shall file an undertaking with the regulator to the effect that the issuer will provide to any person or company, upon request to the secretary of the issuer, the documents listed in Item 9.1(1) of Form 44-101F1.

**3.4 Alternative Form of AIF** - An issuer that has securities registered under section 12 of the 1934 Act or has a reporting obligation under subsection 15(d) of the 1934 Act may file an AIF in the form of a current annual report on Form 10-K, or on Form 20-F, under the 1934 Act.

#### **PART 4 DISCLOSURE IN A SHORT FORM PROSPECTUS OF FINANCIAL STATEMENTS FOR SIGNIFICANT ACQUISITIONS<sup>28</sup>**

<sup>28</sup> The provisions dealing with business acquisition disclosure have been subdivided into two Parts: Part 4 which deals with significant acquisitions and Part 5 which deals with multiple acquisitions that are not otherwise significant or related.

**4.1 Scope** - This Part applies only to

- (a) acquisitions completed during an issuer's three most recently completed financial years;
- (b) acquisitions completed during an issuer's current financial year; and
- (c) probable acquisitions.

#### **4.2 Financial Statement Disclosure for Significant Acquisitions**

(1) If an issuer has made a significant acquisition or is proposing to make a significant probable acquisition, the issuer shall include in its short form prospectus the following financial statements of each business acquired or to be acquired:

- 1. Income statements for at least the periods specified in section 4.3.
- 2. Statements of retained earnings and cash flow statements for the periods for which income statements are included under paragraph 1.<sup>29</sup>

<sup>29</sup> The specific reference to "statements of retained earnings" is new.

- 3. A balance sheet as at the date on which each of the periods specified in section 4.3 ended, except that, if section 4.3 specifies that separate financial statements of the business are to be included for three financial years, a balance sheet as at the end of the earliest of the three financial years is not required.<sup>30</sup>

This paragraph has been revised for greater clarity.

4. An income statement and a cash flow statement for
  - (a) the most recently completed interim period that ended more than 60 days before the date of the short form prospectus; and
  - (b) the comparable period in the preceding financial year.
5. A balance sheet as at the date on which the most recently completed interim period referred to in paragraph 4 ended.
6. A *pro forma* balance sheet of the issuer as at the date of the issuer's most recent balance sheet included in the short form prospectus that
  - (a) gives effect, as if they had taken place as at the date of the *pro forma* balance sheet, to
    - (i) significant acquisitions that have been completed, but are not reflected in the issuer's most recent annual or interim balance sheet included in the short form prospectus, and
    - (ii) significant probable acquisitions; and
  - (b) separately identifies each significant probable acquisition.
7. A *pro forma* income statement of the issuer that
  - (a) gives effect to
    - (i) significant acquisitions completed during the most recently completed financial year of the issuer,
    - (ii) significant acquisitions completed during the issuer's current financial year, and
    - (iii) significant probable acquisitions;
  - (b) gives effect to
    - (i) the acquisitions referred to in clause (a)(i) as if they had taken place at the beginning of the most recent financial year of the issuer for which audited financial statements are included in the short form prospectus, and
    - (ii) the acquisitions referred to in clauses (a)(ii) and (iii) as if they had taken place at the beginning of
      - (A) the most recent financial year of the issuer for which audited financial

statements are included in the short form prospectus, and

- (B) the most recent interim period of the issuer for which financial statements are included in the short form prospectus;<sup>31</sup> and

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Paragraph (b) has been revised to require the *pro forma* statement to give effect to acquisitions completed in the previous year only as of the beginning of the year in which the acquisition occurred, not also at the beginning of the most recent interim period.

- (c) separately identifies each significant probable acquisition.

8. *Pro forma* earnings per share based on the *pro forma* financial statements referred to in paragraphs 6 and 7.

- (2) If an issuer is required under subsection (1) to include financial statements in a short form prospectus for more than one business because the significant acquisition involves an acquisition of related businesses or a probable acquisition of related businesses, the financial statements required under subsection (1) shall be presented separately for each business, except for the periods during which the businesses have been under common control or management, in which case the issuer may present the financial statements of the businesses on a combined basis.
- (3) If an issuer is required under subsection (1) to include *pro forma* financial statements in a short form prospectus, the issuer shall include in the short form prospectus a description of the underlying assumptions on which the *pro forma* financial statements are prepared, cross-referenced to each related *pro forma* adjustment.

### 4.3 Reporting Periods<sup>32</sup>

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This section has been reorganized for greater clarity and expanded to include the exception that appeared in subsection 4.6(1) in the 1999 proposed National Instrument in an effort to consolidate more of the provisions dealing with reporting periods in one section.

- (1) No financial statements are required under section 4.2 to be included in a short form prospectus if
  - (a) the results of the business for a complete financial year have been reflected in the audited consolidated financial statements of the issuer included in the short form prospectus; and
  - (b) none of the three conditions specified in subsection 1.2(1) would be satisfied if the 20 percent threshold in the conditions were changed to 100 percent.
- (2) If the results of the business for a complete financial year have been reflected in the audited consolidated financial statements of the issuer included in the short form prospectus and any of the three conditions specified in subsection 1.2(1) would be satisfied if the 20 percent threshold in the conditions were changed to 100 percent, separate

financial statements of a business are required for as many periods before the acquisition as may be necessary so that, when these periods are added to the periods for which the financial statements in the short form prospectus of the issuer for the periods following the acquisition reflect the results of the business, financial statements reflecting the results of the business, either separately or on a consolidated basis, are included for a total of three years or such lesser period as the business has been in existence.

- (3) Subject to subsections (1) and (2), the periods for which the financial statements are required under paragraphs 1, 2 and 3 of subsection 4.2(1) to be included in a short form prospectus shall be determined by reference to the three conditions set out in subsection 1.2(1) as follows:
1. If none of the three conditions are satisfied if the 20 percent threshold is changed to 40 percent, financial statements shall be included for
    - (a) the most recently completed financial year of the business before the date of the acquisition, if the acquisition was completed more than 90 days before the date of the short form prospectus;
    - (b) the most recently completed financial year of the business ended more than 90 days before the date of the short form prospectus, if the acquisition either has not been completed at the date of the short form prospectus or was completed 90 days or less before the date of the short form prospectus; or
    - (c) such shorter period, ended more than 90 days before the date of the short form prospectus, as the business has been in existence.
  2. If any of the three conditions are satisfied if the 20 percent threshold is changed to 40 percent, but none of the three conditions are satisfied if the 20 percent threshold is changed to 50 percent, financial statements shall be included for
    - (a) each of the two most recently completed financial years of the business before the date of the acquisition, if the acquisition was completed more than 90 days before the date of the short form prospectus;
    - (b) each of the two most recently completed financial years of the business ended more than 90 days before the date of the short form prospectus, if the acquisition either has not been completed at the date of the short form prospectus or was completed 90 days or less before the date of the short form prospectus; or
    - (c) such shorter period, ended more than 90 days before the date of the short form prospectus, as the business has been in existence.

