



**CONSOLIDATED UP TO 11 APRIL 2014**

*This consolidation is provided for your convenience and should not be relied on as authoritative*

---

**NATIONAL INSTRUMENT 44-101  
SHORT FORM PROSPECTUS DISTRIBUTIONS**

**PART 1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Instrument

“AIF” has the same meaning as in NI 51-102 for a reporting issuer other than an investment fund, and for an investment fund means an annual information form as such term is used in NI 81-106;

“applicable CD rule” means, for a reporting issuer other than an investment fund, NI 51-102 and, for an investment fund, NI 81-106;

“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 of Canada,
- (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 a designated rating, or
- (c) a Canadian financial institution, 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 a designated rating from any designated rating organization or its DRO affiliate;

“cash settled derivative” means a 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 derivative;

“current AIF” means,

- (a) if the issuer has filed an AIF for its most recently completed financial year, that AIF, or
- (b) the issuer’s AIF filed for the financial year immediately preceding its most recently completed financial year if
  - (i) the issuer has not filed an AIF for its most recently completed financial year, and
  - (ii) the issuer is not yet required under the applicable CD rule to have filed its annual financial statements for its most recently completed financial year

“current annual financial statements” means,

- (a) if the issuer has filed its comparative annual financial statements in accordance with the applicable CD rule for its most recently completed financial year, those financial statements together with the auditor’s report accompanying the financial statements and, if there has been a change of auditors since the comparative period, an auditor’s report on the financial statements for the comparative period, or
- (b) the issuer’s comparative annual financial statements filed for the financial year immediately preceding its most recently completed financial year, together with the auditor’s report accompanying the financial statements and, if there has been a change of auditors since the comparative period, an auditor’s report on the financial statements for the comparative period if
  - (i) the issuer has not filed its comparative annual financial statements for its most recently completed financial year, and
  - (ii) the issuer is not yet required under the applicable CD rule to have filed its annual financial statements for its most recently completed financial year;

“designated rating” means, for a security, a rating issued by a designated rating organization, or its DRO affiliate, that is at or above one of the following rating

categories or that is at or above a category that replaces one of the following rating categories:

<b>Designated Rating</b>	<b>Long Term Debt</b>	<b>Short Term Debt</b>	<b>Preferred Shares</b>
DBRS Limited	BBB	R-2	Pfd-3
Fitch, Inc.	BBB	F3	BBB
Moody's Canada Inc.	Baa	Prime-3	"baaa"
Standard & Poor's Ratings Services (Canada)	BBB	A-3	P-3

"designated rating organization" means

- (a) each of DBRS Limited, Fitch, Inc., Moody's Canada Inc., Standard & Poor's Ratings Services (Canada), including their DRO affiliates; or
- (b) any other credit rating organization that has been designated under securities legislation;

"DRO affiliate" has the same meaning as in section 1 of National Instrument 25-101 *Designated Rating Organizations*;

"material change report" means, for a reporting issuer other than an investment fund, a completed Form 51-102F3 *Material Change Report* of NI 51-102, and for an investment fund, a completed Form 51-102F3 adjusted as directed by NI 81-106;

"MD&A" has the same meaning as in NI 51-102 in relation to a reporting issuer other than an investment fund, and in relation to an investment fund means an annual or interim management report of fund performance as defined in NI 81-106;

"NI 13-101" means National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*;

"NI 41-101" means National Instrument 41-101 *General Prospectus Requirements*;

"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;

“reverse takeover acquiree” has the same meaning as in section 1.1 of NI 51-102;

“short form eligible exchange” means each of the Toronto Stock Exchange, Tier 1 and Tier 2 of the TSX Venture Exchange and the Canadian National Stock Exchange;

“successor issuer” means

- (a) except for an issuer which, in the case where the restructuring transaction involved a divestiture of a portion of a reporting issuer’s business, succeeded to or otherwise acquired less than substantially all of the business divested, an issuer that meets any of the following requirements:
  - (i) it was a reverse takeover acquiree in a completed reverse takeover;
  - (ii) it was formed as a result of a completed restructuring transaction;
  - (iii) it participated in a restructuring transaction and its existence continued following the completion of the restructuring transaction;  
or
- (b) an issuer that issued securities to the securityholders of a second issuer that was a reporting issuer, in a reorganization that did not alter those securityholders’ proportionate interest in the second issuer or the second issuer’s proportionate interest in its assets;

“underlying interest” means, for a 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 derivative is derived, referenced or based;

“U.S. credit supporter” means a credit supporter that

- (a) is incorporated or organized under the laws of the United States of America or any state or territory of the United States of America or the District of Columbia,
- (b) either
  - (i) has a class of securities registered under section 12(b) or section 12(g) of the 1934 Act, or
  - (ii) is required to file reports under section 15(d) of the 1934 Act,

- (c) has filed with the SEC all 1934 Act filings for a period of 12 calendar months immediately before the filing of the preliminary short form prospectus,
- (d) is not registered or required to be registered as an investment company under the *Investment Company Act of 1940* of the United States of America, and
- (e) is not a commodity pool issuer as defined in National Instrument 71-101 *The Multijurisdictional Disclosure System*.

### **1.1.1 Definitions in NI 41-101**

Every term that is defined or interpreted in NI 41-101, the definition or interpretation of which is not restricted to a specific portion of NI 41-101, has, if used in this Instrument, the meaning ascribed to it in NI 41-101, unless otherwise defined or interpreted in this Instrument.

### **1.2 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.

### **1.3 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.

### **1.4 Interpretation of "short form prospectus"**

In this Instrument, other than in Parts 4 through 8 or unless otherwise stated, a reference to a short form prospectus includes a preliminary short form prospectus.

### **1.5 (Repealed)**

## **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 44-101F1 of this Instrument unless the issuer is qualified under any of sections 2.2 through 2.6 to file a prospectus in the form of a short form prospectus.
- (2) An issuer that is qualified under any of sections 2.2 through 2.6 to file a

prospectus in the form of a short form prospectus for a distribution may file, for that distribution,

- (a) a preliminary prospectus, prepared and certified in the form of Form 44-101F1; and
- (b) a prospectus, prepared and certified in the form of Form 44-101F1.

## 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 the following criteria are satisfied:

- (a) the issuer is an electronic filer under NI 13-101;
- (b) the issuer is a reporting issuer in at least one jurisdiction of Canada;  
the issuer has filed with the securities regulatory authority in each jurisdiction in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction
  - (i) under applicable securities legislation,
  - (ii) pursuant to an order issued by the securities regulatory authority, or
  - (iii) pursuant to an undertaking to the securities regulatory authority;
- (d) the issuer has, in at least one jurisdiction in which it is a reporting issuer,
  - (i) current annual financial statements, and
  - (ii) a current AIF
- (e) the issuer's equity securities are listed and posted for trading on a short form eligible exchange and the issuer is not an issuer
  - (i) whose operations have ceased, or
  - (ii) whose principal asset is cash, cash equivalents, or its exchange listing.

### 2.3 Alternative Qualification Criteria for Issuers of Designated 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 the following criteria are satisfied:
  - (a) the issuer is an electronic filer under NI 13-101;
  - (b) the issuer is a reporting issuer in at least one jurisdiction of Canada;
  - (c) the issuer has filed with the securities regulatory authority in each jurisdiction in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction
    - (i) under applicable securities legislation,
    - (ii) pursuant to an order issued by the securities regulatory authority, or
    - (iii) pursuant to an undertaking to the securities regulatory authority;
  - (d) the issuer has, in at least one jurisdiction in which it is a reporting issuer,
    - (i) current annual financial statements, and
    - (ii) a current AIF;
  - (e) the securities to be distributed
    - (i) have received a designated rating on a provisional basis,
    - (ii) are not the subject of an announcement by a designated rating organization or its DRO affiliate, of which the issuer is or ought reasonably to be aware, that the designated rating given by the organization may be down-graded to a rating category that would not be a designated rating, and
    - (iii) have not received a provisional or final rating lower than a designated rating from any a designated rating organization or its DRO affiliate.
- (2) Paragraph (1)(e) does not apply to an issuer filing a short form prospectus that is a base shelf prospectus under NI 44-102.

## 2.4 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 the following criteria are satisfied:
  - (a) a credit supporter has provided full and unconditional credit support for the securities being distributed,
  - (b) at least one of the following is true:
    - (i) the credit supporter satisfies the criteria in paragraphs 2.2(a), (b), (c) and (d) if the word "issuer" is replaced with "credit supporter" wherever it occurs;
    - (ii) the credit supporter is a U.S. credit supporter and the issuer is incorporated or organized under the laws of Canada or a jurisdiction of Canada;
  - (c) unless the credit supporter satisfies the criteria in paragraph 2.2(e) if the word "issuer" is replaced with "credit supporter" wherever it occurs, at the time the preliminary short form prospectus is filed
    - (i) the credit supporter has outstanding non-convertible securities that
      - (A) have received a designated rating,
      - (B) have not been the subject of an announcement by a designated rating organization or its DRO affiliate, of which the issuer is or ought reasonably to be aware, that the designated rating given by the organization may be down-graded to a rating category that would not be a designated rating, and
      - (C) have not received a rating lower than a designated rating from any a designated rating organization or its DRO affiliate, and
    - (ii) the securities to be issued by the issuer
      - (A) have received a designated rating on a provisional basis,
      - (B) have not been the subject of an announcement by a designated rating organization or its DRO affiliate, of which the issuer is or ought reasonably to be aware,

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

- (C) have not received a provisional or final rating lower than a designated rating from any designated rating organization or its DRO affiliate.
- (2) Subparagraph (1)(c)(ii) does not apply to an issuer filing a short form prospectus that is a base shelf prospectus under NI 44-102.

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

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 the following criteria are satisfied:

- (a) the debt securities or the preferred shares are convertible into securities of a credit supporter that has provided full and unconditional credit support for the securities being distributed;
- (b) the credit supporter satisfies the criteria in section 2.2 if the word “issuer” is replaced with “credit supporter” wherever it occurs.

## **2.6 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 the following criteria are satisfied:
- (a) the issuer is an electronic filer under NI 13-101;
  - (b) the issuer has, in at least one jurisdiction of Canada,
    - (i) current annual financial statements, and
    - (ii) a current AIF;
  - (c) the asset-backed securities to be distributed
    - (i) have received a designated rating on a provisional basis,
    - (ii) have not been the subject of an announcement by a designated rating organization or its DRO affiliate, of which the issuer is or ought reasonably to be aware, that the designated rating given by the organization may be down-graded to a rating category that would not be a

designated rating, and

- (iii) have not received a provisional or final rating lower than a designated rating from any a designated rating organization or its DRO affiliate.
- (2) Paragraph (1)(c) does not apply to an issuer filing a short form prospectus that is a base shelf prospectus under NI 44-102.

## **2.7 Exemptions for Reporting Issuers that Previously Filed a Prospectus and Successor Issuers**

- (1) Paragraphs 2.2(d), 2.3(1)(d) and 2.6(1)(b) do not apply to an issuer if
- (a) the issuer is not exempt from the requirement in the applicable CD rule to file annual financial statements within a prescribed period after its financial year end, but the issuer has not yet been required under the applicable CD rule to file any annual financial statements, and
  - (b) unless the issuer is seeking qualification under section 2.6, the issuer has filed and obtained a receipt for a final prospectus that included the issuer's or each predecessor entity's comparative annual financial statements for its most recently completed financial year or the financial year immediately preceding its most recently completed financial year, together with the auditor's report accompanying those financial statements and, if there has been a change of auditors since the comparative period, an auditor's report on the financial statements for the comparative period.
- (1.1) Subparagraphs 2.2(d)(ii), 2.3(1)(d)(ii) and 2.6(1)(b)(ii) do not apply to an issuer if
- (a) the issuer has filed annual financial statements as required under the applicable CD rule, and
  - (b) unless the issuer is seeking qualification under section 2.6, the issuer has filed and obtained a receipt for a final prospectus that included the issuer's or each predecessor entity's comparative annual financial statements for its most recently completed financial year or the financial year immediately preceding its most recently completed financial year, together with the auditor's report accompanying those financial statements and, if there has been a change of auditors since the comparative period, an auditor's report on the financial statements for the comparative period.

- (2) Paragraphs 2.2(d), 2.3(1)(d) and 2.6(1)(b) do not apply to a successor issuer if
- (a) the successor issuer is not exempt from the requirement in the applicable CD rule to file annual financial statements within a prescribed period after its financial year end, but the successor issuer has not yet, since the completion of the restructuring transaction or the reorganization described in paragraph (b) of the definition of “successor issuer” which resulted in the successor issuer, been required under the applicable CD rule to file annual financial statements, and
  - (b) an information circular relating to the restructuring transaction or the reorganization described in paragraph (b) of the definition of “successor issuer”, in which the successor issuer participated or which resulted in the successor issuer was filed by the successor issuer or an issuer that was a party to the restructuring transaction or reorganization, and such information circular
    - (i) complied with applicable securities legislation, and
    - (ii) in the case of a restructuring transaction, included disclosure in accordance with section 14.2 or 14.5 of Form 51-102F5 for the successor issuer.
- (3) Paragraphs 2.2(d), 2.3(1)(d) and 2.6(1)(b) do not apply to an issuer if
- (a) the issuer is not exempt from the requirement in the applicable CD rule to file annual financial statements within a prescribed period after its financial year end, but the issuer has not yet, since the completion of a qualifying transaction or reverse takeover (as both terms are defined in the TSX Venture Exchange Corporate Finance Manual, as amended from time to time) been required under the applicable CD rule to file annual financial statements, and
  - (b) a CPC filing statement as defined in the TSX Venture Exchange Corporate Finance Manual as amended from time to time, or other filing statement of the TSX Venture Exchange was filed by the issuer and,
    - (i) in the case of a CPC filing statement, the statement
      - (A) was filed in connection with a qualifying transaction, and
      - (B) complied with the TSX Venture Exchange Corporate Finance Manual, as amended from time to time, in respect of the qualifying transaction; or

- (ii) in the case of a TSX Venture Exchange filing statement, other than a CPC filing statement, the statement
  - (A) was filed in connection with a reverse takeover, and
  - (B) complied with TSX Venture Exchange Corporate Finance Manual, as amended from time to time, in respect of the reverse takeover.

## 2.8 Notice of Intention and Transition

- (3) An issuer is not qualified to file a short form prospectus under this Part unless it has filed a notice declaring its intention to be qualified to file a short form prospectus at least 10 business days prior to the issuer filing its first preliminary short form prospectus after the notice
  - (a) with its notice regulator, and
  - (b) in substantially the form of Appendix A.
- (2) The notice under subsection (1) is effective until withdrawn.
- (3) For the purposes of subsection (1), “notice regulator” means, as determined on the date the notice is filed, the securities regulatory authority or regulator of the jurisdiction of Canada
  - (a) in which the issuer’s head office is located, if the issuer is not an investment fund and the issuer is a reporting issuer in that jurisdiction,
  - (b) in which the investment fund manager’s head office is located, if the issuer is an investment fund and the issuer is a reporting issuer in that jurisdiction, or
  - (c) with which the issuer has determined that it has the most significant connection, if paragraphs (a) and (b) do not apply to the issuer.
- (4) For the purposes of this section, if, on December 29, 2005, an issuer had a current AIF under National Instrument 44-101 *Short Form Prospectus Distributions* that was in force on December 29, 2005, the issuer is deemed to have filed a notice on December 14, 2005 declaring its intention to be qualified to file a short form prospectus.
- (5) [Repealed.]
- (6) The 10 business day period referred to in subsection (1) does not apply if

- (a) an issuer is relying on section 2.4 or 2.5 and the following requirements are met:
  - (i) the issuer satisfies section 2.4 or 2.5, as applicable, at the time of filing its short form prospectus;
  - (ii) the issuer files its notice of intention before or concurrently with the filing of its preliminary short form prospectus; and
  - (iii) the issuer's credit supporter
    - (A) previously filed a notice of intention under subsection (1) which has not been withdrawn; or
    - (B) is deemed to have filed a notice of intention under subsection (4); or
  
- (b) an issuer is a successor issuer and the following requirements are met:
  - (i) the issuer satisfies
    - (A) section 2.2, 2.3 or 2.6, and
    - (B) subsection 2.7(2);
  - (ii) the issuer files its notice of intention before or concurrently with the filing of its preliminary short form prospectus; and
  - (iii) the issuer has acquired substantially all of its business from a person or company that
    - (A) previously filed a notice of intention under subsection (1) which has not been withdrawn; or
    - (B) is deemed to have filed a notice of intention under subsection (4).