3. If any of the three conditions are satisfied if the 20 percent threshold is changed to 50 percent, financial statements shall be included for
  - (a) each of the three most recently completed financial years of the business before the date of the acquisition, if the acquisition was completed more than 90 days before the date of the short form prospectus;
  - (b) each of the three most recently completed financial years of the business ended more than 90 days before the date of the short form prospectus, if the acquisition either has not been completed at the date of the short form prospectus or was completed 90 days or less before the date of the short form prospectus; or
  - (c) such shorter period, ended more than 90 days before the date of the short form prospectus, as the business has been in existence.
- (4) Despite subsection (3), the balance sheets of a business referred to in paragraphs 3 and 5 of subsection 4.2(1) are not required to be included in a short form prospectus, if the acquisition of the business was completed before the date of the issuer's most recent audited balance sheet included in the short form prospectus.

#### **4.4 Additional Financial Statements of the Business Approved, Filed or Released**

- (1) An issuer shall include in its short form prospectus annual and interim financial statements of a business for a financial period more recent than the periods for which financial statements are required under subsection 4.2(1) if, before the short form prospectus is filed
  - (a) the board of directors having responsibility for the business at the end of the financial period has approved the statements for the more recent period;
  - (b) the statements for the more recent period have been filed with the securities regulatory authority; or
  - (c) the financial statements for the more recent period, or selected information from those statements, have been released to the public.
- (2) If annual financial statements are required under subsection (1) for a financial year ended 90 days or less before the date of the short form prospectus, an issuer may omit the financial statements for the most recently completed interim period from the short form prospectus.

#### **4.5 Exceptions to Disclosure Requirements for Significant Acquisitions if More Recent Statements Included**

- (1) Despite subsection 4.3(3), an issuer may omit separate financial statements of a business for the oldest financial year otherwise required under subsection 4.3(3), if audited financial statements of the business



are included in the short form prospectus for a financial year ended 90 days or less before the date of the short form prospectus.<sup>33</sup>

33

This subsection is new.

- (2) Despite subsection 4.3(3), an issuer may omit separate financial statements of a business for the oldest financial year otherwise required under subsection 4.3(3) if
  - (a) audited financial statements are included in the short form prospectus for a period of at least nine months in the financial year after the most recent year for which separate financial statements are required under subsection (3);
  - (b) the business is not seasonal;
  - (c) separate financial statements of a business are required under subsection 4.3(3) for more than one financial year;
  - (d) the issuer has not included audited financial statements in the prospectus for a period of less than 12 months using the exception set out in section 4.6.<sup>34</sup>

34

Paragraphs (c) and (d) are new.

- (3) Despite subsection 4.2(1), an issuer may omit from a short form prospectus the financial statements of a business for the interim period otherwise required under subsection 4.2(1) if the issuer includes annual financial statements of the business for a financial year ended 90 days or less before the date of the short form prospectus.<sup>35</sup>

35

This subsection is new.

#### 4.6

**Exception to Disclosure Requirements for Significant Acquisitions if Financial Year End Changed** - Despite section 4.3, an issuer may omit separate financial statements of a business for a financial year in which the business changed its financial year end, if the issuer includes audited financial statements of the business for a period of at least nine months of the financial year in which the year end changed.<sup>36</sup>

36

This exception is new.

#### 4.7

##### **Exception to Disclosure Requirements for Significant Acquisitions Accounted for Using the Equity Method**

- (1) Despite subsection 4.2(1), an issuer may omit from its prospectus the financial statements of a business and the *pro forma* financial statements for an acquisition of a business otherwise required under subsection 4.2(1) 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) disclosure is included in the short form prospectus for the periods for which financial statements are otherwise required under subsection 4.2(1) that

- (i) summarizes information as to 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 statements of the business, from which the disclosure provided under paragraph (b) has been derived, have been audited; and
- (d) the short form prospectus
  - (i) identifies the audited financial statements from which the disclosure provided under paragraph (b) has been derived, and
  - (ii) describes the nature of the audit opinion.<sup>37</sup>

<sup>37</sup> This exception has been broken out into a separate section for ease of reference.

#### **4.8 Additional Disclosure for Significant Acquisitions After Financial Year End Accounted for Using the Purchase Method**

- (1) An issuer shall include in the subsequent event note in its financial statements included in a short form prospectus or elsewhere in a short form prospectus the information referred to in subsection (2), if
  - (a) the issuer
    - (i) has made a significant acquisition since its most recent financial year end, or
    - (ii) is proposing to make a significant probable acquisition; and
  - (b) the purchase method is, or will be, used to account for the acquisition.
- (2) The information required under subsection (1) is
  - (a) if
    - (i) determined by the date of the 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
    - (ii) not determined by the date of the note, the issuer's reasonable estimate of the allocation; and
  - (b) the terms and status of the acquisition, including any material conditions to the completion of the acquisition that have not yet been satisfied.

- (3) Information required under subsection (1) that is included in a short form prospectus elsewhere than in a subsequent event note in the issuer's financial statements included in the short form prospectus is required shall be accompanied by an auditor's report without a reservation of opinion.

**4.9 Audit Requirement for Financial Statements of a Business** - Financial statements of a business included in a short form prospectus under this Part, other than *pro forma* financial statements, shall be accompanied by an auditor's report without a reservation of opinion.<sup>38</sup>

<sup>38</sup> This section is new and supplements the general audit requirement in section 6.2. The reference to "without reservation of opinion" is new and has been added for greater clarity.

**4.10 Exception to Audit Requirement for Interim Financial Statements of a Business** - Despite section 4.9, an issuer may omit from its short form prospectus an auditor's report for the interim financial statements of a business included under this Part.<sup>39</sup>

<sup>39</sup> This section replaces section 5.2 in the 1999 proposed National Instrument and has been added to reduce cross-references to different Parts of the Rule.

**4.11 Exception to Audit Requirement for Recent Financial Statements of a Business**

- (1) Despite section 4.9, an issuer may omit from its short form prospectus an auditor's report for the annual financial statements of a business required to be included under paragraphs (a) and (c) of subsection 4.4(1), if the auditor has not issued an auditor's report on the financial statements.<sup>40</sup>

<sup>40</sup> This section replaces section 5.2 in the 1999 proposed National Instrument and has been added to reduce cross-references to different Parts of the Rule.

- (2) Despite section 4.9, an issuer may omit from its prospectus an auditor's report for the annual financial statements of a business included under subsection 4.5(3), if the auditor has not issued an auditor's report on the financial statements.<sup>41</sup>

<sup>41</sup> This subsection is new.

**4.12 Compilation Report for *Pro Forma* Financial Statements** -The *pro forma* financial statements included in a short form prospectus under this Part shall be accompanied by a compilation report signed by the auditor and prepared in accordance with the Handbook.

**PART 5 FINANCIAL STATEMENT DISCLOSURE FOR MULTIPLE ACQUISITIONS THAT ARE NOT OTHERWISE SIGNIFICANT OR RELATED<sup>42</sup>**

<sup>42</sup> The provisions dealing with financial statement disclosure for multiple acquisitions that are not otherwise significant or related have been broken out into a separate Part for ease of reference.

**5.1 Scope** - This Part applies only to an issuer that

- (a) has acquired two or more businesses since the beginning of its most recently completed financial year;

- (b) is proposing to make two or more probable acquisitions of a business; or
- (c) has acquired one or more businesses since the beginning of its most recently completed financial year and is proposing to make one or more probable acquisitions of a business,

excluding, in each case, acquisitions that are significant acquisitions, significant probable acquisitions, acquisitions of related businesses and probable acquisitions of related businesses.<sup>43</sup>

<sup>43</sup> This has been revised and broken out into a separate section for greater clarity.

## **5.2 Historical Financial Statement Disclosure**

- (1) An issuer shall include in a short form prospectus separate financial statements of each business required under subsection (2) for the periods referred to in subsection (3), if any of the three conditions specified in subsection 1.2(1) would be satisfied if
  - (a) the 20 percent threshold in the conditions were changed to 50 percent;
  - (b) the total consolidated assets of the businesses referred to in section 5.1 were considered on a combined basis;
  - (c) the issuer's consolidated investments in and advances to the businesses referred to in section 5.1 were considered on a combined basis; and
  - (d) the consolidated income from continuing operations of the businesses referred to in section 5.1 were considered on a combined basis.<sup>44</sup>

<sup>44</sup> This has been revised for greater clarity.

- (2) An issuer shall include financial statements under subsection (1) for only those businesses referred to in section 5.1 that, on a combined basis and using the basis, or one of the bases, upon which the conditions in subsection (1) are satisfied, represent a majority of
  - (a) the total consolidated assets of all of the businesses referred to in section 5.1;
  - (b) the issuer's consolidated investments in and advances to all of the businesses referred to in section 5.1; or
  - (c) the consolidated income from continuing operations of all of the businesses referred to in section 5.1.<sup>45</sup>

<sup>45</sup> This has been revised for greater clarity.

- (3) An issuer shall include financial statements of a business under subsection (1) for

- (a) the most recently completed financial year of the business ended more than 90 days before the date of the short form prospectus or such shorter period ended more than 90 days before the date of the short form prospectus as the business has been in existence; and
  - (b) the most recently completed interim period of the business ended more than 60 days before the date of the short form prospectus.
- (4) Despite subsections (1), (2) and (3), the balance sheets of a business referred to in subsection (2) are not required to be included in a short form prospectus, if the acquisition of the business was completed before the date of the issuer's most recent audited balance sheet included in the short form prospectus.<sup>46</sup>

<sup>46</sup> This subsection is new.

### **5.3 Additional Financial Statements of the Business Approved, Filed or Released**

- (1) An issuer shall include in its short form prospectus annual and interim financial statements of a business for a financial period more recent than the periods for which financial statements are required under section 5.2 if, before the short form prospectus is filed
- (a) the board of directors having responsibility for the business at the end of the financial period has approved the statements for the more recent period;
  - (b) the statements for the more recent period have been filed; or
  - (c) the financial statements for the more recent period, or selected information from those statements, have been released to the public.
- (2) If annual financial statements are required under subsection (1) for a financial year ended 90 days or less before the date of the short form prospectus, an issuer may omit the financial statements for the most recently completed interim period from the short form prospectus.<sup>47</sup>

<sup>47</sup> This section is new.

### **5.4 Exceptions to Disclosure Requirements for Multiple Acquisitions if More Recent Statements Included**

- (1) Despite section 5.2, an issuer may omit the financial statements for the financial year otherwise required under section 5.2 if audited financial statements of the business are included in the short form prospectus for a financial year ended 90 days or less before the date of the short form prospectus.
- (2) Despite section 5.2, an issuer may omit from the short form prospectus the financial statements of a business for the interim period otherwise required under section 5.2 if the issuer includes annual financial

statements of the business for a financial year ended 90 days or less before the date of the short form prospectus.<sup>48</sup>

<sup>48</sup> This section is new.

**5.5 Exception to Disclosure Requirements for Multiple Acquisitions if Financial Year End Changed** - Despite section 5.2, an issuer may omit separate financial statements of a business for a financial year in which the business changed its financial year end, if the issuer includes audited financial statements of the business for a period of at least nine months of the financial year in which the year end changed.<sup>49</sup>

<sup>49</sup> This section is new.

**5.6 Pro Forma Financial Statement Disclosure**

- (1) If subsection 5.2(1) applies, the issuer shall include in its short form prospectus the following financial statements of each business referred to in section 5.1:
1. A *pro forma* balance sheet of the issuer as at the date of the issuer's most recent balance sheet included in the short form prospectus that
    - (a) gives effect, as if they had taken place as at the date of the *pro forma* balance sheet, to
      - (i) the acquisitions of businesses
        - (A) for which the issuer has included separate financial statements under section 5.2, and
        - (B) that have been completed, but are not reflected in the issuer's most recent annual or interim balance sheet included in the short form prospectus, and
      - (ii) probable acquisitions of businesses for which the issuer has included separate financial statements under section 5.2; and
    - (b) separately identifies each probable acquisition.
  2. A *pro forma* income statement of the issuer that
    - (a) gives effect to the acquisitions of businesses for which the issuer has included separate financial statements under section 5.2 as if they had taken place at the beginning of
      - (i) the most recent financial year of the issuer for which audited financial statements are included in the short form prospectus, and

- (ii) the most recent interim period of the issuer for which financial statements are included in the short form prospectus; and
- (b) separately identifies each probable acquisition.
- 3. *Pro forma* earnings per share based on the *pro forma* financial statements referred to in paragraphs 1 and 2.
- (2) If an issuer is required under subsection (1) to include *pro forma* financial statements in a short form prospectus, the issuer shall include in the short form prospectus a description of the underlying assumptions on which the *pro forma* financial statements are prepared, cross-referenced to each related *pro forma* adjustment.<sup>50</sup>

<sup>50</sup> This section is new.

**5.7 Audit Requirement for Financial Statements of a Business** - Financial statements of a business included in a short form prospectus under this Part, other than *pro forma* financial statements, shall be accompanied by an auditor's report without a reservation of opinion.<sup>51</sup>

<sup>51</sup> This section is new and supplements the general audit requirement in section 6.2. The reference to "without reservation of opinion" is new and has been added for greater clarity.

**5.8 Exception to Audit Requirement for Interim Financial Statements of a Business** - Despite section 5.7, an issuer may omit from its short form prospectus an auditor's report for the interim financial statements of a business included under this Part.<sup>52</sup>

<sup>52</sup> This section replaces section 5.2 in the 1999 proposed National Instrument and has been added to reduce cross-references to different Parts of the Rule.

**5.9 Exception to Audit Requirement for Recent Financial Statements of a Business**

- (1) Despite section 5.7, an issuer may omit from its short form prospectus an auditor's report for the annual financial statements of a business required to be included under paragraphs (a) and (c) of subsection 5.3(1), if the auditor has not issued an auditor's report on the financial statements.
- (2) Despite section 5.7, an issuer may omit from its short form prospectus an auditor's report for the annual financial statements of a business included under subsection 5.4(2), if the auditor has not issued an auditor's report on the financial statements.<sup>53</sup>

<sup>53</sup> This section is new.

**5.10 Compilation Report for *Pro Forma* Financial Statements** -The *pro forma* financial statements included in a short form prospectus under this Part shall be accompanied by a compilation report signed by the auditor and prepared in accordance with the Handbook.