### **PART 3 DEEMED INCORPORATION BY REFERENCE**

#### **3.1 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 section 11.1 or 12.1 of Form 44-101F1, 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.

### 3.2 Deemed Incorporation by Reference of Subsequently Filed Documents

If an issuer does not incorporate by reference in its short form prospectus a subsequently filed document required to be incorporated by reference under section 11.2 or 12.1 of Form 44-101F1, 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.

### 3.3 Incorporation by Reference

A document deemed by this Instrument to be incorporated by reference in another document is deemed for purposes of securities legislation to be incorporated by reference in the other document.

## PART 4 FILING REQUIREMENTS FOR A SHORT FORM PROSPECTUS

### 4.1 Required Documents for Filing a Preliminary Short Form Prospectus

- (1) An issuer that files a preliminary short form prospectus shall
  - (a) file the following with the preliminary short form prospectus:
    - (i) **Signed Copy** - a signed copy of the preliminary short form prospectus;
    - (ii) **Qualification Certificate** - a certificate, dated as of the date of the preliminary short form prospectus, executed on behalf of the issuer by one of its executive officers
      - (A) specifying which of the qualification criteria set out in Part 2 the issuer is relying on in order to be qualified to file a prospectus in the form of a short form prospectus, and
      - (B) certifying that
        - (I) all of those qualification criteria have been satisfied, and
        - (II) all of the material incorporated by reference in the preliminary short form prospectus and not

previously filed is being filed with the preliminary short form prospectus;

- (iii) **Material Incorporated by Reference** - copies of all material incorporated by reference in the preliminary short form prospectus and not previously filed;
  - (iv) **Documents Affecting the Rights of Securityholders**- a copy of any document required to be filed under subsection 12.1(1) of NI 51-102 or section 16.4 of NI 81-106, as applicable, that relates to the securities being distributed, and that has not previously been filed;
  - (iv.1) **Material Contracts**- a copy of any material contract required to be filed under section 12.2 of NI 51-102 or section 16.4 of NI 81-106 that has not previously been filed;
  - (v) **Mining Reports** - if the issuer has a mineral project, the technical reports required to be filed with a preliminary short form prospectus under NI 43-101;
  - (vi) **Reports and Valuations** - 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 10.1 of NI 41-101 and that has not previously been filed, other than a technical report that
    - (A) deals with a mineral project or oil and gas activities, and
    - (B) is not otherwise required to be filed under paragraph (v); and
  - (vii) **Marketing Materials** - a copy of any template version of the marketing materials required to be filed under paragraph 7.6(1)(e) of this Instrument or paragraph 13.7(1)(e) of NI 41-101 that has not previously been filed; and,
- (b) deliver to the regulator, concurrently with the filing of the preliminary short form prospectus, the following:
- (i) **Personal Information Form and Authorization to Collect, Use and Disclose Personal Information**- a completed personal information form for,
    - (A) each director and executive officer of an issuer;

- (B) if the issuer is an investment fund, each director and executive officer of the manager of the issuer;
  - (C) each promoter of the issuer; and
  - (D) if the promoter is not an individual, each director and executive officer of the promoter;
  - (E) [Repealed.]
  - (F) [Repealed.]
  - (G) [Repealed.]
- (ii) **Auditor's Comfort Letter Regarding Audited Financial Statements** - if a financial statement of an issuer or a business included in, or incorporated by reference into, a preliminary short form prospectus is accompanied by an unsigned auditor's report, a signed letter addressed 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 in the Handbook; and
- (iii) **Marketing Materials** - a copy of any template version of the marketing materials required to be delivered under paragraph 7.6(4)(c) or 7.8(2)(c) of this Instrument or paragraph 13.7(4)(c) or 13.12(2)(c) of NI 41-101 that has not previously been delivered.
- (2) Despite subparagraph (1)(b)(i), an issuer is not required to deliver to the regulator a personal information form for an individual if the issuer, another issuer or, if the issuer is an investment fund, the manager of the investment fund issuer or another investment fund issuer, previously delivered a personal information form for the individual and all of the following are satisfied:
- (a) the certificate and consent included in or attached to the personal information form was executed by the individual within three years preceding the date of filing of the preliminary short form prospectus;
  - (b) the responses given by the individual to questions 6 through 10 of the individual's personal information form are correct as at a date that is within 30 days of the filing of the preliminary short form prospectus;
  - (c) if the personal information form was previously delivered to the regulator by another issuer, the issuer delivers to the regulator,

concurrently with the filing of the preliminary short form prospectus, a copy of the previously delivered personal information form, or alternative information that is satisfactory to the regulator.

- (3) Until May 14, 2016, subparagraph (1)(b)(i) does not apply to an issuer in respect of the delivery of a personal information form for an individual if the issuer or, if the issuer is an investment fund, the manager of the investment fund issuer, previously delivered to the regulator a predecessor personal information form for the individual and all of the following are satisfied:
- (a) the certificate and consent included in or attached to the predecessor personal information form was executed by the individual within three years preceding the date of filing of the preliminary short form prospectus;
  - (b) the responses given by the individual to questions 4(B) and (C) and questions 6 through 9 or, in the case of a TSX/TSXV personal information form in effect after September 8, 2011, questions 6 through 10, of the individual's predecessor personal information form are correct as at a date that is within 30 days of the filing of the preliminary short form prospectus.

#### 4.2 Required Documents for Filing a Short Form Prospectus

An issuer that files a short form prospectus shall

- (a) file the following with the short form prospectus:
  - (i) **Signed Copy** - a signed copy of the short form prospectus;
  - (ii) **Material Incorporated by Reference** - copies of all material incorporated by reference in the short form prospectus and not previously filed;
  - (iii) **Documents Affecting the Rights of Securityholders** - a copy of any document described under subparagraph 4.1 (a) (iv) that has not previously been filed;
  - (iii.1) **Material Contracts**- a copy of any material contract described under subparagraph 4.1 (a) (iv.1) that has not previously been filed;
  - (iv) **Other Reports and Valuations** - a copy of any report or valuation referred to in the short form prospectus, for which a consent is required to be filed under section 10.1 of NI 41-101 and that has not previously been filed, other than a technical report that

- (A) deals with a mineral project or oil and gas activities of the issuer, and
  - (B) is not otherwise required to be filed under subparagraph 4.1(a)(v) or (vi);
- (v) **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 of NI 41-101, if an issuer is incorporated or organized in a foreign jurisdiction and does not have an office in Canada;
- (vi) **Non-Issuer's Submission to Jurisdiction** – a submission to jurisdiction and appointment of agent for service of process of
  - (A) each selling securityholder,
  - (A.1) each director of the issuer, and
  - (B) any other person or company that provides or signs a certificate under Part 5 of NI 41-101 or other securities legislation, other than an issuer,  
  
in the form set out in Appendix C of NI 41-101, if the person or company is incorporated or organized under a foreign jurisdiction and does not have an office in Canada or is an individual who resides outside of Canada;
- (vii) **Expert's Consents** - the consents required to be filed under section 10.1 of NI 41-101;
- (viii) **Credit Supporter's Consent** - the written consent of the credit supporter to the inclusion of its financial statements in the short form prospectus, if financial statements of a credit supporter are required under section 12.1 of Form 44-101F1 to be included in a short form prospectus and a certificate of the credit supporter is not required under section 5.12 of NI 41-101 to be included in the short form prospectus;
- (ix) **Undertaking in Respect of Credit Supporter Disclosure** – an undertaking of the issuer to file the periodic and timely disclosure of a credit supporter similar to the disclosure provided under section 12.1 of Form 44-101F1, for so long as the securities being distributed are issued and outstanding;
- (x) **Undertaking to File Agreements, Contracts and Material Contracts** – if an agreement or contract referred to in subparagraph (iii) or a material contract under subparagraph (iii.1) has not been

executed before the filing of the final short form prospectus but will be executed on or before the completion of the distribution, the issuer must file with the securities regulatory authority, no later than the time of filing of the final short form prospectus, an undertaking of the issuer to the securities regulatory authority to file the agreement, contract or material contract promptly and in any event no later than seven days after the execution of the agreement, contract or material contract;

- (x.1) **Undertaking to File Unexecuted Documents** – if a document referred to in subparagraph (iii) does not need to be executed in order to become effective and has not become effective before the filing of the final short form prospectus, but will become effective on or before the completion of the distribution, the issuer must file with the securities regulatory authority, no later than the time of filing of the final short form prospectus, an undertaking of the issuer to the securities regulatory authority to file the document promptly and in any event no later than seven days after the document becomes effective;
  - (xi) **Undertaking in Respect of Restricted Securities** – for distributions of non-voting securities an undertaking of the issuer to give notice to holders of non-voting securities of a meeting of securityholders if a notice of such meeting is given to its registered holders of voting securities; and
  - (xii) **Marketing Materials** – a copy of any template version of the marketing materials required to be filed under paragraph 7.6(1)(e) or 7.6(7)(a) of this Instrument or paragraph 13.7(1)(e), 13.7(7)(a) or 13.8(1)(e) of NI 41-101 that has not previously been filed; and,
- (b) deliver to the regulator, no later than the filing of the short form prospectus,
- (i) a copy of the short form prospectus, blacklined to show changes from the preliminary short form prospectus,
  - (ii) if the issuer has made an application to list the securities being distributed on an exchange in Canada, a copy of a communication in writing from the exchange stating that the application for listing has been made and has been accepted subject to the issuer meeting the requirements for listing of the exchange, and
  - (iii) a copy of any template version of the marketing materials required to be delivered under paragraph 7.6(4)(c) or 7.8(2)(c) of this Instrument or paragraph 13.7(4)(c) or 13.12(2)(c) of NI 41-101 that has not previously been delivered.

#### 4.2.1 Alternative Consent

- (1) Despite subparagraph 4.2(a)(vii), if the expert whose consent is required is a “qualified person” as defined in NI 43-101, the issuer is not required to file the consent of the qualified person if
  - (a) the qualified person’s consent is required in connection with a technical report that was not required to be filed with the preliminary short form prospectus,
  - (b) the qualified person was employed by a person or company at the date of signing the technical report,
  - (c) the principal business of the person or company is providing engineering or geoscientific services, and
  - (d) the issuer files the consent of the person or company.
- (2) A consent filed under subsection (1) must be signed by an individual who is an authorized signatory of the person or company and who falls within paragraphs (a), (b), (d) and (e) of the definition of “qualified person” in NI 43-101.

#### 4.3 Review of Unaudited Financial Statements

- (1) Subject to subsection (2), any unaudited financial statements, other than *pro forma* financial statements, included in, or incorporated by reference into, a short form prospectus must have been reviewed in accordance with the relevant standards set out in the Handbook for a review of financial statements by the person or company’s auditor or a public accountant’s review of financial statements.
- (2) If NI 52-107 permits the financial statements of the person or company in subsection (1) to be audited in accordance with
  - (a) U.S. AICPA GAAS, the unaudited financial statements may be reviewed in accordance with the review standards issued by the American Institute of Certified Public Accountants,
  - (a.1) U.S. PCAOB GAAS, the unaudited financial statements may be reviewed in accordance with the review standards issued by the Public Company Accounting Oversight Board (United States of America),
  - (b) International Standards on Auditing, the unaudited financial statements may be reviewed in accordance with International

Standards on Review Engagement issued by the International Auditing and Assurance Standards Board, or

- (c) auditing standards that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the issuer is subject, the unaudited financial statements
  - (i) may be reviewed in accordance with review standards that meet the foreign disclosure requirements of the designated foreign jurisdiction, or
  - (ii) do not have to be reviewed if
    - (A) the designated foreign jurisdiction does not have review standards for unaudited financial statements, and
    - (B) the short form prospectus includes disclosure that the unaudited financial statements have not been reviewed.

**4.4**     *(repealed)*

**4.5**     *(repealed)*

**PART 5**     ***(REPEALED)***

**PART 6**     ***(REPEALED)***

**PART 7**     **SOLICITATIONS OF EXPRESSIONS OF INTEREST**

**7.1**     **Definitions and Interpretations**

(1)     In this Part:

“bought deal agreement” means a written agreement

- (a)     under which one or more underwriters has agreed to purchase all securities of an issuer that are to be offered in a distribution under a short form prospectus on a firm commitment basis, other than securities issuable on the exercise of an over-allotment option,
- (b)     that does not have a market-out clause,
- (c)     that, other than an over-allotment option, does not provide an option for any party to increase the number of securities to be

purchased, and

- (d) that, other than what is agreed to under a confirmation clause that complies with section 7.4, is not conditional on one or more additional underwriters agreeing to purchase any of the securities offered;

“comparables” means information that compares an issuer to other issuers;

“confirmation clause” means a provision in a bought deal agreement that provides that the agreement is conditional on the lead underwriter confirming that one or more additional underwriters has agreed to purchase certain of the securities offered;

“market-out clause” means a provision in an agreement which permits an underwriter to terminate its commitment, or underwriters to terminate their commitment, to purchase securities in the event that the securities cannot be marketed profitably due to market conditions;

“U.S. cross-border offering” means an offering of securities of an issuer being made contemporaneously in the United States of America and Canada by way of a prospectus filed with a securities regulatory authority in a jurisdiction of Canada and a U.S. prospectus filed with the SEC;

“U.S. prospectus” means a prospectus that has been prepared in accordance with the disclosure and other requirements of U.S. federal securities law for an offering of securities registered under the 1933 Act.

- (2) In this Part, for greater certainty, a reference to “provides” includes showing a document to a person without allowing the person to retain or make a copy of the document.

## **7.2 Solicitations of Expressions of Interest**

Subject to subsection 7.4(2), the prospectus requirement does not apply to a solicitation of an expression of interest made before the issuance of a receipt for a preliminary short form prospectus for securities to be qualified for distribution under a short form prospectus pursuant to this Instrument or for securities to be issued or transferred pursuant to an over-allotment option that are qualified for distribution under a short form prospectus pursuant to this Instrument, if

- (a) before the solicitation,
  - (i) the issuer has entered into a bought deal agreement;
  - (ii) the bought deal agreement has fixed the terms of the distribution,

including, for greater certainty, the number and type of securities and the price per security, and requires that the issuer file a preliminary short form prospectus for the securities not more than four business days after the date that the bought deal agreement was entered into; and

- (iii) immediately upon entering into the bought deal agreement, the issuer issued and filed a news release announcing the agreement,
- (b) the issuer files a preliminary short form prospectus for the securities pursuant to this Instrument within four business days after the date that the bought deal agreement was entered into,
- (c) 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 that, in response to the solicitation, expressed an interest in acquiring the securities, and
- (d) except for a bought deal agreement under paragraph (a) or a more extended form of underwriting agreement referred to in subsection 7.3(6), no agreement of purchase and sale for the securities is entered into until the short form prospectus has been filed and a receipt has been issued.