## **PART 6 OTHER FINANCIAL STATEMENT MATTERS**

### **6.1 Generally Accepted Accounting Principles**

- (1) The financial statements of a person or company incorporated or organized in a jurisdiction that are included in a preliminary short form prospectus or a short form prospectus shall be prepared in accordance with Canadian GAAP.<sup>54</sup>

54

The term "Canadian GAAP" is defined in National Instrument 14-101 Definitions. The definition is "generally accepted accounting principles determined with reference to the Handbook". The term "Handbook" is defined in the same instrument as "the Handbook of the Canadian Institute of Chartered Accountants, as amended from time to time".

- (2) The financial statements of a person or company incorporated or organized in a foreign jurisdiction that are included in a preliminary short form prospectus or a short form prospectus shall be prepared in accordance with
  - (a) Canadian GAAP; or
  - (b) foreign GAAP, if the notes to the financial statements
    - (i) explain and quantify the effect of material differences between Canadian GAAP and foreign GAAP that relate to measurements, and
    - (ii) provide disclosure consistent with Canadian GAAP requirements to the extent not already reflected in the financial statements.

## 6.2 Audit Requirement

- (1) Subject to the exceptions in this Instrument to the audit requirements in sections 4.9 and 5.7, financial statements included in a short form prospectus, other than the following, shall be accompanied by an auditor's report without a reservation of opinion:<sup>55</sup>

55

The reference to "without reservation of opinion" has been added for clarity.

1. Comparative interim financial statements required to be incorporated by reference under paragraph 3 of Item 12.1 or paragraph 2 of 12.2 of Form 44-101F2.
2. The comparative annual financial statements of the issuer for the most recently completed financial year if
  - (a) the financial statements are required to be incorporated by reference in a short form prospectus solely by reason of paragraph 4(b) or 4(c) of Item 12.1 of Form 44-101F2;
  - (b) the auditor of the issuer has not issued an auditor's report on the financial statements; and
  - (c) comparative financial statements, together with the accompanying auditor's report, for the year preceding the most recently completed financial year are included in the short form prospectus.



3. The comparative interim financial statements of a credit supporter required to be incorporated by reference under Item 13.2 of Form 44-101F2.
4. The *pro forma* financial statements if the *pro forma* financial statements are accompanied by a compilation report signed by the auditor and prepared in accordance with the Handbook.

**6.3 Foreign Auditor's Report** - If the financial statements included in a short form prospectus are accompanied by a foreign auditor's report, the auditor's report shall be accompanied by a statement by the auditor

- (a) disclosing any material differences in the form and content of the foreign auditor's report as compared to a Canadian auditor's report; and
- (b) confirming that the auditing standards applied are substantially equivalent to Canadian GAAS.

**6.4 Audit Committee Review of Financial Statements Included in a Short Form Prospectus** - An issuer shall not file a preliminary short form prospectus or a short form prospectus unless each financial statement of a person or company included in the preliminary short form prospectus or short form prospectus has been reviewed by the audit committee of the board of directors of the person or company, if the person or company has or is required to have an audit committee.

**6.5 Third Quarter Financial Statements** - In the case where an issuer files a short form prospectus before its directors have approved the comparative audited annual financial statements for its most recently completed financial year and before the time period for filing the statements under securities legislation has expired, the requirement in securities legislation to include in a prospectus its financial statements for the most recently completed financial year does not apply if the issuer includes in its short form prospectus the interim financial statements for the third quarter of the last completed financial year.

## **PART 7 DEEMED INCORPORATION BY REFERENCE**

**7.1 Deemed Incorporation by Reference of Filed Documents** - If an issuer does not incorporate by reference in its short form prospectus a document required to be incorporated by reference under Item 12.1 of Form 44-101F2, the document is deemed for purposes of securities legislation to be incorporated by reference in the issuer's short form prospectus as of the date of the short form prospectus to the extent not otherwise modified or superseded by a statement contained in the short form prospectus or in any other subsequently filed document that also is, or is deemed to be, incorporated by reference in the short form prospectus.<sup>56</sup>

<sup>56</sup> This has been revised to reflect paragraph (2) of Item 12.1 of proposed Form 44-101F2.

**7.2 Deemed Incorporation by Reference of Subsequently Filed Documents** - If an issuer does not incorporate by reference in its short form prospectus a document required to be incorporated by reference under Item 12.2 of Form 44-101F2, the document is deemed for purposes of securities legislation to be incorporated by reference in the issuer's short form prospectus as of the date the issuer filed the document to the extent not otherwise modified or superseded by

a statement contained in the short form prospectus or in any other subsequently filed document that also is, or is deemed to be, incorporated by reference in the short form prospectus.<sup>57</sup>

<sup>57</sup> This has been revised to reflect paragraph (2) of Item 12.1 of proposed Form 44-101F2.

## **PART 8 FILING REQUIREMENTS FOR A SHORT FORM PROSPECTUS**

### **8.1 Required Documents for Filing a Preliminary Short Form Prospectus**

- (1) **General** - In addition to any other documents required to be filed or delivered to the regulator under securities legislation, an issuer that files a preliminary short form prospectus shall
- (a) file the following with the preliminary short form prospectus:
1. **Signed Copy** - A signed copy of the preliminary short form prospectus.
  2. **Qualification Certificate** - A certificate executed on behalf of the issuer by one of its executive officers certifying that all of the criteria on which the issuer is relying in order to be qualified to file a prospectus in the form of a short form prospectus have been satisfied.
  3. **Material Incorporated by Reference** - Copies of all material incorporated by reference in the preliminary short form prospectus and not previously filed.
  4. **Earnings Coverage Explanation** - An explanation of the manner by which the earnings coverage ratios were calculated, if the preliminary short form prospectus is filed for a distribution of debt securities having a term to maturity in excess of one year or for a distribution of preferred shares.
  5. **Auditor's Comfort Letter regarding Audited Statements** - A signed letter to the regulator from the auditor of the issuer or of the business, as applicable, prepared in accordance with the form suggested for this circumstance by the Handbook, if a financial statement of an issuer or a business included in a preliminary short form prospectus is accompanied by an unsigned auditor's report.
  6. **Material Contracts** - Subject to subsections (2) and (3), copies of all material contracts to which the issuer is a party that have not previously been filed.
  7. **Mining Reports** - The technical reports required to be filed with a preliminary short form prospectus under National Instrument 43-101, if the issuer has mineral exploration, development or production activities on a mineral property.

8. **Oil and Gas Reports** - Any technical report or certificate required to be filed with a preliminary short form prospectus under the successor instrument to National Policy No. 2-B Guide for Engineers and Geologists Submitting Oil and Gas Reports to Canadian Provincial Securities Administrators and not previously filed, if the issuer has oil and gas operations.
  9. **Reports and Valuations** - Subject to subsection (4), a copy of each report or valuation referred to in the preliminary short form prospectus for which a consent is required to be filed under section 8.3 and that has not previously been filed, other than a technical report that
    - (a) deals with a property of an issuer that has mineral exploration, development or mining properties or oil and gas operations; and
    - (b) is not otherwise required to be filed under paragraph 7 or 8; and
- (b) deliver to the regulator, concurrently with the filing of the preliminary short form prospectus, the following:
1. **Personal Information** - For each director and executive officer of an issuer, each promoter of the issuer or, if the promoter is not an individual, each director and executive officer of the promoter, for whom the issuer has not previously delivered the following information, a statement containing that individual's
    - (a) full name;
    - (b) position with or relationship to the issuer;
    - (c) employer's name and address, if other than the issuer;
    - (d) full residential address;
    - (e) date and place of birth; and
    - (f) citizenship.
  2. **Authorization to Collection of Information** - An authorization in the form set out in Appendix A to the collection of personal information.
- (2) **Ontario Exception regarding Material Contracts** - Despite subparagraph (1)(a)6, in Ontario, an issuer that files a preliminary short form prospectus is not required to file copies of any material contracts to which the issuer is a party, other than copies of material contracts that create or materially affect the rights or obligations of the holders of the securities being distributed.

- (3) **Nova Scotia Exception regarding Material Contracts** - Despite subparagraph (1)(a)6, in Nova Scotia, an issuer that files a preliminary short form prospectus is not required to file, but is required to deliver to the regulator, copies of all material contracts to which the issuer is a party that have not previously been delivered.
- (4) **Ontario and Nova Scotia Exception regarding Reports and Valuations** - Despite subparagraph (1)(a)9, in Ontario and Nova Scotia, an issuer that files a preliminary short form prospectus is not required to file, but is required to deliver to the regulator, a copy of each report or valuation required to be filed in other jurisdictions under subparagraph (1)(a)9.

## 8.2 Required Documents for Filing a Short Form Prospectus

- (1) **General** - In addition to any other documents required to be filed or delivered to the regulator under securities legislation, an issuer that files a short form prospectus shall
- (a) file the following with the short form prospectus:
1. **Signed Copy** - A signed copy of the short form prospectus.
  2. **Material Incorporated by Reference** - Copies of all material incorporated by reference in the short form prospectus and not previously filed.
  3. **Auditor's Comfort Letter regarding Unaudited Financial Statements** - A comfort letter to the regulator 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 short form prospectus.
  4. **Comfort Letter regarding Foreign Auditor's Report** - A letter to the regulator from the auditor that discusses the auditor's expertise
    - (a) to audit the reconciliation of foreign GAAP to Canadian GAAP; and
    - (b) in the case of foreign GAAS other than U.S. GAAS, to make the determination that the auditing standards applied are substantially equivalent to Canadian GAAS, if a financial statement included in a short form prospectus has been prepared in accordance with foreign GAAP or includes a foreign auditor's report.
  5. **Issuer's Submission to Jurisdiction** - A submission to jurisdiction and appointment of agent for service of process of the issuer in the form set out in Appendix B, if an issuer is incorporated or organized in a foreign jurisdiction and does not have an office in Canada.

6. **Non-Issuer's Submission to Jurisdiction** - A submission to jurisdiction and appointment of agent for service of process of the selling securityholder, promoter or credit supporter, as applicable, in the form set out in Appendix C, if a selling securityholder, promoter or credit supporter of an issuer is incorporated or organized under a foreign jurisdiction and does not have an office in Canada.
7. **Expert's Consent** - The consents required to be filed under section 8.3.
8. **Credit Supporter's Consent** - The written consent of the credit supporter to the inclusion of the statements in the short form prospectus, if statements of a credit supporter are required under Item 13.2 of Form 44-101F2 to be included in a short form prospectus and a certificate of the credit supporter is not required under Item 20.3 of Form 44-101F2 to be included in the short form prospectus.
9. **Underwriting Agreement** - Subject to subsection (2), a copy of the underwriting agreement for the distribution, unless previously filed.
10. **Other Material Contracts** - Subject to subsections (3) and (4), copies of all material contracts to which the issuer has been a party that have not previously been filed.
11. **Other Mining Reports** - Any technical report or certificate required to be filed with a short form prospectus under National Instrument 43-101 and not previously filed, if the issuer has exploration, development or production activities on a mineral property.
12. **Other Oil and Gas Reports** - Any technical report or certificate required to be filed with a short form prospectus under the successor instrument to National Policy No. 2-B and not previously filed, if the issuer has oil and gas operations.
13. **Other Reports and Valuations** - Subject to subsection (5), a copy of each report or valuation referred to in the short form prospectus, for which a consent is required to be filed under section 8.3 and that has not previously been filed, other than a technical report that
  - (a) deals with a property of an issuer that has mineral exploration, development or mining properties or oil and gas operations; and
  - (b) is not otherwise required to be filed under paragraph 11 or 12; and

- (b) deliver to the regulator, concurrently with the filing of the short form prospectus, a copy of the short form prospectus, blacklined to show changes from the preliminary short form prospectus.
- (2) **Ontario and Nova Scotia Exception regarding Underwriting Agreement** - Despite subparagraph (1)(a)9, in Ontario and Nova Scotia, an issuer that files a short form prospectus is not required to file, but is required to deliver to the regulator, a signed copy of the underwriting agreement for the distribution.
  - (3) **Ontario Exception regarding Other Material Contracts** - Despite subparagraph (1)(a)10, in Ontario, an issuer that files a short form prospectus is not required to file copies of any material contracts to which the issuer is a party, other than copies of material contracts that create or materially affect the rights and obligations of the holders of the securities being distributed.
  - (4) **Nova Scotia Exception regarding Other Material Contracts** - Despite subparagraph (1)(a)10, in Nova Scotia, an issuer that files a short form prospectus is not required to file, but is required to deliver to the regulator, copies of all material contracts to which the issuer is a party that have not previously been delivered.
  - (5) **Ontario and Nova Scotia Exception regarding Reports and Valuations** - Despite subparagraph (1)(a)13, in Ontario and Nova Scotia, an issuer that files a short form prospectus is not required to file, but is required to deliver to the regulator, a copy of each report or valuation required to be filed in other jurisdictions under subparagraph (1)(a)13.

### 8.3

#### Consents of Experts

- (1) If any solicitor, auditor, accountant, engineer or appraiser, or any other person or company whose profession gives authority to a statement made by that person or company, is named in a short form prospectus or an amendment to a short form prospectus, either directly or in a document incorporated by reference
  - (a) as having prepared or certified any part of the short form prospectus or the amendment, or
  - (b) as having prepared or certified a report or valuation referred to in the short form prospectus or the amendment, either directly or in a document incorporated by reference,

the issuer shall file no later than the time the short form prospectus or the amendment is filed, the written consent of the person or company to being named and to that use of the report or valuation.
- (2) The consent of an auditor required under subsection (1) for a report on financial statements shall
  - (a) refer to the report stating its date and the dates of the financial statements on which the report is made; and

- (b) contain a statement that the auditor has read the short form prospectus and all information specifically incorporated by reference therein and has no reason to believe that there are any misrepresentations in the information in the short form prospectus derived from the financial statements upon which the auditor has reported or that is within the auditor's knowledge as a result of the audit of the financial statements.
- (3) Subsection (1) does not apply to an approved rating organization that issues a rating to the securities being distributed under the preliminary short form prospectus or short form prospectus.