### **7.3 Amendment or Termination of Bought Deal Agreement**

- (1) Except as provided in subsections (2) to (7), a party to a bought deal agreement referred to in paragraph 7.2(a) must not agree to modify the terms of a distribution provided for under a bought deal agreement.
- (2) The parties to a bought deal agreement referred to in paragraph 7.2(a) may increase the number of securities to be purchased by an underwriter or underwriters, if
  - (a) the number of additional securities to be purchased does not exceed 100% of the total of the base offering contemplated by the original agreement plus any securities that would be acquired upon the exercise of an over-allotment option;
  - (b) the type of securities to be purchased, and the price per security, is the same as under the original agreement;
  - (c) the issuer files a preliminary short form prospectus for the increased number of securities in accordance with this Instrument within four business days after the date that the original agreement was entered into;
  - (d) immediately upon agreeing to change the number of securities to

be purchased, the issuer issued and filed a news release announcing the amendment;

- (e) no previous amendment has been made to the original agreement to increase the number of securities to be purchased; and
  - (f) the amended agreement is a bought deal agreement and the conditions in section 7.2 are complied with.
- (3) The parties to a bought deal agreement referred to in paragraph 7.2(a) may reduce the number of securities to be purchased, or the price of the securities, if the amendment is made on or after the date which is four business days after the date the original agreement was entered into.
- (4) The parties to a bought deal agreement referred to in paragraph 7.2(a) may provide for a different type of securities to be purchased by the underwriter or underwriters, and a different price for the securities, if
- (a) in the case where a different type of securities is to be substituted in whole or in part for the securities that were the subject of the original agreement, or offered in addition to the securities that were the subject of the original agreement, the aggregate dollar amount of the securities to be purchased by the underwriter or underwriters on a firm commitment basis under the amended agreement is the same as the aggregate dollar amount of the securities that were to be purchased by the underwriter or underwriters on a firm commitment basis under the original agreement or under an agreement amended in accordance with subsection (2);
  - (b) before a solicitation of an expression of interest in the different type of securities and immediately upon entering into the amendment to the original agreement, the issuer issued and filed a news release announcing the amendment;
  - (c) the issuer files a preliminary short form prospectus for the different type of securities pursuant to this Instrument within four business days after the date that the original agreement was entered into;
  - (d) no previous amendment has been made to the original agreement to provide for a different type of securities to be purchased; and
  - (e) the amended agreement is a bought deal agreement and the conditions in section 7.2 are complied with.

- (5) The parties to a bought deal agreement referred to in paragraph 7.2(a) may add or remove an underwriter or adjust the number of securities to be purchased by each underwriter on a proportionate basis, if
  - (a) the aggregate dollar amount of the securities to be purchased by the underwriter or underwriters on a firm commitment basis under the amended agreement is the same as the aggregate dollar amount of the securities that were to be purchased by the underwriter or underwriters on a firm commitment basis under the original agreement or under an agreement amended in accordance with subsection (2); and
  - (b) the amended agreement is a bought deal agreement and the conditions in section 7.2 are complied with.
- (6) The parties to a bought deal agreement referred to in paragraph 7.2(a) may replace the bought deal agreement with a more extended form of underwriting agreement that includes, without limitation, termination rights, if the more extended form of underwriting agreement complies with the terms and conditions that apply to a bought deal agreement under this Part.
- (7) The parties to a bought deal agreement referred to in paragraph 7.2(a) may agree to terminate the agreement if the parties decide not to proceed with the distribution.

#### **7.4 Confirmation Clause**

- (1) A bought deal agreement referred to in paragraph 7.2(a) must not contain a confirmation clause unless
  - (a) under the bought deal agreement, the lead underwriter must provide the issuer with a copy of the agreement that has been signed by the lead underwriter;
  - (b) the issuer signs the bought deal agreement on the same day that the lead underwriter provides the agreement in accordance with paragraph (a);
  - (c) the lead underwriter has discussions with other investment dealers regarding their participation in the distribution as additional underwriters; and
  - (d) on the business day after the day that the lead underwriter provides the agreement in accordance with paragraph (a), the lead underwriter provides notice in writing to the issuer that

- (i) the lead underwriter has confirmed the terms of the bought deal agreement, or
  - (ii) the lead underwriter will not be confirming the terms of the bought deal agreement and the agreement has been terminated.
- (2) Where an issuer has entered into a bought deal agreement that has been confirmed in accordance with subsection (1), the prospectus requirement does not apply to a solicitation of an expression of interest made before the issuance of a receipt for a preliminary short form prospectus for securities to be qualified for distribution under a short form prospectus pursuant to this Instrument, or for securities to be issued or transferred pursuant to an over-allotment option that are qualified for distribution under a short form prospectus pursuant to this Instrument, if
  - (a) before the solicitation,
    - (i) the bought deal agreement has fixed the terms of the distribution, including, for greater certainty, the number and type of securities and the price per security, and requires that the issuer file a preliminary short form prospectus for the securities not more than four business days after the date that the lead underwriter provides the notice in accordance with subparagraph (1)(d)(i); and
    - (ii) immediately after the lead underwriter provides the notice in accordance with subparagraph (1)(d)(i), the issuer issues the news release referred to in subparagraph 7.2(a)(iii),
  - (b) the issuer files a preliminary short form prospectus for the securities pursuant to this Instrument within four business days after the date that the lead underwriter provides the notice in accordance with subparagraph (1)(d)(i),
  - (c) 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 that, in response to the solicitation, expressed an interest in acquiring the securities, and
  - (d) except for a bought deal agreement under paragraph 7.2(a), no agreement of purchase and sale for the securities is entered into until the short form prospectus has been filed and a receipt has been issued.

## 7.5 Standard Term Sheets after Announcement of Bought Deal but before a Receipt for a Preliminary Short Form Prospectus

- (1) An investment dealer that provides a standard term sheet to a potential investor before the issuance of a receipt for a preliminary short form prospectus is exempt from the prospectus requirement with respect to providing the standard term sheet if
  - (a) the standard term sheet complies with subsections (2) and (3);
  - (b) the issuer is relying on the exemption in section 7.2 and has complied with paragraph 7.2(a);
  - (c) other than contact information for the investment dealer or underwriters, all information in the standard term sheet concerning the issuer, the securities or the offering
    - (i) is disclosed in, or derived from,
      - (A) the news release described in subparagraph 7.2(a)(iii), or
      - (B) a document referred to in subsection 11.1(1) of Form 44-101F1 that the issuer has filed, or
    - (ii) will be disclosed in, or derived from, the preliminary short form prospectus that is subsequently filed; and
  - (d) the preliminary short form prospectus will be filed in the local jurisdiction.
- (2) A standard term sheet provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A preliminary short form prospectus containing important information relating to the securities described in this document has not yet been filed with the securities regulatory authority[ies] in [each of/certain of the provinces/provinces and territories of Canada].

Copies of the preliminary short form prospectus may be obtained from [insert contact information for the investment dealer or underwriters]. There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final short form prospectus has been issued. This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary short form prospectus, final short form prospectus and any amendment, for

disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

- (3) A standard term sheet provided under subsection (1) may contain only the information referred to in subsection (2) and the information referred to in subsection 13.5(3) of NI 41-101.

## **7.6 Marketing Materials after Announcement of Bought Deal but before a Receipt for a Preliminary Short Form Prospectus**

- (1) An investment dealer that provides marketing materials to a potential investor before the issuance of a receipt for a preliminary short form prospectus is exempt from the prospectus requirement with respect to providing the marketing materials if
  - (a) the marketing materials comply with subsections (2) to (8);
  - (b) the issuer is relying on the exemption in section 7.2 and has complied with paragraph 7.2(a);
  - (c) other than contact information for the investment dealer or underwriters and any comparables, all information in the marketing materials concerning the issuer, the securities or the offering
    - (i) is disclosed in, or derived from,
      - (A) the news release described in subparagraph 7.2(a)(iii), or
      - (B) a document referred to in subsection 11.1(1) of Form 44-101F1 that the issuer has filed, or
    - (ii) will be disclosed in, or derived from, the preliminary short form prospectus that is subsequently filed;
  - (d) a template version of the marketing materials is approved in writing by the issuer and the lead underwriter before the marketing materials are provided;
  - (e) a template version of the marketing materials is filed on or before the day that the marketing materials are first provided;
  - (f) the preliminary short form prospectus will be filed in the local jurisdiction; and
  - (g) 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 that received the marketing materials and expressed an interest in acquiring the securities.

- (2) If a template version of the marketing materials is approved in writing by the issuer and lead underwriter under paragraph (1)(d) and filed under paragraph (1)(e), an investment dealer may provide a limited-use version of the marketing materials that
  - (a) has a date that is different than the template version;
  - (b) contains a cover page referring to the investment dealer or underwriters or a particular investor or group of investors;
  - (c) contains contact information for the investment dealer or underwriters; or
  - (d) has text in a format, including the type's font, colour or size, that is different than the template version.
- (3) If a template version of the marketing materials is divided into separate sections for separate subjects and is approved in writing by the issuer and lead underwriter under paragraph (1)(d), and that template version is filed under paragraph (1)(e), an investment dealer may provide a limited-use version of the marketing materials that includes only one or more of those separate sections.
- (4) The issuer may remove any comparables, and any disclosure relating to those comparables, from the template version of the marketing materials before filing it under paragraph (1)(e) or (7)(a) if
  - (a) the comparables, and any disclosure relating to the comparables, are in a separate section of the template version of the marketing materials;
  - (b) the template version of the marketing materials that is filed contains a note advising that the comparables, and any disclosure relating to the comparables, were removed in accordance with this subsection, provided that the note appears immediately after where the removed comparables and related disclosure would have been;
  - (c) if the preliminary short form prospectus is subsequently filed in the local jurisdiction, a complete template version of the marketing materials is delivered to the securities regulatory authority; and
  - (d) the complete template version of the marketing materials contains the disclosure referred to in paragraph 13.7(4)(d) of NI 41-101.

- (5) Marketing materials provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A preliminary short form prospectus containing important information relating to the securities described in this document has not yet been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada]. A copy of the preliminary short form prospectus is required to be delivered to any investor that received this document and expressed an interest in acquiring the securities.

There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final short form prospectus has been issued.

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary short form prospectus, final short form prospectus and any amendment, for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

- (6) If marketing materials are provided before the issuance of a receipt for a preliminary short form prospectus under subsection (1), the issuer must include the template version of the marketing materials filed under paragraph (1)(e) in its final short form prospectus or incorporate by reference the template version of the marketing materials filed under paragraph (1)(e) into its final short form prospectus in the manner described in subsection 11.6(1) of Form 44-101F1.
- (7) If the final short form prospectus or any amendment modifies a statement of a material fact that appeared in marketing materials provided before the issuance of a receipt for the preliminary short form prospectus under subsection (1), the issuer must
- (a) prepare and file, at the time the issuer files the final short form prospectus or any amendment, a revised template version of the marketing materials that is blacklined to show the modified statement, and
  - (b) include in the final short form prospectus, or any amendment, the disclosure required by subsection 11.6(3) of Form 44-101F1.
- (8) A revised template version of the marketing materials filed under subsection (7) must comply with section 13.8 of NI 41-101.

- (9) If marketing materials are provided before the issuance of a receipt for a preliminary short form prospectus under subsection (1) but the issuer does not comply with subsection (6), the marketing materials are deemed for purposes of securities legislation to be incorporated into the issuer's final short form prospectus as of the date of the final short form prospectus to the extent not otherwise expressly modified or superseded by a statement contained in the final short form prospectus.

### **7.7 Road Shows after Announcement of Bought Deal but before a Receipt for a Preliminary Short Form Prospectus**

- (1) An investment dealer that conducts a road show for potential investors before the issuance of a receipt for a preliminary short form prospectus is exempt from the prospectus requirement with respect to the road show if
  - (a) the road show complies with subsections (2) to (4);
  - (b) the issuer is relying on the exemption in section 7.2 and has complied with paragraph 7.2(a); and
  - (c) the preliminary short form prospectus will be filed in the local jurisdiction.
- (2) Subject to section 7.8, an investment dealer must not provide marketing materials to an investor attending a road show conducted under subsection (1) unless the marketing materials are provided in accordance with section 7.6.
- (3) If an investment dealer conducts a road show, the investment dealer must establish and follow reasonable procedures to
  - (a) ask any investor attending the road show in person, by telephone conference call, on the internet or by other electronic means to provide their name and contact information;
  - (b) keep a record of any information provided by the investor; and
  - (c) upon issuance of a receipt for the preliminary prospectus, provide the investor with a copy of the preliminary prospectus and any amendment.
- (4) If an investment dealer permits an investor, other than an accredited investor, to attend a road show, the investment dealer must commence the road show with the oral reading of the following statement or a statement to the same effect:

This presentation does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary prospectus, the final prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.

## **7.8 Exception from Filing and Incorporation Requirements for Road Shows for Certain U.S. Cross-border Offerings**

- (1) Subject to subsections (2) to (4), if an investment dealer provides marketing materials to a potential investor in connection with a road show for a U.S. cross-border offering, the following provisions do not apply to the template version of the marketing materials relating to the road show:
  - (a) paragraph 7.6(1)(e);
  - (b) subsections 7.6(6) to (9);
  - (c) paragraphs 11.6(1)(b) and (c), paragraph 11.6(3)(b) and subsection 11.6(4) of Form 44-101F1.
- (2) Subsection (1) does not apply unless
  - (a) the underwriters have a reasonable expectation that the securities offered under the U.S. cross-border offering will be sold primarily in the United States of America;
  - (b) the issuer and the underwriters who sign the final short form prospectus filed in the local jurisdiction provide a contractual right containing the language set out in subsection 36A.1(5) of Form 41-101F1, or words to the same effect, except that the language may specify that the contractual right does not apply to any comparables provided in accordance with subsection (3); and
  - (c) if the prospectus is filed in the local jurisdiction, the template version of the marketing materials relating to the road show is delivered to the securities regulatory authority.
- (3) If the template version of the marketing materials relating to the road show contains comparables, the template version of the marketing materials must contain the disclosure referred to in paragraph 13.7(4)(d) of NI 41-101.
- (4) For greater certainty, subsection (1) does not apply to marketing materials other than the marketing materials provided in connection with the road show.

## **PART 8        EXEMPTION**

### **8.1     Exemption**

- (1) The regulator or the securities regulatory authority may grant an exemption from the provisions of this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario 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.
- (4) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

### **8.2     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) The issuance of a receipt for a final short form prospectus or an amendment to a final short form prospectus is not evidence that the exemption has been granted unless
  - (a) the person or company that sought the exemption sent to the regulator
    - (i) the letter or memorandum referred to in subsection 8.1 (3), on or before the date of the filing of the preliminary short form prospectus, or
    - (ii) the letter or memorandum referred to in subsection 8.1 (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 before, or concurrently with, the issuance of the receipt sent notice to the person or company that sought the

exemption, that the exemption sought may not be evidenced in the manner set out in subsection (1).

## **PART 9           TRANSITION, REPEAL AND EFFECTIVE DATE**

### **9.1     Applicable Rules**

A short form prospectus may, 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.

### **9.2     Repeal**

National Instrument 44-101 *Short Form Prospectus Distributions* and Form 44-101F3 *Short Form Prospectus*, both of which came into force on December 31, 2000, are repealed on December 30, 2005.

**9.3     Effective Date** This Instrument comes into force on 30 December 2005.

**APPENDIX A**

**NOTICE DECLARING INTENTION TO BE QUALIFIED UNDER  
NATIONAL INSTRUMENT 44-101 *SHORT FORM PROSPECTUS DISTRIBUTIONS*  
("NI 44-101")**

[date]

To: [the issuer's notice regulator (as defined in subsection 2.8(2) of NI 44-101), and any other securities regulatory authority or regulator of a jurisdiction of Canada with whom the issuer may voluntarily file this notice]

[name of issuer] (the "Issuer") intends to be qualified to file a short form prospectus under NI 44-101. The Issuer acknowledges that it must satisfy all applicable qualification criteria prior to filing a preliminary short form prospectus. This notice does not evidence the Issuer's intent to file a short form prospectus, to enter into any particular financing or transaction or to become a reporting issuer in any jurisdiction. This notice will remain in effect until withdrawn by the Issuer.