#### **8.4 Filing of French Version**

- (1) An issuer shall file a French language version of a preliminary short form prospectus, short form prospectus, any amendment to a preliminary short form prospectus or short form prospectus and any supporting document before sending the French language version of a preliminary short form prospectus, a short form prospectus or an amendment to an investor or prospective investor.
- (2) An issuer that has prepared a French language version of a preliminary short form prospectus, short form prospectus, amendment to a preliminary short form prospectus or short form prospectus or any supporting document shall file the French language version of the document in New Brunswick concurrently with or as soon as practicable after filing the English language version of the document.

**8.5 Prohibition on Filing** - An issuer shall not file a preliminary short form prospectus or a short form prospectus if the issuer is in default in filing or delivering to the regulator a document required to be filed or delivered under securities legislation.

**8.6 Material Contracts** - An issuer shall make available all material contracts referred to in a short form prospectus for inspection at a reasonable time and place during the distribution of the securities under the short form prospectus.

### **PART 9 FILING REQUIREMENTS FOR AN AMENDMENT TO A SHORT FORM PROSPECTUS**

**9.1 Form of Amendment** - An amendment to a preliminary short form prospectus or a short form prospectus shall consist of either an amendment that does not fully restate the text of the preliminary short form prospectus or short form prospectus or an amended and restated preliminary short form prospectus or short form prospectus.

**9.2 Required Documents for Filing an Amendment** - An issuer that files an amendment to a preliminary short form prospectus or short form prospectus shall

- (a) file a signed copy of the amendment;
- (b) deliver to the regulator a copy of the preliminary short form prospectus or short form prospectus blacklined to show the changes made by the amendment, if the amendment is also a

restatement of the preliminary short form prospectus or short form prospectus; and

- (c) file or deliver to the regulator any supporting documents required under this Instrument or other provisions of securities legislation to be filed or delivered to the regulator with a preliminary short form prospectus or a short form prospectus, as the case may be, unless the documents originally filed with the preliminary short form prospectus or short form prospectus, as the case may be, are correct as of the date the amendment is filed.

**9.3 Consents** - If an amendment to a preliminary short form prospectus or short form prospectus materially affects, or relates to, the subject matter to which a consent filed under section 8.2 or 8.3 or an auditors' comfort letter filed under section 8.1 or 8.2 refers, the issuer shall file with the amendment a new consent or auditors' comfort letter, as applicable.

**9.4 Forwarding Amendments** - An amendment to a preliminary short form prospectus shall be forwarded to each recipient of the preliminary short form prospectus according to the record of recipients to be maintained under securities legislation.

**9.5 Receipt for Amendment to Preliminary Short Form Prospectus** - The regulator shall issue a receipt for an amendment to a preliminary short form prospectus as soon as reasonably possible after the amendment is filed.

## **PART 10 NON-FIXED PRICE OFFERINGS AND REDUCTION OF OFFERING PRICE UNDER SHORT FORM PROSPECTUS**

### **10.1 Non-Fixed Price Offerings and Reduction of Offering Price under Short Form Prospectus**

- (1) Every security distributed under a short form prospectus shall be distributed at a fixed price.
- (2) Despite subsection (1), securities for which the issuer is qualified under Part 2 to file a prospectus in the form of a short form prospectus may be distributed for cash at non-fixed prices under a short form prospectus if, at the time of the filing of the preliminary short form prospectus, the securities have received a rating, on a provisional or final basis, from at least one approved rating organization.
- (3) Despite subsection (1), if securities are distributed for cash under a short form prospectus, the price of the securities may be decreased from the initial offering price disclosed in the short form prospectus and, after such a decrease, changed from time to time to an amount not greater than the initial offering price, without filing an amendment to the short form prospectus to reflect the change, if
  - (a) the securities are distributed through one or more underwriters that have agreed to purchase all of the securities at a specified price;



- (b) the proceeds to be received by the issuer or selling securityholders or by the issuer and selling securityholders are disclosed in the short form prospectus as being fixed; and
  - (c) the underwriters have made a reasonable effort to sell all of the securities distributed under the short form prospectus at the initial offering price disclosed in the short form prospectus.
- (4) Despite subsections (2) and (3), the price at which the rights under a rights offering may be exercised shall be fixed.

## **PART 11 CIRCULARS**

### **11.1 Use of Short Form Prospectus Disclosure in Securities Exchange Take-Over Bid Circular and Securities Exchange Issuer Bid Circular**

- (1) An issuer that makes a take-over bid or an issuer bid that includes consideration consisting, in whole or in part, of the issuer's securities satisfies the requirement in securities legislation to include, in a securities exchange take-over bid circular or a securities exchange issuer bid circular, the information prescribed by the form of prospectus appropriate for the issuer by including, in the securities exchange take-over bid circular or the securities exchange issuer bid circular, the information required under this Instrument to be included in a short form prospectus, if the issuer's securities offered as consideration are of a type for which the issuer is qualified under section 2.2, 2.3, 2.4 or 2.8 to file a prospectus in the form of a short form prospectus.
- (2) In determining, for the purpose of subsection (1), whether an issuer is qualified to file a prospectus in the form of a short form prospectus under section 2.2, 2.3, 2.4 or 2.8, references in those sections to the time of the filing of a preliminary short form prospectus shall be read as references to the time of the filing of the securities exchange take-over bid circular or securities exchange issuer bid circular.
- (3) Item 11 of Form 44-101F2 applies with necessary changes to a securities exchange take-over bid referred to in subsection (1), if the securities exchange take-over bid would result in the offeror making a significant acquisition.

### **11.2 Use of Short Form Prospectus Disclosure in Information Circular**

- (1) An issuer that sends an information circular to securityholders disclosing information on a proposed reorganization that involves the issuer distributing its securities satisfies the requirement in securities legislation to include in an information circular the information prescribed by the form of prospectus appropriate for the issuer by including in the information circular, the information required under this Instrument to be included in a short form prospectus, if the issuer's securities to be distributed in connection with the reorganization are of a type for which the issuer is qualified under section 2.2, 2.3, 2.4 or 2.8 to file a prospectus in the form of a short form prospectus.
- (2) In determining, for the purpose of subsection (1), whether an issuer is qualified to file a prospectus in the form of a short form prospectus under

section 2.2, 2.3, 2.4 or 2.8, references in those sections to the time of the filing of a preliminary short form prospectus shall be read as references to the time of the filing of the information circular.

**11.3 Information Circular Disclosure regarding Availability of Information** - An issuer that has a current AIF and sends its information circular, as required under securities legislation, to securityholders shall

- (a) send, upon request to the secretary of the issuer, a copy of the following documents to the person or company making the request and, in the case of a securityholder, without charge:
  - 1. The issuer's current AIF, together with one copy of any document, or the pertinent pages of any document, incorporated by reference in the current AIF.
  - 2. The issuer's most recently filed comparative annual financial statements, together with the accompanying report of the auditor, and any interim financial statements of the issuer that have been filed for any period after the end of its most recently completed financial year.
  - 3. The issuer's information circular for its most recent annual meeting of shareholders that involved the election of directors or any annual filing prepared instead of that information circular, as appropriate; and
- (b) include in its information circular a statement describing the availability, without charge to a securityholder, upon request made to the secretary of the issuer, of the documents listed in paragraph (a).