[signature of Issuer]

[name and title of duly authorized signing officer of Issuer]

**APPENDIX B *(repealed)***

**APPENDIX C *(repealed)***

**APPENDIX D *(repealed)***

**FORM 44-101F1**  
**SHORT FORM PROSPECTUS**

INSTRUCTIONS

- (1) *The objective of the short form prospectus is to provide information concerning the issuer that an investor needs in order to make an informed investment decision. This Form sets out specific disclosure requirements that are in addition to the general requirement under securities legislation to provide full, true and plain disclosure of all material facts relating to the securities to be distributed. Certain rules of specific application impose prospectus disclosure obligations in addition to those described in this Form.*
- (2) *Terms used and not defined in this Form that are defined or interpreted in the Instrument or NI 41-101 bear that definition or interpretation. Other definitions are set out in NI 14-101.*
- (3) *In determining the degree of detail required, a standard of materiality must be applied. Materiality is a matter of judgement in the particular circumstance, and is determined in relation to an item's significance to investors, analysts and other users of information. An item of information, or an aggregate of items, is considered material if it is probable that its omission or misstatement would influence or change an investment decision with respect to the issuer's securities. In determining whether information is material, take into account both quantitative and qualitative factors. The potential significance of items must be considered individually rather than on a net basis, if the items have an offsetting effect.*
- (4) *Unless an item specifically requires disclosure only in the preliminary short form prospectus, the disclosure requirements set out in this Form apply to both the preliminary short form prospectus and the short form prospectus. Details concerning the price and other matters dependent upon or relating to price, such as the number of securities being distributed, may be left out of the preliminary short form prospectus, along with specifics concerning the plan of distribution, to the extent that these matters have not been decided.*
- (5) *Any information required in a short form prospectus may be incorporated by reference in the short form prospectus, other than confidential material change reports. Clearly identify in a short form prospectus any document incorporated by reference. If an excerpt of a document is incorporated by reference, clearly identify the excerpt in the short form prospectus by caption and paragraph of the document. Any material incorporated by reference in a short form*

prospectus is required under sections 4.1 and 4.2 of the Instrument to be filed with the short form prospectus unless it has been previously filed.

- (6) The disclosure must be understandable to readers and presented in an easy-to-read format. The presentation of information should comply with the plain language principles listed in section 4.2 of Companion Policy 44-101CP Short Form Prospectus Distributions. If technical terms are required, clear and concise explanations should be included.
- (7) No reference need be made to inapplicable items and, unless otherwise required in this Form, negative answers to items may be omitted.
- (8) Where the term "issuer" is used, it may be necessary, in order to meet the requirement for full, true and plain disclosure of all material facts, to also include disclosure with respect to persons or companies that the issuer is required, under the issuer's GAAP, to consolidate, proportionately consolidate or account for using the equity method (for example, including "subsidiaries" as that term is used in Canadian GAAP applicable to publicly accountable enterprises). If it is more likely than not that a person or company will become an entity that the issuer will be required, under the issuer's GAAP, to consolidate, proportionately consolidate or account for using the equity method, it may be necessary to also include disclosure with respect to the person or company.
- (9) An issuer that is a special purpose entity may have to modify the disclosure items to reflect the special purpose nature of its business.
- (10) If disclosure is required as of a specific date and there has been a material change or change that is otherwise significant in the required information subsequent to that date, present the information as of the date of the change or a date subsequent to the change instead.
- (11) If the term "class" is used in any item to describe securities, the term includes a series of a class.
- (12) Disclosure in a preliminary short form prospectus or short form prospectus must be consistent with NI 51-101 if the issuer is engaged in oil and gas activities (as defined in NI 51-101).
- (13) Forward-looking information included in a short form prospectus must comply with section 4A.2 of NI 51-102 and must include the disclosure described in section 4A.3 of NI 51-102. In addition to the foregoing, FOFI or a financial outlook, each as defined in NI 51-102, included in a short form prospectus must comply with Part 4B of NI 51-102. If the forward-looking information relates to an issuer or other entity that is not a reporting issuer, section 4A.2, section 4A.3 and Part 4B of NI 51-102 apply as if the issuer or other entity were a reporting issuer.
- (14) If an issuer discloses financial information in a short form prospectus in a currency other than the Canadian dollar, prominently display the presentation currency.

- (15) *Except as otherwise required or permitted, include information in a narrative form. The issuer may include graphs, photographs, maps, artwork or other forms of illustration, if relevant to the business of the issuer or the distribution and not misleading. Include descriptive headings. Except for information that appears in a summary, information required under more than one Item need not be repeated.*
- (16) *Certain requirements in this Form make reference to requirements in another instrument or form. Unless this Form states otherwise, issuers must also follow the instructions or requirements in the other instrument or form.*
- (17) *Wherever this Form uses the word "subsidiary", the term includes companies and other types of business organizations such as partnerships, trusts, and other unincorporated business entities.*
- (18) *Issuers must supplement any disclosure incorporated by reference into a short form prospectus if that supplemented disclosure is necessary to ensure that the short form prospectus provides full, true and plain disclosure of all material facts related to the securities to be distributed as required under Item 18 of this Form.*

## **ITEM 1            COVER PAGE DISCLOSURE**

### **1.1     Required Language**

State in italics at the top of the cover page the following:

*"No securities regulatory authority has expressed an opinion about these securities and it is an offence to claim otherwise."*

### **1.2     Preliminary Short Form Prospectus Disclosure**

Every preliminary short form prospectus shall have printed in red ink and italics on the top of the cover page the following, with the bracketed information completed:

*"A copy of this preliminary short form prospectus has been filed with the securities regulatory authority[ies] in [each of/certain of the provinces/provinces and territories of Canada] but has not yet become final for the purpose of the sale of securities. Information contained in this preliminary short form prospectus may not be complete and may have to be amended. The securities may not be sold until a receipt for the short form prospectus is obtained from the securities regulatory authority[ies]."*

## **INSTRUCTION**

*Issuers shall complete the bracketed information by*

- (a) *inserting the names of each jurisdiction in which the issuer intends to offer securities under the short form prospectus;*
- (b) *stating that the filing has been made in each of the provinces of Canada or each of the provinces and territories of Canada; or*
- (c) *identifying the filing jurisdictions by exception (i.e., every province of Canada or every province and territory of Canada, except [excluded jurisdiction]).*

### **1.3 Disclosure Concerning Documents Incorporated by Reference**

State the following in italics on the cover page, with the first sentence in boldface type and the bracketed information completed:

*“Information has been incorporated by reference in this prospectus from documents filed with securities commissions or similar authorities in Canada. Copies of the documents incorporated herein by reference may be obtained on request without charge from the secretary of the issuer at [insert complete address and telephone number], and are also available electronically at [www.sedar.com](http://www.sedar.com).*

### **1.4 Basic Disclosure about the Distribution**

State the following, immediately below the disclosure required under sections 1.1, 1.2 and 1.3, with the bracketed information completed:

[PRELIMINARY] SHORT FORM PROSPECTUS

[INITIAL PUBLIC OFFERING OR NEW ISSUE AND/OR SECONDARY OFFERING]  
(Date)

[Name of Issuer]

[number and type of securities qualified for distribution under the short form prospectus, including any options or warrants, and the price per security]

### **1.5 Name and Address of Issuer**

State the full corporate name of the issuer or, if the issuer is an unincorporated entity, the full name under which the entity exists and carries on business and the address(es) of the issuer’s head and registered office.

## 1.6 Distribution

- (1) If the securities are being distributed for cash, provide the information called for below, in substantially the following tabular form or in a note to the table:

	Price to public (a)	Underwriting discounts or commissions (b)	Proceeds to issuer or selling securityholders (c)
Per security			
Total			

- (2) Describe the terms of any over-allotment option or any option to increase the size of the distribution before closing.

- (2.1) If there may be an over-allocation position provide the following disclosure:

A purchaser who acquires [*insert type of securities qualified for distribution under the prospectus*] forming part of the underwriters' over-allocation position acquires those securities under this short form prospectus, regardless of whether the over-allocation position is ultimately filled through the exercise of the over-allotment option or secondary market purchases.

- (3) If the distribution of the securities is to be on a best efforts basis, and a minimum offering amount

(a) is required for the issuer to achieve one or more of the purposes of the offering, provide totals for both the minimum and maximum offering amount, or

(b) is not required for the issuer to achieve any of the purposes of the offering, state the following in boldface type:

**"There is no minimum amount of funds that must be raised under this offering. This means that the issuer could complete this offering after raising only a small proportion of the offering amount set out above."**

- (3.1) If a minimum subscription amount is required from each subscriber, provide details of the minimum subscription requirements in the table required under subsection (1).

- (4) If debt securities are distributed at a premium or a discount, state in boldface type the effective yield if held to maturity.
- (5) Disclose separately those securities that are underwritten, those under option and those to be sold on a best efforts basis and, in the case of a best efforts distribution, the latest date that the distribution is to remain open.
- (6) In column (b) of the table, disclose only commissions paid or payable in cash by the issuer or selling securityholder and discounts granted. Set out in a note to the table
  - (a) commissions or other consideration paid or payable by persons or companies other than the issuer or selling securityholder;
  - (b) consideration other than discounts granted and cash paid or payable by the issuer or selling securityholder, other than securities described in section 1.10 below; and
  - (c) any finder's fees or similar required payment.
- (7) If a security is being distributed for the account of a selling securityholder, state the name of the selling securityholder and a cross-reference to the applicable section in the short form prospectus where further information about the selling securityholder is provided. State the portion of expenses of the distribution to be borne by the selling securityholder and, if none of the expenses of the distribution are being borne by the selling securityholder, include a statement to that effect and discuss the reasons why this is the case.

#### *INSTRUCTIONS*

- (1) *Estimate amounts, if necessary. For non-fixed price distributions that are being made on a best efforts basis, disclosure of the information called for by the table may be set forth as a percentage or a range of percentages and need not be set forth in tabular form.*
- (2) *If debt securities are being distributed, also express the information in the table as a percentage.*

#### **1.6.1 Offering Price in Currency Other Than Canadian Dollar**

If the offering price of the securities being distributed is disclosed in a currency other than the Canadian dollar, disclose in boldface type the currency.

#### **1.7 Non-Fixed Price Distributions**

If the securities are being distributed at non-fixed prices, disclose

- (a) the discount allowed or commission payable to the underwriter;
- (b) any other compensation payable to the underwriter and, if applicable, that the underwriter's compensation will be increased or decreased by the amount by which the aggregate price paid for the securities by the purchasers exceeds or is less than the gross proceeds paid by the underwriter to the issuer or selling securityholder;
- (c) that the securities to be distributed under the short form prospectus will be distributed, as applicable, at
  - (A) prices determined by reference to the prevailing price of a specified security in a specified market,
  - (B) market prices prevailing at the time of sale, or
  - (C) prices to be negotiated with purchasers;
- (d) that prices may vary from purchaser to purchaser and during the period of distribution;
- (e) if the price of the securities is to be determined by reference to the prevailing price of a specified security in a specified market, the price of the specified security in the specified market at the latest practicable date;
- (f) if the price of the securities will be the market price prevailing at the time of sale, the market price at the latest practicable date; and
- (g) the net proceeds or, if the distribution is to be made on a best efforts basis, the minimum amount of net proceeds, if any, to be received by the issuer or selling securityholder.

### **1.7.1 Pricing Disclosure**

If the offering price or the number of securities being distributed, or an estimate of the range of the offering price or of the number of securities being distributed, has been publicly disclosed in a jurisdiction or a foreign jurisdiction as of the date of the preliminary short form prospectus, include this information in the preliminary short form prospectus.

### **1.8 Reduced Price Distributions**

If an underwriter wishes to be able to decrease the price at which securities are distributed for cash from the initial offering price disclosed in the short form prospectus, include in boldface type a cross-reference to the section in the short form prospectus where disclosure concerning the possible price decrease is provided.

## 1.9 Market for Securities

- (1) Identify the exchange(s) and quotation system(s), if any, on which securities of the issuer of the same class or series as the securities being distributed are traded or quoted and the market price of those securities as of the latest practicable date.
- (2) Disclose any intention to stabilize the market and provide a cross-reference to the section in the short form prospectus where further information about market stabilization is provided.
- (3) If no market for the securities being distributed under the short form prospectus exists or is expected to exist upon completion of the distribution, state the following in boldface type:

**There is no market through which the securities may be sold and purchasers may not be able to resell securities purchased under the short form prospectus. This may affect the pricing of the securities in the secondary market, the transparency and availability of trading prices, the liquidity of the securities, and the extent of issuer regulation. See Risk Factors.**

## 1.10 Underwriter(s)

- (1) State the name of each underwriter.
- (2) If applicable, comply with the requirements of NI 33-105 for front page prospectus disclosure.
- (3) If an underwriter has agreed to purchase all of the securities being distributed at a specified price and the underwriter's obligations are subject to conditions, state the following, with the bracketed information completed:

"We, as principals, conditionally offer these securities, subject to prior sale, if, as and when issued by [name of issuer] and accepted by us in accordance with the conditions contained in the underwriting agreement referred to under Plan of Distribution."

- (4) If an underwriter has agreed to purchase a specified number or principal amount of the securities at a specified price, state that the securities are to be taken up by the underwriter, if at all, on or before a date not later than 42 days after the date of the receipt for the short form prospectus.
- (5) If there is no underwriter involved in the distribution, provide a statement in boldface type to the effect that no underwriter has been involved in the

preparation of the short form prospectus or performed any review of the contents of the short form prospectus.

(6) Provide the following tabular information:

<b>Underwriter's Position</b>	<b>Maximum size or number of securities available</b>	<b>Exercise period or Acquisition date</b>	<b>Exercise price or average acquisition price</b>
Over-allotment option			
Compensation option			
Any other option granted by issuer or insider of issuer to underwriter			
Total securities under option issuable to underwriter			
Other compensation securities issuable to underwriter			

**INSTRUCTION**

*If the underwriter has been granted compensation securities, state, in a footnote, whether the prospectus qualifies the grant of all or part of the compensation securities and provide a cross-reference to the applicable section in the prospectus where further information about the compensation securities is provided.*

**1.11 Enforcement of Judgments Against Foreign Persons or Companies**

If the issuer, a director of the issuer, a selling securityholder, or any other person or company that is signing or providing a certificate under Part 5 of NI 41-101 or other securities legislation, or any person or company for whom the issuer is required to file a consent under Part 10 of NI 41-101, is incorporated, continued, or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada, state the following on the cover page or under a separate heading elsewhere in the prospectus, with the bracketed information completed:

"The [issuer, director of the issuer, selling securityholder, or other person or company] is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada.

[the person or company named below] has appointed the following agent(s) for service of process:

Name of Person or Company	Name and Address of Agent

Purchasers are advised that it may not be possible for investors to enforce judgments obtained in Canada against any person or company that is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada, even if the party has appointed an agent for service of process.

### **1.12 Restricted Securities**

- (1) Describe the number and class or classes of restricted securities being distributed using the appropriate restricted security terms in the same type face and type size as the rest of the description.
- (2) If the securities being distributed are restricted securities and the holders of the securities do not have the right to participate in a takeover bid made for other equity securities of the issuer, disclose that fact.

### **1.13 Earnings Coverage Ratios**

If any of the earnings coverage ratios required to be disclosed under section 6.1 is less than one-to-one, disclose this fact in boldface type.

## **ITEM 2 SUMMARY DESCRIPTION OF BUSINESS**

### **2.1 Summary of Description of Business**

Provide a brief summary on a consolidated basis of the business carried on and intended to be carried on by the issuer.

## **ITEM 3 CONSOLIDATED CAPITALIZATION**

### **3.1 Consolidated Capitalization**

Describe any material change in, and the effect of the material change on, the share and loan capital of the issuer, on a consolidated basis, since the date of the issuer's financial statements most recently filed in accordance with the applicable CD rule, including any material change that will result from the issuance of the securities being distributed under the short form prospectus.

## **ITEM 4            USE OF PROCEEDS**

### **4.1      Proceeds**

- (1) State the estimated net proceeds to be received by the issuer or selling securityholder or, in the case of a non-fixed price distribution or a distribution to be made on a best efforts basis, the minimum amount, if any, of net proceeds to be received by the issuer or selling securityholder from the sale of the securities distributed.
- (2) State the particulars of any provision or arrangements made for holding any part of the net proceeds of the distribution in trust or escrow subject to the fulfillment of conditions.
- (3) If the short form prospectus is used for a special warrant or similar transaction, state the amount that has been received by the issuer of the special warrants or similar securities on the sale of the special warrants or similar securities.

### **4.2      Principal Purposes – Generally**

- (1) Describe in reasonable detail and, if appropriate, using tabular form, each of the principal purposes, with approximate amounts, for which the net proceeds will be used by the issuer.
- (2) If the closing of the distribution is subject to a minimum offering amount, provide disclosure of the use of proceeds for the minimum and maximum offering amounts.
- (3) If the following apply, disclose how the proceeds will be used by the issuer, with reference to various potential thresholds of proceeds raised, in the event that the issuer raises less than the maximum offering amount:
  - (a) the closing of the distribution is not subject to a minimum offering amount;
  - (b) the distribution is to be on a best efforts basis; and
  - (c) the issuer has significant short-term non-discretionary expenditures including those for general corporate purposes, or significant short-term capital or contractual commitments, and may not have other readily accessible resources to satisfy those expenditures or commitments.
- (4) If the issuer is required to provide disclosure under subsection (3), the issuer must discuss, in respect of each threshold, the impact, if any, of raising

each threshold amount on its liquidity, operations, capital resources and solvency.

#### *INSTRUCTIONS*

*If the issuer is required to disclose the use of proceeds at various thresholds under subsections 4.2(3) and (4), include as an example a threshold that reflects the receipt of 15% of the offering or less.*

#### **4.3 Principal Purposes – Indebtedness**

- (1) If more than 10% of the net proceeds will be used to reduce or retire indebtedness and the indebtedness was incurred within the two preceding years, describe the principal purposes for which the proceeds of the indebtedness were used.
- (2) If the creditor is an insider, associate or affiliate of the issuer, identify the creditor and the nature of the relationship to the issuer and disclose the outstanding amount owed.

#### **4.4 Principal Purposes – Asset Acquisition**

- (1) If more than 10% of the net proceeds are to be used to acquire assets, describe the assets.
- (2) If known, disclose the particulars of the purchase price being paid for or being allocated to the assets or categories of assets, including intangible assets.
- (3) If the vendor of the assets is an insider, associate or affiliate of the issuer, identify the vendor and the nature of the relationship to the issuer, and disclose the method used in determining the purchase price.
- (4) Describe the nature of the title to or interest in the assets to be acquired by the issuer.
- (5) If part of the consideration for the acquisition of the assets consists of securities of the issuer, give brief particulars of the class, number or amount, voting rights, if any, and other appropriate information relating to the securities, including particulars of the issuance of securities of the same class within the two preceding years.

#### **4.5 Principal Purposes – Insiders, etc.**

If an insider, associate or affiliate of the issuer will receive more than 10% of the net proceeds, identify the insider, associate or affiliate and the nature of the relationship to the issuer, and disclose the amount of net proceeds to be received.

#### **4.6 Principal Purposes – Research and Development**

If more than 10% of the net proceeds from the distribution will be used for research and development of products or services, describe

- (a) the timing and stage of research and development programs that management anticipates will be reached using such proceeds,
- (b) the major components of the proposed programs that will be funded using the proceeds from the distribution, including an estimate of anticipated costs,
- (c) if the issuer is conducting its own research and development, is subcontracting out the research and development or is using a combination of those methods, and
- (d) the additional steps required to reach commercial production and an estimate of costs and timing.

#### **4.7 Business Objectives and Milestones**

- (1) State the business objectives that the issuer expects to accomplish using the net proceeds of the distribution under section 4.1.
- (2) Describe each significant event that must occur for the business objectives described under subsection (1) to be accomplished and state the specific time period in which each event is expected to occur and the costs related to each event.

#### **4.8 Unallocated Funds in Trust or Escrow**

- (1) Disclose that unallocated funds will be placed in a trust or escrow account, invested or added to the working capital of the issuer.
- (2) Give details of the arrangements made for, and the persons or companies responsible for,
  - (a) the supervision of the trust or escrow account or the investment of unallocated funds, and
  - (b) the investment policy to be followed.

#### **4.9 Other Sources of Funding**

If any material amounts of other funds are to be used in conjunction with the proceeds, state the amounts and sources of the other funds.

#### **4.10 Financing by Special Warrants, etc.**

- (1) If the short form prospectus is used to qualify the distribution of securities issued upon the exercise of special warrants or the exercise of other securities acquired on a prospectus-exempt basis, describe the principal purposes for which the proceeds of the prospectus-exempt financing were used or are to be used.
- (2) If all or a portion of the funds have been spent, explain how the funds were spent.

### **ITEM 5 PLAN OF DISTRIBUTION**

#### **5.1 Disclosure of Conditions to Underwriters' Obligations**

If securities are distributed by an underwriter that has agreed to purchase all of the securities at a specified price and the underwriter's obligations are subject to conditions,

- (a) include a statement in substantially the following form, with the bracketed information completed and with modifications necessary to reflect the terms of the distribution:

"Under an agreement dated [insert date of agreement] between [insert name of issuer or selling securityholder] and [insert name(s) of underwriter(s)], as underwriter[s], [insert name of issuer or selling securityholder] has agreed to sell and the underwriter[s] [has/have] agreed to purchase on [insert closing date] the securities at a price of [insert offering price], payable in cash to [insert name of issuer or selling securityholder] against delivery. The obligations of the underwriter[s] under the agreement may be terminated at [its/their] discretion on the basis of [describe any "market out", "disaster out", "material change out" or similar provision] and may also be terminated upon the occurrence of certain stated events. The underwriter[s] [is/are], however, obligated to take up and pay for all of the securities if any of the securities are purchased under the agreement.", and

- (b) describe any other conditions and indicate any information known that is relevant to whether such conditions will be satisfied.

#### **5.2 Best Efforts Offering**

Outline briefly the plan of distribution of any securities being distributed other than on the basis described in section 5.1.

### **5.3 Determination of Price**

Disclose the method by which the distribution price has been or will be determined and, if estimates have been provided, explain the process for determining the estimates.

### **5.4 Stabilization**

If the issuer, a selling securityholder or an underwriter knows or has reason to believe that there is an intention to over-allot or that the price of any security may be stabilized to facilitate the distribution of the securities, describe the nature of these transactions, including the anticipated size of any over-allocation position, and explain how the transactions are expected to affect the price of the securities.

#### **5.4.1 Underwriting Discounts – Interests of Management and Others in Material Transactions**

Disclose any material underwriting discounts or commissions on the sale of securities by the issuer if any of the persons or companies listed under section 13.1 of Form 51-102F2 were or are to be an underwriter or are associates, affiliates or partners of a person or company that was or is to be an underwriter.

### **5.5 Minimum Distribution**

If securities are being distributed on a best efforts basis and minimum funds are to be raised, state

- (a) the minimum funds to be raised,
- (b) that the issuer must appoint a registered dealer authorized to make the distribution, a Canadian financial institution, or a lawyer who is a practicing member in good standing with a law society of a jurisdiction in which the securities are being distributed, or a notary in Québec, to hold in trust all funds received from subscriptions until the minimum amount of funds stipulated in paragraph (a) has been raised, and
- (c) that if the minimum amount of funds is not raised within the distribution period, the trustee must return the funds to the subscribers without any deduction.

#### **5.5.1 Approvals**

If the proceeds of the distribution will be used to substantially fund a material undertaking that would constitute a material departure from the business or operations of the issuer and the issuer has not obtained all material licences, registrations and approvals necessary for the stated principal use of proceeds, include a statement that

- (a) the issuer must appoint a registered dealer authorized to make the distribution, a Canadian financial institution, or a lawyer who is a practicing member in good standing with a law society of a jurisdiction in which the securities are being distributed, or a notary in Québec, to hold in trust all funds received from subscriptions until all material licences, registrations and approvals necessary for the stated principal use of proceeds have been obtained, and
- (b) if all material licences, registrations and approvals necessary for the operation of the material undertaking have not been obtained within 90 days from the date of receipt of the final short form prospectus, the trustee must return the funds to subscribers.

## **5.6 Reduced Price Distributions**

If the underwriter may decrease the offering price after the underwriter has made a reasonable effort to sell all of the securities at the initial offering price disclosed in the short form prospectus in accordance with the procedures permitted by the Instrument, disclose this fact and that the compensation realised by the underwriter will be decreased by the amount that the aggregate price paid by purchasers for the securities is less than the gross proceeds paid by the underwriter to the issuer or selling securityholder.

## **5.7 Listing Application**

If application has been made to list or quote the securities being distributed, include a statement in substantially the following form with the bracketed information completed:

“The issuer has applied to [list/quote] the securities distributed under this short form prospectus on [name of exchange or other market]. [Listing/Quotation] will be subject to the issuer fulfilling all the listing requirements of [name of exchange or other market].”

## **5.8 Conditional Listing Approval**

If application has been made to list or quote the securities being distributed and conditional listing approval has been received, include a statement in substantially the following form, with the bracketed information completed:

“[name of exchange or other market] has conditionally approved the [listing/quotation] of these securities. [Listing/Quotation] is subject to the [name of the issuer] fulfilling all of the requirements of the [name of exchange or market] on or before [date], [including distribution of these securities to a minimum number of public securityholders.]”

## 5.9 Constraints

If there are constraints imposed on the ownership of securities of the issuer to ensure that the issuer has a required level of Canadian ownership, describe the mechanism, if any, by which the level of Canadian ownership of the securities of the issuer will be monitored and maintained.

## 5.10 Special Warrants Acquired by Underwriters or Agents

Disclose the number and dollar value of any special warrants acquired by any underwriter or agent and the percentage of the distribution represented by those special warrants.

## ITEM 6 EARNINGS COVERAGE RATIOS

### 6.1 Earnings Coverage Ratios

- (1) If the securities being distributed are debt securities having a term to maturity in excess of one year or are preferred shares, disclose the following earnings coverage ratios adjusted in accordance with subsection (2):
  - (ii) the earnings coverage ratio based on the most recent 12-month period included in the issuer's current annual financial statements included in the short form prospectus,
  - (iii) if there has been a change in year end and the issuer's most recent financial year is less than nine months in length, the earnings coverage calculation for its old financial year, and
  - (iv) the earnings coverage ratio based on the 12-month period ended on the last day of the most recently completed period for which an interim financial report of the issuer has been included in the short form prospectus.
- (2) Adjust the ratios referred to in subsection (1) to reflect
  - (a) the issuance of the securities being distributed under the short form prospectus, based on the price at which these securities are expected to be distributed;
  - (b) in the case of a distribution of preferred shares,
    - (A) the issuance of all preferred shares since the date of the annual financial statements or interim financial report, and
    - (B) the repurchase, redemption or other retirement of all preferred shares repurchased, redeemed, or otherwise retired since the date of the annual financial statements or

interim financial report and of all preferred shares to be repurchased, redeemed, or otherwise retired from the proceeds to be realized from the sale of securities under the short form prospectus;

- (c) the issuance of all financial liabilities, as defined in accordance with the issuer's GAAP since the date of the annual financial statements or interim financial report; and
  - (d) the repayment, redemption or other retirement of all financial liabilities, as defined in accordance with the issuer's GAAP, since the date of the annual financial statements or interim financial report and all financial liabilities to be repaid or redeemed from the proceeds to be realized from the sale of securities distributed under the short form prospectus.
  - (e) [Repealed.]
- (3) [Repealed.]
- (4) If the earnings coverage ratio is less than one-to-one, disclose in the short form prospectus the dollar amount of the numerator required to achieve a ratio of one-to-one.
- (5) If the short form prospectus includes a *pro forma* income statement, calculate the *pro forma* earnings coverage ratios for the periods of the *pro forma* income statement, and disclose them in the short form prospectus.

#### INSTRUCTIONS

- (1) *Cash flow coverage may be disclosed but only as a supplement to earnings coverage and only if the method of calculation is fully disclosed.*
- (2) *Earnings coverage is calculated by dividing an entity's profit or loss attributable to owners of the parent (the numerator) by its borrowing costs and dividend obligations (the denominator).*
- (3) *For the earnings coverage calculation*
  - (a) *the numerator should be calculated using consolidated profit or loss attributable to owners of the parent before borrowing costs and income taxes;*
  - (b) *imputed interest income from the proceeds of a distribution should not be added to the numerator;*
  - (c) [Repealed.]

- (d) *for distributions of debt securities, the appropriate denominator is borrowing costs, after giving effect to the new debt securities issue and any retirement of obligations, plus the borrowing costs that have been capitalized during the period;*
  - (e) *for distributions of preferred shares*
    - (i) *the appropriate denominator is dividends declared during the period, together with undeclared dividends on cumulative preferred shares, after giving effect to the new preferred share issue, plus the issuer's annual borrowing cost requirements, including the borrowing costs that have been capitalized during the period, less any retirement of obligations, and*
    - (ii) *dividends should be grossed-up to a before-tax equivalent using the issuer's effective income tax rate; and*
  - (f) *for distributions of both debt securities and preferred shares, the appropriate denominator is the same as for a preferred share issue, except that the denominator should also reflect the effect of the debt securities being offered pursuant to the short form prospectus.*
- (4) *The denominator represents a pro forma calculation of the aggregate of an issuer's borrowing cost obligations on all financial liabilities and dividend obligations (including both dividends declared and undeclared dividends on cumulative preferred shares) with respect to all outstanding preferred shares, as adjusted to reflect*
- (a) *the issuance of all financial liabilities and, in addition in the case of an issuance of preferred shares, all preferred shares issued, since the date of the annual financial statements or interim financial report;*
  - (b) *the issuance of the securities that are to be distributed under the short form prospectus, based on a reasonable estimate of the price at which these securities will be distributed; and*
  - (c) *the repayment or redemption of all financial liabilities since the date of the annual financial statements or interim financial report, all financial liabilities to be repaid or redeemed from the proceeds to be realized from the sale of securities under the short form prospectus and, in addition, in the case of an issuance of preferred shares, all preferred shares repaid or redeemed since the date of the annual financial statements or interim financial report and all preferred shares to be repaid or redeemed from the proceeds to*

be realized from the sale of securities under the short form prospectus.

- (5) *Repealed*
- (6) *For debt securities, disclosure of earnings coverage shall include language similar to the following with the bracketed and bulleted information completed:*

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

- (7) *For preferred share issues, disclosure of earnings coverage shall include language similar to the following with the bracketed and bulleted information completed:*

*“[Name of the issuer]’s dividend requirements on all of its preferred shares, after giving effect to the issue of [the preferred shares to be distributed under the short form prospectus], and adjusted to a before-tax equivalent using an effective income tax rate of •%, amounted to \$• for the 12 months ended •. [Name of the issuer]’s borrowing cost requirements for the 12 months then ended amounted to \$•. [Name of the issuer]’s profit or loss attributable to owners of the parent before borrowing costs and income tax for the 12 months ended • was \$•, which is • times [name of the issuer]’s aggregate dividend and borrowing cost requirements for this period.”*

- (8) *[Repealed.]*
- (9) *Other earnings coverage calculations may be included as supplementary disclosure to the required earnings coverage calculations outlined above as long as their derivation is disclosed and they are not given greater prominence than the required earnings coverage calculations.*

## **ITEM 7 DESCRIPTION OF SECURITIES BEING DISTRIBUTED**

### **7.1 Equity Securities**

If equity securities are being distributed, state the description or the designation of the class of the equity securities and describe all material attributes and characteristics that

are not described elsewhere in a document incorporated by reference in the short form prospectus including, as applicable,

- (a) dividend rights;
- (b) voting rights;
- (c) rights upon dissolution or winding up;
- (d) pre-emptive rights;
- (e) conversion or exchange rights;
- (f) redemption, retraction, purchase for cancellation or surrender provisions;
- (g) sinking or purchase fund provisions;
- (h) provisions permitting or restricting the issuance of additional securities and any other material restrictions; and
- (i) provisions requiring a securityholder to contribute additional capital.