**PART 12 SOLICITATIONS OF EXPRESSIONS OF INTEREST**

**12.1 Solicitations of Expressions of Interest** - The prospectus requirement does not apply to solicitations of expressions of interest before the filing of a preliminary short form prospectus for securities to be qualified for distribution under a short form prospectus in accordance with this Instrument, if

- (a) the issuer has entered into an enforceable agreement with an underwriter who has, or underwriters who have, agreed to purchase the securities;
- (b) the agreement referred to in paragraph (a) has fixed the terms of the distribution and requires that the issuer file a preliminary short form prospectus for the securities and obtain a receipt for the preliminary short form prospectus from
  - (i) the regulator in at least one jurisdiction, dated not more than two business days after the date that the agreement is entered into, and
  - (ii) the Canadian securities regulatory authorities in any other jurisdictions in which the distribution is to be made,

dated not more than three business days after the date that the agreement is entered into;

- (c) the issuer has issued and filed a news release announcing the agreement immediately upon entering into the agreement;
- (d) upon issuance of a receipt for the preliminary short form prospectus, a copy of the preliminary short form prospectus is sent to each person or company who has expressed an interest in acquiring the securities; and
- (e) except as provided in paragraph (a), no agreement of purchase and sale for the securities is entered into until the short form prospectus has been filed and a receipt obtained.

## **PART 13 EXEMPTION**

### **13.1 Exemption**

- (1) The regulator or the securities regulatory authority may grant an exemption, in whole or in part, from the provisions of this Instrument subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario and Alberta, only the regulator may grant such an exemption.
- (3) An application made to the securities regulatory authority or regulator for an exemption from the provisions of this Instrument shall include a letter or memorandum describing the matters relating to the exemption, and indicating why consideration should be given to the granting of the exemption.

### **13.2 Evidence of Exemption**

- (1) Subject to subsection (2) and without limiting the manner in which an exemption under this Part may be evidenced, the granting under this Part of an exemption, other than an exemption, in whole or in part, from Part 2, may be evidenced by the issuance of a receipt for a short form prospectus or an amendment to a short form prospectus.
- (2) An exemption under this Part may be evidenced in the manner set out in subsection (1) only if
  - (a) the person or company that sought the exemption
    - (i) sent to the regulator the letter or memorandum referred to in subsection 13.1(3) on or before the date of the filing of the preliminary short form prospectus, or
    - (ii) sent to the regulator the letter or memorandum referred to in subsection 13.1(3) after the date of the filing of the preliminary short form prospectus and received a written acknowledgement from the regulator that the exemption

may be evidenced in the manner set out in subsection (1); and

- (b) the regulator has not sent notice to the contrary to the person or company that sought the exemption before, or concurrently with, the issuance of the receipt.

**13.3 Exemption under Prior Policy** - An issuer that, immediately before the time this Instrument came into force, was eligible to participate in the prompt offering qualification system contemplated by National Policy Statement No. 47 under an exemption, ruling, order, decision or other action of the securities regulatory authority or regulator, other than a blanket ruling or order,<sup>58</sup>

<sup>58</sup> The term "blanket rulings and orders" is defined in National Instrument 14-101 Definitions as meaning "rulings and orders issued under Canadian securities legislation in certain jurisdictions that are applicable to a class of persons, trades, intended trades, securities, exchange contracts or transactions".

is qualified to file a prospectus in the form of a short form prospectus, in reliance on the exemption, ruling, order, decision or other action and subject to the same conditions, if any, as are in the action, until the earliest of

- (a) the end of the period for which the AIF filed by the issuer before this Instrument came into force is a current AIF under this Instrument;
  - (b) the expiration of the action; and
- (c) the revocation of the action by the securities regulatory authority or the regulator.

**NATIONAL INSTRUMENT 44-101  
SHORT FORM PROSPECTUS DISTRIBUTIONS  
APPENDIX A  
AUTHORIZATION OF  
INDIRECT COLLECTION OF PERSONAL INFORMATION**

The attached Schedule 1 contains information concerning the name, position with or relationship to issuer, name and address of employer, if other than the issuer, residential address, date and place of birth and citizenship of each director, executive officer, promoter, if any, and each director and executive officer of the promoter, if any, of the issuer named below (the "Issuer") as required by securities legislation, unless previously delivered to the regulator. The Issuer hereby confirms that each person or company listed on Schedule 1

- (a) has been notified by the Issuer
  - (i) of the Issuer's delivery to the regulator of the information pertaining to the person or company as set out in Schedule 1,
  - (ii) that such information is being collected indirectly by the regulator under the authority granted to it in securities legislation,

(iii) that such information is being collected for the purpose of enabling the regulator to discharge its obligations under the provisions of securities legislation that, among other things, require or permit the regulator to refuse to issue a receipt for a prospectus if it appears to the regulator that the past conduct of management or promoters of the issuer affords reasonable grounds for belief that the business of the issuer will not be conducted with integrity and in the best interests of its securityholders, and

(iv) of the title, business address and business telephone number of the public official in the local jurisdiction as set out in the attached Schedule 2, who can answer questions about the regulator's indirect collection of the information; and

(b) has authorized the indirect collection of the information by the regulator.

Date: \_\_\_\_\_

\_\_\_\_\_  
**Name of Issuer**

Per: \_\_\_\_\_

\_\_\_\_\_  
 Name

\_\_\_\_\_  
 Official Capacity

(Please print the name of the individual whose signature appears in the official capacity)

**Schedule 1 Personal Information  
 to Appendix A Authorization of Indirect  
 Collection of Personal Information**

[Name of Issuer]

<u>Name and Position with or Relationship to Issuer</u>	<u>Name and Address of Employer, if other than Issuer</u>	<u>Residential Address</u>	<u>Date and Place of Birth</u>	<u>Citizenship</u>

**Schedule 2 Public Official  
 to Appendix A Authorization of Indirect  
 Collection of Personal Information**

<u>Local Jurisdiction</u>	<u>Public Official</u>

Alberta	Executive Director Alberta Securities Commission Suite 400 300 - 5th Avenue S.W. Calgary, Alberta T2P 3C4 Telephone: (403) 297-4228
British Columbia	Supervisor, Registration British Columbia Securities Commission Suite 200 865 Hornby Street Vancouver, British Columbia V6Z 2H4 Telephone: (604) 899-5692 Toll Free within British Columbia: (800) 373-6393
Manitoba	Director Manitoba Securities Commission Consumer and Corporate Affairs Administration 1034 - 405 Broadway Winnipeg, Manitoba R3C 3L6 Telephone: (204) 945-2653
New Brunswick	Administrator Department of Justice Securities Branch Harbour Building, 133 Prince William Street Suite 606, P.O. Box 5001 Saint John, New Brunswick E2L 4Y9 Telephone: (506) 658-3060
Newfoundland	Director of Securities Department of Government Services and Lands P.O. Box 8700 West Block, 2nd Floor, Confederation Building St. John's, Newfoundland A1B 4J6 Telephone: (709) 729-4189
Northwest Territories	[Y] Government of the Northwest Territories Securities Registries Department of Justice P.O. Box 1320, Yellowknife, Northwest Territories X1A 2L9
Nova Scotia	Deputy Director, Compliance and Enforcement Nova Scotia Securities Commission P.O. Box 458 Halifax, Nova Scotia B3J 2P8 Telephone: (902)424-5354
Nunavut	[Y]