## **7.2 Debt Securities**

If debt securities are being distributed, describe all material attributes and characteristics of the indebtedness and the security, if any, for the debt that are not described elsewhere in a document incorporated by reference in the short form prospectus, including

- (a) provisions for interest rate, maturity and premium, if any;
- (b) conversion or exchange rights;
- (c) redemption, retraction, purchase for cancellation or surrender provisions;
- (d) sinking or purchase fund provisions;
- (e) the nature and priority of any security for the debt securities, briefly identifying the principal properties subject to lien or charge;
- (f) provisions permitting or restricting the issuance of additional securities, the incurring of additional indebtedness and other material negative covenants including restrictions against payment of dividends and restrictions against giving security on the assets of the issuer or its subsidiaries and provisions as to the release or substitution of assets securing the debt securities;

- (g) the name of the trustee under any indenture relating to the debt securities and the nature of any material relationship between the trustee or any of its affiliates and the issuer or any of its affiliates; and
- (h) any financial arrangements between the issuer and any of its affiliates or among its affiliates that could affect the security for the indebtedness.

### **7.3 Asset-backed Securities**

- (1) This section applies only if any asset-backed securities are being distributed.
- (2) Describe the material attributes and characteristics of the asset-backed securities, including
  - (a) the rate of interest or stipulated yield and any premium,
  - (b) the date for repayment of principal or return of capital and any circumstances in which payments of principal or capital may be made before such date, including any redemption or pre-payment obligations or privileges of the issuer and any events that may trigger early liquidation or amortization of the underlying pool of financial assets,
  - (c) provisions for the accumulation of cash flows to provide for the repayment of principal or return of capital,
  - (d) provisions permitting or restricting the issuance of additional securities and any other material negative covenants applicable to the issuer,
  - (e) the nature, order and priority of the entitlements of holders of asset-backed securities and any other entitled persons or companies to receive cash flows generated from the underlying pool of financial assets, and
  - (f) any events, covenants, standards or preconditions that may reasonably be expected to affect the timing or amount of payments or distributions to be made under the asset-backed securities, including those that are dependent or based on the economic performance of the underlying pool of financial assets.
- (3) Provide financial disclosure that describes the underlying pool of financial assets, for the period from the date as at which the following information was presented in the issuer's current AIF to a date not more than 90 days before the date of the issuance of a receipt for the preliminary short form prospectus, of

- (a) the composition of the pool as at the end of the period,
  - (b) profit and losses from the pool for the period presented on at least an annual basis or such shorter period as is reasonable given the nature of the underlying pool of assets,
  - (c) the payment, prepayment and collection experience of the pool for the period on at least an annual basis or such shorter period as is reasonable given the nature of the underlying pool of assets;
  - (d) servicing and other administrative fees, and
  - (e) any significant variances experienced in the matters referred to in paragraphs (a) through (d).
- (4) Describe the type of financial assets, the manner in which the financial assets originated or will originate and, if applicable, the mechanism and terms of the agreement governing the transfer of the financial assets comprising the underlying pool to or through the issuer, including the consideration paid for the financial assets.
- (5) Describe any person or company who
- (a) originated, sold or deposited a material portion of the financial assets comprising the pool, or has agreed to do so,
  - (b) acts, or has agreed to act, as a trustee, custodian, bailee or agent of the issuer or any holder of the asset-backed securities, or in a similar capacity,
  - (c) administers or services a material portion of the financial assets comprising the pool or provides administrative or managerial services to the issuer, or has agreed to do so, on a conditional basis or otherwise, if
    - (i) finding a replacement provider of the services at a cost comparable to the cost of the current provider is not reasonably likely,
    - (ii) a replacement provider of the services is likely to achieve materially worse results than the current provider,
    - (iii) the current provider of the services is likely to default in its service obligations because of its current financial condition, or
    - (iv) the disclosure is otherwise material,

- (d) provides a guarantee, alternative credit support or other credit enhancement to support the obligations of the issuer under the asset-backed securities or the performance of some or all of the financial assets in the pool, or has agreed to do so, or
  - (e) lends to the issuer in order to facilitate the timely payment or repayment of amounts payable under the asset-backed securities, or has agreed to do so.
- (6) Describe the general business activities and material responsibilities under the asset-backed securities of a person or company referred to in subsection (5).
  - (7) Describe the terms of any material relationships between
    - (a) any of the persons or companies referred to in subsection (5) or any of their respective affiliates, and
    - (b) the issuer.
  - (8) Describe any provisions relating to termination of services or responsibilities of any of the persons or companies referred to in subsection (5) and the terms on which a replacement may be appointed.
  - (9) Describe any risk factors associated with the asset-backed securities, including disclosure of material risks associated with changes in interest rates or prepayment levels, and any circumstances where payments on the asset-backed securities could be impaired or disrupted as a result of any reasonably foreseeable event that may delay, divert or disrupt the cash flows dedicated to service the asset-backed securities.

## INSTRUCTIONS

- (1) *Present the information required under subsection (3) in a manner that will enable a reader to easily determine whether, and the extent to which, the events, covenants, standards and preconditions referred to in paragraph (2)(f) have occurred, are being satisfied or may be satisfied.*
- (2) *If the information required under subsection (3) is not compiled specifically from the underlying pool of financial assets, but is compiled from a larger pool of the same assets from which the securitized assets are randomly selected so that the performance of the larger pool is representative of the performance of the pool of securitized assets, then an issuer may comply with subsection (3) by providing the financial disclosure required based on the larger pool and disclosing that it has done so.*

- (3) *Issuers are required to summarize contractual arrangements in plain language and may not merely restate the text of the contracts referred to. The use of diagrams to illustrate the roles of, and the relationship among, the persons and companies referred to in subsection (5) and the contractual arrangements underlying the asset-backed securities is encouraged.*

#### **7.4 Derivatives**

If derivatives are being distributed, describe fully the material attributes and characteristics of the derivatives, including

- (a) the calculation of the value or payment obligations under the derivatives;
- (b) the exercise of the derivatives;
- (c) settlements that are the result of the exercise of the derivatives
- (d) the underlying interest of the derivatives;
- (e) the role of a calculation expert in connection with the derivatives;
- (f) the role of any credit supporter of the derivatives; and
- (g) the risk factors associated with the derivatives.

#### **7.5 Other Securities**

If securities other than equity securities, debt securities, asset-backed securities or derivatives are being distributed, describe fully the material attributes and characteristics of those securities.

#### **7.6 Special Warrants, etc.**

If the short form prospectus is used to qualify the distribution of securities issued upon the exercise of special warrants or other securities acquired on a prospectus-exempt basis, state the following:

“The issuer has granted to each holder of a special warrant a contractual right of rescission of the prospectus-exempt transaction under which the special warrant was initially acquired. The contractual right of rescission provides that if a holder of a special warrant who acquires another security of the issuer on exercise of the special warrant as provided for in the prospectus is, or becomes, entitled under the securities legislation of a jurisdiction to the remedy of rescission because of the short form prospectus or an amendment to the short form prospectus containing a misrepresentation,

- (a) the holder is entitled to rescission of both the holder's exercise of its special warrant and the private placement transaction under which the special warrant was initially acquired,
- (b) the holder is entitled in connection with the rescission to a full refund of all consideration paid to the underwriter or issuer, as the case may be, on the acquisition of the special warrant, and
- (c) if the holder is a permitted assignee of the interest of the original special warrant subscriber, the holder is entitled to exercise the rights of rescission and refund as if the holder was the original subscriber."

## 7.7 Restricted Securities

- (1) If the issuer has outstanding, or proposes to distribute under a short form prospectus restricted securities, subject securities or securities that are, directly or indirectly, convertible into or exercisable or exchangeable for restricted securities or subject securities, provide a detailed description of
  - (a) the voting rights attached to the restricted securities that are the subject of the distribution or that will result from the distribution, either directly or following a conversion, exchange or exercise, and the voting rights, if any, attached to the securities of any other class of securities of the issuer that are the same as or greater than, on a per security basis, those attached to the restricted securities,
  - (b) any significant provisions under applicable corporate and securities law that do not apply to the holders of the restricted securities that are the subject of the distribution or that will result from the distribution, either directly or following a conversion, exchange or exercise, but do apply to the holders of another class of equity securities, and the extent of any rights provided in the constating documents or otherwise for the protection of holders of the restricted securities,
  - (c) any rights under applicable corporate law, in the constating documents or otherwise, of holders of restricted securities that are the subject of the distribution or that will result from the distribution, either directly or following a conversion, exchange or exercise, to attend, in person or by proxy, meetings of holders of equity securities of the issuer and to speak at the meetings to the same extent that holders of equity securities are entitled, and
  - (d) how the issuer complied with, or basis upon which it was exempt from, the requirements of Part 12 of NI 41-101.

- (2) If holders of restricted securities do not have all of the rights referred to in subsection (1) the detailed description referred to in that subsection must include, in boldface, a statement of the rights the holders do not have.
- (3) If the issuer is required to include the disclosure referred to in subsection (1), state the percentage of the aggregate voting rights attached to the issuer's securities that will be represented by restricted securities after effect has been given to the issuance of the securities being offered."

## 7.8 Modification of Terms

Describe provisions about the modification, amendment or variation of any rights or other terms attached to the securities being distributed. If the rights of holders of securities may be modified otherwise than in accordance with the provisions attached to the securities or the provisions of the governing statute relating to the securities, explain briefly.

## 7.9 Ratings

- (1) If the issuer has asked for and received a credit rating, or if the issuer is aware that it has received any other kind of rating, including a stability rating or a provisional rating, from one or more credit rating organizations for the securities being distributed, and the rating or ratings continue in effect, disclose
  - (a) each rating received from a credit rating organization;
  - (b) for each rating disclosed under paragraph (a), the name of the credit rating organization that has assigned the rating;
  - (c) a definition or description of the category in which each credit rating organization rated the securities and the relative rank of each rating within the organization's overall classification system;
  - (d) an explanation of what the rating addresses and what attributes, if any, of the securities are not addressed by the rating;
  - (e) any factors or considerations identified by the credit rating organization as giving rise to unusual risks associated with the securities;
  - (f) a statement that a credit rating or a stability rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time by the credit rating organization; and

- (g) any announcement made by, or any proposed announcement known to the issuer that is to be made by, a credit rating organization to the effect that the organization is reviewing or intends to revise or withdraw a rating previously assigned and required to be disclosed under this section.
- (2) If payments were, or reasonably will be, made to a credit rating organization that provided a rating described in subsection (1), state that fact and state whether any payments were made to the credit rating organization in respect of any other service provided to the issuer by the credit rating organization during the last two years.

#### INSTRUCTIONS

*There may be factors relating to a security that are not addressed by a credit rating organization when they give a rating. For example, in the case of cash settled derivative instruments, factors in addition to the creditworthiness of the issuer, such as the continued subsistence of the underlying interest or the volatility of the price, value or level of the underlying interest may be reflected in the rating analysis. Rather than being addressed in the rating itself, these factors may be described by a credit rating organization by way of a superscript or other notation to a rating. Any such attributes must be discussed in the disclosure under this section.*

*A provisional rating received before the issuer's most recently completed financial year is not required to be disclosed under this section.*

#### 7.10 Other Attributes

- (1) If the rights attaching to the securities being distributed are materially limited or qualified by the rights of any other class of securities, or if any other class of securities ranks ahead of or equally with the securities being distributed, include information about the other securities that will enable investors to understand the rights attaching to the securities being distributed.
- (2) If securities of the class being distributed may be partially redeemed or repurchased, state the manner of selecting the securities to be redeemed or repurchased.

#### INSTRUCTION

*This Item requires only a brief summary of the provisions that are material from an investment standpoint. The provisions attaching to the securities being distributed or any other class of securities do not need to be set out in full. They may, in the issuer's discretion, be attached as a schedule to the short form prospectus.*

## **Item 7A      Prior Sales**

### **7A.1   Prior Sales**

For each class or series of securities of the issuer distributed under the short form prospectus and for securities that are convertible or exchangeable into those classes or series of securities, state, for the 12-month period before the date of the short form prospectus,

- (a) the price at which the securities have been issued or are to be issued by the issuer or sold by the selling securityholder,
- (b) the number of securities issued or sold at that price, and
- (c) the date on which the securities were issued or sold.

### **7A.2   Trading Price and Volume**

- (1) For the following securities of the issuer that are traded or quoted on a Canadian marketplace, identify the marketplace and the price ranges and volume traded or quoted on the Canadian marketplace on which the greatest volume of trading or quotation for the securities generally occurs:
  - (a) each class or series of securities of the issuer distributed under the short form prospectus;
  - (b) securities of the issuer into which those classes or series of securities are convertible or exchangeable.
- (2) For the following securities of the issuer that are not traded or quoted on a Canadian marketplace, but are traded or quoted on a foreign marketplace, identify the foreign marketplace and the price ranges and volume traded or quoted on the foreign marketplace on which the greatest volume or quotation for the securities generally occurs
  - (a) each class or series of securities of the issuer distributed under the short form prospectus;
  - (b) securities of the issuer into which those classes or series of securities are convertible or exchangeable.

- (3) Provide the information required under subsections (1) and (2) on a monthly basis for each month or, if applicable, partial months of the 12-month period before the date of the short form prospectus.

## **ITEM 8      SELLING SECURITYHOLDER**

### **8.1      Selling Securityholder**

- (1) If any securities are being distributed for the account of a securityholder, provide the following information for each securityholder:
  1. The name.
  2. The number or amount of securities owned, controlled or directed of the class being distributed.
  3. The number or amount of securities of the class being distributed for the account of the securityholder.
  4. The number or amount of securities of the issuer of any class to be owned, controlled or directed after the distribution, and the percentage that number or amount represents of the total outstanding.
  5. Whether the securities referred to in paragraph 2, 3 or 4 are owned both of record and beneficially, of record only, or beneficially only.
- (2) If securities are being distributed in connection with a restructuring transaction, indicate, to the extent known, the holdings of each person or company described in paragraph 1. of subsection (1) that will exist after effect has been given to the transaction.
- (3) If any of the securities being distributed are being distributed for the account of a securityholder and those securities were purchased by the selling securityholder within the two years preceding the date of the short form prospectus, state the date the selling securityholder acquired the securities and, if the securities were acquired in the 12 months preceding the date of the short form prospectus, the cost to the securityholder in the aggregate and on an average cost-per-security basis.
- (4) If, to the knowledge of the issuer or the underwriter of the securities being distributed, any selling securityholder is an associate or affiliate of another person or company named as a principal holder of voting securities in the issuer's information circular required to be incorporated by reference under paragraph 7. Of subsection 11.1(1), disclose, to the extent known, the material facts of the relationship, including any basis for influence over

the issuer held by the person or company other than the holding of voting securities of the issuer.

- (5) In addition to the above, include in a footnote to the table the required calculation(s) on a fully-diluted basis.
- (6) Describe any material change to the information required to be included in the short form prospectus under subsection (1) to the date of the short form prospectus.

#### INSTRUCTION

*If a company, partnership, trust or other unincorporated entity is a selling securityholder, disclose, to the extent known, the name of each individual who, through ownership of or control or direction over the securities of that company, trust or other unincorporated entity, or membership in the partnership, as the case may be, is a principal securityholder of that entity.*

### **ITEM 9 MINERAL PROPERTY**

#### **9.1 Mineral Property**

If a material part of the proceeds of the distribution is to be expended on a particular mineral property and if the current AIF does not contain the disclosure required under section 5.4 of Form 51-102F2 for the property or that disclosure is inadequate or incorrect due to changes, disclose the information required under section 5.4 of Form 51-102F2.

### **Item 10 Recently Completed and Probable Acquisitions**

#### **10.1 Application and Definitions**

This Item does not apply to a completed or proposed transaction by the issuer that was or will be accounted for as a reverse takeover or a transaction that is a proposed reverse takeover that has progressed to a state where a reasonable person would believe that the likelihood of the reverse takeover being completed is high.

#### **10.2 Significant Acquisitions**

- (1) Describe any acquisition
  - (a) that the issuer has completed within 75 days prior to the date of the short form prospectus;
  - (b) that is a significant acquisition for the purposes of Part 8 of NI 51-102; and

- (c) for which the issuer has not yet filed a business acquisition report under NI 51-102.
- (2) Describe any proposed acquisition by an issuer that
  - (a) has progressed to a state where a reasonable person would believe that the likelihood of the issuer completing the acquisition is high; and
  - (b) would be a significant acquisition for the purposes of Part 8 of NI 51-102 if completed as of the date of the short form prospectus.
- (3) If disclosure about an acquisition or proposed acquisition is required under subsection (1) or (2), include financial statements or other information about the acquisition or proposed acquisition if the inclusion of the financial statements is necessary for the short form prospectus to contain full, true and plain disclosure of all material facts relating to the securities being distributed.
- (4) The requirement to include financial statements or other information under subsection (3) must be satisfied by including
  - (a) the financial statements or other information that will be required to be included in, or incorporated by reference into, a business acquisition report filed under Part 8 of NI 51-102, or
  - (b) satisfactory alternative financial statements or other information.

#### INSTRUCTION

*For the description of the acquisition or proposed acquisition, include the information required by sections 2.1 through 2.6 of Form 51-102F4. For a proposed acquisition, modify this information as necessary to convey that the acquisition is not yet completed.*

### **Item 10A Reverse Takeover and Probable Reverse Takeover**

#### **10A.1 Completed Reverse Takeover Disclosure**

If the issuer has completed a reverse takeover since the end of the financial year in respect of which the issuer's current AIF is incorporated by reference into the short form prospectus under paragraph 1. of subsection 11.1(1), provide disclosure about the reverse takeover acquirer by complying with the following:

1. If the reverse takeover acquirer satisfies the criteria set out in paragraphs 2.2(a), (b), (c), and (d) of the Instrument, incorporate by reference into

the short form prospectus all documents that would be required to be incorporated by reference under Item 11 if the reverse takeover acquirer were the issuer of the securities.

2. If paragraph 1 does not apply to the reverse takeover acquirer, include in the short form prospectus the same disclosure about the reverse takeover acquirer that would be required to be contained in Form 41-101F1 if the reverse takeover acquirer were the issuer of the securities being distributed and the reverse takeover acquirer were distributing those securities by way of the short form prospectus.

## **10A.2 Probable Reverse Takeover Disclosure**

If the issuer is involved in a proposed reverse takeover that has progressed to a state where a reasonable person would believe that the likelihood of the reverse takeover being completed is high, provide disclosure about the reverse takeover acquirer by complying with the following:

1. If the reverse takeover acquirer satisfies the criteria set out in paragraphs 2.2(a), (b), (c), and (d) of the Instrument, incorporate by reference into the short form prospectus all documents that would be required to be incorporated by reference under Item 11 if the reverse takeover acquirer were the issuer of the securities.
2. If paragraph 1 does not apply to the reverse takeover acquirer, include in the short form prospectus the same disclosure about the reverse takeover acquirer that would be required to be contained in Form 41-101F1, if the reverse takeover acquirer were the issuer of the securities being distributed and the reverse takeover acquirer were distributing those securities by way of the short form prospectus

## **ITEM 11 DOCUMENTS INCORPORATED BY REFERENCE**

### **11.1 Mandatory Incorporation by Reference**

- (1) In addition to any other document that an issuer may choose to incorporate by reference, specifically incorporate by reference in the short form prospectus, by means of a statement in the short form prospectus to that effect, the documents set forth below:
  1. The issuer's current AIF, if it has one.
  2. The issuer's current annual financial statements, if any, and related MD&A.
  3. The issuer's interim financial report most recently filed or required to have been filed under the applicable CD rule in respect of an interim period, if any, subsequent to the financial year in respect of

which the issuer has filed its current annual financial statements or has included annual financial statements in the short form prospectus, and the related interim MD&A.

4. If, before the short form prospectus is filed, historical financial information about the issuer for a financial period more recent than the period for which financial statements are required under paragraphs 2 and 3 is publicly disseminated by, or on behalf of, the issuer through news release or otherwise, the content of the news release or public communication.
5. Any material change report, except a confidential material change report, filed under Part 7 of NI 51-102 or Part 11 of NI 81-106 since the end of the financial year in respect of which the issuer's current AIF is filed.
6. Any business acquisition report filed by the issuer under Part 8 of NI 51-102 for acquisitions completed since the beginning of the financial year in respect of which the issuer's current AIF is filed, unless the issuer
  - (a) incorporated the BAR by reference into its current AIF, or
  - (b) incorporated at least 9 months of the acquired business or related businesses operations into the issuer's current annual financial statements.
7. Any information circular filed by the issuer under Part 9 of NI 51-102 or Part 12 of NI 81-106 since the beginning of the financial year in respect of which the issuer's current AIF is filed, other than an information circular prepared in connection with an annual general meeting if the issuer has filed and incorporated by reference an information circular for a subsequent annual general meeting.";
8. The most recent Form 51-101F1, Form 51-101F2 and Form 51-101F3, filed by an SEC issuer, unless
  - (a) the issuer's current AIF is in the form of Form 51-102F2; or
  - (b) the issuer is otherwise exempted from the requirements of NI 51-101.
9. Any other disclosure document which the issuer has filed pursuant to an undertaking to a provincial and territorial securities regulatory authority since the beginning of the financial year in respect of which the issuer's current AIF is filed.

10. Any other disclosure document of the type listed in paragraphs 1 through 8 that the issuer has filed pursuant to an exemption from any requirement under securities legislation since the beginning of the financial year in respect of which the issuer's current AIF is filed.
- (2) In the statement incorporating the documents listed in subsection (1) by reference in a short form prospectus, clarify that applicable portions of the documents are not incorporated by reference to the extent their contents are modified or superseded by a statement contained in the short form prospectus or in any other subsequently filed document that is also incorporated by reference in the short form prospectus.
- (3) Despite paragraph 7 of subsection (1), an issuer may exclude from its short form prospectus a report, valuation, statement or opinion of a person or company contained in an information circular prepared in connection with a special meeting of securityholders of the issuer, and any references therein, if
  - (a) the report is not an auditor's report in respect of financial statements of a person or company; and
  - (b) the report, valuation, statement or opinion was prepared in respect of a specific transaction contemplated in the information circular, unrelated to the distribution of securities under the short form prospectus, and that transaction has been abandoned or completed.

#### INSTRUCTIONS

- (1) *Paragraph 4 of subsection (1) requires issuers to incorporate only the news release or other public communication through which more recent financial information is released to the public. However, if the financial statements from which the information in the news release has been derived have been filed, then the financial statements must be incorporated by reference.*
- (2) *Issuers must provide a list of the material change reports and business acquisition reports required under paragraphs 5 and 6 of subsection (1), giving the date of filing and briefly describing the material change or acquisition, as the case may be, in respect of which the report was filed.*
- (3) *Any material incorporated by reference in a short form prospectus is required under sections 4.1 and 4.2 of the Instrument to be filed with the short form prospectus unless it has been previously filed.*

## 11.2 Mandatory Incorporation by Reference of Future Documents

State that any documents, of the type described in section 11.1, if filed by the issuer after the date of the short form prospectus and before the termination of the distribution, are deemed to be incorporated by reference in the short form prospectus.

## 11.3 Issuers without a Current AIF or Current Annual Financial Statements

- (1) If the issuer does not have a current AIF or current annual financial statements and is relying on the exemption in subsection 2.7(1) of the Instrument, include the disclosure, including financial statements and related MD&A, that would otherwise have been required to have been included in a current AIF and current annual financial statements and related MD&A under section 11.1
- (2) If the issuer does not have a current AIF or current annual financial statements and is relying on the exemption in subsection 2.7(2) or 2.7(3) of the Instrument, include the disclosure, including financial statements, provided in accordance with
  - (a) Section 14.2 or 14.5 of Form 51-102F5 in the information circular referred to in paragraph 2.7(2)(b) of the Instrument; or
  - (b) the policies and requirements of the TSX Venture Exchange for disclosure of a qualifying transaction in a CPC filing statement or a reverse takeover in a filing statement referred to in paragraph 2.7(3)(b) of the Instrument.

### INSTRUCTION

- (1) *If an issuer is required to include disclosure under subsection 11.3(2), it must include the historical financial statements of any entity that was a party to the restructuring transaction and any other information contained in the information circular, CPC filing statement or other filing statement of the TSX Venture Exchange that was used to construct financial statements for the issuer.*
- (2) *The disclosure referenced in instruction (1) must be presented in a way that supplements, but does not replace, the disclosure required to be made for a transaction that constitutes a significant acquisition for the issuer or a reverse takeover in which the issuer was involved.*

## 3.4 Significant Acquisition for Which No Business Acquisition Report is Filed

- (1) If the issuer has,

- (i) since the beginning of the most recently completed financial year in respect of which annual financial statements are included in the short form prospectus; and
- (ii) more than 75 days prior to the date of filing the preliminary short form prospectus;

completed a transaction that would have been a significant acquisition for the purposes of Part 8 of NI 51-102 if the issuer had been a reporting issuer at the time of the transaction, and the issuer has not filed a business acquisition report in respect of the transaction, include the financial statements and other information in respect of the transaction that is prescribed by Form 51-102F4.

- (2) If the issuer was exempt from the requirement to file a business acquisition report in respect of a transaction because the disclosure that would normally be included in a business acquisition report was included in another document, include that disclosure in the short form prospectus.

#### INSTRUCTION

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

### **11.5 Additional Disclosure for Issuers of Asset-Backed Securities**

If the issuer has not filed or has not been required to file interim financial statements and related MD&A in respect of an interim period subsequent to the financial year in respect of which it has included annual financial statements in the short form prospectus because it is not a reporting issuer and is qualifying to file the short form prospectus under section 2.6 of the Instrument, include the interim financial statements and related MD&A that the issuer would have been required to incorporate by reference under paragraph 3 of subsection 11.1(1) if the issuer were a reporting issuer at the relevant time.

### **11.6 Marketing Materials**

- (1) If marketing materials were provided under subsection 7.6(1) of the Instrument or subsection 13.7(1) or 13.8(1) of NI 41-101, the issuer must
  - (a) include a section under the heading "Marketing Materials" proximate to the beginning of the short form prospectus that contains the disclosure required by this Item,

- (b) subject to subsection (2), include the template version of the marketing materials filed under the Instrument or NI 41-101 in the final short form prospectus, or incorporate by reference the template version of the marketing materials filed under the Instrument or NI 41-101 into the final short form prospectus, and
  - (c) indicate that the template version of the marketing materials is not part of the final short form prospectus to the extent that the contents of the template version of the marketing materials have been modified or superseded by a statement contained in the final short form prospectus.
- (2) An issuer may comply with paragraph (1)(b) by including the template version of the marketing materials filed under the Instrument or NI 41-101 in the section of the short form prospectus under the heading “Marketing Materials” or in an appendix to the short form prospectus that is referred to in that section.
- (3) If the final short form prospectus or any amendment modifies a statement of material fact that appeared in marketing materials provided earlier,
  - (a) provide details of how the statement in the marketing materials has been modified, and
  - (b) disclose that, pursuant to subsection 7.6(7) of the Instrument or subsection 13.7(8) or 13.8(8) of NI 41-101,
    - (i) the issuer has prepared a revised template version of the marketing materials which has been blacklined to show the modified statement, and
    - (ii) the revised template version of the marketing materials can be viewed under the issuer’s profile on [www.sedar.com](http://www.sedar.com).
- (4) State that any template version of the marketing materials filed under NI 41-101 after the date of the final short form prospectus and before the termination of the distribution is deemed to be incorporated into the final short form prospectus.
- (5) If the issuer relies on the exception in subsection 7.8(1) of the Instrument or subsection 13.12(1) of NI 41-101, include the statement set out in subsection 36.A.1(5) of Form 41-101F1, or words to the same effect.

#### GUIDANCE

*Marketing materials do not, as a matter of law, amend a preliminary short form prospectus, a final short form prospectus or any amendment.*

## **ITEM 12      ADDITIONAL DISCLOSURE FOR ISSUES OF GUARANTEED SECURITIES**

### **12.1    Credit Supporter Disclosure**

Provide disclosure about each credit supporter, if any, that has provided a guarantee or alternative credit support for all or substantially all of the payments to be made under the securities to be distributed, by complying with the following:

1.    If the credit supporter is a reporting issuer in at least one jurisdiction and has a current AIF, incorporating by reference into the short form prospectus all documents that would be required to be incorporated by reference under Item 11 if the credit supporter were the issuer of the securities.
2.    If the credit supporter is not a reporting issuer in any jurisdiction and has a class of securities registered under section 12(b) or 12(g) of the 1934 Act, or is required to file reports under section 15(d) of the 1934 Act, incorporating by reference into the short form prospectus all 1934 Act filings that would be required to be incorporated by reference in a Form S-3 or Form F-3 registration statement filed under the 1933 Act if the securities distributed under the short form prospectus were being registered on Form S-3 or Form F-3.
3.    If neither paragraph 1 nor paragraph 2 applies to the credit supporter, providing directly in the short form prospectus the same disclosure that would be contained in the short form prospectus through the incorporation by reference of the documents referred to in Item 11 if the credit supporter were the issuer of the securities and those documents had been prepared by the credit supporter.
4.    Providing such other information about the credit supporter as is necessary to provide full, true and plain disclosure of all material facts concerning, the securities to be distributed, including the credit supporter's earnings coverage ratios under Item 6 as if the credit supporter were the issuer of the securities.

## **ITEM 13      EXEMPTIONS FOR CERTAIN ISSUES OF GUARANTEED SECURITIES**

### **13.1    Definitions and Interpretation**

- (1)    In this Item
  - (a)    the impact of subsidiaries, on a combined basis, on the financial results of the parent entity is "minor" if each item of the summary

financial information of the subsidiaries, on a combined basis, represents less than 3% of the total consolidated amounts,

- (b) a parent entity has "limited independent operations" if each item of its summary financial information represents less than 3% of the total consolidated amounts,
- (c) a subsidiary is a "finance subsidiary" if it has minimal assets, operations, revenue or cash flows other than those related to the issuance, administration and repayment of the security being distributed and any other securities guaranteed by its parent entity,
- (d) "parent credit supporter" means a credit supporter of which the issuer is a subsidiary,
- (e) "parent entity" means a parent credit supporter for the purposes of sections 13.2 and 13.3 and an issuer for the purpose of section 13.4,
- (f) "subsidiary credit supporter" means a credit supporter that is a subsidiary of the parent credit supporter, and
- (g) "summary financial information" includes the following line items:
  - (i) revenue;
  - (ii) profit or loss from continuing operations attributable to owners of the parent ;
  - (iii) profit or loss attributable to owners of the parent; and
  - (iv) unless the issuer's GAAP permits the preparation of the credit support issuer's statement of financial position without classifying assets and liabilities between current and non-current and the credit support issuer provides alternative meaningful financial information which is more appropriate to the industry,
    - (A) current assets;
    - (B) non-current assets;
    - (C) current liabilities; and
    - (D) non-current liabilities.

## INSTRUCTION

See section 1.1 of NI 41-101 for the definitions of "profit or loss attributable to owners of the parent" and "profit or loss from continuing operations attributable to owners of the parent".