	Nunavut Legal Registries Government of Nunavut BAG 9500 Yellowknife, Northwest Territories X1A 2R3
Ontario	[Y] Ontario Securities Commission 18th Floor, 20 Queen Street West Toronto, Ontario M5H 2S8 [(416) 593-Y]
Prince Edward Island	Deputy Registrar, Securities Division Shaw Building 95 Rochford Street, P.O. Box 2000, 4th Floor Charlottetown, Prince Edward Island C1A 7N8 Telephone: (902) 368-4550
Quebec	Secretary and Director Legal Department Commission d'accès à l'information Québec City (Head Office) 575, rue St-Amable Bureau 1.10 Québec, Québec G1R 2G4 Telephone: (418) 528-7741 Toll Free in Québec: (888) 628-7741
Saskatchewan	Director Saskatchewan Securities Commission 800-1920 Broad Street Regina, Saskatchewan S4P 3V7 Telephone: (306) 787-5842
Yukon	Registrar of Securities Department of Justice Andrew A. Philipsen Law Centre 2130 - 2nd Avenue, 3rd Floor Whitehorse, Yukon Territory Y1A 5H6 Telephone: (867) 667-5005

**NATIONAL INSTRUMENT 44-101  
SHORT FORM PROSPECTUS DISTRIBUTIONS  
APPENDIX B  
ISSUER FORM OF SUBMISSION TO  
JURISDICTION AND APPOINTMENT OF  
AGENT FOR SERVICE OF PROCESS**

1. Name of issuer (the "Issuer"):

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2. Jurisdiction of incorporation, or equivalent, of Issuer:

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3. Address of principal place of business of Issuer:  
\_\_\_\_\_
4. Description of securities (the "Securities"):  
\_\_\_\_\_
5. Date of the short form prospectus (the "Short Form Prospectus") under which the Securities are offered:  
\_\_\_\_\_
6. Name of agent for service of process (the "Agent"):  
\_\_\_\_\_
7. Address for service of process of Agent in Canada (the address may be anywhere in Canada):  
\_\_\_\_\_
8. The Issuer designates and appoints the Agent at the address of the Agent stated above as its agent upon whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the "Proceeding") arising out of, relating to or concerning the distribution of the Securities made or purported to be made under the Short Form Prospectus or the obligations of the Issuer as a reporting issuer, and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring such Proceeding.
9. The Issuer irrevocably and unconditionally submits to the non-exclusive jurisdiction of
- (a) the judicial, quasi-judicial and administrative tribunals of each of the provinces [and territories] of Canada in which the securities are distributed under the Short Form Prospectus; and
  - (b) any administrative proceeding in any such province [or territory],
- in any Proceeding arising out of or related to or concerning the distribution of the Securities made or purported to be made under the Short Form Prospectus or the obligations of the issuer as a reporting issuer.
10. Until six years after it has ceased to be a reporting issuer in any Canadian province or territory, the Issuer shall file a new submission to jurisdiction and appointment of agent for service of process in this form at least 30 days before termination of this submission to jurisdiction and appointment of agent for service of process.
11. Until six years after it has ceased to be a reporting issuer in any Canadian province or territory, the Issuer shall file an amended submission to jurisdiction and appointment of agent for service of process at least 30 days before any change in the name or above address of the Agent.
12. This submission to jurisdiction and appointment of agent for service of process shall be governed by and construed in accordance with the laws of [insert province or territory of above address of Agent].

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Issuer



\_\_\_\_\_  
Print name and title of signing  
officer of Issuer

AGENT

The undersigned accepts the appointment as agent for service of process of [insert name of Issuer] under the terms and conditions of the appointment of agent for service of process stated above.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Issuer

\_\_\_\_\_  
Print name of person signing and, if Agent is not  
an individual, the title of the person

**NATIONAL INSTRUMENT 44-101  
SHORT FORM PROSPECTUS DISTRIBUTIONS  
APPENDIX C  
NON-ISSUER FORM OF SUBMISSION TO  
JURISDICTION AND APPOINTMENT OF  
AGENT FOR SERVICE OF PROCESS**

1. Name of issuer (the "Issuer"):  
\_\_\_\_\_
2. Jurisdiction of incorporation, or equivalent, of Issuer:  
\_\_\_\_\_
3. Address of principal place of business of Issuer:  
\_\_\_\_\_
4. Description of securities (the "Securities"):  
\_\_\_\_\_
5. Date of the short form prospectus (the "Short Form Prospectus") under which the Securities are offered:  
\_\_\_\_\_
6. Name of person filing this form (the "Filing Person"):  
\_\_\_\_\_
7. Filing Person's relationship to Issuer:  
\_\_\_\_\_

8. Jurisdiction of incorporation, or equivalent, of Filing Person, if applicable, or jurisdiction of residence of Filing Person:

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9. Address of principal place of business of Filing Person:

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10. Name of agent for service of process (the "Agent"):

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11. Address for service of process of Agent in Canada (which address may be anywhere in Canada):

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12. The Filing Person designates and appoints the Agent at the address of the Agent stated above as its agent upon whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the "Proceeding") arising out of, relating to or concerning the distribution of the Securities made or purported to be made under the Short Form Prospectus, and irrevocably waives any right to raise as a defence in any such Proceeding any alleged lack of jurisdiction to bring the Proceeding.

13. The Filing Person irrevocably and unconditionally submits to the non-exclusive jurisdiction of

(a) the judicial, quasi-judicial and administrative tribunals of each of the provinces [and territories] of Canada in which the securities are distributed under the Short Form Prospectus; and

(b) any administrative proceeding in any such province [or territory],

in any Proceeding arising out of or related to or concerning the distribution of the Securities made or purported to be made under the Short Form Prospectus.

14. Until six years after completion of the distribution of the Securities made under the Short Form Prospectus, the Filing Person shall file a new submission to jurisdiction and appointment of agent for service of process in this form at least 30 days before termination of this submission to jurisdiction and appointment of agent for service of process.

15. Until six years after completion of the distribution of the Securities under the Short Form Prospectus, the Filing Person shall file an amended submission to jurisdiction and appointment of agent for service of process at least 30 days before a change in the name or above address of the Agent.

16. This submission to jurisdiction and appointment of agent for service of process shall be governed by and construed in accordance with the laws of [insert province or territory of above address of Agent].

Dated: \_\_\_\_\_  
Signature of Issuer

\_\_\_\_\_  
Print name of person signing and, if the Filing Person is not an individual, the title of the person

AGENT

The undersigned accepts the appointment as agent for service of process of [insert name of Filing Person] under the terms and conditions of the appointment of agent for service of process stated above.

Dated: \_\_\_\_\_  
Signature of Issuer

\_\_\_\_\_  
Print name of person signing and, if Agent is not an individual, the title of the person