- (2) For the purpose of this Item, consolidating summary financial information must be prepared on the following basis
  - (a) an entity's annual or interim summary financial information must be derived from the entity's financial information underlying the corresponding consolidated financial statements of the parent entity included in the short form prospectus,
  - (b) the parent entity column must account for investments in all subsidiaries under the equity method, and
  - (c) all subsidiary entity columns must account for investments in non-credit supporter subsidiaries under the equity method.

### 13.2 Issuer is Wholly-owned Subsidiary of Parent Credit Supporter

Despite Items 6 and 11, an issuer is not required to incorporate by reference into the short form prospectus any of its documents under paragraphs 1 to 4 and 6 to 8 of subsection 11.1(1) or include in the short form prospectus its earning coverage ratios under section 6.1, if

- (a) a parent credit supporter has provided full and unconditional credit support for the securities being distributed;
- (b) the parent credit supporter satisfies the criterion in paragraph 2.4(1)(b) of the Instrument;
- (c) the securities being distributed are non-convertible debt securities, non-convertible preferred shares, or convertible debt securities or convertible preferred shares that are convertible, in each case, into non-convertible securities of the parent credit supporter;
- (d) the parent credit supporter is the beneficial owner of all the issued and outstanding equity securities of the issuer;
- (e) no other subsidiary of the parent credit supporter has provided a guarantee or alternative credit support for all or substantially all of the payments to be made under the securities being distributed;
- (f) the issuer includes in the short form prospectus either

- (i) a statement that the financial results of the issuer are included in the consolidated financial results of the parent credit supporter, if
  - (A) the issuer is a finance subsidiary, and
  - (B) the impact of any subsidiaries of the parent credit supporter on a combined basis, excluding the issuer, on the consolidated financial results of the parent credit supporter is minor, or
- (ii) for the periods covered by the parent credit supporter's consolidated interim financial report and consolidated annual financial statements included in the short form prospectus under section 12.1, consolidating summary financial information for the parent credit supporter presented with a separate column for each of the following:
  - (A) the parent credit supporter;
  - (B) the issuer;
  - (C) any other subsidiaries of the parent credit supporter on a combined basis;
  - (D) consolidating adjustments;
  - (E) the total consolidated amounts.

**13.3 Issuer is Wholly-owned Subsidiary of, and One or More Subsidiary Credit Supporters Controlled by, Parent Credit Supporter**

- (1) Despite Items 6, 11 and 12, an issuer is not required to incorporate by reference into the short form prospectus any of its documents under paragraphs 1 to 4 and 6 to 8 of subsection 11.1(1), or include in the short form prospectus its earning coverage ratios under section 6.1, or include in the short form prospectus the disclosure of one or more subsidiary credit supporters required by section 12.1, if
  - (a) a parent credit supporter and one or more subsidiary credit supporters have each provided full and unconditional credit support for the securities being distributed;
  - (b) the parent credit supporter satisfies the criterion in paragraph 2.4(1)(b) of the Instrument;
  - (c) the guarantees or alternative credit supports are joint and several;

- (d) the securities being distributed are non-convertible debt securities, non-convertible preferred shares, or convertible debt securities or convertible preferred shares that are convertible, in each case, into non-convertible securities of the parent credit supporter;
- (e) the parent credit supporter is the beneficial owner of all the issued and outstanding equity securities of the issuer;
- (f) the parent credit supporter controls each subsidiary credit supporter and the parent credit supporter has consolidated the financial statements of each subsidiary credit supporter into the parent credit supporter's financial statements that are included in the short form prospectus; and
- (g) the issuer includes in the short form prospectus for the periods covered by the parent credit supporter's financial statements included in the short form prospectus under section 12.1, consolidating summary financial information for the parent credit supporter presented with a separate column for each of the following:
  - (i) the parent credit supporter;
  - (ii) the issuer;
  - (iii) each subsidiary credit supporter on a combined basis;
  - (iv) any other subsidiaries of the parent credit supporter on a combined basis;
  - (v) consolidating adjustments;
  - (vi) the total consolidated amounts.

(2) Despite paragraph (1)(g)

- (a) if the impact of any subsidiaries of the parent credit supporter on a combined basis, excluding the issuer and all subsidiary credit supporters, on the consolidated financial results of the parent credit supporter is minor, column (iv) may be combined with another column, and
- (b) if the issuer is a finance subsidiary, column (ii) may be combined with another column.

### 13.4 One or More Credit Supporters Controlled by Issuer

Despite Item 12, an issuer is not required to include in the short form prospectus the credit supporter disclosure for one or more credit supporters required by section 12.1, if

- (a) one or more credit supporters have each provided full and unconditional credit support for the securities being distributed,
- (b) if there is more than one credit supporter, the guarantee or alternative credit supports are joint and several,
- (c) the securities being distributed are non-convertible debt securities or non-convertible preferred shares, or convertible debt securities or convertible preferred shares that are convertible, in each case, into non-convertible securities of the issuer,
- (d) the issuer controls each credit supporter and the issuer has consolidated the financial statements of each credit supporter into the issuer's financial statements that are included in the short form prospectus, and
- (e) the issuer includes in the short form prospectus either
  - (i) a statement that the financial results of the credit supporter(s) are included in the consolidated financial results of the issuer, if
    - (A) the issuer has limited independent operations, and
    - (B) the impact of any subsidiaries of the issuer on a combined basis, excluding the credit supporter(s) but including any subsidiaries of the credit supporter(s) that are not themselves credit supporters, on the consolidated financial results of the issuer is minor, or
  - (ii) for the periods covered by the issuer's financial statements included in the short form prospectus under Item 11, consolidating summary financial information for the issuer, presented with a separate column for each of the following:
    - (A) the issuer;
    - (B) the credit supporters on a combined basis;
    - (C) any other subsidiaries of the issuer on a combined basis;
    - (D) consolidating adjustments;
    - (E) the total consolidated amounts.

**ITEM 14      RELATIONSHIP BETWEEN ISSUER OR SELLING SECURITYHOLDER AND UNDERWRITER**

**14.1    Relationship between Issuer or Selling Securityholder and Underwriter**

- (1)    If the issuer or selling securityholder is a connected issuer or related issuer of an underwriter of the distribution, or if the issuer or selling securityholder is also an underwriter of the distribution, comply with the requirements of NI 33-105.
- (2)    For the purposes of subsection (1), "connected issuer" and "related issuer" have the same meaning as in NI 33-105.

**ITEM 15      INTEREST OF EXPERTS**

**15.1    Names of Experts**

Name each person or company

- (a)    who is named as having prepared or certified a report, valuation, statement or opinion in the short form prospectus or an amendment to the short form prospectus, either directly or in a document incorporated by reference; and
- (b)    whose profession or business gives authority to the report, valuation, statement or opinion made by the person or company.

**15.2    Interest of Experts**

For each person or company referred to in section 15.1, provide the disclosure that would be required under section 16.2 of Form 51-102F2, as of the date of the short form prospectus, as if that person or company were a person or company referred to in section 16.1 of Form 51-102F2.

**15.3    Exemption**

Sections 15.1 and 15.2 do not apply to a person or company if the disclosure regarding the person or company required under section 15.2 is already disclosed in the issuer's current AIF and the disclosure is correct as at the date of the prospectus.

**ITEM 16      PROMOTERS**

**16.1    Promoters**

- (1)    For a person or company that is, or has been within the two years immediately preceding the date of the short form prospectus, a promoter

of the issuer or subsidiary of the issuer, state, to the extent not disclosed elsewhere in a document incorporated by reference in the short form prospectus,

- (a) the person or company's name,
  - (b) the number and percentage of each class of voting securities and equity securities of the issuer or any of its subsidiaries beneficially owned, or controlled or directed, directly or indirectly, by the person or company,
  - (c) the nature and amount of anything of value, including money, property, contracts, options or rights of any kind received or to be received by the promoter, directly or indirectly, from the issuer or from a subsidiary of the issuer, and the nature and amount of any assets, services or other consideration received or to be received by the issuer or a subsidiary of the issuer in return, and
  - (d) for an asset acquired within the two years before the date of the preliminary short form prospectus, or to be acquired, by the issuer or by a subsidiary of the issuer from a promoter,
    - (i) the consideration paid or to be paid for the asset and the method by which the consideration has been or will be determined,
    - (ii) the person or company making the determination referred to in subparagraph (i) and the person or company's relationship with the issuer or the promoter or an affiliate of the issuer or promoter, and
    - (iii) the date that the asset was acquired by the promoter and the cost of the asset to the promoter.
- (2) If a promoter referred to in subsection (1) is, as at the date of the preliminary short form prospectus, or was within 10 years before the date of the preliminary short form prospectus, a director, chief executive officer or chief financial officer of any person or company that
- (a) was subject to an order that was issued while the promoter was acting in the capacity as director, chief executive officer or chief financial officer, or
  - (b) was subject to an order that was issued after the promoter ceased to be a director, chief executive officer or chief financial officer and which resulted from an event that occurred while the promoter was acting in the capacity as director, chief executive officer or chief financial officer,

state the fact and describe the basis on which the order was made and whether the order is still in effect.

- (3) For the purposes of subsection (2), "order" means:
  - (a) a cease trade order,
  - (b) an order similar to a cease trade order, or
  - (c) an order that denied the relevant person or company access to any exemption under securities legislation,  
  
that was in effect for a period of more than 30 consecutive days.
- (4) If a promoter referred to in subsection (1)
  - (a) is, at the date of the preliminary short form prospectus, or has been within the 10 years before the date of the preliminary short form prospectus, a director or executive officer of any person or company that, while the promoter was acting in that capacity, or within a year of that person ceasing to act in that capacity, became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets, state the fact, or
  - (b) has, within the 10 years before the date of the preliminary short form prospectus, become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency, or became subject to or instituted any proceedings, arrangement or compromise with creditors, or had a receiver, receiver manager or trustee appointed to hold the assets of the promoter, state the fact.
- (5) Describe the penalties or sanctions imposed and the grounds on which they were imposed or the terms of the settlement agreement and the circumstances that gave rise to the settlement agreement, if a promoter referred to in subsection (1) has been subject to
  - (a) any penalties or sanctions imposed by a court relating to provincial and territorial securities legislation or by a provincial and territorial securities regulatory authority or has entered into a settlement agreement with a provincial and territorial securities regulatory authority, or

- (b) any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor in making an investment decision.
- (6) Despite subsection (5), no disclosure is required of a settlement agreement entered into before December 31, 2000 unless the disclosure would likely be considered important to a reasonable investor in making an investment decision.

#### INSTRUCTIONS

- (1) *The disclosure required by subsections (2), (4) and (5) also applies to any personal holding companies of any of the persons referred to in subsections (2), (4), and (5).*
- (2) *A management cease trade order which applies to a promoter referred to in subsection (1) is an "order" for the purposes of paragraph (2)(a) and must be disclosed, whether or not the director, chief executive officer or chief financial officer was named in the order.*
- (3) *For the purposes of this section, a late filing fee, such as a filing fee that applies to the late filing of an insider report, is not a "penalty or sanction".*
- (4) *The disclosure in paragraph (2)(a) only applies if the promoter was a director, chief executive officer or chief financial officer when the order was issued against the person or company. The issuer does not have to provide disclosure if the promoter became a director, chief executive officer or chief financial officer after the order was issued.*

## ITEM 17 RISK FACTORS

### 17.1 Risk Factors

Describe the factors material to the issuer that a reasonable investor would consider relevant to an investment in the securities being distributed.

#### INSTRUCTIONS

- (1) *Issuers may cross-reference to specific risk factors relevant to the securities being distributed that are discussed in their current AIF.*
- (2) *Disclose risks in the order of seriousness from the most serious to the least serious.*
- (3) *A risk factor should not be de-emphasized by including excessive caveats or conditions.*

## **ITEM 18 OTHER MATERIAL FACTS**

### **18.1 Other Material Facts**

Give particulars of any material facts about the securities being distributed that are not disclosed under any other items or in the documents incorporated by reference into the short form prospectus and are necessary in order for the short form prospectus to contain full, true and plain disclosure of all material facts relating to, the securities to be distributed.

## **ITEM 19 EXEMPTIONS FROM THE INSTRUMENT**

### **19.1 Exemptions from the Instrument**

List all exemptions from the provisions of the Instrument, including this Form, granted to the issuer applicable to the distribution or the short form prospectus, including all exemptions to be evidenced by the issuance of a receipt for the short form prospectus pursuant to section 8.2 of the Instrument.

## **ITEM 20 STATUTORY RIGHTS OF WITHDRAWAL AND RESCISSION**

### **20.1 General**

Include a statement in substantially the following form, with the bracketed information completed:

Securities legislation in [certain of the provinces [and territories] of Canada/the Province of [insert name of local jurisdiction, if applicable]] provides purchasers with the right to withdraw from an agreement to purchase securities. This right may be exercised within two business days after receipt or deemed receipt of a prospectus and any amendment. [In several of the provinces/provinces and territories,] [T/t]he securities legislation further provides a purchaser with remedies for rescission [or[, in some jurisdictions,] revisions of the price or damages] if the prospectus and any amendment contains a misrepresentation or is not delivered to the purchaser, provided that the remedies for rescission [, revision of the price or damages] are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province [or territory]. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province [or territory] for the particulars of these rights or consult with a legal adviser.

### **20.2 Non-fixed Price Offerings**

In the case of a non-fixed price offering, replace, if applicable in the jurisdiction in which the short form prospectus is filed, the second sentence in the legend in section 20.1 with a statement in substantially the following form:

"This right may only be exercised within two business days after receipt or deemed receipt of a prospectus and any amendment, irrespective of the determination at a later date of the purchase price of the securities distributed."

### **20.3 Convertible, Exchangeable or Exercisable Securities**

In the case of an offering of convertible, exchangeable or exercisable securities in which additional amounts are payable or may become payable upon conversion, exchange or exercise, provide a statement in the following form:

"In an offering of [state name of convertible, exchangeable or exercisable securities], investors are cautioned that the statutory right of action for damages for a misrepresentation contained in the prospectus is limited, in certain provincial [and territorial] securities legislation, to the price at which the [state name of convertible, exchangeable or exercisable securities] is offered to the public under the prospectus offering. This means that, under the securities legislation of certain provinces [and territories], if the purchaser pays additional amounts upon [conversion, exchange or exercise] of the security, those amounts may not be recoverable under the statutory right of action for damages that applies in those provinces [and territories]. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province [or territory] for the particulars of this right of action for damages or consult with a legal adviser."

#### *INSTRUCTION*

*For greater certainty, in the case of a short form prospectus that is a base shelf prospectus under NI 44-102, issuers must include the above statement, unless it is stated in the base shelf prospectus that no convertible, exchangeable or exercisable securities will be offered, or that such securities may be offered but no amounts will be payable to convert, exchange or exercise those securities.*

## **Item 21 Certificates**

### **21.1 Certificates**

Include the certificates required by Part 5 of NI 41-101 or by other securities legislation.

### **21.2 Issuer Certificate Form**

An issuer certificate form must state

"This short form prospectus, together with the documents incorporated by reference, constitutes full, true and plain disclosure of all material facts relating to

the securities offered by this short form prospectus as required by the securities legislation of [insert the jurisdictions in which qualified]."

### **21.3 Underwriter Certificate Form**

An underwriter certificate form must state

"To the best of our knowledge, information and belief, this short form prospectus, together with the documents incorporated by reference, constitutes full, true and plain disclosure of all material facts relating to the securities offered by this short form prospectus as required by the securities legislation of [insert the jurisdictions in which qualified]."

### **21.4 Amendments**

- (1) For an amendment to a short form prospectus that does not restate the short form prospectus, change "short form prospectus" to "short form prospectus dated [insert date] as amended by this amendment" wherever it appears in the statements in sections 21.2 and 21.3.
- (2) For an amended and restated short form prospectus, change "short form prospectus" to "amended and restated short form prospectus" wherever it appears in the statements in sections 21.2 and 21.3.